IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-11-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

SA No. 311 of 2015 and
M.P.No.1 of 2015

R.M.Yousuf

Appellant(s)

Vs

1. Selvam

2.Janaki

3.Dakshinamoorthy

Respondent(s)

For Petitioner(s) : M/s.G.Sumitra

For Respondent(s): M/s.Elizabeth Ravi
for RR1 and R2
R3- Served (No appearance)

Judgment

This second appeal has been preferred as against the decree and judgment dated 17.10.2014 passed in A.S.No.17 of 2013 on the file of the Principal District Judge, Puducherry, however, the respondents 1 and 2 have preferred the first appeal as against the decree and judgment passed by the trial Court in

O.S.No.57 of 2007 on the file of the Principal Special Judge, Puducherry dated 06.03.2013. In fact, the appellant herein being the plaintiff, has filed the above suit for declaration seeking to declare the sale deed dated 31.07.2006, executed by the first defendant in favour of the third defendant is null and void and to consequently cancel the same and to pass a decree of permanent injunction from their men from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and also for permanent injunction restraining the defendants their men and agents or anyone claiming under them from creating any encumbrance over the suit property. The said suit was decreed in favour of the appellant. Aggrieved over the same, the defendants 1 and 2 have preferred the first appeal, wherein the first appellate Court had allowed the said appeal by setting aside the order of the trial Court.

2. The brief averments of the plaintiff are as follows:

2.1. The suit property absolutely belongs to the plaintiff through a sale deed dated 29.03.1995 and thereafter, he was in peaceful possession and enjoyment of the property. The plaintiff is employed at Embassy of Beharin at Kuwait and the family members of the plaintiff are residing in Kottakuppam. The first defendant is a known person to the plaintiff, who is working at the Xerox shop of the plaintiff. The first defendant used to borrow paltry sums from the plaintiff whenever he used to visit family members of the plaintiff and also stood as a guarantor for the plaintiff's loan obtained from the erstwhile Nedungadu Bank subsequently amalgamated with Punjab National Bank for purchase of a Xerox machine. Therefore, the plaintiff trusted the first defendant. Since the plaintiff was in Kuwait, in order to maintain his property, he executed a power of attorney dated 18.03.2000 in favour of the defendant in respect of the suit property.

2.2. Thereafter, when the plaintiff came to India he gathered information that the first defendant had sold the property without the plaintiff's knowledge or consent by fraudulently conniving with the 2nd defendant as if the original parent document had been lost. The plaintiff also came to know that the first defendant had lodged a false complaint at the Kalapet Police Station as if the original title deeds were not traceable. The defendants 1 to 3 conspired together and have fraudulently fabricated the documents. Therefore, the plaintiff issued a legal notice dated 19.09.2006 to the defendants 1 and 2 and a reply notice dated 27.09.2006 was issued as if the first defendant executed a sale deed in favour of the third defendant through a sale deed dated 31.07.2006. Therefore, the plaintiff had filed a suit for declaration seeking to declare the sale deed dated 31.07.2006 executed by the first defendant in favour of the third defendant is null and void and also for permanent injunction restraining the defendants their men and agents or anyone claiming under them from creating any encumbrance of the suit property.

3. The brief averments of the written statement filed by the respondents 1 and 2 / defendants 2 and 3 are as follows:

(i) The suit is not maintainable and the same has to be dismissed *in limine*. The defendants denied the averments made in the plaint as not correct except those that are admitted herein. It is true that the suit schedule property belongs to the plaintiff through sale deed dated 29.03.1995. The defendants 2 and 3, are not aware of the relationship which prevailed between the plaintiff and the first defendant. As a family friend of the first defendant, the plaintiff requested the wife of the first defendant to produce the title deeds of her movable property to avail loan. In fact, the plaintiff offered to sell the property to the first defendant and agreed to execute a registered general power deed in favour of the first defendant on 08.03.2000, however, subsequently, the plaintiff had stated that he had misplaced the original title deeds and undertook to produce the same after being traced out. Only after the execution of the same, the plaintiff showed his colour and convinced the wife of the first defendant and made to deposit the title deeds of her in the bank with all its assets and liabilities. The plaintiff availed a loan of Rs.50,000/- from the Bank and since the said amount was not repaid, the Bank instituted a suit in O.S.No.161 of 2003 before the learned Additional Sub Judge, Puducherry and thereafter, transferred the same to the learned II Additional District Munsif, Puducherry and later it was re-numbered as O.S.No.1292 of 2005. The first defendant produced all the records including the certificate issued by the Kalapet Police dated 05.01.2005 and the missing complaint that the original title deed was washed out in Tsunami which was also published on 02.10.2005. It is clear from the encumbrance certificate that the sale was effected and thus the third defendant is a bonafide purchaser for value and further so far the general power of attorney given to the first defendant by the plaintiff has not been cancelled. After the purchase of the suit property, the third defendant was in peaceful possession and enjoyment of the property. Subsequently, the third defendant entered into a sale agreement with one R.Selvam dated 10.09.2006. The plaintiff issued a notice dated 19.01.2006 and the same was replied on 27.01.2006 and thereafter the plaintiff filed a suit after a lapse of six months. The Court fee paid is not correct. Since the plaintiff is not in possession of the suit property, he is not entitled to any relief and the suit is liable to be dismissed.

