



S.A.(MD)Nos.238 and 243 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)Nos.238 and 243 of 2025
and
C.M.P.(MD)No.8866 of 2025

S.A(MD)No.238 of 2025:-

V.Murugesan

... Appellant

-VS-

1.V.M.Jeyalakshmi
2.S.Murugesan

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 22.04.2024 made in A.S.No.7 of 2021 on the file of the Subordinate Court, Sattur confirming the judgment and decree, dated 19.11.2019 made in O.S.No.104 of 2013 on the file of the District Munsif Court, Sattur.

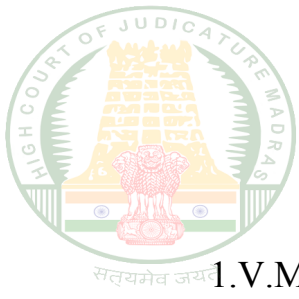
For Appellant : Mr.C.M.Arumugam

S.A(MD)No.243 of 2025:-

V.Murugesan

... Appellant

VS



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1.V.M.Jeyalakshmi

2.S.Murugesan

3.The Sub Registrar,
O/o.Sub Registrar,
Sattur Taluk, Virudhunagar District.

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 22.04.2024 made in A.S.No.6 of 2021 on the file of the Subordinate Court, Sattur confirming the judgment and decree, dated 19.11.2019 made in O.S.No.104 of 2013 on the file of the District Munsif Court, Sattur.

For Appellant :Mr.C.M.Arumugam
For R3 :Mr.B.Saravanan
Additional Government Pleader

COMMON JUDGMENT

The plaintiff is on appeal before this Court. The plaintiff had filed a suit in O.S.No.104 of 2013 for permanent injunction restraining the defendants 1 and 2 from interfering with the rights of the plaintiff from receiving rents from the tenants in the suit property and also for permanent injunction against the third defendant from entertaining any documents for registration till the loan amount is repaid by the first defendant.



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2.In the suit, the defendants 1 and 2 had made a counter claim to direct the plaintiff to hand over the original title documents and the keys of the suit property to the defendants 1 and 2.

3.By a judgment and decree, dated 19.11.2019, the suit came to be dismissed. However, the counter claim of the defendants 1 and 2 was decreed. Aggrieved, the plaintiff filed two separate appeal suits in A.S.Nos. 6 and 7 of 2021 before the Subordinate Court, Sattur. By two separate judgments and decrees, dated 22.04.2024, both the appeal suits came to be dismissed. Assailing the judgment and decree of the lower appellate Court, the plaintiff had filed the above two separate Second Appeals.

4.The parties are referred to, as per their status before the trial Court.

5.It is the case of the plaintiff that two items of the suit property were purchased by the first defendant through two separate registered sale deeds, dated 26.11.2010 and 17.02.2011, respectively. The first defendant is the daughter of the plaintiff and the second defendant is the son-in-law of the plaintiff. It is the case of the plaintiff that for the purchase of the suit



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property and the construction made therein, the plaintiff, who is the father of the first defendant, had given a loan to the tune of Rs.11,00,000/- to the first defendant on 29.01.2011. It is his further case that at the time of handing over the keys, the loan amount will be repaid and in the event of any default or a situation that the first defendant is not able to repay the loan amount, then the plaintiff is entitled to hold the possession of the suit property and he can rent out or lease the property in lieu of the loan amount. According to the plaintiff, since the loan amount of Rs.11,00,000/- advanced by him was not repaid by the defendants 1 and 2, after the completion of the construction of the building, the houses have been let on rent and the plaintiff had received rents for four years, but however, since the defendants 1 and 2 to defraud the plaintiff, intended to encumber by selling the suit property, he had come with the suit for permanent injunction.

