



S.A. Nos.200 & 863 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 30.01.2025

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THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Second Appeal Nos. 200 & 863 of 2024
and
CMP.Nos.6896 & 27389 of 2024

V.Perumayee ... Appellant in S.A.No.200/2024

S.Rajammal ... Appellant in S.A.No.863/2024

Versus

1.S.Rajammal
2.S.Murugesan .. Respondents in S.A.No.200/2024

1.V.Perumayee
2.S.Murugesan .. Respondents in S.A.No.863/2024

PRAYER in S.A.No.200 of 2024 : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 19.04.2023 made in A.S.No.5 of 2014 on the file of Subordinate Court, Attur, modifying the judgment and decree dated 19.03.2014 made in O.S.No.351 of 2009 on the file of District Munsif Court, Attur.

PRAYER in S.A.No.863 of 2024 : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.5 of 2014 on the file of Subordinate Court, Attur (Salem District) dated 19.04.2023, modifying the judgment and decree dated 19.03.2014 made in O.S.No.351 of 2009 on the file of District Munsif Court, Attur.



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For Appellant in S.A.No.200/2024 : Mr.D.Selvaraju
For Appellant in S.A.No.863/2024 : Mr.K.R.Masilamani
For Respondents in S.A.No.200/2024 : Mr.K.R.Masilamani
For Respondents in S.A.No.863/2024 : Mr.D.Selvaraju

COMMON JUDGMENT

The appellants have preferred these Second Appeals against the Judgment and decree passed in A.S.No.5 of 2014 on the file of Subordinate Court, Attur, modifying the judgment and decree dated 19.03.2014 made in O.S.No.351 of 2009 on the file of District Munsif Court, Attur.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. The appellant in S.A.No.200 of 2024 is the plaintiff in suit O.S. No. 351 of 2009 on the file of the District Munsif, Attur. The 2nd defendant is the appellant in another appeal, S.A.No.863 of 2024.

4. Before the trial court, the suit was decreed, against which an appeal, A.S.No.5 of 2014, was filed by the 2nd defendant, Rajammal, before the learned Subordinate Judge, Attur. The appeal was modified and partly



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allowed. Challenging these findings, both the plaintiff and the 2nd defendant preferred the above second appeals.

5. The brief facts of the case.

The plaintiff's husband and the second defendant's husband are brothers. The 1st defendant is the son of the 2nd defendant. The plaintiff filed a suit for specific performance, seeking a direction for the defendants to execute the sale deed along with other consequential reliefs. The plaintiff's case is that the suit property belonged to Sellappa Gounder, the husband of the 2nd defendant. He died intestate, leaving behind the defendants as his legal heirs. Due to family circumstances, the defendants decided to sell the property to the plaintiff on 08.07.2009 for valid consideration. The plaintiff paid Rs.90,000/- as the entire sale consideration, and the defendants signed the sale deed. The sale deed was also typed on the same day on stamp paper. However, as there was insufficient time to register the document, the plaintiff was advised by the Registration Office to complete the registration the next day. The defendants agreed to this and handed over possession of the property to the plaintiff. The plaintiff waited for nearly two months for the defendants to execute the sale deed. On 18.09.2009, she made an oral demand. Later, on 25.09.2009, she issued a notice requesting the defendants to attend the Registration Office on



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29.09.2009 for the execution of the sale deed. On 29.09.2009, the plaintiff waited at the Sub-Registrar's Office in Attur from 10:00 a.m. to 5:00 p.m., but the defendants failed to appear. On that day, the plaintiff signed as a witness on some other documents. Despite repeated oral and written demands, the defendants refused to execute the sale deed, even though they had received the entire sale consideration. Consequently, the plaintiff filed a suit for specific performance, seeking a direction for the defendants to execute the sale deed along with other consequential reliefs.

6. The defendants contested the suit. While they admitted the relationship and ownership of the property, they argued that the suit was not maintainable in law. They contended that if the value of the property exceeded Rs.100/-, the sale deed required valid registration. The plaintiff relied on an unregistered sale deed, which, according to the defendants, conferred no legal rights. The 2nd defendant also contended that, under Section 35 of the Registration Act, the plaintiff ought to have filed a petition before the Registrar for enforcement if the document was valid.