4. Based on the above said pleadings and on hearing both sides and on perusing the records, the trial Court has framed the following issues:

1) Whether the sale deed dated 04.08.2006 executed by the first defendant in favour of the third defendant is to be declared as invalid, void, *non est* in law and incapable of creating any right or title in favour of third defendant?

2) Whether the plaintiff is entitled for the decree and judgment of permanent injunction restraining the defendants, their men and agents or anyone claiming under them for interfering with the peaceful possession and enjoyment of the suit property by plaintiff and creating

any encumbrance over the suit property?

3) To what relief the plaintiff is entitled?

5. Before the trail Court in order to prove the case on the side of the plaintiff, PW.1 and 2 were examined and marked exhibits A1 to A11. On the side of defendants, D.W.1 to D.W.3 were examined and marked exhibits B1 to B31. The trial Court after hearing both sides and perusing the records have passed the decree in favour of the plaintiff vide judgement dated 06.03.2013. Aggrieved over the same, the defendants 2 and 3 have preferred an appeal before the Principal District Judge, Puducherry on various grounds. The Principal District Judge, Puducherry framed the point for determination in the appeal that *Whether the Judgment and decree passed by the learned Principal Subordinate Judge, Puducherry dated 06.03.2013 in O.S.No.57 of 2007 is liable to be set aside?*

6. Thereafter, the Principal District Judge, Puducherry allowed the appeal by setting aside the decree and judgment passed by the trial Court in O.S.No.57 of 2007. Aggrieved by the said judgment the plaintiff has preferred this second appeal. This Court at the time of admitting the appeal, had formulated the following substantial questions of law.

a) Whether the Lower Appellate Court was right in concluding that Ex.B27 certificate is valid without adverting to the evidence of D.W.2 who has specifically admitted that the same was issued without verifying the genuineness of the claim of the 1st defendant regarding the loss of original document?

b) Whether the Lower Appellate Court was right in holding that the 3rd defendant is a bonafide purchaser for value more so when it has been established that the encumbrance certificate Ex.B-2 itself was obtained after the execution of the sale deed Ex.B1?

c) Whether the Lower Appellate Court was right in holding that the Plaintiff / Appellant should have paid court fee under Section 40 of the Pondicherry Court Fees and Suits Valuation Act even without framing an issue regarding the payment of court fee and granting an opportunity to the plaintiff to make good the deficit as provided under Section 11(4) of the Pondicherry Court Fees and Suits Valuation Act 1972?

7. The learned counsel for the appellant submits that the plaintiff has purchased the suit property and he is in possession and enjoyment of the said property. The first defendant is a known person to the plaintiff and he used to borrow money from the plaintiff and he stood as a guarantor for the plaintiff when he applied for loan at Nedungudi Bank. By trust put upon him, the plaintiff executed power of attorney in favour of the 1st defendant to manage the property in absence of the plaintiff. At the time of execution of power deed the plaintiff retained the original title deeds with him. Thereafter, the plaintiff

returned to India on 26.07.2006 and came to know that the first defendant along with the second defendant sold the property to the third defendant and the first defendant has given a false complaint with the Kalapet Police Station as if the original title deeds are not traceable. With the false certificate he had executed the sale deed in favour of the third defendant.

