



A.S.(MD)No.132 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S.(MD)No.132 of 2025
and
C.M.P.(MD)No.5458 of 2025**

Nijamdeen

... Appellant

Vs.

A.Lingaraj

... Respondent

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 20.10.2023 made in O.S.No.24 of 2023 on the file of the III Additional District Court, Tirunelveli.

For Appellant : Mr.S.Sivakumar

For Respondent : Mr.N.Dilipkumar



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JUDGMENT

Heard both sides. The defendant in O.S.No.24 of 2020 on the file of the III Additional District Court, Tirunelveli is the appellant herein.

2.The case of the plaintiff is as follows:

The suit schedule property was the ancestral property of one Gnyana Arulmani. It shifted hands to as many as four persons and was finally purchased by one Muthuraj vide sale deed dated 24.07.2015. The plaintiff herein purchased the said property from Muthuraj vide sale deed dated 03.04.2016. The defendant was a former employee of the plaintiff. The defendant was engaged in lending money to third parties and as a consequence incurred a loss of about 50,00,000 rupees. He approached the plaintiff to purchase the properties belonging to him and informed him that he had already paid Rs 20,00,000 as advance to Muthuraj for purchase of the suit scheduled property. Since he was unable to pay the remaining 7,00,000, he sought plaintiff's help. The plaintiff, defendant and Muthuraj worked out an arrangement through which it was agreed that the plaintiff would pay 20,00,000 to the defendant and the remaining



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consideration to Muthuraj to conclude the sale transaction and get the sale deed executed in his favour. As per the oral agreement between the plaintiff and Muthuraj, the plaintiff paid 20,00,000 rupees to the defendant and Rs 7,33,800 to Muthuraj and consequently, a sale deed came to be executed on 04.04.2016. Since the defendant forcefully took possession of the house forming a part of the suit schedule property and refused to vacate, the plaintiff filed the said suit seeking declaration of title over the suit property and recovery of possession from the appellant herein.

3.The defendant filed written statement controverting the plaintiff's averments. He admitted that the property belonged to one Muthuraj. He paid a sum of Rs.20,00,000/- as advance to the said Muthuraj. According to him, a further amount of Rs.15,00,000/- was payable. The plaintiff tricked him into a kind of arrangement and got the property registered in his name. The property was registered in the name of the plaintiff as the plaintiff undertook to secure a loan on that premise. The sale deed is a sham and nominal document and he did not receive any amount from the plaintiff. He undertook expenses to finish the construction of the house



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and has been in possession. The plaintiff cheated him and in this regard, he has registered an FIR in crime no. 490/2017 and the investigation is underway. Since the plaintiff did not approach the court with clean hands, he prayed for the dismissal of the suit.

4.The trial court framed the following issues:

- I) Whether the possession of the defendant in the suit property is lawful?
- II) Whether the plaintiff is entitled for declaration and recovery of possession?
- III) To what relief is the plaintiff entitled to?

The plaintiff examined himself as P.W.1 and Muthuraj, his vendor was examined as P.W.2. One Pechimuthu, witness to Ex.A1/sale deed was examined as P.W.3. As many as 15 documents were marked on his side. The appellant examined himself as D.W.1. Not even a scrap of document was marked as evidence on his side. The learned trial Judge by judgment and decree dated 20.10.2023 decreed the suit as prayed for. Challenging the same, this appeal has been filed.



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5.The points for determination is as follows:

- I. Whether the appellant has proved that Ex A1/sale deed is a sham and nominal document?
- II. Whether the appellant has proved that the respondent exerted undue influence on him?
- III. Whether the appellant is entitled to continue to be in possession of the suit property?

6.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal. He took us through the relevant averments in the plaint as well as the stand taken by the appellant in the written statement and contended that Ex.A1 is a sham and nominal document. He would also allege that undue influence was exerted on the appellant since the plaintiff was his former employer.

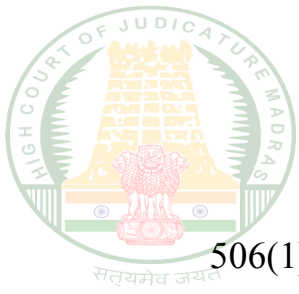
7.Per contra, the learned counsel for the respondent submitted that the order of the court below was well-reasoned and it does not warrant interference.



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8.It is not in dispute that the suit property belonged to one Muthuraj. It is seen that the said Muthuraj executed Ex.A1 / sale deed dated 03.04.2016 conveying the suit property in favour of the plaintiff. On the basis of the said sale deed / title document, the suit for declaration and recovery of possession came to be filed.

9.It is well settled that once the party relying upon the document establishes its genuineness, the onus shifts on the other party to prove that the said document is a sham and nominal document (vide ***Subhra Mukherjee vs Bharat Coking Coal Ltd (2000) 3 SCC 312***). The plaintiff has produced Ex.A1 / sale deed dated 03.04.2016 executed by Muthuraj in his favour and has adduced other supporting documents such as computer patta (Ex A7), original electricity bill receipt (Ex. A9), original house tax receipt (Ex.A10) and encumbrance certificate (Ex. A11). The vendor Muthuraj/P.W.2 also supported the claim of the plaintiff and deposed the receipt of consideration from him. PW.3 has deposed regarding the execution of Ex A1. The defendant alleged in his written statement that he had filed an FIR in crime no. 490/2017 against the plaintiff and Muthuraj for the offences under Sections 294(b), 417, 420,



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506(1) of IPC. It was noted by the Court below that Ex. A14 indicated that crime no 490/2017 was closed with a remark that the appellant herein had registered a false case and that the allegation that the plaintiff had cheated the defendant was false. In these circumstances, since the genuineness of the sale deed has been clearly established by the plaintiff, the onus shifts on the defendant to prove that Ex A1 is a sham and nominal document.

10.We have to examine whether the appellant has discharged the burden cast on him. The appellant has not obtained any declaration that Ex.A1 is a sham and nominal document. He did not file any counter-claim in the present suit. Except for his testimony, he did not adduce an iota of evidence, neither oral nor documentary, to substantiate his claim. The burden cast on him was not at all discharged by the defendant. We are therefore of the view that the appellant has failed to prove that Ex. A1 is not a sham and nominal document.

11.The counsel for the appellant contended that the plaintiff had exercised undue influence on the defendant to get the sale deed executed



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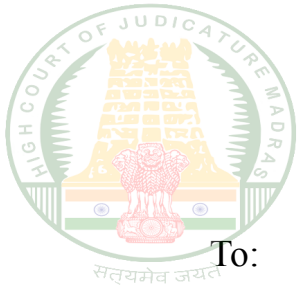
in his favour. It is well settled that undue influence cannot be presumed merely because there exists an employer-employee relationship between the plaintiff and the defendant. The onus is on the party alleging undue influence to set forth particulars and lead in evidence to substantiate the same. This has not been done by the defendant. We carefully went through the contents of the written statement. The defendant has nowhere put forward the plea of undue influence. That is why the court below has not framed an issue regarding the same. In the absence of categorical pleadings as required by Order VI Rule 4 of the Civil Procedure Code, 1908, the plea of undue influence has to necessarily fail.

12. When the appellant has no title as such, he has to necessarily vacate the suit property and hand over the same to the plaintiff. The trial Court had approached the issue in a correct fashion and we find that there is absolutely no merit in this appeal. The appellant is at liberty to initiate appropriate proceedings for recovering the amount said to have been paid by him to Muthuraj. The appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (M.J.R. J.)
07.04.2025

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To:

The III Additional District Court,
Tirunelveli.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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