



S.A.No.1158 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal. No.1158 of 2013

Chandra ... Appellant
-Vs-

1. A.Murugan

2. V.Kasturi ... Respondents

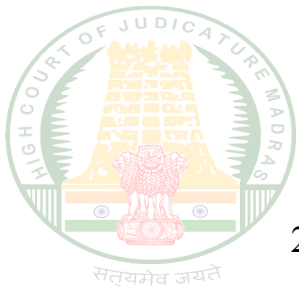
Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 18.03.2013 in A.S.No.90 of 2011 on the file of the learned Subordinate Judge, Kanchipuram confirming the Judgment and Decree dated 06.08.2011 in O.S.No.455 of 2006 on the file of the learned Principal District Munsif, Kanchipuram.

For Appellant : Mr.T.Thiyagarajan
for Mr.V.Ramesh

For Respondents : Ms.R.V.Gayatri
for M/s.P.B.Ramanujam Associates

J U D G M E N T

This Second Appeal has been filed to set aside the Judgment and Decree dated 18.03.2013 in A.S.No.90 of 2011 on the file of the learned Subordinate Judge, Kanchipuram by confirming the Judgment and Decree dated 06.08.2011 in O.S.No.455 of 2006 on the file of the learned Principal District Munsif, Kanchipuram.



S.A.No.1158 of 2013

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2. The second Plaintiff before the learned Principal District Munsif, Kanchipuram is the Appellant herein. As per the Plaint averments, the first Plaintiff/Govindammal originally filed a Suit in O.S.No.455 of 2006 before the learned Principal District Munsif, Kanchipuram for direction directing the Defendants to hand over vacant possession of the Suit property to the Plaintiffs in the event of receiving a sum of Rs.30,000/- from the Plaintiffs. It is the claim of the Plaintiff in the Plaint that her husband/Mannar was an Ex-Serviceman. After retirement from the Indian Army, he had been cultivating in the Suit property which is an Odai Poramboke and he had also sought an assignment from the Government. Pending his Petition for assignment, Mannar died leaving behind the first Plaintiff/Govindammal and her daughter. The first plaintiff/ Govindammal wanted to perform the marriage of her granddaughter who is the daughter of the second Plaintiff. At the time of marriage discussions, she had obtained the loan of Rs.30,000/- from the first Defendant in the presence of the second Plaintiff/her daughter and her grandson who were witnesses to the borrowal of loan. At that time, the Defendant obtained thumb impression from the first plaintiff Govindammal. As per the terms of the oral agreement between the Defendants and the Plaintiffs towards interest for the principal amount of Rs.30,000/-, the possession of the property is to be



S.A.No.1158 of 2013

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handed over to the Defendants. So that the Defendants cultivate the same for two years and interest will be settled by availing proceeds of the cultivation for two years. Whenever the Plaintiff was ready to repay the amount, the possession would be handed over to the first Plaintiff. The loan was availed in the year 1998 and Mannar/husband of the first Plaintiff died in the year 1999. In the year 2001, the Plaintiffs were ready to repay the amount of Rs.30,000/- and requested the Defendants to stop cultivation. The first defendant wantonly refused to receive the amount with an ulterior motive to grab the property. Therefore, the Plaintiff issued a legal notice seeking return of the property. The legal notice was issued on 18.06.2006. After receipt of the same, the Defendants 1 and 2 had replied to the legal notice dated 28.06.2006 with false averments. It was made to appear as though the Plaintiff had executed the sale deed. The first Plaintiff is an illiterate and an aged widow. The first Defendant is a Government Servant and the second Defendant is the sister of the first Defendant. Both possess men, muscle power and political influence; and they are trying to grab the property. Therefore, the second Plaintiff had approached this Court by filing the Suit.

3. The Defendants in the written statement had disputed the claim of



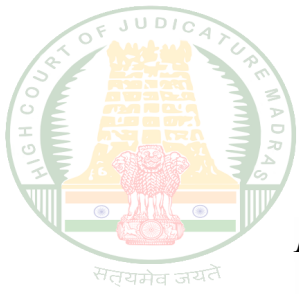
S.A.No.1158 of 2013

the Plaintiffs stating that the Plaintiffs had executed the sale deed dated 18.10.2000 and the possession was delivered to the Defendants and the

Defendants had been in enjoyment of the same by raising crops. The Suit is filed after six years, from the date of execution of the sale deed and the Suit is filed with false claims and fictitious allegations. The Defendants are in lawful possession of all the rights of ownership. The sale deed dated 18.10.2000 is to be treated as a sale agreement and handing over the possession is part-performance of the contract. The Defendants are taking steps to enforce the contract against the Plaintiffs by way of specific performance. The Plaintiff is estopped by her own conduct, acquiescence and promise. There are standing crops in the Suit property. Hence, the Plaintiff is not entitled to any relief much less permanent injunction. Therefore, the Suit is liable to be dismissed.

4. Based on the averments in the Plaint and the written statement, the learned Principal District Munsif, Kanchipuram had framed the following issues:-

- “(i) Whether the Plaintiff executed any sale deed in favour of the Defendants?*
- (ii) Whether the Defendants were in lawful possession of the Suit property?*
- (iii) Whether the Plaintiff is entitled to possession of Suit property after remitting back Rs.30,000/- to the*



S.A.No.1158 of 2013

Defendants?

(iv) To what other relief?"

WEB COPY 5. During pendency of the Suit, the first Plaintiff died. The only daughter of Govindammal and Mannar/the second Plaintiff examined herself as P.W-1. She was a witness to the transactions alleged in the Plaint and marked documents as Ex.A-1 to Ex.A-8. Ex.A-1 is the report regarding the Government property in the possession of Mannar; Ex.A-2 is the notice issued by the Revenue Authorities to persons who are in possession of Poramboke property. Ex.A-3 is the application for assignment of cultivable land in the Village. Ex.A-4 is the letter from the Secretary of Chennai Pattinam District Soldiers and Sailors Airmen's Board. Ex.A-5 is the Special Registrar's Report dated 15.07.1971. Ex.A-6 is the series of Kist receipts No.1 to 56. Ex.A-7 is the copy of the legal notice dated 18.06.2006 issued on behalf of the Plaintiff to the first Defendant. Ex.A-8 is the reply notice dated 28.06.2006 by the first Defendant.

6. In support of the claim of the Defendants, the first Defendant was examined as D.W-1 and the documents were marked as Ex.B-1 to Ex.B-4. Ex.B-1 is the sale deed dated 18.10.2000 in favour of the first Defendant. Ex.B-2 is the sale deed dated 18.10.2000 in favour of the second



S.A.No.1158 of 2013

Defendant. Ex.B-3 is the copy of the legal notice issued on behalf of the Plaintiff under Ex.A-7 dated 18.06.2006. Ex.B-4 is the copy of the reply notice issued to the learned Counsel for the Plaintiff.

7. After hearing both sides and perusal of evidence, the learned Principal District Munsif, Kanchipuram had decreed the Suit. Against which, the Defendants had preferred A.S.No.90 of 2011 before the learned Sub Judge, Kancheepuram.

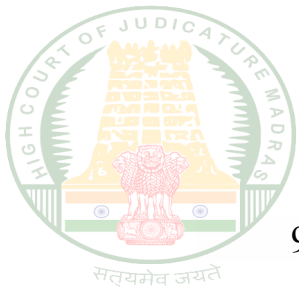
8. After hearing both sides, the learned Sub Judge, Kancheepuram had allowed the Appeal. Aggrieved, the second Plaintiff had preferred this Second Appeal before this Court and the following *substantial questions of law are framed by this Court:-*

(i) Whether the Lower Appellate Court was right in finding that the Plaintiff ought to have filed a Suit for declaration to declare an unregistered sale deed as null and void?

(ii) Whether the Lower Appellate Court had given cogent reasons while reversing the findings of the trial Court as mandated under Order XLI Rule 31 of CPC?

