



S.A.No.751 of 2023
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM:

THE HONOURABLE **Mrs.JUSTICE R.KALAIMATHI**

S.A.No.751 of 2023

Sathya .. Appellant/Defendant

vs.

Chinnappan .. Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.26 of 2011 dated 21.03.2019 on the file of the Additional District Court, Chengalpattu, confirming the judgment and decree in O.S.No.76/2008(Chengalpattu, Subordinate Court, O.S.No.48/2006) dated 15.11.2010 on the file of the Subordinate Court, Tambaram.

For Appellant : Mr.V.Anthony Elangovan

for M/s.G.Saranya

For Respondent : Mr.M.Poovendira Kumar

JUDGMENT

The defendant herein has preferred this Second Appeal against the judgment and decree dated 21.03.2019 passed in AS.No.26 of 2011 by the Additional District Court Chengalpattu.

2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the sole plaintiff Chinnappan, s/o.Sowrimuthu, he is the absolute owner of the suit property. The suit property was gifted in his favour by virtue of registered Gift Deed dated 16.12.1989 executed



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by one Duraivel, Power of Attorney of original owners namely, N.Sabeena Begam and others. The said Gift Deed was accepted and acted upon by him. Since then, the plaintiff has been in possession and enjoyment /suit of the property by constructing a residential house thereon. Patta was granted in favour of the plaintiff in respect of the suit property by recognizing the plaintiff's possession. During the year 2000, the residential house in the suit property was rented out by the plaintiff to the defendant on monthly basis.

3.1.The defendant was very irregular in payment of rent. The plaintiff caused to issue legal notice demanding the defendant to pay arrears of rent. The defendant sent a reply by denying the title of the plaintiff. Hence, the suit is filed for the relief of declaration of title and for recovery of possession.

4. Per contra, the defendant would *inter alia* contend that originally the property bearing S.No.406 with an extent of 15 x 20sq.ft. was purchased on 13.11.1989 by the defendant and her husband from the wife of the plaintiff through oral purchase. From then onwards, the defendant has been in possession and enjoyment of the suit property by paying necessary tax to the Government. After the purchase, the plaintiff's wife and father-in-law caused disturbance to the defendant with a view to grab the defendant's property. The defendant filed O.S.No.187 of 1990 before the District Munsif Court at Poonamallee against the persons who caused disturbance to her and the said suit was decreed on 25.07.1990. From then onwards till date, the defendant has been in continuous and absolute possession and enjoyment of the entire extent of the suit property as her own. There is no landlord - tenant relationship between the plaintiff and the defendant. The defendant never paid any rent to the plaintiff. The plaintiff has laid a false suit.

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5. Based on the divergent pleadings. the Trial Court framed the relevant issues. At trial, to substantiate the plaint details, two witnesses have been examined and six documents have been marked. Ex.A1 dated 16.12.1989 is the registered Gift Deed executed in favour of the plaintiff by one Duraivel who is the power agent of original owners. Ex A2 dated 25.05.1992 is the patta stands in the name of the plaintiff under Patta No.5071. Ex.A4 is the true copy of the Chitta extract, stands in the name of the plaintiff. On the defendant's side, four witnesses have been examined.(DW1 Sathya - defendant, DW2 - Mythili, DW3 - N.Ravi & DW4 - M.Kasi) and seven documents have been marked. Ex.B1 dated 25.07.1990 is the certified copy of decree granted in O.S.No.187 of 1990 by the District Munsif Court Poonamallee.

6. The trial Court upon consideration of oral and documentary evidence and after hearing the arguments advanced by the learned counsels on either side, concluded that the plaintiff has substantiated as to his ownership to the suit property and, therefore the trial Court decreed the suit in its entirety. Aggrieved, the defendant preferred Appeal before the Additional District Court, Chengalpattu in A.S.No 26 of 2011.

7. Upon consideration of the entire material records and after hearing the arguments advanced by either side, except the finding that the defendant is a tenant, the other details of the Trial court was confirmed and dismissed the appeal.

8. The following substantial questions of law arise for consideration:-

“a. Whether the Courts below are justified in granting the recovery of possession, when there is a bar under



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Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, when there is admitted pleadings of the respondent / plaintiff that there is oral tenancy and the same is proved by oral evidence on record?

b. When there is a bar under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 whether the Courts below are justified in exercising jurisdiction for eviction.?