7.1. Thereafter, the plaintiff issued legal notice dated 19.09.2006 and defendants 1 and 2 issued a reply dated 27.09.2006 and thereafter, the plaintiff filed a suit before the Principal Subordinate Judge, Puducherry. The first defendant was set exparte in the suit. The defendant 2 and 3 contrary to the stand taken by them in reply notice dated 27.09.2006, introduced a new pleading in the written statement and stated as if they come to know about these issues and facts only at the time of receiving summons in the suit and filing written statement on the information gathered from the first defendant only after the summons. The plaintiff examined P.W.1 and P.W.2 and marked Exhibits A1 to A11. On behalf of the defendants they examined D.W.1 to D.W.3 and marked Exhibits B1 to B31. The trial Court after analyising the evidences correctly decreed the suit. However, the second and third defendants preferred an appeal in A.S.No.17 of 2015 on the file of the Principal District Judge, Puducherry.

7.2. The first appellate Court had allowed the appeal on the ground that there is no need for the original title deeds for execution of the sale deed by power agent. When the case of the plaintiff itself is that the power agent by fraudulent misrepresentation, in connivance with the 2nd defendant had executed a sale deed in favour of the third defendant, wife of the second defendant, the first appellate Court proceeded with the appeal on the basis of the execution of Power of Attorney dated 08.03.2000 and the sale deed (Ex.B1) dated 31.07.2006. The first appellate Court failed to consider that there was a fraud and misrepresentation played by the first defendant in the execution of Ex.B1, since the first defendant had created a false complaint under the guise of Ex.A2 that the original antecedent title deeds were doused in sea water during Tsunami. The purchaser, third defendant herself admitted in her evidence as D.W.1 that she has purchased the property only on the basis of power deed, Ex.A2 and they have not produced any consent letter of the appellant. The above said conduct of D.W.1, purchaser would show the active connivance of defendants 1 to 3 to defraud the plaintiff's property. The first appellate Court without considering the same allowed the appeal and dismissed the suit instead of dismissing the appeal. D.W.2 is the Sub-Inspector of Police, Kalapet Police Station categorically admitted that he does not know there was any conclusion that the documents were lost. He also deposed that he does not know whether any copies of document furnished along with the complaint. Therefore, the first appellate Court ought to have seen that whether an ordinary prudent man can purchase a property without the parent document. Per contra the plaintiff produced the original title deeds in respect of the suit property. The power of attorney states that the reason for execution of the same was only on account of the fact that the plaintiff was not able to take care of the property. Even in the reply notice the defendants have not stated that only in view of the bank loan obtained by the appellant, and putting the property of the 1st defendant under mortgage through the wife of the first defendant, the plaintiff executed the power of attorney in favour of the first defendant. Therefore the contention of the defendants that the power of attorney was executed in view of some exigency and bank loan is absolutely false.

7.3. The third defendant had filed a written statement contrary to the reply notice. The first appellate Court had failed to consider that the first defendant has not contested the suit and adverse inference can be drawn against him. Moreover, the first defendant / power agent has acted beyond the powers vested in him under the said deed of power of attorney in Ex.A1. Ex.A1 nowhere stated that he is being given custody of the original title deeds. The evidence of D.W.1 shows that the third defendant had purchased the property only after going through all the records and the encumbrance certificate, which is marked as Ex.B2, but Ex.B2 is dated 04.09.2006 which is after the date of execution of Ex.B1 dated 31.07.2006. Therefore, the above said evidence reveals that the first and second defendants colluded together in grabbing the property of the appellant by way of fraud and collusion, misrepresenting the Police authorities obtained a fraudulent certificate had executed the sale deed.

7.4. Therefore, by considering all these aspects, the trial Court decreed the suit. However, without considering the real facts in a proper perspective the first appellate Court had allowed the appeal and dismissed the suit. The plaintiff had valued the suit under Section 25(d) of the Pondicherry Court Fees and Suits Valuation Act, 1972. The plaintiff is not a party to the documents dated 31.07.2006 and the same has been brought into being only due to the conspiracy of the defendants 1 to 3 and as such the relief of declaration sought for against the sale deed dated 31.07.2006 and the injunction sought, ought to be valued only under Section 25(d) of the Pondicherry Court Fees and Suit Valuation Act. Therefore, the decree and judgment passed by the first appellate Court is liable to be set aside and the second appeal is liable to be allowed.

