

S.A.Nos.96 & 97 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.Nos. 96 and 97 of 2025

and

CMP.No. 2814 of 2025

1.Kalamani

W/o. Parthasarathy

...Appellant in S.A.No.96/2025 &
1st Appellant in SA.No.97/2025

2.Parthasarathi

S/o. Gopalsamy Naidu

....2nd Appellant in SA.No.97/2025

Versus

Saraswathi (Died)

1.Selvaraj

S/o. Late.Kasturisamy

2.Prema

D/o. Late.Kasturisamy

W/o. Kanagaraj

3.Chitra

D/o. Late. Kasturisamy

W/o. Jayabal.

...Respondents
[in both SAs]



S.A.Nos.96 & 97 of 2025

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Prayer in SA.No.96 of 2025: Second Appeal filed under Section 100 of the Code of Civil Procedure praying to set aside the Judgment and Decree dated 29.11.2024 in A.S.No. 21 of 2023 on the file of Sub Court, Udumalaipet confirming the Judgment and Decree dated 10.10.2023 in O.S.No. 94 of 2012 on the file of District Munsif Court, Udumalaipet.

Prayer in SA.No.97 of 2025: Second Appeal filed under Section 100 of the Code of Civil Procedure praying to set aside the Judgment and Decree dated 29.11.2024 in A.S.No. 22 of 2023 on the file of Sub Court, Udumalaipet confirming the Judgment and Decree dated 10.10.2023 in O.S.No. 276 of 2012 on the file of District Munsif Court, Udumalaipet.

In both the Second Appeals:

For Appellants : Mr.M. Sivavarthanan
For Respondents : No Appearance

COMMON JUDGMENT

These Second Appeals have been filed to set aside the Judgment and Decree dated 29.11.2023 in A.S.Nos. 21 & 22 of 2023 on the file of Sub Court, Udumalaipet, confirming the Judgment and Decree dated 10.10.2023 in



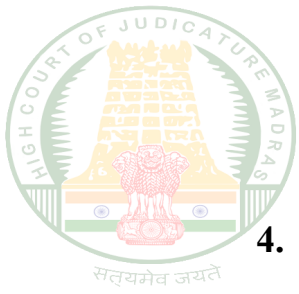
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O.S.Nos. 94 & 276 of 2012 on the file of District Munsif Court, Udumalaipet,

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2. The 1st appellant herein is the plaintiff and the respondents herein are the defendants in O.S.No. 94 of 2012 And the 2nd appellant herein is the 2nd defendant and the respondents herein are the plaintiffs in O.S.No. 276 of 2012 before the Trial Court.

3. The 1st appellant/plaintiff has filed the suit in O.S.No. 94 of 2012 and the respondents/plaintiffs filed the suit in O.S.No.276 of 2012 for declaration and permanent injunction before the District Munsif Court, Udumalaipet. After perusing the records, the Trial Court partly decreed the suit in O.S.No. 276 of 2012 and the suit in O.S.No. 94 of 2012 was dismissed by judgment and decree dated 10.10.2023. Aggrieved by the same, the appellants had preferred the appeals in A.S.Nos.21 and 22 of 2023 and the same were dismissed by judgment and decree dated 29.11.2023. Challenging the concurrent findings of the Courts below, the appellants have preferred the present Second Appeals.

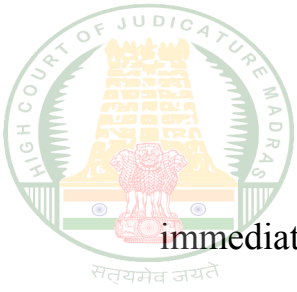


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4. Before the Courts below, the first appellant contended that she is a

WEB COPY *bona-fide* purchaser of the suit property and the power of attorney holder is the husband of the first appellant. Admittedly, the suit property belongs to the respondent/plaintiff, namely, Kalamani. Based upon the alleged Power of Attorney dated 22.06.2000 executed by the respondents herein in favour of the second appellant herein, namely, Parthasarathy, the first appellant said to have purchased the suit property for a valid sale consideration. According to the defendants, the respondents/original owners of the suit property that they have not received any sale consideration from the plaintiff viz., Kalamani and therefore, the Power of Attorney was executed by the respondents in favour of the second appellant, has also been cancelled by them. But, after the Sale Deed dated 02.03.2009 was also executed by the second appellant to and in favour of the first appellant, the alleged Power of Attorney was also cancelled by the respondents herein on 03.03.2009. However, the alleged Power of Attorney was said to be executed on 22.06.2000.

5. To prove the payment of the sale consideration, the 1st appellant/plaintiff has relied on a varthamana letter and receipt which were executed on the same day of the Power of Attorney was executed. As per the alleged varthamana letter, Rs.8,50,000/- was paid as sale consideration

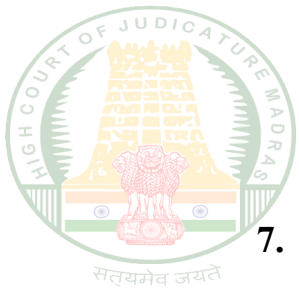


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immediately. But, after the said varthamana letter, nearly about 9 years later,

the sale deed has also been executed in favour of the plaintiff who is the wife of the Power of Attorney Holder. However, the Courts below held that there is no proof that the sale consideration was paid to the respondents/original owners.

6. Thereafter, notice dated 05.01.2012 was issued by the Periyanaickenpalayam Co-operative Agricultural Development Bank to the respondents which shows that already there is a loan borrowed by the respondents/original owners by pledging the subject property to the Periyanaickenpalayam Co-operative Agricultural Development Bank. But, the plaintiff contended that she came to know about the loan and also steps taken to settle the issue as per the alleged varthamana letter marked as Ex.A11 dated 22.06.2000 in which there is a recital that already the property was pledged with the Co-Operative Bank along with original documents. Therefore, the alleged Power of Attorney and the varthamana letter are in contradictory letter which shows that the plaintiff and her husband have colluded to grab the property.



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7. Therefore, the Courts below have rightly held that the relief of the

plaintiff in O.S.No. 94 of 2012 that she is the absolute owner of the property, as such is not maintainable. Another suit in O.S.No.276 of 2012 was filed by the respondents/original owners for the reliefs of declaration and permanent injunction in respect of 8 acres 21 cents. The reliefs prayed by the respondents in that suit to declare the sale deed stood in the name of the first appellant claiming by way of Document No. 1431 of 2009 as null and void, was also granted and insofar as the relief of permanent injunction was dismissed. Challenging the concurrent findings of the Courts below, the appellants have preferred the present Second Appeals.

8. The learned Counsel for the appellants would submit that the first appellant has proved that the balance payment of sale consideration and as on date, she is in possession and enjoyment of the suit property, but, title follows the possession. The Trial Court has rightly observed that the first appellant viz., Kalamani, not proved that she is a *bona-fide* purchaser and she has not established the payment of valid sale consideration. Therefore, she is not a *bona-fide* purchaser and both the appellants i.e., husband and wife had colluded and fabricated the documents belonging to the respondents. The findings rendered by the Courts below does not warrant interference. Hence, there is no



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infirmity or illegality in the order passed by the Courts below and the second

appeals are liable to be dismissed.

9. Accordingly, both the Second Appeals are dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

07.02.2025

MSM

1. The Sub Court, Udumalaipet.
2. The District Munsif Court, Udumalaipet.
3. The Section Officer, High Court, Madras.



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T.V.THAMILSELVI, J

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