



S.A.No.44 of 2019
and C.M.P.Nos.2636 and 842 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2025

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CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.44 of 2019

and

C.M.P. Nos.2636 and 842 of 2019

M.Selvaraju

... Appellant

Vs.

E.Ramasamy Gounder (Died)

1.V.Manoharan

2.R.Ammanni @ Perumayee

3.Ramakrishnan

4.T.Chitra

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 07.03.2018 passed in A.S. No.56 of 2015, on the file of the Principal District Court, Salem, upholding the decree and judgment dated 10.02.2015 passed in O.S.No.583 of 1997, on the file of the Principal Sub Court, Salem.



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For Appellant : Mr.S.Parthasarathy, Senior Counsel
for Mr.J.Ramakrishnan
For R2 to 4 : Mr.R.Kaaveesh Raja
and Mr.Varun Muthukumar
R1 : No appearance

JUDGMENT

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

2. The plaintiff, M.Selvaraju filed the suit in O.S.No.583 of 1997 before the Principal Sub Court, Salem, for declaration of his title to the suit property and for a permanent injunction restraining the defendants 3 to 5 and their men and agents from interfering with his peaceful possession and enjoyment of the suit property or in the alternative directing the defendants 3 to 5 to deliver possession of the suit property to the plaintiff. The suit property morefully described in the plaint is a vacant land in survey number 19/2A1B3B1 of Meyyanur Village, Salem Taluk, Salem District, measuring 0.03.0 hectares within the boundaries stated in the plaint schedule.



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3. For the sake of convenience, the parties are referred to as per their rank 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 plaintiff is the absolute owner of the suit property. The suit property originally belonged to one Sengottuvelu Gounder. He created a public charitable trust in the name and style of "P.Sengottuvelu and Pavayammal Charitable Trust" through a Trust deed dated 10.06.1988 (Ex.B1). Sengottuvelu Gounder and one Nalliappan were trustees and the suit property was settled in favour of the Trust by Sengottuvelu Gounder vide a registered settlement deed dated 14.06.1988 (Ex.A1 = Ex.A22). Thereafter, the trustees executed a Power of Attorney in favour of one Nagarajan authorising him to deal with the suit property on behalf of the Trust. Accordingly, Nagarajan, the Power of Attorney holder, sold the suit property in favour of the second defendant through a registered sale deed dated 22.11.1990 (Ex.A3). The second defendant in turn sold the



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suit property in favour of the plaintiff vide a registered sale deed dated 29.08.1991 (Ex.A4). Ever since the date of purchase the plaintiff has been in possession and enjoyment of the suit property. He also constructed a compound wall around the suit property and put up a gate. The first defendant who is a total stranger is attempting to trespass into the suit property and one such attempt was made on 09.01.1997. The first defendant, in fact, claimed right over the suit property pursuant to the sale deed executed by the court in O.S.No.800/1990 on the file of the Additional Sub Court, Salem. The decree passed in O.S.No.800/1990 is not a valid decree. In any event, the plaintiff is a bonafide purchaser for value without notice of the earlier court proceedings. The first defendant filed the suit in O.S.No.800/1990 against Sengottuvelu Gounder for specific performance of contract based on a sale agreement dated 27.02.1984 (Ex.A17). The signature of Sengottuvelu Gounder on the sale agreement was forged. Though the property was sold by Sengottuvelu Gounder to the second defendant, the second defendant was not shown as a party in O.S.No.800/1990 and therefore, the decree passed in the said suit would not bind the plaintiff. The Power of Attorney holder had a



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valid right to sell the suit property in favour of the second defendant.

Moreover, the suit in O.S.No.800/1990 was filed on 13.09.1990 and the decree was passed on 06.04.1994 (Ex.A16). The decree passed in O.S.No.800/1990 on the file of the Additional Sub Court, Salem, is an *ex parte* decree. Since the property was sold in favour of the plaintiff's vendor on 22.11.1990 itself the sale is not hit by *lis pendens*. Hence, the plaintiff is entitled for all the reliefs as prayed for by him.

5. During the pendency of the suit the first defendant died and his legal heirs were impleaded as defendants 3 to 5. The second defendant remained absent before both the courts below and was set *ex parte*. The suit was resisted by the defendants 3 to 5 on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. It is true that the suit property originally belonged to one Sengottuvelu Gounder.
- iii. He entered into an agreement of sale with the first defendant on 27.02.1984 (Ex.A17).
- iv. Since Sengottuvelu Gounder did not come forward to execute the



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sale deed as per the sale agreement, the first defendant filed the suit in O.S.No.800/1990 before the Additional Sub Court, Salem, for specific performance of contract. The suit was decreed on 06.04.1994 (Ex.A16).

