

S.A.No.742 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2025

DELIVERED ON : 21.02.2025

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.742 of 2018
and C.M.P.No.21537 of 2018

R.Vijaya

... Appellant

Vs.

1.Viswanathan

2.Kalaiselvi

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 25.01.2016 passed in A.S. No.44 of 2015, on the file of the Principal District and Sessions Court, Ariyalur, upholding the decree and judgment dated 26.02.2014 passed in O.S.No.198 of 2005, on the file of the District Munsif Court, Jayankondam.

For Appellant : Mr.V.P.Valliappan
Senior Counsel
assisted by
Mr.SMS.Shriram Narayanan

For Respondents : No appearance



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JUDGMENT

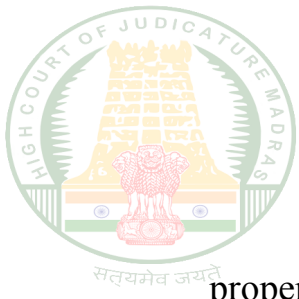
The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2. The plaintiff filed the suit in O.S.No.198/2005 before the District Munsif, Jayankondam, seeking for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

The suit property originally belonged to one Perumal Padayachi, father of the plaintiff. Perumal Padaiyachi during his life time executed a Will, dated 20.11.1980 (Ex.A20) bequeathing the suit



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property in favour of his daughter (the plaintiff). He also created a life estate in favour of his wife Saroja Ammal. However, Saroja Ammal (mother of the plaintiff), the plaintiff and her daughter Kalaiselvi executed a Sale deed, dated 24.06.2003 (Ex.B1) in favour of one Viswanadhan (first defendant) as a security for the loan obtained by the plaintiff. Thus it is a sham and nominal document and there was no consideration for the same. The plaintiff is also in possession and enjoyment of the suit property even after the execution of the sale deed, dated 24.06.2003 (Ex.B1). The plaintiff is now ready to repay the loan amount. Since the defendants 1 and 2 directed the plaintiff to vacate the suit property, she is forced file the present suit.

5. The suit was resisted by the defendants on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The plaintiff along with her mother and daughter executed a registered sale deed, dated 24.06.2003 (Ex.B1) in favour of the first defendant. Ever since the date of purchase, the first defendant



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has been in possession and enjoyment of the suit property and it is false to contend that the plaintiff or her mother Saroja Ammal did not receive any sale consideration.

iii. The suit property absolutely belonged to the first defendant and therefore the plaintiff cannot claim any right over the suit property. Hence the suit filed by the plaintiff is liable to be dismissed.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. *Whether the plaintiff is entitled for the relief of permanent injunction?*
- ii. *Whether the Court fee has been paid properly?*
- iii. *To what relief the plaintiff is entitled?*

7. In the Trial Court, the plaintiff examined herself and three other witnesses and marked Ex.A1 to Ex.A24. The first defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B4.

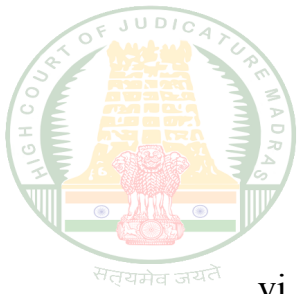


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8. After full contest, the learned Trial Court Judge, vide his decree and judgment dated 26.02.2014, dismissed the suit filed by the plaintiff on the following grounds:

- i. The plaintiff along with her mother Saroja Ammal and her daughter Kalaiselvi executed a registered sale deed, dated 27.08.1998 (Ex.A15) in favour of one Kadhiresan.
- ii. In the said sale deed, there is a mention about the Will dated 20.11.1980, (Ex.A20) executed by Perumal Padaiyachi.
- iii. Subsequently, the plaintiff purchased the said property through a registered sale deed dated 10.05.2002 (Ex.A16) from the said Kadhiresan. Thus the plaintiff has become the absolute owner of the suit property.
- iv. The plaintiff had subsequently executed a registered sale deed, dated 24.06.2003 (Ex.B1) in favour of the first defendant.
- v. Though it is contended by the plaintiff that the sale deed, dated 24.06.2003 (Ex.B1) was executed only as a security for the loan obtained by her, the same has not been established by her.



