



S.A. No. 762 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2025 : Pronounced on 06.11.2025

CORAM

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

S.A. No. 762 of 2010
and M.P. No. 1 of 2010

1.Chengammal
2.Munusamy Naidu

...Plaintiffs /Appellants

Vs.

1.Kadar Basha
2.Abdul Raheem

...Defendants/Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 12.11.2008 made in A.S. No. 14 of 2003 on the file of the Subordinate Judge, Ponneri, reversing the judgment and decree dated 26.03.2003 made in O.S. No. 401 1983 on the file of the District Munsif Court, Ponneri.

For Appellants : Mr.R.Munuswamy

For Respondents : M/s.N.S.Mohamed Jafarullah, K.Anusarala (R1)
R1-unclaimed

J U D G M E N T

The appellants are the plaintiffs. The suit has been filed by the plaintiffs for the relief of recovery of possession. The trial Court decreed the suit and the First Appeal preferred by the defendants was allowed by the First Appellate Court by reversing the judgment of the Trial Court. Hence, the



S.A. No. 762 of 2019

Second Appeal has been filed by the plaintiffs.

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2. Short facts pleaded in the plaint :-

2.1. The plaintiffs 1 and 2 are wife and husband. The suit property is the absolute property of the 1st plaintiff. She constructed a house in the suit site out of her own funds which she earned out of milk vending business. The plaintiffs are in possession and enjoyment of the suit property for more than 15 years. As the 2nd plaintiff was managing the family, the property tax of the suit property was originally assessed in his name and later it was assessed in the name of the 1st plaintiff.

2.2. On 15.07.1983, the defendants came to the suit property and took up an argument with the plaintiffs and asked them to vacate. It is claimed by the defendants that the 2nd plaintiff has affixed her thumb impression in blank papers. The 1st defendant taking undue advantage of the friendship he had with the 2nd plaintiff, compelled him to consume country arrack and got his thumb impression in blank papers when he was under the influence of alcohol. The defendants have also taken some house tax receipts from the 2nd plaintiff.



WEB COPY



S.A. No. 762 of 2019

2.3. On 18.07.1983, the 1st plaintiff sent a legal notice to the 1st defendant calling upon him to return the papers illegally obtained from her husband. The 1st defendant received the notice, but he did not comply with the demand. As the 1st and 2nd defendants joined hands and tried to evict the plaintiffs from the suit property, the plaintiffs have filed the suit for permanent injunction. As the defendants have dispossessed the plaintiffs during the pendency of the suit by force, the plaint has been amended by including the relief of declaration and recovery of possession.

3. The written statement of the 1st defendant in brief:-

3.1. The 1st plaintiff is not the absolute owner of the suit property. The 1st plaintiff did not have any means to acquire the property. The 2nd plaintiff had occupied the suit property and put up a superstructure out of his own funds and started to live there. The 1st plaintiff was not doing any milk vending business. The 2nd plaintiff was the milk vendor. The 1st plaintiff was living in the suit property only as a dependant of the 2nd plaintiff. The house tax assessment was made only in the name of the 2nd plaintiff.



3.2. It is denied that the house was assessed in the name of the 1st plaintiff. The 2nd plaintiff's legally wedded wife belongs to Aarambakkam and she got separated from him. So he started to live with the company of some other woman and thereafter, with the 1st plaintiff.

3.3. On 03.05.1983, the 2nd plaintiff conveyed the suit property to the 1st defendant for a sale consideration of Rs.1,100/- and executed an unregistered sale deed and on the same day, he delivered the possession of the suit property also. It is false to state that the thumb impression of the 2nd plaintiff was obtained by forcing him when he was in an intoxicated mood and he also handed over the tax receipts to the defendants.

3.4. After taking possession, the 1st defendant has renovated the damaged superstructure. The 1st defendant has performed his part of contract and he is entitled to the benefit of Section 53-A of the Transfer of Property Act, 1882. Hence, his possession has to be protected. The 2nd defendant has filed his written-statement stating that he is an unnecessary party and he had never attempted to trespass into the suit property.



4. On the basis of the above pleadings, the following issues have been framed by the trial Court:-

“1. Whether the first plaintiff was the owner of the suit property?

2. Whether the first defendant is in possession of the suit property in part performance of a contract and if so whether he is qualified to get the benefits of Section 53A of the Transfer of Property Act.

