



S.A.Nos.720 and 721 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED 25.11.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. Nos. 720 and 721 of 2014

S.A.No.720 of 2014

C.Albert Raj
S/o. Chelladurai Nadar,
No.140, Thilagar Street,
Kamatchi Nagar,
Valasaravakkam Village & Post,
Chennai – 600 087.

... Appellant

Versus

1. V.V.Sampath Kumar
S/o. V.V.Velayutham

2. S.Senthil Kumar
S/o. V.V.Sampath Kumar
Both are residing at
Plot Nos.119 and 120,
Kamatchi Nagar,
Vyasar Street,
Valasaravakkam,
Chennai – 600 087.

...Respondents

S.A.No.721 of 2014

C.Albert Raj
S/o. Chelladurai Nadar,
No.140, Thilagar Street,
Kamatchi Nagar,



S.A.Nos.720 and 721 of 2014

Valasaravakkam Village & Post,
Chennai – 600 087.

... Appellant

Versus

1. V.V.Sampath Kumar
S/o.V.V.Velayutham

2. S.Senthil Kumar
S/o.V.V.Velayutham

3. M.Manivannan
S/o.V.P.R.S.Nallaperumal Chettiar

4. S.Prakash
S/o.Subramaniam Mudaliar

5. M.S.Sivakumar
S/o. Subramaniam Mudaliar

... Respondents

PRAYER in S.A.No.720 of 2021: Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment of the Sub-ordinate Judge, Poonamallee dated 13.02.2013 made in A.S.No.59 of 2010 in confirming the decree and judgment of the learned Additional District Munsif, Poonamallee dated 20.04.2010 made in O.S.No.270 of 2009.

PRAYER IN S.A.No.721 of 2021.: Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment of the Sub-ordinate Judge, Poonamallee dated 13.02.2013 made in A.S.No.58 of 2010 in confirming the decree and judgment of the learned Additional District Munsif, Poonamallee dated 20.04.2010 made in O.S.No.360 of 2008.



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APPEARANCE OF PARTIES:

WEB COPY For Appellant : M/s.G.Sumitra
In both appeals

For Respondents : Mr.M.R.Khapali for R1 & R2
in both appeals
M/s.C.Usha for R4 & R5
in S.A.No.721 of 2014

COMMON JUDGMENT

Heard.

2. These two Second Appeals directed against the common judgment and decrees dated 13.02.2013 passed in A.S.Nos.58 and 59 of 2010 on the file of the learned Subordinate Judge, Poonamallee, confirming the common judgment and decrees dated 20.04.2010 made in O.S.Nos.270 of 2009 and 360 of 2008 on the file of the learned Additional District Munsif, Poonamallee whereby the prayer for relief of permanent injunction against the appellant was decreed by the trial court in O.S.No.270 of 2009 and the prayer of the appellant herein seeking to be declared as tenant was dismissed in O.S.No.360 of 2009.



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3. As these appeals arise out of a common judgment rendered by the first appellate court and concern the same parties and the same property, they are, therefore, disposed of by this common judgment.

4. The appellant herein was the defendant in O.S.No.270 of 2009 and the plaintiff in O.S.No.360 of 2008 on the file of the learned Additional District Munsif, Poonamallee. The respondents herein were the plaintiffs in O.S.No.270 of 2009 and the defendants in O.S.No.360 of 2008. By order of this Court in C.R.P.(NPD) No.1890 of 2008, both suits were directed to be tried together and a common judgment was delivered on 20.04.2010. The appeals preferred by the present appellant in A.S.Nos.58 and 59 of 2010 were dismissed by the learned Subordinate Judge, Poonamallee, by common judgment dated 13.02.2013. Hence this Second Appeal.

5. The brief case of the appellant is that he is a lawful tenant in respect of A, B and C schedule properties, having been inducted into possession on 01.12.2003 by one Balraj, acting as Power of Attorney holder of the owner Vijayakumar, under an oral tenancy for a



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consolidated monthly rent of Rs.6,000/-, later evidenced by a lease deed dated 06.12.2003. He claims to have put up pucca constructions in B and C schedule lands at considerable cost and to have been running his export business, “SARC Exports”, from the demised premises. He relies on an ex parte decree in O.S.No.292 of 2006 on the file of the District Munsif, Poonamallee, to contend that his tenancy and possession stand recognised. Alleging that the respondents, claiming under subsequent sale deeds, attempted to disturb his lawful possession and deny his status as tenant, he has filed the present suit seeking a declaration that he is the tenant of the A, B and C schedule properties and a consequential injunction restraining the respondents from interfering with his possession except by due process of law.

