



S.A.No.560 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 24-06-2025

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 560 of 2013

S. Ranganathan

.. Appellant

Versus

1. Bala Saraswathy
2. Jagadeeswari
3. Saravanan
4. Srinivasan
5. Sankar Ganesh
6. Agilandeswari
7. Jayaraman

.. Respondents

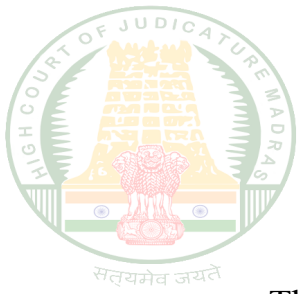
Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.03.2011 made in A.S. No. 47 of 2008 on the file of the Subordinate Judge, Arani, confirming the judgment and decree dated 20.06.2008 made in in O.S.No.156 of 2000 on the file of the District Munsif Court, Polur.

For Appellant : Mr. M. Sriram
for Mr. Ramesh Venkatachalapathy

For Respondents
(3,4,5 and 7) : No appearance

For Respondents : Notice served
(RR1, 2 and 6)

JUDGMENT



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This Second Appeal has been filed against the judgment and decree dated 31.03.2011 made in A.S. No. 47 of 2008 on the file of the learned Subordinate Judge, Arani, confirming the judgment and decree dated 20.06.2008 made in O.S.No.156 of 2000 on the file of the learned District Munsif Court, Polur.

2. For the sake of convenience, the parties to this appeal shall be referred to as per their litigative status in the suit as 'Plaintiff' and 'Defendant'.

3. The Plaintiff in O.S. No. 156 of 2000 on the file of the District Munsif Court, Polur is the appellant in this Second Appeal. Pending Second Appeal, the first Defendant Appasamy died and his legal heirs are brought on records as respondents 1 to 6. The second Defendant in the suit is the seventh respondent in this appeal.

4. As per the plaint averments, the Plaintiff and the Defendants are brothers and sons of Chakravarthy Gounder and Rajammal. Mr. Chakravarthy Gounder died on 04.05.2000. Even during the life time of Chakravarthy Gounder, the Plaintiff and Defendants have partitioned their properties as per which the “A” Schedule was given to the father Chakravarthy and Schedule “B” was allotted to the Plaintiff and “C” and “D” Schedule were given to the



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Defendants. As per such partition, the Plaintiff and Defendants are in possession and enjoyment of their respective property. Further, during the life time of Chakravarthy Gounder, he executed a lease deed dated 12.01.1996 in favour of the Plaintiff and he is in possession of the leasehold property of his father. The lease was for a period of five years and the Plaintiff was paying the lease rent to his father until his death. However, after the death of his father Chakravarthy Gounder, the Defendants attempted to interfere with the lease hold right of the Plaintiff. Even after expiry of the period of lease, the Plaintiff is continuing the possession of the property as a legal heir of the deceased Chakravarthy Gounder. Therefore, the Plaintiff has filed the suit for a bare injunction to restrain the Defendants, their men, servants, agents from in any manner disturbing the peaceful possession and enjoyment of the plaint schedule mentioned property, till the Plaintiff is legally evicted by due process of law.

5. On notice, the first Defendant filed a written statement contending that the lease given to the Plaintiff expired and therefore, the Plaintiff is not entitled to continue in possession of the lease hold property. The lease deed was executed in favour of the Plaintiff on 12.01.1996 and not 12.06.1996 as stated in the plaint. The Plaintiff has furnished the incorrect date of lease to misguide this Court. When Chakravarthy Gounder dies, naturally, the Plaintiff



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cannot continue as a lessee and the leasehold land has to be divided among his surviving legal heirs. The Defendants are his brothers and co-owners of the property. The Plaintiff, by filing the present suit is intending to continue in the leasehold property forever without even paying any lease amount as the original owner and father Chakravarthy Gounder died. Even in the lease deed, the Plaintiff has given an undertaking to vacate the lease hold lands on expiry of the lease on 11.01.2001. However, taking advantage of the death of his father, the Plaintiff is refusing to budge. By filing the present suit, the Plaintiff is continuing to squat on the property without permitting his brothers to divide the property by metes and bounds. The suit is not maintainable and it has to be dismissed.

6. Before the trial court, the Plaintiff examined himself as P.W-1 along with three other witnesses as P.W-s 2 to 4. P.W-4 Rajammal is the mother of the Plaintiff and Defendants. Exs. P1 to P3 have been marked as documents on the side of the Plaintiff. On behalf of the Defendants, the first Defendant examined himself as DW1, but no document was marked.