3. Whether the plaintiffs are entitled to evict the first defendant and recover vacant possession from him?

4. To what other relief are the plaintiffs entitled?”

5. During the course of trial, on the side of the plaintiffs, two witnesses were examined as PW1 and PW2 and four documents were marked as Ex.A1 to A4 and on the side of the defendants, four witnesses were examined DW1 to DW4 and 14 documents have been marked as Exs. B1 to B14.

6. At the conclusion of the trial and after considering the evidence on records, the Trial Court has decreed the suit as prayed. Aggrieved over that, the defendants have filed the first appeal in A.S. No. 14 of 2003 on the file of



the Sub Court, Ponneri and the same was allowed by reversing the judgment of the Trial Court. Hence, the plaintiffs have filed this Second Appeal.

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7. The Second Appeal has been admitted on the following substantial questions of law :-

“(1) Whether the unregistered inadequate stamped document /Ex.B1 could grant title and right of possession to the respondents?

(2) Whether under the said Ex.B1 which is neither registered nor adequately stamped, the respondents could claim right of part performance under Section 53-A of the Transfer of Property Act, 1882?”

Appellants arguments:-

8. The learned counsel for the appellants/plaintiffs submitted that under Section 53-A of the Transfer of Property Act, 1882, the contract must be lawful and enforceable. If the contract is executed by fraud, mistake and want of free will, the benefit of Section 53 will not accrue to the transferee viz.,



WEB COPY



S.A. No. 762 of 2019

the 1st defendant.

8.1. The Trial Court has observed that Ex.B1/alleged unregistered sale deed is found to be in two parts written in different inks and with different hand writings and the thumb impression of the 2nd plaintiff has not been obtained below the 2nd part. There are some interlineations and additions seen in that document. The Trial Court has observed that Ex.B2 is a doubtful document and it cannot be relied. The 1st defendant had ignored the right position and proceeded to file the appeal. The First Appellate Court has not considered the legal aspect of Section 53-A of the Transfer of Property Act, 1882 and the validity of Ex.B1 which is an unregistered document and cannot be relied as an evidence.

Respondents side arguments:-

9. The learned counsel for the 1st respondent/1st defendant submitted that the 1st defendant has taken possession right from the year 1983 and he has been in enjoyment of the same. The plaintiffs have not proved that there was a forcible eviction as pleaded by them. As the possession of the 1st defendant itself



would show that the performance of the agreement to sell the suit property to the 1st defendant, his possession has to be protected. The First Appellate Court has rightly appreciated the said fact and allowed the First Appeal.

Discussion:-

10. The fact that the suit property originally belonged to the 2nd plaintiff is not denied, but the 1st defendant has denied that the 1st plaintiff is the owner of the property, but the 2nd plaintiff had been in possession of the same. The 1st defendant has claimed further that on 03.05.1983, the 2nd plaintiff had validly conveyed the suit property to the 1st defendant by receiving the entire sale consideration of Rs.1,100/- and executed a deed. It is further claimed that the 2nd plaintiff has delivered the possession of the suit property also to the 1st defendant. Admittedly, Ex.B1 document which is claimed to be the document of title in favour of the 1st defendant is not a registered one. At the same time, it has not been stated that Ex.B1 is only a sale agreement. The 2nd plaintiff did not have any previous document of title in his name. It appears that the plaintiffs have been in enjoyment of the suit property by paying house tax for the same. In Ex.A3/House Tax Receipts, names of both the plaintiffs are found. The plaintiffs are husband and wife. So, in the absence of any



document to show that the 2nd plaintiff is the absolute and sole owner of the suit property, it cannot be denied that the 1st plaintiff has joint interest in the suit property by taking into consideration of the joint enjoyment of the plaintiffs over the suit property.

11. The contention of the plaintiffs is that the 1st defendant had managed to obtain the thumb impression of the 2nd plaintiff in Ex.B1 while he was in an intoxicated mood and claimed to have derived title. However, it is claimed by the 1st defendant that Ex.B1 conveys valid title in his favour and consequent thereof, he has been put in possession also. At another stretch, the 1st defendant also claims that he is entitled to the benefit of Section 53-A of the Transfer of Property Act as he has done the part performance of the contract. It is further pleaded by the 1st defendant that he is ready to perform his part of contract. If the 1st defendant had paid the sale consideration in full to the 2nd plaintiff by proceeding that he is the sole owner of the suit property, it is not known what is the remaining part of the contract to be fulfilled by the 1st defendant.

