



S.A.No.434 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 01.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.No.434 of 2017

D.Vijayakumar

...Appellant

Vs.

1.M.A.Sivakumar

2.K.M.Kulothungan

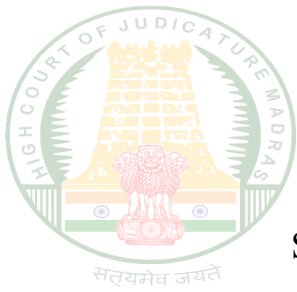
3.M.Thirunavukkarasu (Died)

4.T.Srinivasan

5.T.Revathy

[R3 died, RR4 and 5 brought on records as LRs of the deceased R3 vide Court order date 19.02.2025 made in C.M.P.No.10399 of 2022 in S.A.No.434 of 2017]

...Respondents



S.A.No.434 of 2017

WEB COPY

Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 20.12.2016 made in A.S.No.136 of 2016 on the file of the learned XVI Additional City Civil Court, Chennai reversing the judgment and decree dated 04.01.2016 made in O.S.No.943 of 2012 on the file of the XVII Assistant City Civil Court, Chennai.

For Appellant : Mr.M.Balasubramanian

For Respondents : No appearance for R1, R2 and R5
R3 – Died
R4 – Not ready in notice

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 20.12.2016 made in A.S.No.136 of 2016 on the file of the learned XVI Additional City Civil Court, Chennai reversing the judgment and decree dated 04.01.2016 made in O.S.No.943 of 2012 on the file of the XVII Assistant City Civil Court, Chennai.

2. Heard Mr.M.Balasubramanian, learned counsel appearing for the appellant. There is no appearance for the respondents 1 and 2. The 3rd respondent died and respondents 4 and 5 are brought on record as the legal



S.A.No.434 of 2017

representatives of the deceased 3rd respondent. Notice sent to the 4th respondent returned un-served with an endorsement “door locked”. Name of the 5th respondent has been printed in the cause list, but, none appeared for the 5th respondent.

3. The learned counsel appearing for the appellant would submit that the appellant had filed a suit for permanent injunction restraining the respondents/ defendants from in any manner interfering with his right from collecting the monthly rents from the tenants who are in occupation of the schedule mentioned properties. The 1st respondent alone contested the suit and the 2nd and 3rd respondents remained absent and they were set exparte. By a well considered judgment and decree, the suit was decreed granting a permanent injunction as prayed for. As against the same, the 1st respondent/ 1st defendant had filed a first appeal and the first appellate Court had reversed the judgment and decree and dismissed the suit.

4. The 1st defendant had purchased the suit property from the 2nd defendant and then the said sale had been canceled by a fair and decreetal



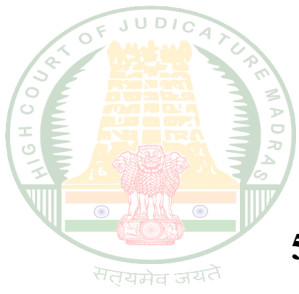
S.A.No.434 of 2017

order made in I.A.No.19007 of 2007 in O.S.No.9381 of 2006 dated

WEB COPY

19.07.2010 on the file of the District Munsif Court, Chennai. The Civil

Revision Petition filed against the same was dismissed as infructuous by recording the statement that the suit in which the the impugned order was passed has been withdrawn. He would submit that the order passed in the interlocutory application stage also gets effaced with the disposal of the suit. But, in case when the sale deed was directed to be cancelled by orders of the Court and when the suit was sought to be withdrawn, it would be proper to record that the interim order granted by this Court stood effaced. However, no such proceedings was recorded when the suit was withdrawn. But, the first appellate Court interpreted that on withdrawal of the suit, the sale by the 2nd defendant in favour of the 1st defendant becomes valid. The learned counsel would submit that such a finding given by the first appellate Court is contrary to the facts and therefore the 2nd defendant did not have a valid right to sell the suit schedule property to the 1st defendant and therefore, the 1st defendant cannot be said to have a perfected title over the suit schedule property to deny the relief to the appellant/ plaintiff.