8. The learned counsel for the respondents would submit that the plaintiff has filed a suit for declaration declaring that the sale deed is null and void. The suit has been decreed on the sole ground that the respondents 1 to 3 did not possess the original title deeds and based on the certificate issued by the Kalapet Police Station and that the second respondent, who is the purchaser, in the sale deed dated 31.07.2006 had not made any enquiry about the capacity of the person in possession and if no enquiry is made, then it cannot be stated that she is a bonafide purchaser for value.The defendants 2 and 3 have taken a plea in respect of Court fee and the plaintiff being a party to the document has to value

the suit only under Section 40 and not under Section 25(b) of the Puducherry Court Fees and Suits Valuation Act, 1972. The lower appellate Court has reversed the said findings on the ground that since on the date of execution of sale deed, power given in favour of the second respondent herein was in force and only on the basis of the certificate issued by the Police authorities, regarding the missing of the original title deeds, the second respondent purchased the property for value, as such, they should be considered as bonafide purchasers. Even in the plaint there is no whisper about the cancellation of the power granted in favour of the third respondent herein and also in Ex.A1, subsequent power deed executed by the appellant, to and in favour of his wife, the earlier power, granted in favour of the third respondent had not been cancelled. As there was valid power, existing on the date of execution of Ex.B1, Sale Deed, the said sale cannot be declared as invalid, *non est* in law and inoperative.

8.1. When the suit is one, challenging the sale deed, dated 31.07.2006, the certified copy of the said deed, was not at all produced by the appellant in the suit, and not marked on the side of the appellant, as plaintiff's side document. The non-production of the original antecedent title deeds, by the power agent, third respondent herein during sale on 31.07.2006, cannot be a hindrance or bar for execution of sale, as there was a certificate, dated 19.06.2006, issued by the Kalapet Police, marked as Ex.B27, regarding the missing of the original documents. The respondents 1 and 2 can only be treated as bonafide purchasers, as all the original documents, were produced by the plaintiff, only on 28.03.2007, along with the plaint, in the suit. D.W.2 who was the Sub-Inspector of Police, Kalapet, was not in charge of the Kalapet Police Station, during the relevant point of time and also that Ex.B27 Certificate was relied upon by the respondents 1 and 2, since the original documents, surfaced only on 28.03.2007, when the suit was filed by the appellant.

8.2. In the written statement, the defendants clearly pleaded about the defence that the plaintiff has not entered into the box and only his wife alone appeared and stepped into the box and examined as P.W.1 and she has no personal knowledge about the earlier transactions between the plaintiff and the defendants. Therefore, the Court can draw adverse inference against the plaintiff. The P.W.1 has also admitted that from 1995 to 2000 she maintained the property. In the year 2006, Datchinamoorthy sold the property. The encumbrance certificate obtained by the respondents 1 and 2 marked as Ex.B2, dated 04.09.2006, only after the execution of Ex.B1 Sale deed, is in no way affect the sale transactions, as there was no encumbrance from the period from 08.03.200 to 31.07.2006, over the suit property, and the title of the appellant over the suit property was also not defective, as such, there was no impediment or embargo in executing the sale, in favour of the respondents 1 and 2.

8.3. The only grievance of the plaintiff is that the sale transaction have not been brought to his knowledge. The plaintiff has not taken any steps as against the first defendant and his remedy was only as against the first defendant. Hence the respondents 2 and 3 have rightly been considered as bonafide purchasers, by the lower appellate Court. If the appellant had any grievance against the third respondent, regarding the non-payment of sale transaction, it is for him to initiate legal proceedings, against him. The lower appellate Court also correctly held that the plaintiff ought to have paid the Court fee under Section 40 and not under Section 25(b) of the Puducherry Court Fees and Suits Valuation Act, 1972 (hereinafter referred to as 'the Act'). When the appellant has become a party to the sale transaction, since his power agent, the third respondent executed Ex.B1 Sale Deed, on behalf of his Principal, the appellant, must be deemed to be treated as a party to the said document, especially on the date of sale, the power was in force, as such, the valuation of the suit ought to have been only under Section 40 and not under Section 25(b) of the Act. Therefore, the second appeal is liable to be dismissed.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. The plaintiff has filed a suit seeking a declaration that the sale deed dated 31.07.2006, executed by the first defendant in favour of the third

defendant, is invalid, void, inoperative and incapable of creating any right, title or interest in favour of the third defendant. According to the plaintiff, he purchased the suit property under a registered sale deed dated 29.03.1995. Thereafter, the plaintiff executed a power of attorney in favour of the first defendant solely for the purpose of managing the property.