- v. The first defendant also filed a petition in REP.No.250/1994 in which a sale deed was executed by the court. He also obtained possession through the process of court on 02.12.1996 (Ex.B10). Thereafter, the first defendant constructed a compound wall with hallow bricks.
- vi. Since the suit in O.S.No.800/1990 was filed on 13.09.1990 itself, the purchase made by the second defendant on 22.11.1990 during the pendency of the suit is hit by *lis pendens*.
- vii. The agreement of sale dated 27.02.1984 (Ex.A17) is a true and valid document. The plaintiff has stated that he has been in possession and enjoyment of the suit property. However, he has prayed for recovery of possession also from the defendants.
- viii. After executing the sale agreement with the first defendant, Sengottuvelu Gounder had created a Trust and settled the suit



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- ix. Subsequently, the trustees Sengottuvelu Gounder and Nalliappan executed the Power of Attorney in favour of Nagarajan. The said Nagarajan filed a suit in O.S.No.863/1990 before the Sub Court, Salem, against the principal Sengottuvelu Gounder and the Trust for setting aside the settlement deed dated 14.06.1988 (Ex.A1).
- x. Sengottuvelu Gounder and the other trustee appeared in the said suit and submitted to decree.
- xi. On the date of sale by Nagarajan in favour of the second defendant the Trust had no title and therefore, the sale made in favour of the second defendant and the plaintiff is null and void.

6. In the reply statement the plaintiff has stated that he was not aware of the proceedings in O.S.No.863/1990 on the file of the Sub Court, Salem, filed by the Power of Attorney Nagarajan against his own principal and the decree passed thereon. The decree passed in O.S.No.863/1990 on the file of the Sub Court, Salem, is not valid in the eye of law as Nagarajan, the Power of Attorney holder cannot file a suit



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against his own principal, the Trust seeking for a declaration that the settlement deed dated 14.06.1988 (Ex.A1) is null and void.

7. On the basis of the above pleadings, the trial Court framed the following issues :

- "(i) Whether the Power of Attorney dated 04.10.1990 is valid ?*
- (ii) Whether the decree in O.S.No.863/1990 is valid and binding on the plaintiff ?*
- (iii) Whether the decree in O.S.No.800/1990 is valid and binding on the plaintiff ?*
- (iv) Whether the plaintiff is entitled for the relief of declaration and recovery of possession ?*
- (v) To what other relief the plaintiff is entitled?"*

8. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A22. The fourth defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B24.



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9. The learned trial court judge, on considering the evidence on record, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 10.02.2015, on the following grounds:

- i. As per Section 47 of the Indian Trust Act, a trustee cannot delegate his office to any third party and therefore, Sengottuvelu Gounder and Nalliappan are not empowered to execute the Power of Attorney in favour of Nagarajan, the vendor of the second defendant.
- ii. The Power of Attorney had also filed the suit in O.S.No.863/1990 to declare the settlement deed as null and void and the said suit was decreed. Therefore, the settlement deed executed by Sengottuvelu Gounder in favour of the Trust has become *non-est*.
- iii. The plaintiff has suppressed the filing of the suit by Nagarajan in O.S.No.863/1990 in his original plaint even though he was aware of it.
- iv. Moreover, the sale deed in favour of the second defendant was executed during the pendency of the suit in O.S.No.800/1990 and



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- v. The plaintiff has also suppressed in his plaint, the fact that the defendants 3 to 5 have taken over the possession of the suit property through process of court.
- vi. It is also significant to note that the balance sale consideration of Rs.87,000/- was deposited by the first defendant as is seen from the lodgment schedule (Ex.B14) .
- vii.Sengottuvelu Gounder filed a cheque application on 04.01.1995 and withdrew the entire amount and also filed full satisfaction memo (Ex.B16) in the execution proceedings.
- viii.The plaintiff had stated that the signature of Sengottuvelu Gounder was forged on the sale agreement dated 27.02.1984 (Ex.A17). The handwriting expert in his report (Ex.A20) had opined that the signature of P.Sengottuvelu Gounder was not forged.
- ix. Sengottuvelu Gounder had executed a gift settlement deed after entering into the sale agreement with the first defendant. In any event, the gift settlement deed itself was declared as null and void in O.S.No.863/1990 and the Power of Attorney holder of



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to execute the sale deed in favour of the second defendant.