(iii) Whether the Lower Appellate Court failed to take into consideration the specific defence taken by the Defendant in the written statement and in spite of the same, proceeded to dismiss the Suit filed by the Plaintiff?

(iv) Whether the findings of the Lower Appellate Court can be termed as perverse due to improper appreciation of the oral and documentary evidence?



S.A.No.1158 of 2013

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9. The learned Counsel for the Appellant in the Second Appeal submitted that the Husband of the Plaintiff before the learned District Munsif, Kancheepuram in O.S.No.455 of 2006 by name Mannar worked in Indian Army as Gunner. He had filed petition seeking assignment of lands. He was assigned 1 acre and 10 cents under Ex.A-4. To perform the marriage of his grand daughter, Mannar had borrowed money from the Defendants 1 and 2.

10. On demand of the Defendants, the possession of the property assigned under Ex.A-4, the land that was assigned to Mannar was handed over in possession of the Defendants, so that they can cultivate the land in lieu of the interest towards the loan availed by the Plaintiff. Subsequently, Mannar died. After repayment of loan, Plaintiff Govindammal sought return of the property. The Defendants alleged that the Plaintiff had executed an unregistered sale deed and therefore they cannot handover possession of the property to the Plaintiff.

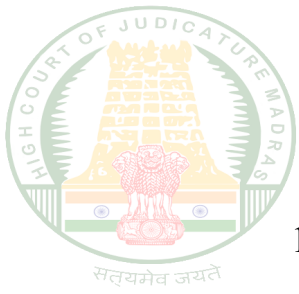
11. Aggrieved, the Plaintiff had approached the learned Principal District Munsif, Kancheepuram by filing the suit for return of the property and to handover the vacant possession of the property after payment of the original amount availed from the Defendants. Prior to filing of the suit,



S.A.No.1158 of 2013

WEB COPY

legal notice was issued to which the Defendants replied. The Defendant had not denied the contention of the Plaintiff regarding borrowal of the amount and regarding handing over the possession of the property, in lieu of the interest. The only claim by the Defendants in the reply notice was that the Plaintiff had executed unregistered sale deed. The Defendants entered appearance and filed written statement reiterating the contents raised in the reply notice by the Defendants. The learned Counsel for the Appellant submitted that after due trial, the learned Principal District Munsif, Kancheepuram by judgment dated 06.08.2011 granted decree in favour of the Plaintiff. Aggrieved by the same, the Defendant filed Appeal in A.S.No.90 of 2011 before the learned Sub Judge, Kancheepuram. The learned Sub Judge, Kancheepuram by judgment dated 18.03.2013 reversed the judgment and decree of the learned Principal District Munsif and dismissed the suit. Aggrieved by the judgment and reversal of the judgment of the learned Principal District Munsif by judgment of first Appellate Court, the Plaintiff before the learned Principal District Munsif is the Appellant in this Second Appeal. During pendency of the suit, after giving evidence, the Plaintiff died. Therefore, the daughter of the Plaintiff had impleaded herself to continue with the proceedings.



S.A.No.1158 of 2013

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12. The learned Counsel for the Appellant invited the attention of this Court to the plaint in O.S.No.455 of 2006, to the written statement filed on behalf of the first Defendant in O.S.No.455 of 2006, the issues framed by the learned Principal District Munsif and the evidence of the Plaintiff and Defendant and the Judgment of the learned District Munsif dated 06.08.2011. The Suit filed by the Appellant herein as Plaintiff was dismissed. Aggrieved by the dismissal of the Suit the Plaintiff before the learned Principal District Munsif, Kancheepuram preferred Appeal in A.S.No.90 of 2011 before the learned Sub Judge, Kancheepuram.

13. Also, the learned Counsel for the Appellant invited the attention of this Court to the memorandum of grounds of appeal and the discussion of the evidence before the trial Court by the learned first Appellate Court, the learned Sub Judge, Kancheepuram in the judgment in A.S.No.90 of 2011 dated 18.03.2013.

14. It is the contention of the learned Counsel for the Appellant that the learned Appellate Judge had dismissed the appeal on two grounds that the Plaintiff had not sought declaration of the unregistered sale deed and the Plaintiff had not approached the Court within three (3) years seeking declaration. On these two grounds, the Appeal was allowed and the

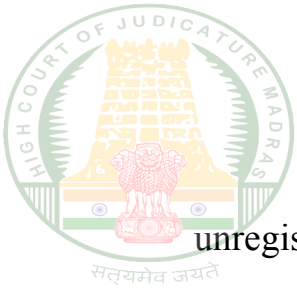


S.A.No.1158 of 2013

judgment of the learned Principal District Munsif was reversed.

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15. It is the contention of the learned Counsel for the Appellant that nowhere either in the pre-suit reply notice by the Defendants or in the written statement, they had disputed title of the Plaintiff. Therefore, the question of seeking declaration does not arise. Also it is his contention that the Plaintiff in the plaint had stated that they had handed over the possession of the property only to enable the Defendants to cultivate the same in lieu of the interest towards the loan amount. When the Defendants had obtained signature of the Plaintiff and her daughter in blank papers which was described by the Plaintiff in the legal notice prior to filing of the suit which was not denied by the Defendants in the reply notice. The denial of the title by the Defendants was also not stated in the legal notice or in the written statement. The observation by the learned Appellate Judge that the Plaintiff ought to have filed suit for declaration does not arise. Also when the Defendants had stated in the written statement that the Plaintiff had executed unregistered sale deed in the blank sheets wherein the Defendants had obtained signature from the Plaintiff and her daughter which was exploited by the Defendant to create forged sale deed, when property having value of more than Rs.100/- is to be registered, the



S.A.No.1158 of 2013

WEB COPY

unregistered sale deed relied by the Defendants cannot be marked during

trial. It cannot be linked into by the trial Court or Civil Court. These facts were ignored by the first Appellate Court Judge and had misdirected himself to arrive at a contradictory conclusion thereby reversed the judgment of the learned District Munsif, Kancheepuram in the judgment dated 06.08.2011. Therefore, it is the contention of the learned Counsel for the Appellant that the finding of the learned first Appellate Court is perverse and is to be set aside.

16. The learned Counsel for the Respondents invited the attention of the Court to the plaint averments. The claim of the Defendants is that the Plaintiffs are not the owner of the property. There is a cloud on the title. The learned Counsel for the Respondents also relied on the documents under Ex.A-1 which is the report regarding the Government property in possession of Mannar; Ex.A-2 is the notice issued by the Revenue Authorities to the persons who are in possession of Poramboke property. Ex.A-3 is the application for assignment of cultivable land in the Village. Ex.A-4 is the letter from the Secretary, Chennai Pattinam District Soldiers and Sailors Airmen's Board. Ex.A-5 is the Special Registrar's Report dated 15.07.1971. Ex.A-6 is the series of Kist receipts No.1 to 56. Ex.A-7 is the



S.A.No.1158 of 2013

copy of the legal notice issued on behalf of the Plaintiff to the first Defendant dated 18.06.2006. The learned Counsel for the Respondents

invited the attention of this Court to the contents of the written statement.

There is a specific denial by the Defendants. The relevant portion reads as follows:-

“4. This Defendant submits that after receiving the entire sale consideration the Plaintiff has executed the sale deed dated 18.10.2000 in respect of the Suit property in favour of the Defendants and possession was also delivered to them. When the Defendants insisted upon due registration, the Plaintiff has been postponing the registration for unknown reasons. The Defendants are in valid possession and enjoyment of the Suit property by raising crops. It is quite strange and un-understandable that the Plaintiff having slept ever for six years woke up in 2006 and has chosen to move the above Suit with false untenable and fictitious allegations. It is travesty of truth to aver that there is a loan transaction between the parties and in lieu of the interest possession was handed over. The Defendants are in lawful possession with all rights of ownership. The Suit is bad in law and misguided. In any event viewed from legal angle, the sale deeds dated 18.10.2000 through remain unregistered can be treated as sale agreement and as part performance of contract possession was delivered to them. The Defendants are taking steps to enforce the contract against the Plaintiff by way of specific performance Suit.