7. The trial court, on appreciating the oral and documentary evidence concluded that the lease in favour of the Plaintiff was till 11.01.2001 and the lessor Chakravarthi Gounder died on 04.05.2000. The period of lease was in force at the time of institution of the suit. However, after expiry of the period



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of lease, the Plaintiff cannot claim himself to be a lessee and continue to squat in the property. The Plaintiff cannot claim that even after the expiry of the period of lease, as a legal heir of Chakravarthi Gounder, he can continue to remain in possession of the lease hold land. When the Plaintiff claim himself to be in lawful possession based on the lease deed under Ex.P-2, on it's expiry, he is bound to vacate the property and has no right to remain in possession. Further, it is claimed that a Will was executed by late. Chakravarthi Gounder in which he has given life estate to his mother/P.W-4. However, the Will was not the subject matter in the suit and the suit was filed only for a bare injunction. Accordingly, the trial court refused to grant any relief to the Plaintiff and dismissed the suit on 20.06.2008.

8. Assailing the Judgment and Decree dated 20.06.2008 passed in O.S. No. 156 of 2000, the Plaintiff has filed an appeal in A.S. No. 47 of 2008 and the same was also dismissed by the first appellate Court on 31.05.2011. Aggrieved by the concurrent decisions of the courts below, the unsuccessful Plaintiff has come forward with this second appeal under Section 100 of The Code of Civil Procedure.

9. Mr. Sriram, learned Counsel for the Appellant submitted that the suit was filed for permanent injunction against the first and second Defendants,



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who are none other than the brothers of the Plaintiffs. The suit property was allotted to the Plaintiff's father Chakravarthi Gounder in a family partition.

The Chakkaravarthi Gounder during his life time executed a lease deed in favour of the Plaintiff and the Plaintiff was also paying the lease rent to his father promptly. It is further stated that Chakravarthi Gounder has also executed a Will by which he bequeathed the entire property to be enjoyed by his wife Rajammal/P.W-4 till her life time and thereafter, the property shall be acquired by the beneficiaries of the Will. Therefore, the Plaintiff has been paying the lease amount to the mother Rajammal/P.W-4 and is in lawful possession of the property. Similarly other properties were leased out to Defendant-1 and Defendant-2 with condition that they shall pay the lease amount to their mother during her lifetime. The lease executed in favour of the Plaintiff was for a period of 5 years. Before the expiry of 5 years, the father of the Plaintiff Chakkaravarthi Gounder died. After his death, the Defendants, claiming to divide the property by metes and bounds have attempted to interfere with the possession and enjoyment of the property by the Plaintiff. Therefore, the suit was filed for a bare injunction. According to the learned counsel, even on the death of Chakravarthi Gounder, as a legal heir, the Plaintiff is entitled to continue in possession of the property for which he is also paying the lease amount to his mother-Rajammal/P.W-4. Therefore, even after the expiry of lease deed, the Plaintiff is peacefully enjoying the property



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by paying the lease amount to his mother. The Plaintiff and the Defendants are co-owners and they have to peacefully enjoy the property left behind by his father. Even during the life time of the father, the property was partitioned into three equal shares and one such share was given to the Plaintiff while two other properties have been given to the Defendants. In any event, without following the due process of law, the Plaintiff cannot be evicted from the plaintiff described property. The courts below, without taking note of the above facts dismissed the suit on specious reasons. The Plaintiff was paying the due rent to the mother of the Plaintiff and Defendant Rajammal. The validity of the Will executed by the Plaintiff's father Chakravarthi Gounder is the subject matter in Second Appeal No. 919 of 2013 pending before this Court. Even otherwise as per the Registered lease deed, the tenant shall hold over the property as per Section 116 of the Transfer of Property Act.

10. The learned Counsel for the Appellant invited the attention of this Court to the evidence of mother/P.W-4, who has admitted that the Plaintiff is paying lease rent to her after the demise of her husband Chakravarthi Gounder. While so, the provisions of Section 116 of the Transfer of Property Act was not at all considered either by the learned District Munsif, Polur or by the learned Sub Judge, Arani. Therefore the judgment of both the trial Court as well as the Appellate Court are erroneous and therefore they are liable to be set aside. Till



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date, the Defendant-1 and Defendant-2 had not failed any suit for recovery of possession . Therefore the possession of the Plaintiff in O.S.No.156 of 2000 is to be protected.