7. The defendants further claimed that the 2nd defendant, an illiterate woman living with her mentally challenged son (D1), was misled into signing the document under the pretense of transferring the patta. They asserted that



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the 2nd defendant had no intention of selling the property. The 1st defendant, being of unsound mind, was unaware of any transactions. Therefore, the defendants sought the dismissal of the suit as not maintainable.

8. Before the trial Court, both parties adduced oral and documentary evidence. On the plaintiff's side, P.W.1 to P.W.6 were examined, and Exhibits A1 to A3 were marked. On the defendants' side, the 2nd defendant was examined as D.W.1, and another witness was examined as D.W.2, but no documents were marked.

9. Considering both side submissions and evidence on record, the learned trial court framed three issues, with the primary issue being: *"Whether the plaintiff is entitled to the relief of specific performance as prayed for?"*

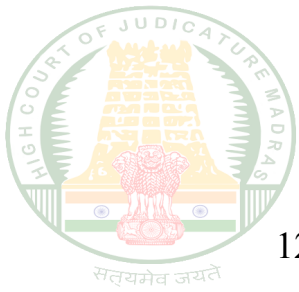
10. After considering the evidence, the learned trial judge held that Ex.A1 was an unregistered sale deed, however, P.W.1's evidence established that she had entered into a sale transaction with the defendants, but the 1st defendant was found to be of unsound mind, indeed the evidence of P.W.2 proved that the 2nd defendant received Rs.90,000 as sale consideration and signed the document, although the document was unregistered, its execution was proved through the attesting witnesses (P.W.2 and P.W.3) and the



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document writer (P.W.5). another attester, P.W.4, confirmed that the document was signed in the presence of the parties. P.W.6, the wife of the 1st defendant and daughter-in-law of the 2nd defendant, testified that the original documents were handed over to the plaintiff by her mother-in-law (the 2nd defendant). Furthermore, the defendants did not deny their signatures on Ex.A1. The evidence of D.W.2 also supported the plaintiff's case. Considering all these aspects, the trial court concluded that Ex.A1 was executed upon receipt of Rs.90,000/- in the presence of witnesses. Since the defendants failed to register the sale deed despite being served with a notice, and since they did not lodge any police complaint regarding alleged fraud, therefore, the court held that they were bound to execute the sale deed. The provisions of the Registration Act were deemed inapplicable to this case. Accordingly, the trial court decreed the suit, directing the defendants to execute the sale deed as prayed for.

11. Challenging the trial court's findings, the 2nd defendant preferred A.S. No. 5 of 2014 before the learned Subordinate Judge, Attur. In that appeal, the 1st defendant, Murugesan, was represented as an unsound person by his guardian / wife Palaniammal. Consequently, the second appeal was preferred by the 2nd defendant alone.



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12. The learned first appellate judge analyzed the evidence on record and framed the following issues: (i).Whether the plea of the 2nd respondent regarding an unsound state of mind can be considered at the appeal stage without prior pleadings? (ii).Whether the plaintiff's claim is legally valid based on Ex.A1, an unregistered sale deed? (iii).Whether the findings of the trial court are liable to be set aside?

13. Considering the evidence on record, as well as the provisions of Section 17(1A) of the Registration Act and Section 53 of the Transfer of Property Act, the learned first appellate judge held that Ex.A1 is an unregistered document through which the plaintiff claims possession of the suit property, however, under Section 17(1A) of the Registration Act, valid registration is required for such a claim. Therefore, Ex.A1 is not legally valid for claiming possession, but it can be received as evidence in a suit for specific performance.

14. By relying on the ratio laid down in the judgment of ***R. Hemalatha Vs. Kasthuri*** in C.A. No. 2535/2023 in SLP No. 14884 of 2022, Supreme Court of India, dated 10.04.2023, the learned first appellate judge observed that an unregistered document can be admitted as evidence of a contract in a suit for specific performance, as per Section 47 of the Registration Act.