6.The defendants 1 and 2 resisted the suit by filing a written statement disputing that they have received a sum of Rs.11,00,000/- from the plaintiff on 29.01.2011. It is their case that since they wanted to buy a property and construct a house in Sattur and since the plaintiff being father was residing in Sattur, they went ahead with the construction of the property, but the



plaintiff had cheated the defendants 1 and 2 due to which, they had put to a huge loss. Pursuant to which, they had entered into a contract with a contractor and they have constructed the houses in the suit property. It is their further case that the plaintiff, being the father of the first defendant was overseeing the construction and was also holding the documents and keys, was bound to hand over the same to the defendants 1 and 2. But however, since he failed to do so and had come up with the suit making false allegations, they made a counter claim seeking for return of the original title documents and keys.

7.During trial, the plaintiff examined himself as PW-1 and further examined his wife as PW-2 and Ex-A1 to Ex-A12 were marked on the side of the plaintiff. The first defendant examined herself as DW-1 and another witness, Kandan as DW-2, but however, have not marked any documents.

8.The trial Court, after analysing the evidences, dismissed the suit, but decreed the counter claim. The trial Court had relied on the admission of PW-2 and also the fact that the plaintiff had not filed any documents to substantiate that he advanced a sum of Rs.11,00,000/- to the first defendant.



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On appeal, the lower appellate Court dismissed both the appeals of the plaintiff confirming the judgment and decree of the trial Court on the ground that admittedly, the first defendant is the owner of the suit property through Ex-A1 and Ex-A2 and further, all the documents from Ex-A3 to Ex-A9, which pertain to the suit property, stand in the name of the first defendant. The lower appellate Court also considered the admission of PW-1 that four houses in the suit property belong to the first defendant and when the first defendant is found to be the owner of the suit property, she is entitled for custody of documents and keys of the suit property. Assailing the concurrent finding on facts, the plaintiff had preferred the above two separate Second Appeals.

9.The learned Counsel for the appellant though fairly admitted that the appellant has not filed any documents to establish that a sum of Rs.11,00,000/- has been advanced, as loan, to the first defendant, it is his vehement contention that the appellant has been collecting rent from the tenants in the suit property for the past four years. The learned Counsel also contended that the plaintiff has advanced this money without any document to the first defendant, only because she is his daughter. The learned



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Counsel further submitted that even though the Courts below have dismissed the suit, since the plaintiff failed to establish the payment of Rs.11,00,000/- as loan, but still, had erroneously decreed the counter claim, as the defendants ought to have sought for recovery of possession and as such, the findings arrived at are perverse and sought for interference of this Court.

10.The learned Additional Government Pleader, who has accepted notice on behalf of the third respondent, submitted that the third respondent is only a formal party and the *lis* in respect of the suit property is between the plaintiff and the defendants 1 and 2.

11.Heard the learned Counsel for the appellant and perused the materials available on record.

12.Admittedly, the first defendant had purchased the suit property through two separate sale deeds, dated 26.11.2010 and 17.02.2011 in Ex-A1 and Ex-A2 respectively. Ex-A1 and Ex-A2 pertain to the two items of the suit property. After purchase, the first defendant had constructed four



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houses in the suit property. Ex-A3 to Ex-A9 are all the house tax receipts and EB receipts issued in respect of two items of the suit property, which stand in the name of the first defendant. From the documents filed in Ex-A1 to Ex-A9, it is clearly established that the first defendant has title and possession over the suit property.

13.The plaintiff, who is none other than the father of the first defendant, had come up with the suit for permanent injunction making a claim that he has advanced a sum of Rs.11,00,000/-, as loan, to his daughter at the time of purchase and construction. It is his further claim that his daughter, the first defendant, had agreed to repay this amount at the time of completion of construction and receiving the keys of the houses constructed in the suit property. In case, the first defendant is not able to repay, the plaintiff is allowed to let the property to tenants and receive rents in lieu of the loan amount, till such time, the loan amount is repaid. In effect, the plaintiff contends to have usufructuary mortgage executed by the first defendant/daughter, in favour of the plaintiff/father, for receipt of the loan of Rs.11,00,000/- and till the repayment of the loan amount, the plaintiff is entitled to receive rents from the suit property.