6. The learned trial Judge tried both suits together, framing issues on the appellant’s alleged tenancy, possession and injunction in O.S.No.360 of 2008 and the injunction in O.S.No.270 of 2009. Ex.B2, the lease deed dated 06.12.2003, was held inadmissible as it was an unregistered and insufficiently stamped lease for more than 11 months, and there was no proper pleading laying foundation for its reliance. De



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hows Ex.B2, the court found no rent receipts, no examination of landlords, no contemporaneous records of payment of rent, and no steps under the Rent Control Act, and therefore held that the appellant had failed to prove his tenancy or lawful possession; the earlier ex parte decree in O.S.No.292 of 2006 and the Commissioner's report therein were also held not binding on the present respondent and not conclusive of the appellant's possession.

7. Conversely, in O.S.No.270 of 2009, the court accepted the respondents' title based on the two sale deeds dated 03.04.2006 and found that pattas, chitta, adangal, planning permission dated 08.08.2006, mutation of property tax and transfer of electricity connection and municipal assessment all stood in their names. The evidence of PW1 and PW2 was treated as cogent in proving that possession had been handed over to the respondent and that the appellant was never in possession of the suit plots. Ex. A14, the memorandum of grounds in C.R.P.(NPD) No.1890 of 2008 filed by the appellant, showing the respondents' address as the suit property and service of notice there, was treated as an admission of their occupation. The allegation of fabrication of documents



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was rejected for want of proof. On this cumulative assessment, O.S.No.270 of 2009 was decreed as prayed for and O.S.No.360 of 2008 was dismissed.

8. The first appellate court, on reappraisal of the evidence in A.S.Nos.58 and 59 of 2010, concurred with the trial court that Ex.B2, being an unregistered and insufficiently stamped lease for more than one year and not even properly pleaded, was inadmissible and could not prove the appellant's alleged tenancy; even otherwise, in the absence of rent receipts, landlord's evidence or any Rent Control proceedings, tenancy was not established. It agreed that the ex parte decree in O.S.No.292 of 2006, obtained in a suit to which the present respondents were neither parties nor privies and relating to a property not satisfactorily shown to be identical, did not bind them or operate as res judicata. The appellate court also dismissed I.A.No.41 of 2011 in A.S.No.59 of 2010, holding that the appellant, as a mere defendant in O.S.No.270 of 2009, could not, by amendment, convert the respondent's simple injunction suit into one for his own recovery of possession; likewise, it rejected I.A.No.260 of 2012 in A.S.No.58 of 2010, as the



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proposed amendment to introduce a case of dispossession on 20.01.2011 and seek recovery of possession would belatedly and inconsistently transform O.S.No.360 of 2008 from a suit based on subsisting possession into one based on a new, subsequent cause of action. On the question of possession, the appellate court endorsed the trial court's view that the respondents' sale deeds, pattas, revenue, municipal and electricity records, supported by the evidence of PW1 and PW2 and the admission in Ex.A14, clearly established their possession of the suit property, while the appellant failed to prove his alleged tenancy or possession; accordingly, both appeals were dismissed and the common judgment and decrees of the trial court were confirmed.

9. Learned counsel for the appellant sought to formulate as substantial questions of law, the following: whether the courts below were right in treating Ex.B2 as wholly inadmissible and in refusing to look into it even for collateral purposes; whether the courts below were justified in dismissing the amendment applications seeking to add a relief of recovery of possession at the appellate stage.



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10. As regards Ex. B2, it is an unregistered lease deed executed for a period of three years on an insufficiently stamped paper. Though an unregistered document which is compulsorily registrable may be admitted in evidence for a *collateral purpose* under Section 49 of the Registration Act, 1908, an instrument executed on insufficiently stamped paper cannot be admitted in evidence unless it is first impounded under Section 33 of the Indian Stamp Act, 1899 and the required stamp duty and penalty under Section 35 is paid.