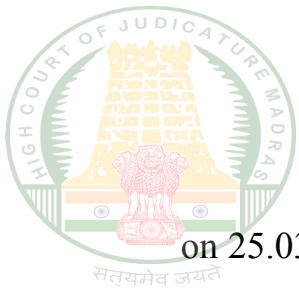
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Accordingly, the appellate court held that Ex.A1 was duly executed by the defendants and could be considered for granting relief of specific performance but not for possession.

15. Additionally, the appellate court concluded that the 1st defendant was not of unsound mind at the time of executing Ex.A1. However, applying principles of equity, the court directed the defendants to execute the sale deed for 20 cents of the property while permitting them to retain the remaining 16 cents. As a result, the appeal was partly allowed in favor of the plaintiff and partly in favor of the defendants.

16. Challenging these findings, the appellant in S.A. No. 200 of 2024 contends that the learned first appellate judge erred in modifying the decree passed by the trial court by reducing the extent of land granted for specific performance without any legal basis. While the appellate court accepted the trial court's findings regarding Ex.A1 in its entirety, the appellant argues that the modification was unwarranted. Therefore, the appellant prays for the 1st appellate court's findings to be set aside.

17. Accordingly, the Second appeal S.A.No.200 of 2024 was admitted



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on 25.03.2024 with the following substantial questions of law.

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"(a) Whether the First Appellate Court is right in modifying the judgment and decree of the Trial Court while no infirmity or illegality was found in the judgment and decree of the Trial Court, as regard to the findings of the Trial Court?

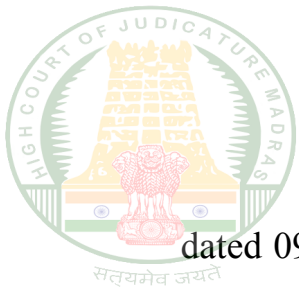
(b) Whether the First Appellate Court is right in reducing the extent of the land covered under the sale deed on equity, while accepting the validity of the contract in entirety and the right of the appellant/plaintiff to get the sale registered in accordance with the sale deed Ex.A1?

(c) Whether the First Appellate Court have jurisdiction to direct the parties (plaintiff and defendants) to amend the sale deed Ex. A1 to an extent of 20 cents only, while the Trial Court has found that the contract of sale entered between the parties is for an extent of 36 cents?"

18. Furthermore, the 2nd defendant, Rajammal, preferred S.A. No. 863 of 2024, challenging the appellate court's decision on the following grounds.

i) The Courts below ought to have considered that the suit has been filed for specific performance and permanent injunction based on the unregistered sale deed dated 09.07.2009 (Exhibit A1).

ii) The Courts below failed to appreciate that the unregistered sale deed



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dated 09.07.2009 (Exhibit A1) is inadmissible in evidence under Section 17 of

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iii) The Courts below ought to have considered that the sale deed dated 09.07.2009 (Exhibit A1) at the least can be used only for collateral purpose but the present suit for specific performance is filed based on the said unregistered sale deed

iv) The Court below ought to have considered that the sale deed dated 09.07.2009 (Exhibit A1) ought to have been impounded under Section 35 of Stamp Act in order to be received in evidence

v) The Court below failed to consider that Plaintiff is not entitled to claim the relief of permanent injunction based on a unregistered document under Section 53(a) of the Transfer of Property Act

Vi. The Court below failed to consider that the suit is improperly framed as she has not exhausted her relief for compulsory registration under Section 77 of the Registration Act

Vii. The Courts below ought to have considered that the Plaintiff has not



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exhausted his statutory remedy that was available to her to register the document within 4 months under the Registration Act but hastily filed the present suit within 3 months of alleged sale deed

Viii. The Courts below ought to have considered that the Plaint was returned twice directing the Plaintiff to approach the Registering Authorities but the same was not complied with.

ix. The Courts below ought to have considered that the Plaintiff has failed to prove the passing of consideration and there is no specific plea that a sum of Rs.90,000/-was handed over to the Defendants through PW2

x. The Courts below erred in not considering that the value of suit property is about Rs.450/- per square feet even as per the evidence of PW2, who is a close relative and neighboring land owner.

xi. The Court below failed to consider that the Plaintiff has not explained as to why the sale deed dated 09.07.2009 (Exhibit A1) was executed for a sum of Rs.90,000/-when the value of the suit properties is worth about Rs. 70,00,000/-.