- x. The plaintiff also did not file a petition under Order XXI Rule 101 CPC before the executing court when he states that he is dispossessed of the suit property by the order of court.
- xi. Hence, the suit filed by the plaintiff is not maintainable.

10. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.56 of 2015, before the Principal District Court, Salem. The learned Principal District Judge, Salem, after analysing the evidence on record, upheld the findings recorded by the trial court judge vide his decree and judgment dated 07.03.2018, as against which the present second appeal is filed.

11. At the time of admission the following substantial questions of law were framed by my learned predecessor.

"(1) When the filing of suit in O.S.No.800 of 1990 for specific performance by the 1st defendant itself is vitiated



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WEB COPY *by fraud, suppression of material facts and also based on forged endorsement dated 20.09.1986 in the alleged Ex.A17 Sale Agreement, whether any decree passed in that suit is not nullity in the eye of law and as such whether the judgment and decree of the courts below in upholding the title of the 1st defendant in the present suit is sustainable?*

(2) When the decree in O.S.No.800 of 1990 itself is nullity in the eye of law as the fraud vitiates all solemn proceedings, whether the execution of such decree, sale through court and alleged delivery of possession said to have been effected in the execution proceedings really confer any valid title and possession when the present plaintiff was neither impleaded as a party to the said suit for specific performance and also in the execution proceedings?

(3) Having regard to scope of Section 19(b) of the specific Relief Act, when the fact remains that the plaintiff is a bonafide purchaser for value without notice of the alleged sale agreement (Ex.A17), whether the plaintiff can be construed to be a pendent-lite purchaser in the eye of law and is not entitled to the reliefs as prayed for?

(4) Having regard to the facts and circumstances of the present case whether the courts below are right in applying the provisions of Indian Trust Act selectively in order to give undue advantage to the 1st defendant's case and



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(5) Have not the courts below misconstrued and misdirected themselves regarding Order 21 Rules 97 to 101 when the plaintiff categorically denying the factum of effecting delivery of possession?

(6) When the plaintiff established his actual physical possession of suit property through the revenue records such as Patta proceedings, Chitta, Adangal Extracts, Kists receipts and House Tax Receipt marked as Ex.A5 to Ex. A12, whether the principles of possession follows title is not actually lies infavour of the plaintiff?"

12. Heard Mr.S.Parthasarathy, learned senior counsel assisted by Mr.J.Ramakrishnan, learned counsel for the appellant and Mr.R.Kaaveesh Raja, learned counsel for the respondents 2 to 4.

13. Mr.S.Parthasarathy, learned senior counsel for the appellant would contend that the plaintiff is a bonafide purchaser for value and that he was not aware of any of the earlier proceedings in O.S.No.800/1990 and O.S.No.863/1990. Sengottuvelu Gounder had



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infact executed the settlement deed in favour of the Trust namely "P.Sengottuvelu and Pavayammal Charitable Trust". He also became one of the trustees and another trustee was Nalliappan. Both of them had executed a Power of Attorney in favour of Nagarajan. Nagarajan had executed a sale deed dated 22.11.1990 (Ex.A3) in favour of the second defendant who in turn had sold the property in favour of the plaintiff through a registered sale deed dated 29.08.1991 (Ex.A4). His specific contention is that the suit filed by the first defendant against Sengottuvelu Gounder for specific performance of contract is a collusive suit. He also drew the attention of this court to the judgment and decree passed in O.S.No.863/1990 and delivery warrant (Ex.B10) in O.S.No.800/1990 and contended that a cursory look of these two orders would make it clear that both the suits in O.S.No.800/1990 and O.S.No.863/1990 are collusive suits. He also relied on the decision of the Hon'ble Supreme Court in ***S.P.Chengalvaraya Naidu (Dead) by LRs vs Jagannath (Dead) by LRs and others*** reported in ***(1994) 1 SCC 1*** and contended that there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence and that the principle



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of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. His specific contention is that Nagarajan, the Power of Attorney holder of the Trust cannot file a suit against the Trust and its trustees to declare the settlement deed null and void. The trustees had also submitted to decree which is a total fraud played upon the Court. In this regard, he relied on the decision in ***R.Stella vs V.Antony Francis*** reported in **2019 (3) MWN (Civil) 647** in which it has been held thus :

"19. It is clear from the above judgments that where the defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. When a Court considers an application for delay to set aside the exparte decree, this must also be taken into consideration. If the original judgment itself is ex facie illegal, it cannot be allowed to continue and under such circumstances, it will have a bearing, while the Court considers an application to



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His further submission is that in the delivery warrant recorded by the court Amin, the signatures of the respondents were not obtained and therefore it can be easily inferred that the suit in O.S.No.800/1990 was instituted by the first defendant in collusion with Sengottuvelu Gounder. According to the learned Senior Counsel, the plaintiff was not given any notice before recording the delivery of possession and therefore, the orders passed by the executing court cannot be sustained. Both the Courts below had not taken these aspects into consideration and had dismissed the suit filed by the plaintiff. He therefore prayed for setting aside the decree and judgment passed by both the courts below.