5. The Plaintiff is estopped by her own conduct, acquaint and promise. There are standing crops in the Suit property. With a view to removing the crops which are ripe for harvest the Plaintiff has chosen the Hon'ble Court as play ground. The Plaintiff has not done any equity. Hence, she cannot be allowed to seek enquiry through back door. The Plaintiff is not entitled to any relief much less permanent



S.A.No.1158 of 2013

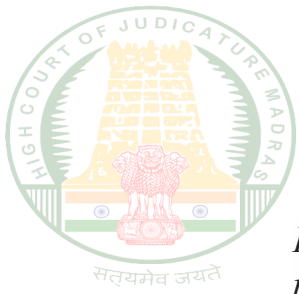
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injunction as claimed in the Suit. It is liable to be vacated forthwith. There is no merits in the Suit and the same is liable to be dismissed with costs.”

17. The Defendants claim that the Plaintiffs had executed the sale deed. If the sale deed is an unregistered deed, it is to be treated as agreement to sale. On the date of the sale deed, the possession was handed over by the Plaintiffs to the Defendants. After having executed the sale deed, even though unregistered sale deed, the Plaintiff is estopped from resiling from the expressions in the sale deed. As per Section 92 of the Indian Evidence Act, the parties to a document are not permitted to depose against the recitals of the written document. Actually, it is a sale agreement.

18. The Plaintiffs had received entire sale consideration of Rs.30,000/-. By the cause of action, the sale deed had been executed. The Defendants were rightly put in possession. The learned Counsel for the Defendants relied on the discussion of evidence by the learned Sub Judge, Kanchipuram. The relevant portion is extracted hereunder:-

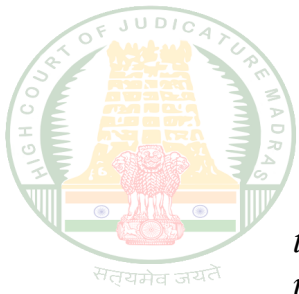
14.....On perusal of evidence of P.W-1, she has categorically admitted that the amount of Rs.30,000/- was received from the appellants and also admitted that the 1^a plaintiff has put up thumb impression in the stamp papers.



S.A.No.1158 of 2013

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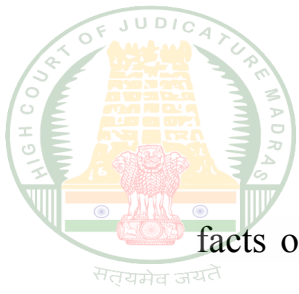
But the plaintiff has failed to prove that the appellants have prepared the sale deed by way of using the blank stamp papers. The original documents filed by the respondents are all related to prior to the suit i.e obtained by the husband of the 1st plaintiff. It may be true that as a Government servant before purchasing the immovable property should be obtained permission from the Government. But for which the respondent herein has no right to question the same before the court of law. Because, permission for purchasing the property is between the Government and the Government servant. Further, the appellants have also taken steps for registration of unregistered sale deed and wanted to get over the illegality by way of paying penalties. If at all, the 1st plaintiff has allegedly borrowed loan amount why she would have executed a sale deed in favour of the appellants. The intention of the plaintiff is to discharge the loan amount borrowed from the defendants by way of attesting the loan amount towards sale consideration. For which the appellants are not liable to loss their right over the suit properties. Any how, the consideration for the suit property is passed with the plaintiff and accepted by the same. Further, before filing the suit, the plaintiffs have issued legal notice to the appellants. For which the appellants have also issued reply in which, they have categorically stated that the 1st plaintiff has executed a sale deed dated 18/10/2000 in favour of the appellants by way of two documents which was marked as Exhibit B-1 and B-2. Even though the contradiction stated by the 1st appellant during the course of examination, which will not create any prejudice to the title of the appellants over the suit properties. The citations submitted by the appellants would prove that the unregistered sale deed was used for the collateral purposes since for the purpose of transferring the title to the suit property in favour of the appellants they have executed the documents. Further the appellants have categorically denied the allegations of the plaintiff in the written statement generally and subsequently claim that the suit properties belonged to the appellants by way of unregistered sale deed dated 18/10/2000. The plaintiffs have



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to file the suit within three years from the date of unregistered sale deed and challenged the same by way of filing the suit. But the plaintiffs have filed the suit in the year 2006. Hence without cancellation of the unregistered sale deed, the plaintiffs cannot file the suit. Further, the plaintiffs did not seek relief of declaration in respect of the Suit properties. Hence, the Suit framed by the plaintiffs are not maintainable. Further, the plaintiffs not filed the suit within three years from the date of sale deed by way of canceling the same. Hence, the suit filed by the plaintiffs is barred by limitation. The citations submitted by the appellants are very relevant to the facts of the present case on hand. The grounds or reasons stating for decreeing the suit is not at all acceptable on the basis of the above said facts and circumstances of the case. In view of the foregoing narration of both the factual and legal premise, the court has found any illegality or infirmity in the judgment and decree of the trial court and the same need be interfered with. Therefore, the arguments advanced by the learned counsel appearing for the appellants as convinced once and this court is ready to accept the same and whereas the arguments advanced by the learned counsel appearing for the respondents is not really having considerable force and effect. Therefore, the above points are answered accordingly in favour of the appellants.

19. Until the filing of the Suit, the Plaintiffs had not deposited the amount or paid the amount to the Defendants. The Defendants dispute the title of the Plaintiffs. The Plaintiffs had not approached the Court with clean hands. The Plaintiff's case has to be thrown out. In support of her submission, the learned Counsel for the Defendant relied on the ruling reported in **(2008) 4 SCC 594 : AIR 2008 SCC 2033 in the case of Anathula Sudhakar Vs. P.Bhuchi Reddy (Dead) by Lrs. and others.** The



S.A.No.1158 of 2013

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facts of this Second Appeal squarely fall in Para 13 of the Judgment and whether Rs.30,000/- amount to be repaid by the Plaintiff can be waived by the Defendant is the question raised by the Defendant. Therefore, this Second Appeal is to be dismissed. The Plaintiffs had admitted the signature on the document under Ex.B-3 and Ex.B-4. The Plaintiff failed to prove that she signed on blank paper. Therefore, the Defendants contend that the Judgment of the learned Sub Judge, Kanchipuram is on strong reasoning.

20. By way of rejoinder, the learned Counsel for the Plaintiffs submitted that there is no cloud over the title of the Plaintiffs. Therefore, the question of filing the Suit for declaration does not arise. The sale deeds had been created by the Defendants by misusing the signatures and thumb impression obtained from the Plaintiffs and her daughter on blank sheets. Ex.A-3 is the application by Mannar seeking assignment of lands. Ex.A-4 is the letter from the Secretary, Chennai Pattinam District Soldiers and Sailors Airmen's Board to the Tahsildar seeking assignment in favour of Mannar.