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WEB COPYxii. The Court below failed to consider that the equitable relief of specific performance can be granted only if the Plaintiff has approached the courts with clean hands

19. This Court admits S.A. No. 863 of 2024 on the following substantial questions of law.

A) Whether the Courts below justified in decreeing the suit for specific performance and permanent injunction based on sale deed dated 09.07.2009 (Exhibit A1) which is unregistered and insufficiently stamped and barred under Section 17 of Registration Act and Stamp Act.

B) Is not the suit for specific performance maintainable without exhausting the relief of compulsory registration under Section 77 of Registration Act?

C) Were the court below correct in shifting the burden of proof on the Appellant who is an illiterate woman and whose thumb impressions were obtained in blank stamp papers under misrepresentation?



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20. The appellant in S.A. No. 200 of 2024 is the plaintiff, challenging the findings of the learned First Appellate Judge. The appellant contends that modifying the judgment of the trial court, despite no infirmity or illegality being found in it, is erroneous and should be set aside. Additionally, the First Appellate Judge erred in reducing the extent of land covered under the alleged sale deed on the grounds of equity while simultaneously accepting the contract between the parties in its entirety. Furthermore, the said court had no jurisdiction to amend the sale deed to an extent of 20 cents only. Therefore, the appellant prays for the findings to be set aside as they are unsustainable under the law.

21. Per contra, the learned counsel appearing for the appellant in S.A. No. 863 of 2024 argues that the appellant, who is the second defendant, is an illiterate woman. He contends that she was taken to the Registrar's Office by the plaintiff, a close relative, and was made to sign certain papers under the false pretense of changing the patta. It is alleged that the plaintiff and her husband obtained her signatures by drafting the sale deed without her knowledge or consent. The plaintiff later fabricated a story that the second defendant had agreed to sell the property due to financial necessity, which, according to the appellant, is entirely false. Furthermore, the learned counsel



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asserts that the value of the property exceeds Rs.75 lakhs, whereas the alleged sale deed was fraudulently drafted for only Rs.90,000/-. This, he claims, was done to usurp the property. He argues that the courts below failed to properly appreciate the evidence on record and erroneously granted relief in favour of the plaintiff. Hence, he prays that the findings of the courts below be reconsidered. The learned counsel further contends that, even assuming the sale deed was drafted, it was the duty of the plaintiff to present the document before the registering authority the next day. If the Registrar found that the presence of the second defendant was necessary, only he had the authority to summon her.

22. To support his arguments, the learned counsel relied on Sections 32, 35, 36, 71, 73, and 74 of the Registration Act.

*“ 32. Persons to present documents for registration.
-Except in the cases mentioned in ¹[sections 31, 88 and 89],
every document to be registered under this Act, whether such
registration be compulsory or optional, shall be presented at
the proper registration office, -*

*(a) by some person executing or claiming under the
same, or, in the case of a copy of a decree or order, claiming
under the decree or order, or*



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(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

35. Procedure on admission and denial of execution respectively.-

(1)(a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document,

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3)(a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor. an idiot or a lunatic, or

(c) if any person by whom the document purports to be



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executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

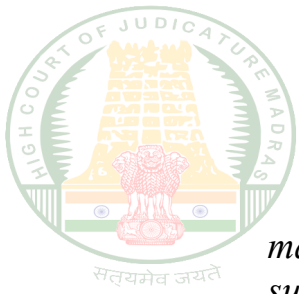
Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

36. Procedure where appearance of executant or witness is desired.- *If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion call upon such officer or Court as the [State Government] directs in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.*

71. Reasons for refusal to register to be recorded. -(1) *Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.*

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.-(1) *When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the*



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making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints

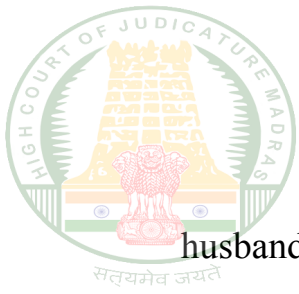
74. Procedure of Registrar on such application. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire-

(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.”