11. It is the specific case of the plaintiff that the first defendant, by misusing and abusing the powers conferred under the power of attorney, unlawfully executed the impugned sale deed in favour of the third defendant. No consideration was paid under the said sale transaction, and the original title deeds have all along remained in the custody of the plaintiff. The first defendant had no authority to alienate the property and had executed the sale deed without possession of the original title deeds. Consequently, the sale deed dated 31.07.2006 executed by the first defendant in favour of the third defendant is illegal, void and not binding on the plaintiff

12. There were many transactions between the plaintiff and the first defendant, and the plaintiff had also availed loan from the bank. In that context, the plaintiff executed a power of attorney in favour of the first defendant, authorising him to deal with the property, including its sale. Acting as the power agent of the plaintiff, the first defendant executed a sale deed in favour of the third defendant. Significantly, the plaintiff has not denied the execution of sale

deed in favour of the third respondent.

13. According to the third defendant, she is the bona fide purchaser for valuable consideration. It is her specific case that the plaintiff had represented that the original title deeds were damaged during the Tsunami, pursuant to which a complaint was lodged before the Kalapet Police Station, which in turn issued a certificate marked as Ex.B27. Relying upon the said certificate, Ex.B.27, and the power of attorney, the third defendant purchased the property. Though the plaintiff does not deny the execution of the power of attorney, his contention is that it was executed only for the limited purpose of managing the property. However, having sought the relief of declaration, the burden lies squarely on the plaintiff to independently establish his case and substantiate the alleged limitation on the authority conferred under the power of attorney.

14. The plaintiff, who had executed the power of attorney, was not examined as a witness in the present suit. Instead, the wife of the plaintiff was examined as P.W.1. Though P.W.1, being the spouse of the plaintiff, is competent to depose on his behalf in view of Section 120 of the Indian Evidence Act, the personal and exclusive transactions between the plaintiff and the first defendant could have been spoken to only by the plaintiff himself. Moreover, the plaintiff filed a suit for declaration to declare the sale deed

31.07.2006 executed by the first defendant in favour of the third defendant as invalid, void, inoperative and incapable of creating any right or title. The said deed has not been produced by the plaintiff. Per contra the defendants have produced the document as Ex.B1. Once the plaintiff has admitted the execution of power deed and there are recitals in the power deed to sell the property and there are no specific recitals that only to manage the property the power deed was executed. It is the duty of the plaintiff to prove that the power deed was only executed for the purpose of managing the property. But the plaintiff was not examined as witness.

15. It is an admitted fact that the power deed was executed and based on the said power deed the first defendant had executed the sale deed dated 31.07.2006 in favour of the third defendant for valuable consideration. The first defendant who is the power agent of the plaintiff has not appeared throughout the proceedings and the purchaser of the power alone contested the suit. Another contention raised by the plaintiff is that without original title deeds the third defendant purchased the property. Therefore the Court can come to a conclusion that the defendants colluded together and fabricated the sale deed. In this context it is the admitted fact that Ex.B27 was produced by the first defendant at the time of negotiations for sale of property and Ex.B27 is the certificate issued by the Kalapet Police station in respect of the missing of documents.

16. The plaintiff also contended that the said SHO of the police station was examined as a witness, who himself questioned the genuinty of the said certificate, Ex.B27 and therefore the said certificate cannot be relied upon. Once a certificate is issued by the concerned Police station regarding the loss of the original documents, and the sale deed is executed thereafter, it cannot be presumed that the third defendant has purchased the property solely on the basis of such certificate. The purchase was effected primarily on the strength of the subsisting power of attorney, which was admittedly in force on the date of execution of the sale deed, namely 31.07.2006, executed by the first defendant in favour of the third defendant. The sale deed in favour of the third defendant is valid and the plaintiff has not even filed the said sale deed as document and without producing the document he cannot seek any relief. However, the trial Court without considering the same without verifying the document and without discussing about the non- production of the copy of the sale deed which is the base for the prayer sought for in the suit decreed the suit. However, the first appellate Court after careful consideration of the documents by placing reliance upon Ex.B27 and Ex.B1 had set aside the judgment of the trial Court and allowed the appeal.

17. As far as the substantial questions of law that *whether the lower appellate Court was right in concluding that Ex.B-27 certificate is valid without*

adverting to the evidence of D.W.2 who has specifically admitted that the same was issued without verifying the genuineness of the claim of the first defendant regarding the loss of original document, is concerned the complaint was lodged by the first defendant and based on the complaint the concerned Police department had issued Ex.B.27 certificate. On the side of defendants D.W.2 was examined in respect of Ex.B27 and he admitted that the same was issued without verifying the genuineness of the claim of the first defendant regarding the loss of original document. But he was not working in that police station on the date of issuance of the certificate and only based on the records he can depose by the facts based on the documents.