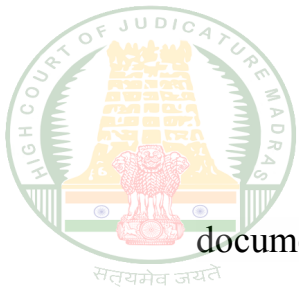
21. The learned Counsel for the Plaintiffs invited the attention of this Court to written statement filed by the Defendants wherein there is no



S.A.No.1158 of 2013

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specific denial regarding the exchange of legal notices. The Defendants do not deny the claim in the Plaint. The Plaintiffs had sought decree for return of the lands that were given as security for cultivation by the Defendants, for adjustable interest for the principal amount of Rs.30,000/- . When the Plaintiffs were ready to repay the amount, the Defendants refused it. The conduct of the parties has to be viewed in the light of the evidence as well as the circumstances, the first Plaintiff is an illiterate and aged widow. The attempt of the first Defendant is to grab the property to which the Defendants are not entitled. The first Defendant is a Central Government servant, who had not obtained prior permission from his Superiors to register the property, either on the date of filing of the written statement or on the issuance of reply to the legal notice. The attempt of the Defendants to register the sale deed through the Court also failed as the Sub Registrar refused to register it. Since the property is an Odai Poramboke, the first Plaintiff who is an agriculturist and the widow of a retired Army Jawan, had been cultivating the land, and had approached the Government for assignment of the land. Pending assignment, there was borrowal for which the Defendants obtained signatures and thumb impressions from the illiterate aged widow of Mannar/first Plaintiff and the signature from the daughter of the second Plaintiff, which was subsequently converted into



S.A.No.1158 of 2013

documents/sale deeds, which he could not register it as it is an Odai

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Poramboke land. The Government Servant is not expected to encroach on the Poramboke lands whereas the poor landless retired Army Jawan cultivating Odai Poramboke seeking assignment of lands is justified. Therefore, the learned Counsel for the Plaintiffs by way of rejoinder sought to allow the Second Appeal and to set aside the Judgment of the learned Sub Judge, Kanchipuram as perverse and restore the Judgment of the learned Principal District Munsif, Kanchipuram which was a well-reasoned Judgment.

22. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent.

23. Perused the evidence before the learned Principal District Munsif and the Judgment of the learned Principal District Munsif and the Judgment of the learned Sub Judge, Kancheepuram.

24. On perusal of the evidence and the Judgment of the learned Principal District Munsif dated 06.08.2011 in O.S.No.455 of 2006, it is found that the learned Principal District Munsif in the Judgment had observed that Ex.B-1 and Ex.B-2 are unregistered documents. Also, the



S.A.No.1158 of 2013

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learned Judge had in the Judgment stated that the learned Counsel for the

Defendant had submitted that Ex.B-1 and Ex.B-2, being unregistered

documents, are to be treated as a sale agreement. Based on the sale

agreement, possession was handed over to the Plaintiff by the Defendant.

Under Section 17 of the Registration Act, if any interest is transferred, it

has to be registered mandatorily. But Ex.B-1 and Ex.B-2 are unregistered

documents. Steps were taken through the Court to register the same by

paying a penalty and getting the registration of sale deeds through the

Court. But the same was refused by the Office of the Registrar for the

reason that it is an Odai Poramboke. The learned Counsel for the

Defendant before the learned District Munsif had submitted that Ex.B-1

and Ex.B-2 can be looked into for collateral purpose for which he cited the

decision in the case of *Venugopal @ Alagarsamy (died) and others Vs.*

Bajanai Alagarsamy and another reported in 2004 (3) Mad LJ 362. Civil

Procedure Code IV of 1908 under Order XLI Rule 31 of Civil Procedure

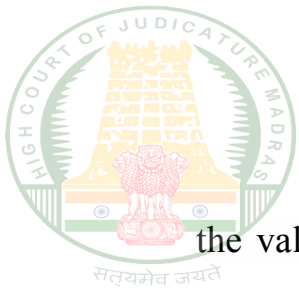
Code, 1908, where the land was leased for excavating earth to take bricks,

the land was exploited and the claim was for recovery of possession and

compensation. Agreement entered into between parties was not registered.

The lower Appellate Court refused to grant relief as unregistered document

cannot be considered even for collateral purpose. It was held that though



S.A.No.1158 of 2013

the validity of unregistered documents is inadmissible as evidence but it may be considered for collateral purpose. The Order of the lower Appellate Court is set aside.

25. Also, the learned Counsel for the Defendant before the learned District Munsif relied on another reported Judgment in ***(1999) 3 CTC 40 in the case of M/s.Ram Mohan represented by Proprietors R.Renu Vs. M/s Ganesar Gining Company Private Limited, Coimbatore and others.*** In Registration Act(XVI) of 1908-Section 49 (c)lease deed that was not registered was marked as a document. The landlord was not seeking to enforce the terms of the lease in the suit, but only sought for vacant possession and other reliefs. It was held that the lease deed was to prove the nature of possession only belated. What is prohibited is the attempt to enforce the terms of the lease. However, establishing the purpose for which the lease was executed is permitted for a collateral purpose.

26. The learned Counsel for the Defendant before the learned District Munsif had relied on the another ruling of the High Court reported in ***1997 (2) MLJ 23 in the case of M.K.Varappan Vs. Sri Lakshminarayana Gopala Samy Temple by Executive Officer, Big Bazaar.*** It is a time-barred suit. It is admitted by the Defendant that the



S.A.No.1158 of 2013

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loan was obtained in the year 1998 and they failed to make payment in the

year 2000. Under the Limitation Act, the Suit for recovery of possession

can be filed within a period of 12 years. The Suit was filed in the year

2006, it is well within the period of limitation and the plea of the

Defendant was rejected. The learned Principal District Judge had perused

the evidence and considered the rival contentions. It was the contention of

the Defendant that the Suit is not within time. As per the Defendant, the

Plaintiff had paid Rs.30,000/- and handed over possession. They had

executed the sale deed and they had come forward by filing the Suit as

though the Suit had been filed for recovery of vacant possession. It was

made to appear as though they had handed over possession for a time

bound period towards the settlement of the interest and that they were

ready to repay the principal amount. However, the Defendants refused to

accept the principal amount of Rs.30,000/-. Whereas the Defendants claim

that the Plaintiff had executed the sale deed after the receipt of Rs.30,000/-

and towards execution of the sale, they had handed over possession. From

the date of handing over the possession, the Defendants have been

cultivating the same. Now, the Plaintiff cannot be permitted to claim that

the sale deed was not executed just because Ex.B-1 and Ex.B-2 are

unregistered sale deeds. The contention of the learned Counsel for the

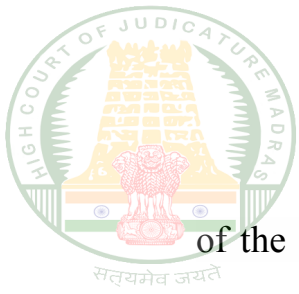


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Defendants before the learned District Munsif was that even though it is an unregistered document, it can be treated as a sale agreement and it was in continuation of the sale deed, the possession was handed over to the Defendants. In the light of the rival submissions, the learned Principal District Munsif held that the borrowal of the amount by the Plaintiff had been admitted by the Defendants. The claim of the Defendants that the Suit is barred by limitation was rejected on the ground that the Suit is filed for recovery of possession and it is within time from the date of borrowal ie., 1998 till the date of filing of the Suit i.e. 2006. The period for recovery of possession is 12 years as per the Limitation Act. Therefore, the learned Principal District Munsif had rejected the claim of the Defendants that the Suit was barred by limitation. Section 66 of the Limitation Act is extracted hereunder:-

Description of Suit	Period of limitation	Time from which period begins to run
<i>66. For possession of immovable property when the Plaintiff has become entitled to possession by reason of any forfeiture or breach of condition."</i>	Twelve years	When the forfeiture is incurred or the condition is broken.

27. The learned Principal District Munsif in the subsequent Paragraphs had observed that the pleadings of the Defendants and evidence



S.A.No.1158 of 2013

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of the Defendants contradicted each other. The learned Principal District

Munsif had observed that the Plaintiffs had taken a plea that the signature

of the Plaintiffs had been obtained in blank papers by the Defendants. It is

the case of the Plaintiffs that a sum of Rs.30,000/- was borrowed and the

same was not repaid. The Plaintiffs had proved that the Defendants are in

illegal possession of the Suit property and they have to be evicted. The

Plaintiffs have to prove that the Defendants are in illegal occupation of the

Suit and that the Defendants might have misused the blank signed papers.

The Plaintiffs had proved their case. Therefore, the issues were decided in

favour of the Plaintiffs. Thereby the learned Principal District Munsif

decreed the Suit and answered the issues 1 to 3 in favour of the Plaintiffs.