23. Based on the above legal provisions, he asserts that the civil court had no jurisdiction to entertain such a suit, and the relief granted by the trial court is not legally maintainable. Accordingly, he prays for the findings to be set aside, as they are perverse in nature.

24. Considering both submissions, it is evident that the plaintiff's



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husband and the second defendant's husband are brothers. The first defendant is the son of the second defendant. These relationships are undisputed. It is also an undisputed fact that the property originally belonged to the second defendant's husband, and upon his demise, it devolved upon his legal heirs, namely, the first defendant son (D1) and the second defendant wife (D2).

25. The plaintiff's case is that the second defendant agreed to sell the property and, upon this agreement, she immediately received Rs.90,000/-, after which the sale deed was drafted. There was no written sale agreement, and all terms were settled orally between the parties. Accordingly, the sale deed was drafted, and both the plaintiff and defendants, along with witnesses, proceeded to the Registrar's Office.

26. In the presence of the witnesses, the second defendant allegedly received Rs.90,000/- and agreed to register the document on 08.07.2009. However, due to time constraints, the registering authorities could not complete the registration that day. The defendants allegedly assured cooperation in registering the sale deed the following day but later evaded the process. This led the plaintiff to issue a notice, which was ignored by the defendants.



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WEB COPY 27. Upon perusal of Ex.A1, it is evident that it is an unregistered draft sale deed. The plaintiff is claiming possession of the suit property based on this document. However, there is no proof that possession was handed over to her immediately after the alleged execution of the draft sale deed. She has not produced any document to show that she is in possession of the property. In fact, the plaintiff's own witness, PW4, deposed that he was unaware of the plaintiff's possession of the property. Another witness also stated the same. Moreover, the plaintiff herself admitted that she has not produced any document to establish that she was in possession of the suit property.

28. Admittedly, the plaintiff owns land adjacent to the suit property, yet she has not produced any document to prove her possession of the disputed property. Regarding the execution of Ex.A1, as per the contention of the second defendant, Rajammal, she was unaware of the said document and had signed it merely for the purpose of transferring the patta.

29. The burden lies heavily on the plaintiff to establish that Rajammal offered to sell the property to her and agreed to execute the sale deed immediately without fixing any specific time. To substantiate this claim, the



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plaintiff relied on witness testimonies. PW2 is the husband of PW1 and naturally supported her case. Admittedly, he is also the brother of the second defendant's husband.

30. The second defendant contended that her son, the first defendant, is of unsound mind and had no knowledge of the alleged draft sale deed. His thumb impression was allegedly obtained forcibly. During cross-examination, PW2 gave an evasive reply regarding the mental state of the first defendant. Being a close relative, PW2 would have known about the mental capacity of his brother's son. However, he claimed that he was unaware of the first defendant's mental condition suggests that his testimony is untrustworthy and that he has suppressed real facts.

31. Moreover, the evidence of DW5, a document writer, confirms that the first defendant is mentally challenged. It appears that PW2 and his wife, PW1, misrepresented facts to the defendants in an attempt to fraudulently acquire the property for a lesser price of Rs. 90,000/-. PW2 himself stated that the per square feet rate is Rs.500/-, considering that his own property is adjacent to the disputed land. Therefore, PW2's own testimony indicates that the property's actual value exceeds Rs. 70,00,000/-, whereas Ex.A1 reflects a sale consideration of only Rs. 90,000/-. This discrepancy strongly suggests



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that the document was drafted with ulterior motives to fraudulently acquire the property from the defendants, who are illiterate and incapable of understanding the situation.