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vi. The plaintiff though had adduced documentary evidence such as tax receipts, electricity consumption charges (Ex.A1 to Ex.A11) to show that she has been in possession and enjoyment of the suit property, she cannot claim any permanent injunction against the lawful owner.

vii. The suit property has also been sold by the first defendant to the second defendant through a registered sale deed dated 12.02.2007 (Ex.B3).

9. Aggrieved over the decree and judgment passed by the Trial Court Judge, the plaintiff filed an appeal in A.S.No.44/2015 before the Principal District and Sessions Judge, Ariyalur. The learned Principal District and Sessions, Ariyalur on considering the oral and documentary evidence adduced on both sides, upheld the findings recorded by the Trial Court, vide her decree and judgment dated 25.01.2016, as against which the present second appeal is filed.

10. The second appeal was admitted on 05.12.2018 on the



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following substantial question of law by my learned predecessor:

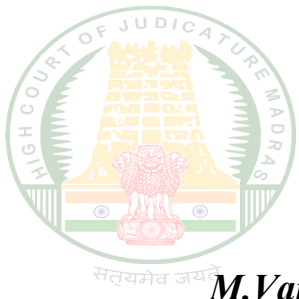
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Whether, in the light of the admission of DW2 and DW3, the Courts below are correct in law in dismissing the suit filed for injunction?

11. Heard Mr.V.P.Valliappan learned Senior Counsel assisted by Mr.SMS.Shriram Narayanan, learned counsel for the appellant.

12. Though notice was served on the Respondents and their names are also printed in the cause list, there is no representation on their behalf.

13. Mr.V.P.Valliappan, learned Senior Counsel appearing for the appellant drew the attention of this Court to the evidence of the first defendant (D.W.1) and contended that when D.W.1 had admitted that the plaintiff is in possession of the suit property, both the Courts below had wrongly dismissed the suit filed by the plaintiff. He also relied on the decision of the Supreme Court in (i) **Rame Gowda (D) by L.Rs Vs.**



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M.Varadappa Naidu (D) by L.R.s and anr. reported in ***AIR 2004 SC***

4609 (ii) Bhoomireddy Chenna Reddy and anr. Vs. Bhoospalli Pedda

Verrappa (dead) by L.Rs. and anr. reported in ***AIR 1997 Supreme***

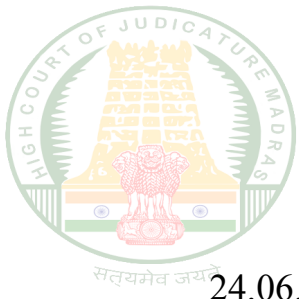
Court 2311 and contended that so far as the Indian law is concerned, the

person in peaceful possession is entitled to retain his possession and in

order to protect such possession, he may even use reasonable force to

keep out a trespasser.

14. It is an admitted fact that the suit property was originally owned by Perumal Padaiyachi, father of the plaintiff. He executed a Will dated 20.11.1980 (Ex.A20) bequeathing the suit property in favour of his daughter Vijaya (the plaintiff/appellant). He had also created a life estate to his wife Saroja Ammal. However, Saroja Ammal, the plaintiff and her daughter Kalaiselvi had executed a registered sale deed dated 27.08.1998 (Ex.A15) in favour of one Kadhiresan. Subsequently, the plaintiff purchased the very same property from Kadhiresan through a registered sale deed, dated 10.05.2002 (Ex.A16). Thereafter, the plaintiff along with her mother and daughter Kalaiselvi had executed a sale deed, dated



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24.06.2003 (Ex.B1) in favour of the first defendant. The contention of

the plaintiff is that this sale deed was made only as a security for the loan obtained by her and that there was no consideration. The further contention of the plaintiff is that since the property would devolve upon her only after the death of Saroja Ammal and Saroja Ammal had only a life estate, the sale deed, dated 24.06.2003 (Ex.B1) is not valid in the eye of law. It is also her contention that she has been in possession and enjoyment of the suit property.