11. After hearing the arguments of the learned Counsel for the Appellant, the appeal was listed for hearing the argument of the Respondents on 23.07.2024 and 24.07.2024. In the connected appeal in S.A.No.919 of 2013, the learned Counsel for the Respondent 2, 3, 5 and 7 submitted argument. In this case in S.A.No.560 of 2013, the Respondents did not appear.

12. On the basis of the submissions advanced by the learned counsel for the appellant, the following question of law arises for consideration in this appeal.

“Whether the courts below are right in dismissing the suit filed by the Plaintiff only by considering the period stipulated under Ex.P-3, lease deed without taking note of the fact that the appellant is one of the legal heirs of the deceased Chakravarthi Gounder and is entitled to remain in possession of the plaint described property.?”

13. From the records, it is found that Rajammal, the mother of Plaintiff and Defendants had filed the suit in O.S. No. 97 of 2002. During the

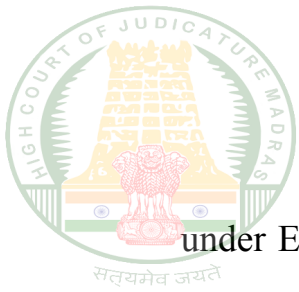


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pendency of the suit, after her deposition as P.W-1, she died. Therefore the daughters were impleaded as Plaintiffs 2 to 4 in O.S. No. 97 of 2002. In the said suit in O.S. No. 97 of 2022, the validity and/or enforceability of the Will dated 22.02.1994 was questioned. The decision rendered in O.S. No. 97 of 2022 is the subject matter of Second Appeal No. 919 of 2013. In the said appeal, by an even date, this Court passed a Judgment holding that the Will dated 22.02.1994 was duly proved and the children born to the testator Chakravarthy Gounder and Rajammal are entitled to the shares, as set out in the Will dated 22.02.1994

14. In this appeal, it is an admitted fact that the lease period covered under Ex.P-3 expired shortly after filing of the present suit in O.S. No. 156 of 2000. Further, Rajammal/Mother of the Plaintiff also passed away and therefore, it can be presumed that the Plaintiff is continuing to remain in possession of the leased property as on date without even paying the lease rent taking advantage of this litigation. As could be seen from Ex.P-3, the lease in favour of the Plaintiff expired on 11.01.2001. It is stated that even after the expiry of the lease period, on the basis of the Will dated 22.02.1994, the Plaintiff has been paying the lease rent to his mother Rajammal/P.W-4. Now, Rajammal also died and therefore, the Plaintiff has no leasehold right in the plaint described property. In any event, on the basis of the expired lease deed

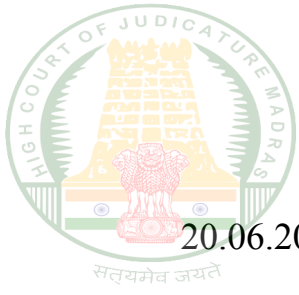


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under Ex.P-3, the Plaintiff cannot be allowed to continue the lease for several years. As per the Will dated 21.02.1994, the leased hold property devolved on the mother of Plaintiff namely Rajammal/P.W-4 to whom the Plaintiff was paying the lease rent. Even the mother Rajammal also passed away during the pendency of the suit. Therefore, as per the WILL dated 21.02.1994 executed by Chakravarthy Gounder, the plaint schedule property has to be divided after the life time of mother Rajammal, equally between the daughters and sons born to Chakravarthy Gounder and Rajammal. However, by virtue of the present litigation, the property could not be amicably divided among the surviving legal heirs. The Defendants are co-owners of the property who also got a legitimate right to get a share in the plaint described property as well as other properties left by the father Chakravarthi Gounder. Therefore, the Plaintiff is not entitled for the relief of bare injunction as prayed for in the suit. By virtue of this appeal, considerable time has been wasted and the Defendants were deprived of their legitimate share in the properties left by Chakravarthi Gounder. Accordingly, the substantial question of law in this appeal is answered against the Plaintiff and in favour of the Defendants.

15. In the result, **this Second Appeal is dismissed.** The judgment and decree dated 31.03.2011 made in A.S. No. 47 of 2008 on the file of the Subordinate Judge, Arani, confirming the judgment and decree dated



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20.06.2008 made in in O.S.No.156 of 2000 on the file of the District Munsif

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Court, Polur are confirmed. No costs.

24.06.2025

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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1. The District Munsif Court,
Polur.

2. The Subordinate Judge,
Arani.

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



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SATHI KUMAR SUKUMARA KURUP, J

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Judgment in
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