Aggrieved, the Defendants had preferred the Appeal before the learned

Sub Judge, Kanchipuram claiming that the learned Principal District

Munsif misread the evidence of P.W-1 and failed to appreciate the legal

contentions in proper perspective raised with reference to the probative

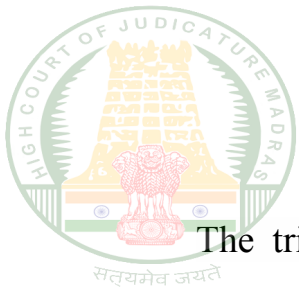
value of Ex.B-1 and Ex.B-2. The trial court failed to see that even though

Ex.B-1 and Ex.B-2 are unregistered documents, still in the eyes of law, the

same could be treated as an agreement between the parties under which the

Plaintiffs had in their own writing gave up their occupancy/possession in

respect of the Suit property on the date indicated in the said documents.



S.A.No.1158 of 2013

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The trial court committed an error in holding that Ex.B-1 and Ex.B-2 cannot be treated as sale deeds. Therefore, the possession of the defendants would be illegal when the appellants are entitled to rely upon these documents to prove they were inducted in possession in a lawful manner. The trial Court erred in holding that the suit was not barred under the Limitation Act as it overlooked the fact that 12 years limitation period cannot be availed by the plaintiffs when the suit property admittedly belongs to the Government. Hence, the suit filed after six years ought to have been rejected on this ground also. The learned District Munsif failed to apply the settled principles laid down in the decisions relied up on by the defendants regarding Ex.B-1 and Ex.B-2. Therefore, the Defendants/Appellants sought to set aside the Judgment and decree granted by the learned District Munsif. The learned Sub Judge, Kanchipuram after hearing the argument of the learned counsel for the Appellant (Defendant before the learned District Munsif) and the learned counsel for the respondent (Plaintiff before the District Munsif) and on appreciation of evidence had raised the following points for consideration:-

- 1. Whether the Decree and Judgment passed by the trial Court is correct or not?*
- 2. Whether the Appellant is entitled to allow this Appeal?*



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3. *Whether the Suit is barred by limitation?*

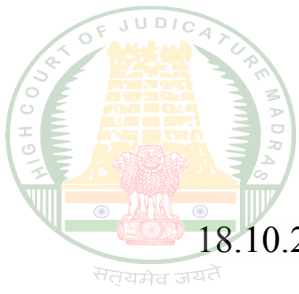
4. *Whether the sale deed executed by the first Defendant in favour of the Appellant on 18.10.2000 is valid?*

5. *To what other relief?*

28. All the points for determination are taken together for consideration on the basis of the appreciation of evidence. The learned Sub Judge in the Judgment had observed in the course of the re-appreciation of evidence, which reads as follows:-

“11. On perusal of entire statement of witnesses, the Plaintiff herself admitted in evidence that they have received amount of Rs.30,000/- and the Suit property was handed over to the Appellants for cultivating the same. The citations submitted by the Appellants proves that the right and title vested with the Appellants from 2000 onwards to till dated. Hence, the trial Court has without considering the original facts of the case and statement of witnesses, decreed the Suit in favour of the Respondent. Hence, the reasons given by the trial Court is not acceptable and hence, the decree and Judgment of the trial Court should be set aside and the Appeal may be allowed with costs.”

29. In the course of the discussion of evidence by the learned Sub Judge, it is observed that the plaintiffs themselves admitted that they had borrowed Rs.30,000/- from the first defendant and signed the blank papers. The signature was also admitted by the plaintiffs. The second plaintiff had also attested as a witness. During the course of trial, the first Defendant had filed the Petition seeking to register the unregistered sale deed dated

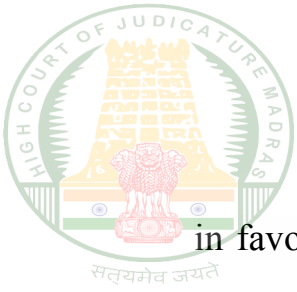


S.A.No.1158 of 2013

18.10.2000 with a penalty which was also allowed by the Court. At the

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time of registration, the Sub Registrar had refused to register in favour of the Appellants since the suit property is classified as Odai Poramboke. Even though the property was classified as a cultivable land, this was not communicated by the authorities, for which the defendants are not responsible. On perusal of the evidence of P.W-1, she had categorically admitted that the amount of Rs.30,000/- was received from the defendants and the first plaintiff had affixed her thumb impression on the blank stamp paper. However, the plaintiffs failed to prove that the defendants had prepared the sale deed by way of using the blank stamp papers. The original documents filed by the plaintiffs are all related to prior to the suit i.e., obtained by the husband of the first Plaintiff. It may be true that a government servant before purchasing an immovable property should obtain permission from the government. But for which the plaintiff before the trial court has no right to question the same before the Court of law because permission for purchasing the property is between the government and the government servant. Further, the defendants have also taken steps for registration of unregistered sale deeds and wanted to get over the illegality by way of paying penalties. If at all, the first plaintiff has allegedly borrowed loan amount, why would she have executed a sale deed



S.A.No.1158 of 2013

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in favour of the defendants. The intention of the plaintiff is to discharge

the loan amount borrowed from the defendants by way of adjusting the

loan amount towards sale consideration. For which the

appellants/defendants are not liable to lose their right over the suit

properties. Anyhow, the consideration for the suit property is passed to the

plaintiff and accepted by the same. Further, before filing the suit, the

plaintiffs had issued legal notice to the Appellants/Defendants. For which

the Defendants have also issued reply notice in which they have

categorically stated that the first plaintiff had executed the sale deed dated

18.10.2000 in favour of the defendants by way of two documents which

were marked as Ex.B-1 and Ex.B-2. The contradiction stated by the first

defendant during the course of examination will not create any prejudice to

the title of the defendants over the suit properties. The citations submitted

by the learned counsel for the defendants before the learned Principal

District Munsif would prove that the unregistered sale deed was used for

collateral purpose. Since the purpose was the transfer of title of the suit

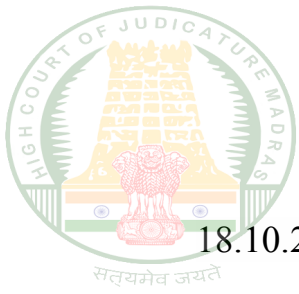
property in favour of the defendants, they have executed the documents.

Further, the Defendants have categorically denied the claim of the

plaintiffs in the written statement and subsequently claimed that the suit

property belonged to the defendants by way of unregistered sale deed dated

27/50



S.A.No.1158 of 2013

18.10.2000. The plaintiffs ought to have filed the suit within three years

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from the date of the unregistered sale deed and challenge the same by way of filing the suit. However, the plaintiffs filed the suit in the year 2006. Hence, without cancellation of the unregistered sale deed, the plaintiffs cannot file the suit. Further, the plaintiffs did not seek relief of declaration in respect of the suit property. Hence, the suit filed by the plaintiffs is not maintainable. The plaintiffs had not filed the suit within three years from the date of sale deed, by way of cancelling the same. Hence, the Suit filed by the Plaintiff is barred by limitation. The citations submitted by the learned Counsel for the defendants before the learned Principal District Munsif are relevant to the facts of the case on hand. The grounds or reasons stating that the judgment of the learned Principal District Munsif is perverse, in the light of the reported decisions relied by the learned Counsel for the defendants before the learned Principal District Munsif. Therefore, the judgment to be set aside was accepted by the learned Sub Judge, thereby the arguments put forth by the learned Counsel for the Plaintiffs as Respondents in the Appeal was rejected and the Judgment of the learned Principal District Munsif was set aside.