12. As per Section 17 of the Registration Act, 1908, any non-testamentary instrument, which purports or operates to create, declare,



assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in respect of an immovable property of value of more than Rs.100 /-, shall be registered.

13. As per Section 49 of the Registration Act, the documents required to be registered under Section 17 cannot be received as the evidence for any transactions affecting such property, unless it has been registered. But as per proviso to Section 49 before amendment (Act 48 of 2001), even an unregistered document affecting immovable property can be received as evidence for particular performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882. As per Section 53-A of the Transfer of Property Act as it stood before amendment, the possession of a person, who has partly performed a contract, can be protected even against the transferor or any person claiming under him. This is irrespective of the fact whether the contract is a registered one or not. Ex.B1 through which the 1st defendant claims his interest over the suit property is dated 03.05.1983. The above date is prior to 2001 amendment and hence, the 1st defendant ought to have made his stand clear whether Ex.B1 document is considered as a sale deed or sale agreement. The 1st defendant has made confusing averments in their written statement and the 1st defendant himself is not sure about the



transaction.

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14. But on perusal of the Ex.B1, and by going with the averments therein it can only be presumed that Ex.B1 is written as a sale deed and it was not treated as sale agreement by the 1st defendant. In such case, the 1st defendant cannot have the benefit of protection of possession by invoking Section 53-A of the Transfer of Property Act, 1882.

15. Once it is concluded that Ex.B1 cannot be treated as sale agreement, then it ought to have been registered in terms of Section 17 of the Registration Act, 1908. So, inadmissibility of an unregistered sale deed even before or after amendment of the immovable property of value is more than Rs.100/- remains the same. So the 1st defendant cannot claim title and consequent possession over the suit property by considering Ex.B1 as the document transferring title in the suit property, which even according to the 1st defendant is valued at Rs.1,100/-. So there is no question of applicability of Section 53-A of the Transfer of Property Act on the basis of the facts pleaded by the 1st defendant.



16. Apart from the unregistered nature of Ex.B1, the 1st defendant has not made it clear as to whether the 2nd plaintiff is the absolute owner of the suit property. It has already been stated that Ex.A3 House Tax Receipts seem to be standing in the name of the plaintiffs. No prior document of title is said to have been handed over to the 1st defendant at the time when Ex.B1 was executed by the 2nd plaintiff.

17. The contention of the plaintiffs is that the 1st defendant had obtained the thumb impression of the 2nd plaintiff by making him intoxicated. Even if it is presumed that the 2nd plaintiff has affixed his thumb impression consciously on Ex.B1, it cannot convey any valid title in favour of the 1st defendant as it is an unregistered document. As the unregistered sale deed cannot convey any title in favour of the transferee in view of the bar under Section 17 of the Registration Act, 1908, the 1st defendant ought not to have been found to have acquired title and consequent protection for his possession.

18. The First Appellate Court appears to have considered the possession of the 1st defendant as part performance of a contract under Section 53-A of the Transfer of Property Act, 1882. But the 1st defendant had at no point of



time claimed that Ex.B1 is a sale agreement and it was an incomplete contract of sale and by way of part performance, he was put into possession of the suit property. Even if it is assumed for the sake of argument without attempting that Ex.B1 is a partly performed contract, then the benefit of protection of possession under Section 53-A of the Transfer of Property Act is available to the 1st defendant only when the contract is not tainted by fraud, mistake or for want of free will etc.,

19. The Trial Court had observed in its judgment that contracts that comes under the Transfer of Property Act shall be considered as part of the Indian Contracts Act as well. In such case, the transferee of the Ex.B1 has got the burden to prove that it is a valid contract. The 1st defendant himself did not deny the title of the plaintiffs though he claimed that the title vested only with the 2nd plaintiff. Even if it is presumed that the 2nd plaintiff alone is the title holder of the suit property, it should be proved by the 1st defendant that Ex.B1 contracts has been executed by the 2nd plaintiff out of his free will while he was not in an intoxicated mood and unsound state of mind. At the time when the suit was filed, the plaintiffs were in the possession of the suit property and to prove that, the house tax receipts in the name of the plaintiffs have also been produced as Exs. A3 and A4. On perusal of Ex.B1/sale deed, it is seen



that the thumb impression of the 2nd plaintiff has been obtained on revenue stamp and the property, which is said to have been subjected to sale, had been written below his thumb impression. The 2nd plaintiff has not affixed his thumb impression once again below the property particulars. So, there are possibilities for the 1st defendant himself to include it subsequently.