11. In the present case, the Trial Court erroneously received Ex. B2 in evidence despite its being engrossed on insufficiently stamped paper. Under Section 36 of the Indian Stamp Act, once an instrument has been admitted in evidence, such admission cannot be called in question in the same proceeding on the ground of insufficient stamping. However, the issue here is whether an instrument, admitted erroneously despite being insufficiently stamped, can be *acted upon* even for a collateral purpose.

12. Section 35 of the Stamp Act contains an absolute prohibition



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that no instrument chargeable with duty shall be admitted in evidence for any purpose unless properly stamped. Therefore, even if such an instrument is marked as an exhibit without objection, the Court is still prohibited from *acting upon it* for deciding the rights of the parties. In other words, the bar under Section 36 only prevents a later challenge to its *admission*; it does not cure the defect so as to permit the Court to rely on it.

13. This position has been clearly explained by the Madras High Court in **D. Balachandran v. T.C. Shanmugam, 2013 (2) CTC 832**, wherein the Court held:

“Section 36 does not lay down any prohibition that such a document, which has not been duly stamped and admitted in evidence, can be acted upon. Therefore, a combined reading of Sections 35 and 36 of the Stamp Act, makes it clear that even though a document was admitted in evidence, which was not duly stamped. the admission cannot be questioned later by virtue of Section 36 on the ground that the document was not duly stamped. But as per Section 35, the Court shall not act upon the document, unless it is



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duly stamped. Therefore, relying upon a document which is not duly stamped, though admitted in evidence, is prohibited under Section 35.”

14. The High Court also noted that, as held in **2003 (8) SCC 752**, an objection that a document is *inherently inadmissible* can be raised at any stage. Therefore, the mere fact that a document has been marked as an exhibit does not automatically make it legally usable.

15. Thus, the settled position of law is that even if an insufficiently stamped instrument is admitted in evidence and marked as an exhibit, the Court cannot rely upon or act upon such a document unless the statutory requirements of stamping are satisfied.

16. The next legal contention raised by the appellant relates to the dismissal of the amendment applications filed in the appeal. The appellant, in his written statement dated 26.06.2008, had clearly stated that he had already been dispossessed from the suit property. Despite this admitted position, he made no attempt to file any amendment petition before the trial Court. After the suit was decreed against him on the



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finding that he failed to prove possession, he has now, for the first time in appeal, sought to amend the *appeal prayer* by alleging that he was dispossessed on 20.01.2011.

17. There is absolutely no explanation as to how a person who claims to have been dispossessed prior to 26.06.2008 could again be dispossessed on 20.01.2011. There is also no pleading suggesting that he recovered possession in the intervening period, so as to make a second dispossession even remotely plausible. The plea is self-contradictory and unsupported.

18. Further, an appeal is a continuation of the suit. Therefore, an amendment confined only to the *appeal prayer*, without seeking a corresponding amendment to the plaint, is legally unsustainable. The appellate court cannot grant a relief that was never part of the original suit. Thus, an amendment to the appeal prayer alone is not maintainable, and the failure to seek amendment of the plaint is fatal. Accordingly, the contention of the appellant on this issue also deserves rejection.



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19. Upon a thorough scrutiny of the records, this Court finds no perversity, illegality, or misapplication of law in the reasoning adopted by the Courts below. The appellant has not demonstrated how the concurrent findings suffer from any infirmity warranting interference under Section 100 CPC. The findings are based on proper appreciation of evidence and are neither arbitrary nor unreasonable. Hence, no substantial question of law arises for consideration in this Second Appeal.

20. In view of the above discussion, the Second Appeal stands dismissed at the stage of admission itself. There shall be no order as to costs. The connected miscellaneous petition, if any, is closed.

25.11.2025

dpq

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No



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To

1. The Sub-Ordinate Court, Poonamallee
2. The Additional District Munsif, Poonamallee
3. The Section Officer, V.R.Records, Madras High Court.



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DR. A.D. MARIA CLETE, J

dpq

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