



S.A.No. 386 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 01.08.2025	PRONOUNCED ON 27.10.2025
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CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.No. 386 of 2018

1.N.Ravindran (Died)
2.R.Swarnakumari
3.M.Padmavathi
4.R.Venkatesan

... Appellants

Sole Appellant died. A2 to A4 bring on record as Lrs of deceased sole appellant vide Court order dated 10.07.2025 made in CMP.Nos.8661, 8662 & 8664 of 2025 in S.A.No.386 of 2018

Vs

1.V.Ramachandran (Died)
2.R.Mohana @Janaki
3.Sairam
4.Srividhya Aravindhan
5.Srivatsan

... Respondents

(Sole Respondent Died, RR2 to5 are brought on record as legal heirs of the deceased Sole Respondent vide Court order dated 10.07.2025 made in C.M.P.Nos.8665, 8666, 8667 of 2025 in S.A.No.386 of 2018)

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code as against the common judgment and decree dated 16.02.2018 made in A.S.Nos.320 of 2015 on the file of the VI Additional Judge, City Civil Court,



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Chennai confirming the judgment and decree dated 15.07.2015 made in O.S.No.300 of 2006 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Santhosh Kumar for
Mr.Azhagu Raman

For Respondents : Mr.V.Chandrakanthan for RR2, 4 & 5
R1 – Died
R3 – No Ready in notice

JUDGMENT

This Second Appeal had been filed as against the common judgment and decree dated 16.02.2018 made in A.S.Nos.320 of 2015 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 15.07.2015 made in O.S.No.300 of 2006 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

2) Mr.S.Santhosh Kumar, learned counsel for the appellant would submit that the respondent herein had filed a suit seeking for a decree of the vacant possession of the suit property and also for damages for use and occupation at Rs.5,000/- per month from the date of the suit till the actual surrender of possession. He had also filed a counter claim seeking for a prayer in having a right to continue in possession in pursuant to the agreement of sale entered between the appellant and the respondent. He would submit



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that however, the Trial Court had decreed the suit in respect of the relief of possession, but dismissed the suit with regard to the mesne profit and also the counter claim filed by the appellant. He would submit that as against the same, he had preferred an appeal suit in A.S.No.320 of 2015 and the respondent had also filed an appeal suit in A.S.No.325 of 2015 against the dismissal of the suit with regard to the mesne profits. The Appellate Court by a common judgment dismissed both the appeal suits with a direction to the appellants to hand over the vacant possession within 30 days from the date of judgment and decree. Against the dismissal of the appeal suit, he had preferred the present Second Appeal.

3) He would further submit that even though the appellant had filed a suit before this Court for specific performance of agreement of sale, the plaint was rejected by this Court under Order II, Rule 2 CPC which was also affirmed up till the Hon'ble Apex Court, but however, he would claim that the Hon'ble Apex Court had given a liberty to the appellant to agitate his claim in the present proceedings. He would further submit that the respondent having failed to prove that he had discharged the loan is not entitled for the possession of the suit property. He would further submit that the Hon'ble Apex Court had given the liberty to raise all the points that had been raised



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there in the present proceedings. The Courts below had failed to appreciate the case of the appellants in that regard. He would further submit that various substantial question of law as raised by him would have to necessarily made. He would submit that the substantial question of law with regard to the failure of the respondent seeking for recovery of property by proving the discharge of the mortgage loan would have to be adjudicated by this Court. He would further submit that the plea of leave and license and the plea of loan transaction are mutually contradictory and destructive and having pleaded and failure to prove the same would hold the judgment and decree of the Courts below to be bad in law. Therefore, he prays indulgence of this Court to the judgments and decrees of the Courts below.

4) Countering his arguments, Mr.V.Chandrakanthan, learned counsel appearing for the respondent would at the outset submit that having failed to file an appeal against the rejection of his counter claim, the appellant cannot raise the issue in the present Second Appeal for retention of his possession. He would further submit that even though the respondent had taken a plea of mortgage, the same had been stoutly denied by the appellant and had claimed that he had been put in possession of the property only pursuant to the agreement of sale that had been entered between them. He would submit that



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this Court on its original side had given a categorical finding that the said document relied upon by him cannot be said to be an agreement of sale. He would further submit that even though the respondent had failed to prove the mortgage or the leave and license, equally the appellant, having failed in his counter claim before the Trial Court had also failed to file any appeal suit against his counter claim. Therefore, the appellant is dis-entitled to contend that the claim of the respondent for vacant possession of the property which admittedly is owned by the respondent. He would submit that the respondent being the rightful owner of the property is always entitled for recovery of possession of the property from another when that person has no right whatsoever to continue to be in possession in the manner known to law. Therefore, he prays to dismiss the present Second Appeal.

5) I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

6) There is no dispute that the respondent is the owner of suit scheduled property. It is the claim of the respondent that the appellant had been put in possession of the suit scheduled property pursuant to a mortgage and that it was the arrangement between them that once the mortgage is discharged, the



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possession would be reverted back to the respondent. It is his further claim that he had discharged the mortgage in the year 1997 and the appellant had refused to hand over the suit scheduled property. On the other hand it is the claim of the appellant that there has been no such mortgage as claimed by the respondent and that he had entered into an agreement of sale and had been put in possession of the property pursuant to such agreement of sale.

7) It is to be noted that the suit filed by the appellant for specific performance before this Court had been rejected by this Court holding that the suit is hit by Order II Rule 2 CPC and also barred by law of limitation. The same had been affirmed up till the Hon'ble Apex Court, but, however, liberty had been granted by the Hon'ble Apex Court to raise all the contentions that the appellant had raised in the said suit in this proceedings. Based upon the liberty granted, he had also filed an additional written statement and a counter claim for retention of the property. It is surprising to note that the appellant had not sought for even for refund of the part sale consideration paid by him under Ex.B22 and other further documents. It is also worthwhile to note that the Trial Court had rejected the counter claim of the appellant and even in his appeal suit, he had only challenged the grant of decree in favour of the respondent and had not prayed any relief against the rejection of his counter claim. Therefore, as rightly pointed out by the learned counsel for the



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respondent, the appellant cannot be allowed to canvas the grounds that he had raised in his counter claim in the present Second Appeal.

8) Having failed to claim a relief against the rejection of his counter claim, the appellant cannot canvas a case that the respondent is dis-entitled to seek recovery of the possession. It is not disputed by the appellant that the respondent is the owner of the suit property. He admits title of the suit property with the respondent. A categorical finding had been given by the First Appellate Court that both the parties have failed to prove on what basis the appellant had been put in possession.

9. It is the case of the appellant that he had been put in possession pursuant to an agreement of sale. No such agreement of sale had been produced in evidence except for Ex.B22 which has already held that it cannot be treated as agreement of sale and utmost it could be a document evidencing that the parties have agreed to enter into an agreement of sale. The appellant having failed in his attempt to specifically perform the agreement and also having raised a counter claim to retain the possession of the property in terms of Section 53A of Transfer of Property Act, which had been rejected by the Trial Court and having failed to file an appeal against the rejection of claim



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specifically he is dis-entitled to claim that he is entitled to retain the possession.

10) For the aforesaid reasons, this Court does not find any substantial question of law, much less any substantial question of law as sought to be framed by the appellant in the present Second Appeal.

11) In fine, the present Second Appeal fails and is accordingly dismissed. However, there shall be no order as to costs.

27.10.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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- 1.VI Additional Judge, City Civil Court, Chennai
- 2.The XVI Assistant Judge, City Civil Court, Chennai.



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K.KUMARESH BABU,J.

Gba

A Pre-delivery order made in
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