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14. Admittedly, when the plaintiff claims an usufructuary mortgage on an understanding or agreement entered into with the first defendant, based on which, a sum of Rs.11,00,000/- has been advanced, the plaintiff was not able to file any documents to establish that he has advanced a sum of Rs.11,00,000/- to the first defendant. Further, the plaintiff, who was examined as PW-1, had categorically admitted that he has not entered into any agreement with the first defendant, daughter, and he has no material to prove that a sum of Rs.11,00,000/-, was advanced, as loan, to the first defendant. PW-1 has also categorically admitted that he does not have anything to do with the construction made in the suit property and it is the first defendant, who had entered into an independent contract with a contractor, namely, one Kumaraguru and the contractor had constructed the houses in the suit property. PW-1 had also further admitted that he had no role in the construction made or the agreement entered into between the owner of the property, the first defendant and the contractor, Kumaraguru.

15. When the plaintiff was not able to file any documents to prove that a sum of Rs.11,00,000/- was advanced, as loan, to his daughter and also when he had categorically admitted that he is not in possession of any



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material to evidence the same and the construction had also been undertaken by the first defendant by entering into an agreement with the contractor, Kumaraguru, it makes it evident that the plaintiff had miserably failed to prove that a sum of Rs.11,00,000/- was advanced, as loan, to the first defendant, which is the basis for the claim made by the plaintiff in the suit. Only on a claim that loan amount was advanced, the plaintiff had come with the relief of permanent injunction that he should not be disturbed from collecting rents from the tenants in the suit property.

16.PW-2, who is the wife of the plaintiff and the mother of the first defendant, had also categorically admitted that the suit property was purchased by the first defendant and belongs to her and she is not aware of any amount paid by the plaintiff to her daughter, the first defendant. Both PW-1 and PW-2 have also categorically made it clear that the suit property belongs to the owner, ie., the first defendant, who is none other than their daughter and she is having all the rights over the houses constructed in the suit property.



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17.It is also to be noted that when the plaintiff has admitted that the construction had been made through one Kumaraguru, the plaintiff has not chosen to examine the said Kumaraguru or had not taken any steps to establish that there had been any understanding or he had role in the construction made. Further, when the plaintiff claims that he had been collecting rents from the suit property for the past four years, the plaintiff, who had come up with the suit, had not filed any documents to the effect that he has entered into tenancy with any of the tenants in the suit property and the rents have been collected and retained by him from the tenants. In the absence of any materials in respect of advancing loan to the first defendant or the role of the plaintiff in the tenancy, that has been created with the tenants in the suit property and further from the documents from Ex-A3 to Ex-A9, it has been established that all the documents stood in the name of the first defendant, the Courts below have rightly rendered a finding that when once the first defendant had been found to be the owner of the suit property holding valid title in respect of the suit property, it is a natural corollary, that the documents and keys of the suit property are handed over to the first defendant.



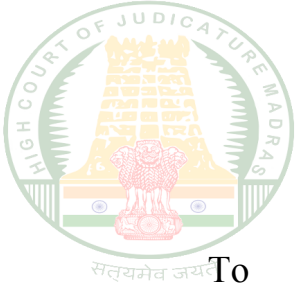
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18.As it has been observed earlier, the plaintiff, who claims to have an usufructuary mortgage, has not established his claim by any documents and the Courts below had, based on the admission of PW-1 and PW-2 and the documents in Ex-A1 to Ex-A9, rightly come to the conclusion that the first defendant is the owner of the suit property, who is entitled to hold the keys and documents. This Court is not able to find any illegality or perversity in the finding of facts rendered by the Courts below. There is no substantial question law that arises for the consideration of this Court.

19.Accordingly, both the Second Appeals are dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

18.06.2025

Index :Yes/No
NCC :Yes/No
cmr



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To

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- 1.The Subordinate Judge, Sattur.
- 2.The District Munsif, Sattur.
- 3.The Sub Registrar,
O/o.Sub Registrar,
Sattur Taluk, Virudhunagar District.
- 4.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

cmr

Common judgment made in
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