30. On perusal of the Judgment of the learned Principal District



S.A.No.1158 of 2013

WEB COPY Munsif and the Judgment of the learned Sub Judge, the reasoning of the learned Sub Judge cannot at all be accepted. In the evidence of D-1 as

D.W-1 he had admitted that he was serving as Superintendent in the Central Government. The Plaintiff while approaching the Court by filing the Plaint had clearly stated that her husband retired from the Indian Army. He was assigned the land, he had been cultivating the land which was in the register of the Revenue Department as Odai Poramboke. He had been paying the kist which has been marked as Ex.A-6 which is series of kist receipts Nos.1 to 56. He had filed an application seeking assignment under Ex.A-3 and it was pending. While so, the husband of the original Plaintiff/Mannar died in the year 1999, the Plaintiff had approached the first Defendant seeking loan of Rs.30,000/- to perform the marriage of her granddaughter. At that time, the daughter of the Plaintiff was also a witness along with the grandson/Jayapal and the signatures of the Plaintiff and the daughter of the Plaintiff were obtained by the first Defendant in blank papers. As per the oral agreement between the Plaintiffs and the first defendant, the possession of the cultivable land which the Plaintiff had been cultivating was handed over to the first Defendant. As per the oral agreement, the Defendants 1 and 2 will cultivate the land and derive income from the agricultural yield, from which they will adjust the interest



S.A.No.1158 of 2013

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for Rs.30,000/-. Initially, the agreement was for two years and whenever the Plaintiffs were ready with the original principal amount of Rs.30,000/-, she would be handed over the possession of the land by the Defendants. In 2001, she went with the money but the Defendants did not accept the money. Therefore, the Plaintiffs apprehended that the document blank papers on which she had affixed her thumb impression may be exploited to create documents. Apprehending such conduct, the Plaintiff had issued notice under Ex.A-7 seeking to hand over vacant possession of the land over to the Plaintiffs. Instead, the Defendants had sent a reply notice claiming that the Plaintiffs had executed the sale deed.

31. In the pleadings in the Plaint, it has been clearly stated that the original Plaintiff, the first Plaintiff was an illiterate widow and she had only one daughter who had impleaded herself as second Plaintiff. After the death of the first Plaintiff, second Plaintiff was a witness to the transaction. Therefore, she had proceeded with the Suit as the legal heir of Mannar and Govindammal. She had cogently stated the fact in her evidence. The learned Principal District Munsif had on proper appreciation of evidence and considering the fact that the Suit was filed for recovery of vacant possession assessed the matter. As per the Plaint averments and as



S.A.No.1158 of 2013

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per the claim of the Defendants, it was an agreement for refund of the money after cultivating the land with the intention to adjust the amount towards interest. Therefore, practically, it is a mortgage. The first Defendant being better placed, is not illiterate, he is educated, worldly wise, and obtained thumb impression and signatures from Plaintiff and the daughter of the Plaintiff as security. Subsequently, he had converted those documents into “sale deeds”, which he could not register. As per evidence available before the trial Court, he had filed a Petition to register it which was allowed by the learned Principal District Munsif in the course of the trial. But when the document was produced before the concerned Sub Registrar, the Sub Registrar refused to register on the ground that it is an “Odai Poramboke” and that much of evidence is available before the learned District Munsif. Therefore, by all means, it is only a mortgage deed. Therefore, even if Ex.B-1 and Ex.B-2 were treated as sale agreement deeds and in the light of sale agreement deeds, possession was handed over to the Defendants, the Plaintiff is within her rights to seek recovery of vacant possession. She was an illiterate and not worldly wise whereas the first Defendant is the educated and working in Central Government service and holding the Post of Superintendent. Therefore, the learned Principal District Munsif had properly analysed the evidence in proper perspective.



S.A.No.1158 of 2013

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The claim of the Plaintiffs as Respondents in the Appeal that the first Defendant being a Government Servant before ever getting a sale deed has to obtain permission from his superior Authority is the normal conduct of a lawful citizen working in Government Service before registering a sale, otherwise he will end up in trouble. The observation of the learned Sub Judge while re-appreciating evidence and while rejecting the finding of the learned Principal District Munsif with the observation that the Plaintiff has no right to question the same before the Court of law cannot be accepted. The Court of law is expected to enforce the law and not encourage lawlessness or violation of law. The first Defendant admits in cross-examination that he is working as a Superintendent in Central Government service and he admits in cross-examination that before registering a document, he has to obtain approval from his Superiors. When he has not obtained the said approval, the claim that the Plaintiffs executed the sale deed for Rs.30,000/- has to be rejected. The learned Principal District Munsif had properly analysed the evidence whereas the learned Sub Judge had observed that the trial Court failed to consider the fact. This specific observation of the learned Sub Judge is condemnable as it failed to appreciate the evidence as it is. The learned Judge had found means to encourage violations by a Government Servant and also as a common man



S.A.No.1158 of 2013

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in exploiting the illiteracy and helplessness of an aged, illiterate widow, an aspect that also was ignored by the learned Sub Judge, Kanchipuram while re-appreciating the evidence independently. Therefore, the finding of the learned Sub Judge, Kanchipuram in setting aside the Judgment of the learned District Munsif itself is perverse.

32. The finding of the learned Principal District Munsif is on strong reasoning. The fact has to be considered that the husband of the first Plaintiff, the father of the second Plaintiff was an ex-serviceman. He had been cultivating the Odai Poramboke as a cultivating tenant which is proved as per Ex.A-6-kist series 1 to 56 numbers and he had been issued with notice under Ex.A-2 under Act 3 of 1905. Also, he had addressed the Revenue Authorities seeking assignment of the land as per Ex.A-3. While so, the learned Sub Judge had on appreciation of evidence stated the Suit properties is classified as Odai Poramboke even though the property is shown as cultivable which was not communicated by the Revenue Authorities, for which the Respondent is not responsible. The original documents filed by the Respondents are all related to prior to the Suit.

33. On perusal of the Plaint, the learned Sub Judge ought to have found out that the Suit was for recovery of possession and not for



S.A.No.1158 of 2013

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declaration that the sale deed is null and void. The Plaintiff averments are

clear. She apprehended that her thumb impression might have been misused. Therefore, she had issued notice under Ex.A-7 for which reply was given under Ex.A-8. Only after Ex.A-8, she had filed the Suit. By the time she approached the Court, it was beyond three years. Therefore, she had to seek recovery of possession and accordingly, she had filed the Suit. The reasoning by the learned Judge that the Suit property is Odai Poramboke for which the Plaintiff cannot seek recovery of possession is a misinterpretation of the fact. The facts before the learned Principal District Munsif are clear and simple. The husband of the Plaintiff was cultivating “Odai Poramboke” as per Ex.A-6 for quite a long time and he was expecting the Government to assign the land to him. For all practical purposes, he is the owner of the land and his application for assignment is pending with the Government. Therefore, when the first Defendant sought thumb impression, Plaintiff had given her thumb impression and the only daughter of the Plaintiff who is an attesting witness had affixed her signature as a witness to the transaction. The borrowal had been accepted by the Plaintiffs. It is a clear case of the Plaintiffs that when she wanted to return the principal amount, the Defendants refused to accept the same. Only then, she suspected that he had some other motive i.e., to grab the



S.A.No.1158 of 2013

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property which forced her to issue notice under Ex.A-7 calling upon the

Defendants to hand over vacant possession. Instead of handing over vacant possession, he claimed to have obtained the sale deed. When the defendants claim to have obtained the sale deed, it is the right to question the defendants in the witness box by the learned Counsel for the Plaintiffs that before registering a sale deed and before proceeding with the purchase of the property the Defendants ought to have obtained appropriate permission from his Authorities which is a very important legal issue which was however lightly rejected as unnecessary, unimportant by the learned Sub Judge. The Judge enforcing the law is not expected to reject such important question of law. Also, he had observed that the Plaintiffs had not furnished the document regarding assignment of the land. After conversion it is clear that it is a cultivable land. It is clear that even though the Court had granted permission to the Defendants to execute the unregistered deed as registered deed, the Sub Registrar of the Registration Department refused to register it as it is an “Odai Poramboke”. Therefore, by all means, the Defendant has to return the possession of the land to the Plaintiffs. He has adjusted the principal till the original amount is repaid by the Plaintiffs. It is to be noted that the Government Servants are not expected to encroach on “Odai Poramboke” or seek ownership of



S.A.No.1158 of 2013

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Government lands as it is a violation of the rules of conduct of a Government servant, whether he served under the Central Government or State Government. Here, by all means, it is an illegal act on the part of the Defendants to assert the property which is in possession of the Plaintiffs as cultivable tenants as agriculturists and as a retired army man/the husband of the Plaintiff. The Plaintiffs were also expecting assignment of the land as per Ex.A-3. Therefore, the entire claim of the Defendants in the written statement ought to have been rejected by the Appellate Judge, instead the learned Appellate Judge had found ways to justify the conduct of the Defendants, which a Court of law is not expected to do.

