

S.A.No.89 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :19.02.2025

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.89 of 2025

K.Raja

...appellant

Vs

1.Indirani Ammal
2.Usha
3.P.Kanimozhi
4.M.Geetha
5.V.Umamaheswari
6.S.Lakshmi
7.P.Geetha

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 21.07.2022, in A.S.No.8 of 2022 on the file of Principal Subordinate Judge, Puducherry, confirming the judgement and decree dated 14.02.2022 in O.S.No.1713 of 2016 on the file of the II Additional District Munsif, Puducherry.



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For Appellant : Mr.K.S.Ilangovan

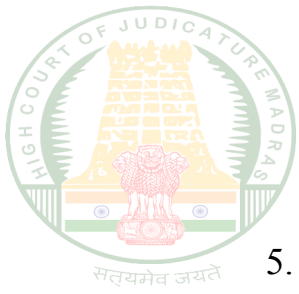
JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree dated 21.07.2022 in A.S. No. 8 of 2022 on the file of the Principal Subordinate Judge, Puducherry, confirming the judgment and decree dated 14.02.2022 in O.S. No. 1713 of 2016 on the file of the II Additional District Munsif, Puducherry.

2. Heard Mr. K.S. Ilangovan, learned counsel for the appellant, and perused the materials available on record.

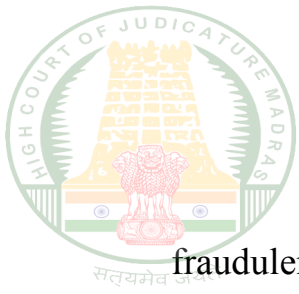
3. For the sake of convenience, the parties herein are referred to as they were ranked in the original suit.

4. Challenging the concurrent findings of the Courts below, the plaintiff has preferred this appeal.



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5. The learned counsel for the appellant submitted that the appellant/plaintiff filed a suit before the trial Court for declaration and consequential injunction in respect of the sale deeds standing in the name of defendants 4 to 7. These sale deeds were allegedly executed by virtue of a power of attorney dated 29.04.1991 standing in the name of the 1st defendant, who in turn sold the property in favour of the 2nd and 3rd defendants, his wife and son, through sale deeds executed in the year 2007. The said power of attorney was cancelled in the year 2009. The plaintiff came to know about the fraudulent sale deeds only in the year 2016. Consequently, he filed a suit for declaration. Though the defendants entered appearance before the trial Court, they remained ex parte. The learned trial Judge dismissed the suit without properly considering the documents marked as Exs. A1 to A24, which were relied upon by the plaintiff. Aggrieved by the dismissal, the plaintiff preferred A.S. No. 8 of 2022. The learned First Appellate Judge independently analyzed the documents but ultimately held that the plaintiff had not sought for a declaration that the sale deeds in favour of defendants 2 and 3 were null and void, nor had he proved that the power agent and his family members (D1 to D3) had



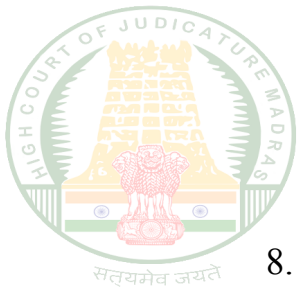
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fraudulently executed the documents without paying any consideration.

Accordingly, the appeal was dismissed.

6. The learned counsel for the appellant argued that both the Courts below failed to properly appreciate the evidence and documents adduced on the side of the plaintiff. He also pointed out that the averments in the plaint specifically mentioned the fraudulent acts committed by the power agent in favour of his family members, which were not taken into consideration by the Courts below. He, therefore, prayed for setting aside the findings and remanding the matter for fresh consideration.

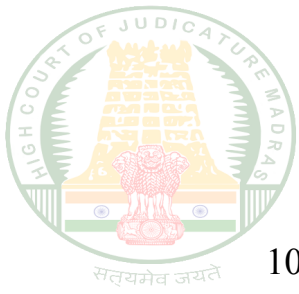
7. On perusal of the records, it is revealed that the plaintiff filed O.S. No. 1713 of 2016 before the learned II Additional District Munsif, Puducherry, seeking the relief of declaration and injunction. Though notice was served, the learned counsel for the defendants appeared but subsequently remained ex parte.



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8. The learned trial Judge merely narrated the averments in the plaint without framing proper issues. The suit was dismissed primarily on the ground of limitation and with a finding that there was no allegation of fraud, without appreciating the documents marked as Exs. A1 to A24. A reading of the entire order of the learned II Additional District Munsif shows that he had not applied his mind nor appreciated the documents produced by the plaintiff. It appears to be a mechanical or stenographic order. This Court is inclined to call for an explanation from the learned II Additional District Munsif regarding the decree passed without appreciation of documents.

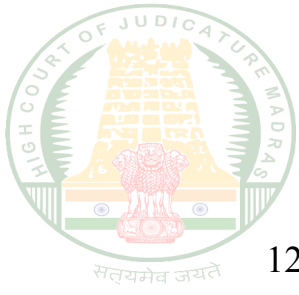
9. A perusal of the First Appellate Court's judgment also shows that the learned Judge concluded that the plaintiff had not proved the alleged fraudulent acts committed by the defendants. If such a conclusion was reached, the learned First Appellate Judge ought to have remanded the matter to the trial Court to give one more opportunity to the plaintiff to adduce evidence and prove the alleged fraudulent transactions. Instead, the appeal was dismissed by merely confirming the findings of the trial Court, which is both improper and illegal and liable to be set aside.



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10. Considering the nature of the relief claimed in the suit and the materials on record, this Court finds that the sale deed executed by the power agent in favour of his wife and son is stated by the plaintiff to be a sham and nominal document, for which no consideration was paid. Furthermore, in light of the vast extent of the suit property, this Court is inclined to give one more opportunity to the plaintiff to substantiate his claim regarding the alleged fraudulent acts by the defendants and to establish his right and title over the property. Therefore, the findings of the Courts below are set aside.

11. This Court remands the matter back to the trial Court. The learned II Additional District Munsif, Puducherry, is directed to dispose of the case afresh after issuing notice to the defendants and affording sufficient opportunity to both parties to adduce evidence. The trial Court shall frame proper issues and dispose of the case in accordance with law within a period of six months from the date of receipt of a copy of this order.



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12. In view of the above, the Second appeal is disposed of. There shall be no order as to costs.

19.02.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The Principal Subordinate Judge, Puducherry.
2. The II Additional District Munsif, Puducherry.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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