S.A.No.434 of 2017

WEB COPY

5. The appellate Court had given a finding that in view of the dismissal of the suit as not pressed, the interim application had become infructuous.

The appellate Court failed to appreciate that the interim application had already been disposed of holding that the sale deed executed in favour of the 2nd respondent was bad and hence ordered cancellation of the said sale deed. Therefore, he would submit that the finding arrived at by the first appellate Court in reversing the well considered judgment of the trial Court is liable to be set aside.

6. Various substantial questions of law had been raised by the appellant, but, he would press this Court to frame the question No.A as the substantial question of law.

7. I have considered the submissions of the appellant and perused the materials available on record.

8. From the facts that has been narrated above and on going through the pleadings, judgment and decree of the Courts below, this Court is



S.A.No.434 of 2017

satisfied that the following substantial question of law arises for consideration:

1) *Whether the sale deed executed in favour of the 1st defendant by the 2nd defendant after the sale is set aside in I.A.No.19007 of 2007 in O.S.No.938 of 2006 on 19.07.2010 without challenging the same the 2nd defendant has got any right to execute the sale deed in favour of the 1st defendant herein?*

9. As rightly pointed out by the learned counsel appearing for the appellant, the sale deed in favour of the 2nd defendant was held to be bad & by a fair and decreetal order, the trial Court had cancelled the said sale deed, which has been marked as Ex.B7. The 2nd defendant under Ex.B8 had sold the property to the 1st defendant. The effect of the order passed in the Interlocutory Application would indicate that the 2nd respondent had lost his right to execute the sale deed. Therefore, Ex.B8 sale deed even though made on 10.06.2020 before the order in I.A.No.19007 of 2007 cannot be said to be a valid sale. It is to be noted that the 2nd defendant had challenged the order made in the interlocutory application in C.R.P.No.2829 of 2010 and under



S.A.No.434 of 2017

Ex.B10 the said Civil Revision Petition had been dismissed as infructuous,

as the suit itself was dismissed as withdrawn on 06.01.2011. The order in I.A had not been set aside in the manner known to law. The finding of the appellate Court that the I.A. itself had become infructuous cannot be applied to the facts of the case, as the right of the 2nd defendant to hold over the property had been set at naught. When the suit had been withdrawn, only the pending Interlocutory Applications on that day can be said to have become infructuous and not an Interlocutory Application which had been disposed of determining the right of the party to the suit. The right which was determined under I.A. by the order dated 19.07.2010 cannot be said to have been eclipsed by the withdrawal of the suit. Since by the order and decree of this Court the sale deed which was executed in favour of the 2nd defendant had been negated, unless and until the said judgment and decree is set aside by the manner known to law, the 2nd defendant cannot be said to have any valid title.

10. Therefore, the finding of the appellate Court that the 1st respondent/ 1st defendant had a valid title, to reverse the judgment and decree



S.A.No.434 of 2017

of the trial Court, in the considered view of this Court would have to be interfered with and the same has to be set aside. Accordingly, the judgment and decree dated 20.12.2016 made in A.S.No.136 of 2016 on the file of the XVI Additional City Civil Court, Chennai is set aside.

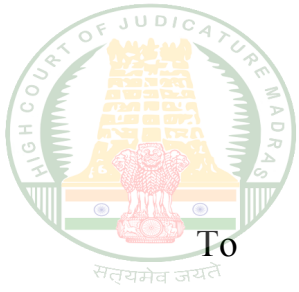
11. In fine, the Second Appeal stands allowed. No costs.

01.08.2025

dsa

Index : Yes/No

Speaking Order/Non-Speaking order



S.A.No.434 of 2017

To

WEB COPY

- 1.The XVI Additional Judge,
City Civil Court, Chennai.
- 2.The XVII Assistant Judge,
City Civil Court, Chennai.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



S.A.No.434 of 2017

K.KUMARESH BABU, J.

dsa

S.A.No.434 of 2017

01.08.2025