15. At the outset, it may be observed that the plaintiff has filed the suit only for a bare injunction. She did not file the suit for a declaration of her title to the suit property especially when the first defendant had filed a written statement stating that he is the absolute owner of the suit property. In fact, the plaintiff herself in her plaint had stated that she had executed the registered sale deed, dated 24.06.2003 (Ex.B1) in favour of the first defendant



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16. It is pertinent to point out that the plaintiff along with her mother and daughter had executed a sale deed, dated 27.08.1998 (Ex.A15) in favour of one Kadhiresan prior to the execution of the sale deed, dated 24.06.2003 (Ex.B1). In the said sale deed (Ex.A15) there is a specific mention about the loan obtained by the plaintiff. Thus it is seen that the plaintiff has the habit of borrowing loan from various persons and executing sale deeds in their favour. The plaintiff had subsequently purchased the suit property from the said Kadhiresan through a sale deed, dated 10.05.2002 (Ex.A16). However, when the suit property is transferred in favour of the first defendant through a registered sale deed, dated 24.06.2003 (Ex.B1), the plaintiff cannot now contend that the sale is made only as a security. In any event the said contention was not also substantiated by way of adducing acceptable evidence. Moreover, both the life estate holder and the beneficiary of the Will had executed the sale deed (Ex.B1) and it can be easily inferred that both of them had sold the suit property in favour of the first defendant.



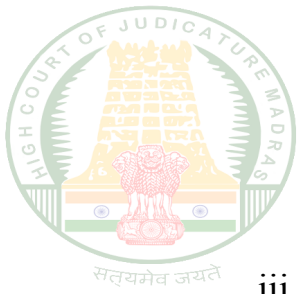
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17. It is true that the first defendant (D.W.1) had admitted that the plaintiff is in possession of the suit property. However, the plaintiff cannot be granted an order of permanent injunction restraining the true owner of the suit property.

18. The decisions relied on by the learned Senior counsel in *Rame Gowda (D) by L.Rs Vs. M.Varadappa Naidu (D) by L.R.s and anr.* reported in *AIR 2004 SC 4609* and in *Bhoomireddy Chenna Reddy and anr. Vs. Bhoospalli Pedda Verrappa (dead) by L.Rs. and anr.* reported in *AIR 1997 Supreme Court 2311* would not apply to the facts of the present case for the following reasons:

- i. The first defendant has purchased the suit property through a registered sale deed, dated 24.06.2003 (Ex.B1) and subsequently sold the same in favour of the second defendant through a registered sale deed dated 12.02.2007 (Ex.B3).
- ii. Possession of the plaintiff is not a lawful possession since the title to the suit property has passed on to the first defendant and thereafter to the second defendant.



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iii. Possession follows title and the plaintiff cannot seek the relief of permanent injunction against the true owner.

19. All these aspects have been properly analysed by both the Courts below and therefore I do not see any reason to interfere with the same. Therefore, the substantial questions of law are answered against the appellant.

20. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. The decree and judgment dated 25.01.2016 passed in A.S.No. 44/2015, on the file of the Principal District and Sessions, Ariyalur are upheld.
- iii. The suit in O.S.No.198/2005, on the file of the District Munsif, Jayankondam is dismissed with costs.

21.02.2025

Index: Yes/No
Internet: Yes/No



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Speaking/Non-Speaking order
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To

1. The Principal District and Sessions Court, Ariyalur.
2. The District Munsif Court, Jayankondam.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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Pre-Delivery Judgment in
S.A.No.742 of 2018
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