18. No documents have been produced to show that without verifying the genuineness of the claim the certificate was issued. Once the Government authority has issued the certificate on their official capacity unless the contrary is proved it cannot be presumed that the certificate is genuine. To prove the contrary there is no evidence. Therefore, Ex.B27 certificate can be relied upon and based on the certificate only the third defendant purchased the property. The third defendant is not a party to Ex.B27 and based on the complaint lodged by the first defendant that certificate was issued. Therefore, D.W.2 is not a competent person to speak about Ex.B27 which was issued much prior to taking charge in the concerned police station. The plaintiff has not even produced the document of alleged sale deed and the plaintiff who has personal knowledge

about the transaction between the first defendant and the plaintiff has not been examined as witness and he was not subjected for examination. Therefore, the plaintiff failed to prove his case through sufficient evidence. Thus, the first substantial question of law is answered.

19. The second substantial question of law that *whether the lower appellate Court was right in holding that the third defendant is a bonafide purchaser for value more so when it has been established that the encumbrance certificate Ex.B2 itself was obtained after the execution of the sale deed Ex.B.1,* is concerned, according to the plaintiff the third defendant without perusing the title deeds and the encumbrance over the property purchased the property. However, the defendants produced the encumbrance certificate Ex.B2. The said exhibit is subsequent to the sale deed dated 31.07.2006. Merely because this encumbrance certificate is much later to the date of sale and when there is no encumbrance over the property on the date of sale deed it cannot be termed that he is not a bona fide purchaser for valuable consideration. Already this Court in the previous paragraphs came to a conclusion that Ex.B27 is valid and based on the power deed Ex.A2 the third defendant purchased the property. According to the third defendant, she purchased the property for valuable consideration and paid the sale price to the first defendant, but however, the plaintiff denied the receipt of sale consideration from the first defendant. Once, the first defendant executed sale deed based on the power deed and received consideration and

failed to make payment of the sale of property to his principal, it is between the plaintiff and the first defendant and the plaintiff ought to have taken steps as against the first defendant for recovery of money and merely because the first defendant, power agent did not pay the money to the principal the purchase is not liable. Therefore, based on the Ex.B2 this Court cannot come to a conclusion that the third defendant is not the bona fide purchaser. Thus, the second substantial question of law is answered.

20. As far as the third substantial question of law that *whether the lower appellate Court was right in holding that the plaintiff / appellant should have paid court fee under Section 40 of the Pondicherry Court Fees and Suit Valuation even without framing an issue regarding the payment of court fee and granting an opportunity to the plaintiff to make good the deficit as provided under Section 11(4) of the Pondicherry Court Fees and Suits Valuation Act 1972,* is concerned, the plaintiff filed the suit for the relief of declaration in respect of the document and he valued the suit under Section 25(b) of the Act. The plaintiff admitted the power deed executed in favour of the first defendant and the first defendant on behalf of the plaintiff executed the sale deed in favour of the third defendant.

21. Therefore, the power agent has not executed sale deed on his personal capacity and on behalf of his principal he executed the sale deed. Therefore, the plaintiff being the party to the document ought to have paid the

Court fee under Section 40 of the Act. Eventhough, there is no issue in respect of the payment of Court fee the first appellate Court granted an opportunity to the plaintiff to make good the deficit Court fee as provided under Section 11(4) of the Act. If the first appellate Court without giving an opportunity to the plaintiff has drawn an adverse interference then, this Court can interfere, but, the first appellate after giving opportunity to the plaintiff to make good the deficit Court fee by invoking provision under Section 11(4) of the Act passed the order. Therefore, this Court is declined to interfere with the decree and judgment passed by the first appellate Court. Thus the third substantial question of law is answered.

22. In view of the above said discussions and the answers to the substantial questions of law, this Court is declined to interfere with the decree and judgment passed by the first appellate Court and the second appeal is devoid of merits and deserves to be dismissed.

23. Accordingly, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27-11-2025

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To

1. The Principal District Judge, Puducherry.

2.The Principal Sub Judge, Puducherry

P.DHANABAL J.

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SA No. 311 of 2015

27-11-2025