14. Per contra, Mr.R.Kaaveesh Raja, learned counsel for the respondents 2 to 4 would contend that both the Courts below, after analysing the oral and documentary evidence adduced on both sides have rightly dismissed the suit and he prayed for dismissal of the present appeal.



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15. The plaintiff has filed the suit for the relief of declaration of his title to the suit property and for a permanent injunction restraining the defendants 3 to 5 from interfering with his peaceful possession and enjoyment of the suit property or in the alternative directing the defendants 3 to 5 to deliver the vacant possession of the suit property to the plaintiff. The plaintiff has purchased the suit property from the second defendant through a registered sale deed dated 29.08.1991 (Ex.A4). It is admitted that the original owner of the suit property was one Sengottuvelu Gounder. He created a public charitable trust in the name and style of "P.Sengottuvelu and Pavayammal Charitable Trust" and executed a settlement deed in favour of the Trust in respect of the suit property on 14.06.1988 (Ex.A1). The trustees of "P.Sengottuvelu and Pavayammal Charitable Trust" are Sengottuvelu Gounder and one Nalliappan. Both of them executed a power of attorney on 04.10.1990 (Ex.A2) in favour of Nagarajan. The said Nagarajan filed the suit in O.S.No.863/1990 before the Sub Court, Salem, seeking for a declaration that the settlement deed dated 14.06.1988 (Ex.A1) is null and void. The



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suit was decreed as the defendants in the suit submitted to decree. Thus the settlement deed dated 14.06.1988 has become null and void.

16. It is pertinent to point out that the suit in O.S.No.863/1990 was filed subsequent to the filing of the suit in O.S.No.800/1990 before the Additional Sub Court, Salem, by the first defendant for specific performance of contract dated 27.02.1984. In fact, Sengottuvelu Gounder entered appearance in O.S.No.800/1990 and filed a written statement stating that his signature on the sale agreement dated 27.02.1984 (Ex.A17) was forged. However, he did not subsequently pursue the suit and the suit was also decreed in favour of the first defendant vide decree and judgment dated 06.04.1994 (Ex.A15 and Ex.A16). The first defendant, thereafter, filed a petition in REP No.250/1994 in O.S.No.800/1990 (Ex.B10) and took delivery of the suit property after paying balance sale consideration. In fact, Sengottuvelu Gounder filed a cheque application for withdrawing the balance sale consideration and also filed a full satisfaction memo (FS memo Ex.B16) before the executing court.



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17. However, Nagarajan, the power of attorney holder had executed a sale deed on 22.11.1990 (Ex.A3) in favour of the second defendant during the pendency of the suit in O.S.No.800/1990. Moreover, the plaintiff has suppressed the filing of the suit in O.S.No.863/1990 by Nagarajan in his original plaint even though he was aware of the same. In fact, the cancellation of settlement deed was clearly indicated in his sale deed.

18. At the risk of repetition, it is relevant to point out that Sengottuvelu Gounder had executed the gift settlement deed in favour of the Trust on 14.06.1988 (Ex.A1) after the execution of the sale agreement with the first defendant on 27.02.1984. This settlement deed is in favour of the Trust namely "P.Sengottuvelu and Pavayammal Charitable Trust". Thereafter on 04.10.1990, the trustees namely Sengottuvelu Gounder and Nalliappan executed a power of attorney in favour of Nagarajan to deal with the suit property. As per Section 47 of Indian Trust Act, the trustees



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cannot delegate their powers in favour of a third party. In any event, since the settlement deed executed in favour of the Trust itself has been declared as null and void in O.S.No.863/1990, the Power of Attorney dated 04.10.1990 (Ex.B2) in favour of Nagarajan also goes. Therefore, Nagarajan does not have any right to execute the sale deed in favour of the second defendant on 22.11.1990 (Ex.A3). Moreover, as already observed, this settlement deed was executed during the pendency of the suit in O.S.No.800/1990 and therefore, it is hit by *lis pendens*.