34. The arguments put forth on behalf of the Defendants relying upon the ruling before the learned Sub Judge *in the case of Venugopal @ Alagarsamy (died) and others Vs. Bajanai Alagarsamy and another (reported in 2004 (3) Mad LJ 362; in the case of M/s.Ram Mohan represented by Proprietors R.Renu Vs. M/s Ganesar Gining Company Private Limited, Coimbatore and others ((reported in 1999) 3 CTC 40); and in the case of M.K.Varappan Vs. Sri Lakshminarayana Gopala Samy Temple by Executive Officer, Big Bazaar (reported in 1997 (2) MLJ 23)* cannot be pressed into the service of this case. The first



S.A.No.1158 of 2013

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Defendant admitted that he is a Central Government servant and he had not obtained prior permission before executing the sale deed. Therefore, the probable claim of the Plaintiffs that she had borrowed Rs.30,000/- and she had given her thumb impression and her daughter and grandson had been witnesses to the transaction has to be accepted as it is. As security for the borrowal, the Plaintiffs had handed over possession of the property which they had been cultivating to the Defendants and permitted the Defendants to cultivate and adjust the income derived from it towards the interest. When she was ready with Rs.30,000/- and she wanted repay the borrowed amount, the Defendants refused to accept it, instead, the Defendants claimed that the Plaintiffs had executed a sale deed which is marked as Ex.B-1 and Ex.B-2. Therefore, the Defendants contended that the Plaintiff ceased to be the owner of the property. The attempt of the Defendants to execute and to register the sale deed even though allowed by the Court of law, was refused by the Sub Registrar as it was “Odai Poramboke”. The first Defendant who is the Government Servant is not expected to be encroaching on Poramboke lands. Therefore, it is an illegal attempt which cannot be justified in a Court of law. The learned Sub Judge had reversed the Judgment of the learned Principal District Munsif on the ground that the Suit was filed after three years as though the Plaintiff had filed a Suit



S.A.No.1158 of 2013

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for declaration of title or for a declaration to declare the sale deed as null

and void. She need not seek declaration. It is a clear case that she had

borrowed the money and she had handed over possession to the

Defendants. Therefore, the Suit for recovery falls under Article 66 of the

Limitation Act, and the Judgment of the learned Principal District Munsif

was well-reasoned. The reasoning of the learned Sub Judge cannot at all be

accepted as per the provisions of law. He had wantonly reversed the

finding by justifying the violation of a Government Servant attempting to

grab Odai Poramboke land cultivated by a former Army Jawan and his

legal heirs which cannot be justified by Courts of law. The Judgment of

the learned Sub Judge ignoring those well-reasoned, well-settled

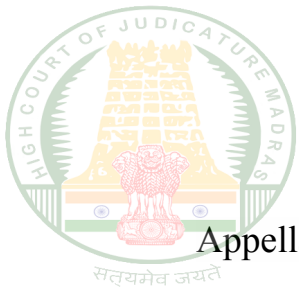
principles and justifying illegality cannot be condoned. The learned Sub

Judge has found ways to set aside the Judgment of the learned Principal

District Munsif which cannot be appreciated by this Court in the Second

Appeal.

35. As per the rulings cited by the learned Counsel for the Appellant reported in *(1990) 4 SCC 706 in the case of Achal Reddy Vs. Ramakrishna Reddiar and Others; and AIR 2021 SCC 4293 in the case of T.V.Ramakrishna Reddy Vs. M.Mallappa and another*, the first

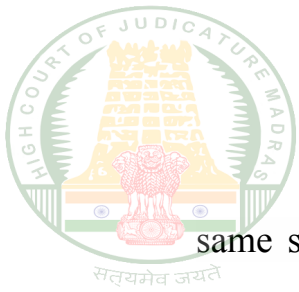


S.A.No.1158 of 2013

WEB COPY

Appellate Court was not right in its finding that the Plaintiffs ought to have filed a Suit for declaration to declare an unregistered sale deed as null and void. The Plaintiffs need not seek declaration to declare the unregistered sale deed as null and void. The Plaintiffs had clearly stated that she had given her thumb impression in blank sheets of paper at the time of borrowal and she had clearly stated that she had handed over possession on demand of the Defendants. So that interest could be adjusted from the yield of the land through cultivation. Therefore, *the substantial question of law-1 is answered in favour of the Plaintiffs before the learned Principal District Munsif and against the Defendants 1 and 2.*

36. Substantial Questions of Law-2 to 4:- the reasons given by the learned Sub Judge are not mandated as per Order 41 Rule 31 of the Civil Procedure Code. The learned Sub Judge had raised the points for determination but had not answered it separately as per Order 41, Rule 31 of the Civil Procedure Code. It is a settled principle of law as laid down by the Hon'ble Supreme Court that while re-appreciating evidence by the Appellate Court, the Appellate Court shall not disturb the finding by the trial Court, if the finding of the trial Court is on proper appreciation of evidence. Even if the Appellate Court arrives at an opposite finding on the



S.A.No.1158 of 2013

WEB COURT

same set of facts and evidence, the same shall not be thrust on the trial

Court if the finding of the trial Court is based on proper appreciation of evidence. This is due to the fact that the trial Court had the advantage of observing the demeanour of the witnesses which is not available to the Appellate Court. In the light of such principle, the Judgment of the learned Sub Judge as Appellate Court cannot be accepted. In the light of the above discussions, the finding of the first Appellate Court is found perverse due to improper appreciation of oral and documentary evidence.

37. The first Appellate Court had not given cogent reasons while reversing the findings of the trial Court as mandated under Order 41, Rule 31 of the Civil Procedure Code. The first Appellate Court failed to take into consideration the specific defence taken by the Defendants in the written statement that the Plaintiff had executed sale deed in favour of the Defendants, and despite of the same proceeded to dismiss the Suit filed by the Plaintiffs. The Judgment of the first Appellate Court is erroneous. ***The substantial questions of law-2 to 4 are answered in favour of the Plaintiffs and against the Defendants before the learned District Munsif.***

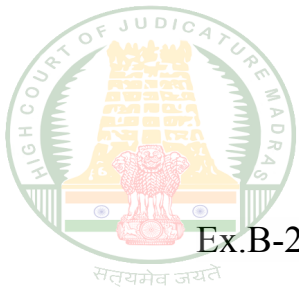
38. The learned Counsel for the Respondents in the Second Appeal/Defendants before the learned District Munsif had relied upon the



S.A.No.1158 of 2013

WEB COPY ruling reported in the case of *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs. And others ((2008) 4 SCC 594)* which is not applicable to

the facts of this case. Here, there is no cloud of title. The Suit property is treated as Odai Poramoke which is under the cultivation of the first Plaintiff and her husband/Mannar. The first Plaintiff's husband was a retired Army Jawan and the Revenue Authorities had collected penalty from him through a series of kist receipts (Nos. 1 to 56) which is marked as Ex.A-6. The husband of the first Plaintiff was expecting the Government to give him an assignment order towards his long enjoyment of the Odai Poramboke as he was cultivating the same. He had also preferred application under Ex.A-3 for the same. Therefore, there is no cloud of title. The case of the Plaintiffs is simple. She had clearly stated that the land was under cultivation and her husband had approached the Revenue Authorities for assigning the land to him. Being a landless and poor retired Army Jawan, he cultivated the Poramboke land as an agriculturist. However, the Defendants, under the guise of extending loan obtained thumb impression from an illiterate aged widow. Though, it was accepted as a security, it was later misused by the Defendants. When the Plaintiff wanted to repay the loan, the Defendants refused to accept it, claiming that she had already executed a sale deed. The claim of the Defendants under Ex.B-1 and 41/50