32. Under such circumstances, D1 and D2 were surrounded by witnesses closely known to the plaintiff's family and were made to sign Ex.A1. However, the courts below failed to appreciate these facts properly. When there is an improper appreciation of evidence, this court is empowered to interfere. Accordingly, the findings of the courts below that Ex.A1 was proved by the plaintiff through witnesses are illegal and liable to be set aside.

33. Even assuming that the sale deed was drafted, if the defendants had indeed refused to cooperate in registering the document, the plaintiff ought to have approached the registering authorities as per the procedures established by law. The plaintiff claims that she prepared the document and, due to lack of time, it was not registered. She further alleges that a receipt was signed for registration, but notably, the first defendant did not sign it. If the plaintiff had truly attempted to register the document and the defendants had refused to cooperate, she should have followed the procedures outlined under Sections 32, 35, and 36 of the Registration Act. These provisions clearly set forth the procedures for document registration. If necessary, the Registering Office has



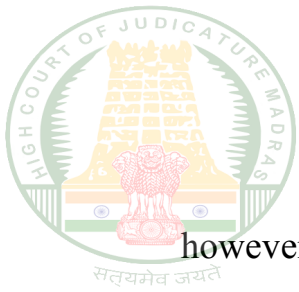
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the authority to issue summons. Therefore, if the defendants were unwilling to register the document, the plaintiff ought to have approached the registering authorities instead of filing a civil suit.

34. For the sake of argument, even if Ex.A1 was executed with the consent of D1 and D2, the plaintiff ought to have approached the registering authority rather than the civil court. Therefore, in the absence of an existing remedy, filing a suit for specific performance to register the document is not maintainable in law. Accordingly, Question of Law B is answered.

35. The plaintiff failed to prove the execution of Ex.A1, yet the lower courts erroneously shifted the burden onto the defendants to establish the alleged execution of the draft sale deed. This is incorrect and liable to be set aside. Accordingly, Question of Law C is answered.

36. Upon perusal of Ex.A1, it is clear that the document is unregistered and insufficiently stamped. The plaintiff claims possession of the property through this document. However, since she is asserting ownership and interest over the property, the document requires mandatory registration under Section 17 of the Registration Act. Since Ex.A1 is not a valid document under law, the plaintiff is not entitled to claim relief for specific performance. The trial court,

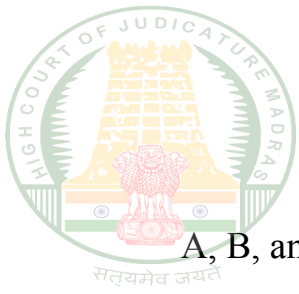


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however, erroneously granted relief, which is liable to be set aside.

Furthermore, the learned first appellate judge improperly modified the decree by directing the defendants to execute the sale deed for 20 cents, which is also legally unsustainable. Accordingly, Question of Law A is answered. In both appeals, the second respondent was questioned via video conference but was unable to respond to the court's queries. This demonstrates that he is mentally unsound. Moreover, before the first appellate court, the first defendant was mentioned in the cause title as an unsound person represented by a guardian by plaintiff in her appeal A.S.No.200 of 2024. This cause title was not challenged. Therefore, it stands established that the first defendant is a mentally challenged person and should have been represented by a lawful guardian without which, any signature obtained from him is legally invalid.

37. Thus, the plaintiff has not approached the court with clean hands, nor has she proven that Ex.A1 was executed with the defendants' full consent. Furthermore, the first defendant, being of unsound mind, was not properly represented by a lawful guardian as required by law. Therefore, in all aspects, Ex.A1 is neither true nor valid. The findings of the learned first appellate judge, modifying the decree, are unjustifiable. Accordingly, Questions of Law



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A, B, and C are answered.

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38. The appeal filed in **S.A. No. 200 of 2024** is dismissed. **S.A. No. 863 of 2024** is allowed. The findings rendered by the courts below are set aside. Accordingly, the suit is dismissed as devoid of merit. Consequently, the connected the Miscellaneous petitions are closed. There shall be no order as to costs.

30.01.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

- 1.The Subordinate Judge, Attur.
- 2.The District Munsif, Attur.
- 3.The Section Officer, VR Section, High Court of Madras.



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