20. In all probabilities, Ex.B1 document can neither be considered as a valid sale deed for want of registration nor considered as a valid contract for want of proof of free will on the part of the 2nd plaintiff. In whichever way Ex.B1 is adduced in evidence, that will not confer either valid title or valid possession over the suit property for the 1st defendant. Ex.B1 pertains to a date prior to the year 2001, but it ought to have been registered because the 1st defendant had considered that as a sale deed by showing the sale value as Rs.1,100/-. The difference between the claim of the person under Section 17 and under Section 53-A has been elaborated by the Hon'ble Supreme Court in the judgment of the ***Guman Singh -vs- Manga Singh*** reported in ***Manu/SC/0872/2016***. By making reference to the earlier judgment in ***Ranchhoddas Chhaganlal -vs- Devaji Supdu Dorik*** reported in ***1977 (3) SCC 584***, the Hon'ble Supreme Court in ***Guman Singh*** has held as follows:-

“From the facts narrated above, it becomes manifest that



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the purported sale deed dated 02.05.1966 was never registered and remained an unregistered document. Even as per the appellants, consideration for the suit land was Rs.9000/-, i.e., more than Rs.100. The transaction pertains to immovable property. Such a sale deed was compulsorily registrable under Section 17 of the Indian Registration Act. The consequence of non-registration are provided in Section 49 thereof. Such document cannot be led into evidence and no rights indicated in the said document can be pressed and claimed. The document can be seen only for collateral purposes. In the instant case, on the basis of the said document, the appellants are claiming ownership which cannot be countenanced. Thus, the appellants cannot claim that they had become owners of the suit land on the basis of document dated 02.05.1966. Insofar as rights claimed on the basis of Section 53A of the Act are concerned, that deals with only part-performance. It has been held by this Court in 'Ranchhoddas Chhaganlal v. Devaji Supdu Dorik' [1977 (3) SCC 584] that the plea of Section 53A of the Act can be taken only in defence. It is a sword and not a shield. In the present case, suit was filed by the appellants and we are not dealing with a situation where suit is filed against the appellants and on the allegations of the said part-performance, their claim had to be their defence. In order to get the reliefs claimed by them, they were required to show their ownership in the suit land, in which attempt they have failed may be because of the reason that the sale deed in question on which they rely upon is an unregistered



document.”

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21. In the case on hand, the 1st defendant tried to use Ex.B1/Sale deed as a sword and a shield by making pleas to consider it both as the sale deed and also as a partly performed contract under Section 53-A of the Transfer of Property Act. As the 1st defendant had taken a confused stand and Ex.B1 document does not have any averments to consider that as an incomplete sale or sale agreement, the said document cannot be considered either to confirm the title or to protect the possession of the 1st defendant over the suit property. So Ex.B1 is hit under Section 17 of the Registration Act. The petitioner cannot be found to be either owner or a person who is in lawful possession of the suit property. In other words, though Ex.B1 was prior to 2001 amendment, it can be considered as a sale deed in view of its recitals, and due to its unregistered nature, it cannot convey any effective title. **Hence, the substantial questions of law No.1 is answered accordingly.**

22. Ex.B1 document is not proved to be a valid contract. On the other hand, the manner in which it has been written and the type of affixure of the thumb impression of the 2nd plaintiff on the same would only show that there is no valid contract which might protect the possession of the 1st defendant



against the transferee viz., the 2nd plaintiff. **Thus, the substantial question of law No.2 is answered accordingly.**

23. As the First Appellate Court had properly appreciated both the facts and law involved in this case, and the answers to the substantial questions are given in favour of the plaintiffs, this Second Appeal deserves to be allowed.

24. In the result, the appeal is allowed. The judgment and decree dated 12.11.2008 in A.S. No. 14 of 2003 passed by the First Appellate Court is set aside and the judgment and decree dated 26.03.2003 in O.S. No. 401 1983 passed by the Trial Court is restored. No costs. Connected petition is closed.

25. The 1st defendant shall hand over the possession of the suit schedule property to the plaintiffs within a period of one month from the date of receipt of a copy of this judgment.

06.11.2025

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No



S.A. No. 762 of 2019



S.A. No. 762 of 2019

To

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1. The Subordinate Judge, Ponneri.
2. The District Munsif Court, Ponneri.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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S.A. No. 762 of 2010

Dr.R.N.MANJULA, J.

Maya

S.A. No. 762 of 2010

06.11.2025