19. The plaintiff has also taken a plea that the sale agreement dated 27.02.1984 (Ex.A17) is a forged document. The trial court had sent the signature of Sengottuvelu Gounder in Ex.A17 along with his admitted signatures to forensic lab. The forensic department had sent its opinion dated 14.07.2011 (Ex.A20) stating that the signature of Sengottuvelu Gounder on Ex.A17 is not forged.

20. The contention of the learned Senior Counsel for the appellant is that the suit in O.S.No.863/1990 is a collusive suit as the



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power of attorney holder has no right to file the said suit for declaring the settlement deed executed by one of the trustees in favour of the Trust as null and void. It is his submission that the plaintiff was not aware of both the proceedings in O.S.No.800/1990 and O.S.No.863/1990 on the file of the Sub Court, Salem. At this juncture, it is pertinent to point out that in the sale deeds dated 29.08.1991 (Ex.A4) and 22.11.1990 (Ex.A3) there is a specific mention that the settlement deed executed in favour of the Trust was cancelled. The plaintiff (PW1) also during the course of cross examination admitted this. His evidence in this regard is extracted hereunder:

“தாவா சொத்தை எனக்கு கிரையம் செய்து கொடுத்த 2ம் பிரதிவாதி இந்த வழக்கில் தோன்றாத்தரப்பினர் ஆகிவிட்டார் என்றால் சரிதான். டிரஸ்டுக்கு கொடுக்கப்பட்ட தான செட்டில்மென்ட் ரத்து ஆகிவிட்டது என்று என் பெயருக்கு எழுதிக்கொடுத்த எக்சிபிட் எ4 சாசனத்தில் சொல்லப்பட்டுள்ளது. எக்சிபிட் எ3-ல் அவ்வாறு தான செட்டில்மென்ட் ரத்து செய்யப்பட்டது என்று எழுதப்பட்டுள்ளது என்றால் அது சரிதான். அந்த தான செட்டில்மென்ட் ஐ ரத்து செய்தது செல்லாது என்று நானோ அல்லது மனோகரனோ அப்பீலுக்கு போகவில்லை. நான் கிரையம் வாங்கியது டிரஸ்டுக்காக விற்றவரிடம் இருந்து தான்



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நான் தாவா சொத்தை கிரையம் வாங்கி உள்ளேன். தான்
செட்டில்மென்ட் ரத்து ஆன பிறகு அந்த சொத்தை கிரையம்
செய்து கொடுக்க டிரஸ்டுக்கு அதிகாரம் இல்லை என்றால் அது
சரிதான். அவ்வாறு கிரையம் செய்யப்பட்டதும் சரியல்ல என்றால்
சரிதான்.”

Thus the plaintiff knew that the settlement deed in favour of the Trust is cancelled and nevertheless he has purchased the suit property. Therefore, he cannot say that the suit in O.S.No.863/1990 is a collusive suit at this point of time. Thus the decision in ***S.P.Chengalvaraya Naidu (Dead) by LRs vs Jagannath (Dead) by LRs and others*** (cited supra) would not apply to the facts of the present case.

21. It is relevant to point out that in the original plaint it is stated that ever since the date of purchase the plaintiff has been in possession and enjoyment of the suit property by putting up a compound wall. Subsequently, when the first defendant filed his written statement stating that he took delivery of the suit property through process of court, the plaintiff amended the plaint for recovery of possession from him. On the date of delivery the plaintiff was not in possession of the suit



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property. Mr.S.Parthasarathy, learned Senior Counsel contended that since the suit property is a vacant land, he was not aware of the proceedings. He also drew the attention of this court to the delivery warrant (Ex.B10) and contended that the respondents' signatures were not obtained in the warrant. This alone cannot be a ground to hold that the suit in O.S.No.800/1990 is a collusive suit. In fact, the executing court had followed all the procedures before recording the delivery. In any event, the present plaintiff who says that he is in possession of the suit property, did not raise any objection in REP No.250/1994.

22. Both the Courts below had analysed each and every aspect of this case and by their well reasoned judgments had dismissed the suit filed by the plaintiff. I do not find any reason to interfere with the same and the substantial questions of law are answered accordingly.

23. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.



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ii. the decree and judgment dated 07.03.2018 passed in A.S. No.56 of 2015, on the file of the Principal District Court, Salem, and the decree and judgment dated 10.02.2015 passed in O.S.No.583 of 1997, on the file of the Principal Sub Court, Salem, are upheld.

.....01.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Principal District Court, Salem.
2. The Principal Sub Court, Salem.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

mtl

Pre-Delivery Judgment in
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