9. It is the evidence of PW1 that he is the absolute and exclusive owner of the ground and house bearing Door No.15, First Street, Kodhandam Nagar, Chrompet, as morefully described in the suit schedule of property of the plaint. The suit property was gifted by Sabeena Begam and others, through their Power of Attorney, Duraivel Mudhaliar and he was placed in possession of the suit property. The Gift Deed dated 16.12.1989 was accepted and acted upon by him. Recognizing his possession of the suit property, patta was granted in his favour in patta No.5071. (Patta- Ex.A2) Kist receipt dated 08.11.2005 is Ex.A3. He would also further state that the suit property was let out to the defendant. The Chitta relating to the suit property is Ex A4.

10. It is the further evidence of PW1 that, in the year 2000, the residential house in the suit property was orally leased out to the defendant on a monthly rental basis. The defendant was irregular in payment of monthly rent from January 2003. On 4.10.2005, the defendant attempted to construct a septic tank in the suit property without obtaining any permission from him, which was prevented by the plaintiff. Thereafter, the plaintiff issued notice to the defendant dated 08.10.2005 calling upon her to pay the rental dues and to vacate the suit property.

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She sent a reply notice dated 11.11.2005 with false details. Hence, the suit.

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11. To support the case of the plaintiff, one Ettiyappan has been examined as PW2. He would state that the property in S.No.406 originally belonged to Aji Mohamed Yagathiya Sahib. The said land was encroached upon by his father and other persons by constructing house . When the encroachments were sought to be removed, his father namely, Ekambaram and others laid the suit before the District Munsif Court, Poonamallee in O.S.No 415 of 1991, and during the pendency of the suit, the matter was settled, and his father was allotted Plot No.5 in Survey No.406 and he constructed the house. Earlier to this settlement arrived at between the said Chinnappan and the General power agent of Haji Mohamed Yagathiya Sahib, Duraivelu Mudaliar executed Gift Deed dated 01.12.1989, a plot with an extent of 345 sq.ft.in favour of the plaintiff. The above details are not elicited through the cross examination of PW1.

12. During the cross examination of D.W1, she would depose that she purchased the property from Velankanni and Irudhayam. Her daughter Mythili has been examined as DW2. DW2 would also support the version of her mother(DW1). DW3 Mr.N.Ravi would depose that the suit property is in possession of the 1st defendant based on the oral gift made by the landowner.

13. Whereas, it is the evidence of D.W.4 .M.Kasi that as far as the case of DW1 & DW2 is concerned, one Irudhayam had executed the sale deed in favour of the defendant in the year 1989. He would further state that the said sale was not registered. Ex.B5 is the family card of the defendant. Ex.B6 is the property tax receipt issued in the name of defendant. Ex.B.7 is the E.B.white card issued in the name of the



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defendant. In the absence of title deed, Ex. B5 to Ex.B7 will not clothe with any right upon the defendant in respect of the suit property. To substantiate the case of the defendant, no title deed is marked.

14. It is relevant to note that the plaintiff is not arrayed as a party in O.S.No.187 of 1990 on the file of District Munsif Court, Poonamallee. The plaintiff by examining himself and PW2 coupled with Ex.A1 to Ex.A4, has proved that he purchased the suit property and that he is in possession of the same.

15. Though the defendant has stated that she purchased the suit property from one Irudhayam and Velankanni, no sale deed is marked by the defendant before the trial Court. Except the fact that the defendant is a tenant, the First Appellate court has confirmed the findings of the Trial court, to the effect that the plaintiff is entitled for the declaration of title and for recovery of possession and such findings cannot be found fault with.. The plaintiff has filed the suit for the relief of declaration of title based on the Gift Deed - Ex.A1.

16. This Court does not find any infirmity or perversity in the findings of the First Appellate court. This Court also does not find any good reason to upset the findings of the First Appellate court. The substantial questions of law is answered in favour of the plaintiff.

17. Above being the position, the second appeal is dismissed. Sequel to this, the judgment and decree dated 21.03.2019 passed in A.S.No.26 of 2011 by the Additional District Court, Chengalpattu, stands confirmed. There is no order as to costs.

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Index : Yes/No

Speaking : Non speaking order

Neutral Citation : Yes/No

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To

- 1.The Additional District Court, Chengalpattu,
- 2.The Subordinate Court, Tambaram.



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R.KALAIMATHI,J.

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