S.A.No.1158 of 2013

Ex.B-2/sale deeds cannot be accepted by Courts of law. The first

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Defendant is employed in the Central Government service and being a Government servant, he is not expected to encroach upon the Government lands. If the claim of the Defendants in the written statement is to be accepted, it would amount to encroachment on the Government lands. The Government, however, is within its power and discretion to grant assignment of lands available with the Government to the landless poor. The Courts cannot interfere. Even though the Plaintiff had been in enjoyment of an Odai Poramboke, she had permitted the Defendant to cultivate the same and adjust the yield towards interest on the loan amount of Rs.30,000/-. Therefore, the reversal of the Judgment of the learned Principal District Munsif by the learned Sub Judge cannot be considered as well-reasoned Judgment by applying the reported ruling cited by the learned Counsel for the Respondent in ***(2008) 4 SCC 594 : AIR 2008 SCC 2033 in the case of Anathula Sudhakar Vs. P.Bhuchi Reddy (Dead) by Lrs. and others.***

39. The finding of the learned Sub Judge that the Suit filed by the Plaintiffs is not maintainable had been reiterated by the learned Counsel for the Respondents. The written statement claims that the Suit was for

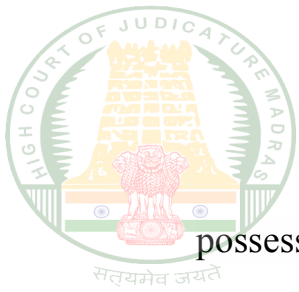


S.A.No.1158 of 2013

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bare injunction. However, it is not a Suit for bare injunction, rather it is a Suit for recovery of possession, which is well within the period of limitation.

40. The learned Counsel for the Appellants/Plaintiffs relied on the ruling reported in *(1990) 4 SCC 706 in the case of Achal Reddy Vs. Ramakrishna Reddiar and Others*. The claim of the Defendants before the learned District Munsif that the Plaintiffs handed over possession in the light of Ex.B-1 and Ex.B-2, which are sale deeds, and thus, has to be treated as sale agreement deeds cannot be accepted by the Courts below. The claim of adverse possession also cannot be accepted in the light of the ruling reported in *(1990) 4 SCC 706 in the case of Achal Reddy Vs. Ramakrishna Reddiar and Others*. When the Defendants claim that possession was handed over by the Plaintiffs, then such possession cannot be considered as illegal. It is legal possession. It is only from the date of the Defendants refusal to accept the repayment of loan amount that it had been adverse to the Plaintiffs. The Defendants have not claimed adverse possession in the written statement. They had only claimed that they had taken possession in the light of sale deeds. Therefore, this ruling is not helpful to the facts of this case. Only it has to be considered as either the



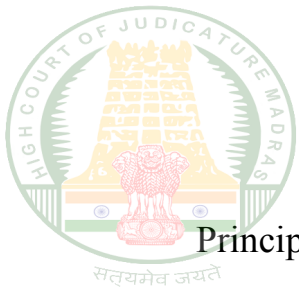
S.A.No.1158 of 2013

possession of the Plaintiffs was accepted by the Defendants while extending the loan and possession was handed over to the Defendants by the Plaintiffs as security.

41. The learned Counsel for the Plaintiffs relied on the ruling reported in *AIR 2021 SCC 4293 in the case of T.V.Ramakrishna Reddy Vs. M.Mallappa and another*. The facts of this case are different from the reported ruling. The Plaintiffs had filed the Suit for recovery of possession which was not considered by the learned Sub Judge. She need not seek declaration of title or declaration of sale deed executed relied on by the Defendants as null and void. She had clearly narrated the facts and the evidence in support of her case was also found proper. Therefore, the ruling is not applicable to the facts of this case.

42. In the light of the above discussions, the *substantial questions of law are answered in favour of the Plaintiffs and against the Defendants*.

In the light of the above discussions, this *Second Appeal is allowed*. The Judgment dated 18.03.2013 in A.S.No.90 of 2011 on the file of the learned Sub Judge, Kanchipuram is set aside and the Judgment dated 06.08.2011 passed in O.S.No.455 of 2006 on the file of the learned



S.A.No.1158 of 2013

Principal District Munsif, Kanchipuram is restored. The Plaintiff is

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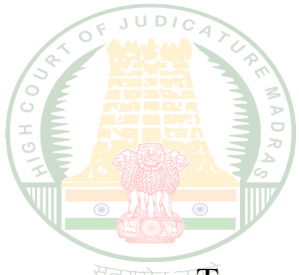
directed to pay Rs.30,000/- to the Defendant within a period of three months from the date of receipt of a copy of this Order. No costs.

25.06.2025

dh

Index : Yes/No

Speaking/Non-speaking order

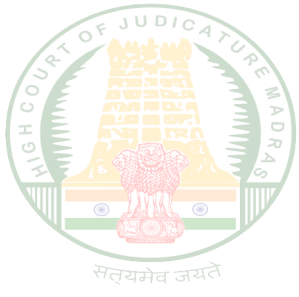


S.A.No.1158 of 2013

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To
1. The Sub Judge,
Kanchipuram.

2. The Principal District Munsif,
Kanchipuram.

3. The Section Officer,
V.R.Section,
High Court, Madras.



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S.A.No.1158 of 2013

SATHI KUMAR SUKUMARA KURUP, J.,

dh

Pre-delivery Judgment made in
Second Appeal No.1158 of 2013

25.06.2025



S.A.No.1158 of 2013

S.A.No.1158 of 2013

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SATHI KUMAR SUKUMARA KURUP, J.

This case is listed today under the caption “for being mentioned” at the instance of the learned Counsel for the Appellant.

2. The learned Counsel for the Appellant submitted that as per the judgment of the learned Principal District Munsif, Kancheepuram in O.S.No.455 of 2006 dated 06.08.2011, the Defendant was directed to handover possession of the property within a period of three months from the date of judgment and the Plaintiff was directed to make payment of Rs.30,000/- to the Defendant with interest at the rate of 12% p.a. from the date of borrowal till the date of judgment and the same has to be paid within three months from the date of judgment. But, in the judgment dated 25.06.2025 made in this Second Appeal, the same was omitted to be ordered. Therefore, the learned Counsel for the Appellant sought to include those directions in this Judgment also.

3. Considering the submission of the learned Counsel for the Appellant, the result portion of the judgment shall read as follows:



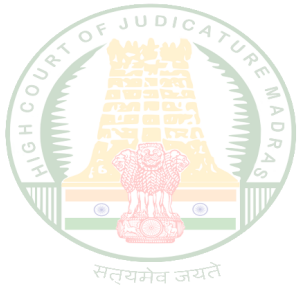
S.A.No.1158 of 2013

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"In the light of the above discussion, **this Second Appeal is allowed.** The judgment dated 18.03.2013 in A.S.No.90 of 2011 on the file of the learned Sub Judge, Kanchipuram is set aside and the judgment dated 06.08.2011 passed in O.S.No.455 of 2006 on the file of the learned Principal District Munsif, Kanchipuram is restored. The Defendant is directed to handover possession of the property to the Plaintiff within the period of three months from the date of receipt of a copy of this judgment. The Plaintiff is directed to pay Rs.30,000/- to the Defendant with interest at the rate of 12% p.a from the date of borrowal till date of decree before the trial Court and 6% from the date of decree till the date of realisation. No costs. "

4. Registry is directed to incorporate the above paragraph instead of the earlier one and issue fresh copy of the judgment to both parties.

11.07.2025



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S.A.No.1158 of 2013

SATHI KUMAR SUKUMARA KURUP, J.

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S.A.No.1158 of 2013

11.07.2025