

S.A.(MD)No.256 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.256 of 2025
and
C.M.P(MD)No.9327 of 2025

Jeyaraj

... Appellant

-vs-

Saravanakumar

..Respondent

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 26.02.2025 made in A.S.No.24 of 2024 on the file of Sub Court, Bodinayakanur, Theni District, confirming the judgment and decree dated 28.09.2022 made in O.S.No.47 of 2013 on the file of the District Munsif Court, Bodinayakanur, Theni District.

For Appellant ... Mr.S.Muniyandi

For Respondent ... Mr.J.Jeyakumaran



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JUDGMENT

The defendant is before this court on appeal.

2. The second appeal is filed challenging the judgment and decree dated 26.02.2025 in A.S.No.24 of 2024 on the file of the Sub Court, Bodinayakanur, Theni District, confirming the judgment and decree dated 28.09.2022 in O.S.No.47 of 2013 on the file of the District Munsif Court, Bodinayakanur, Theni District.

3. The parties are referred to as per their litigative status before the trial court.

4. It is the case of the plaintiff that originally the suit property belonged to one Meenakshi, Parasakthi, Chandrasekaran, Ganesan and Gunasekaran jointly. The owners of the property had executed a power of attorney on 29.07.2009 in Ex.A1, nominating the defendant as the power agent. Pursuant to the power deed executed, the defendant had sold the suit property in favour of the plaintiff through the sale deed dated 31.07.2009 in Ex.A2 for a sale consideration of Rs.1,75,000/-. On the date of sale, the plaintiff had been put in possession of the suit property, and he has been cultivating the lands

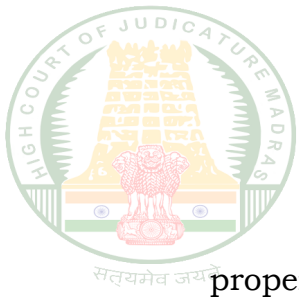


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without any interruption for nearly three years. The plaintiff had filed the revenue records mutated in his favour and the tax paid by him to evidence his possession. It is the further case of the plaintiff that the defendant is also an adjacent landowner of the suit property, and further, they are close relatives. In fact, the defendant is the maternal uncle of the plaintiff. While so, at that point of time, the defendant was interested in purchasing the suit property from the plaintiff. Since the plaintiff refused, differences arose between them, and the defendant, being the influenced person, started to interfere with the possession of the suit property. On 16.01.2013 and 22.02.2013, the defendant, along with his sons, attempted to dispossess the plaintiff. Hence, the plaintiff had come with the suit for a permanent injunction.

5. The defendant resisted the suit by filing a written statement, contending that though he had executed a sale deed in favour of the plaintiff, the sale was only sham and nominal, and the same was executed only for the namesake. When the defendant was in need of money, the plaintiff, who had advanced this money on 31.07.2009, however, had taken the sale deed in his favour. As such, the sale deed in Ex.A2 will not go to any right of the plaintiff. The defendant had also disputed the possession of the plaintiff over the suit



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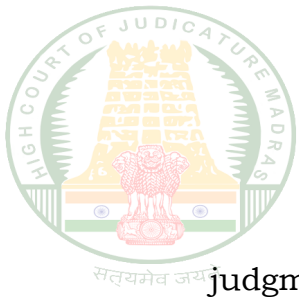
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property, and it is the stand of the defendant that the plaintiff does not have a valid title to the suit property.

6. During the trial, the plaintiff examined himself as P.W.1 and his uncle, who is the defendant's brother, as P.W.2 and marked Exs.A1 to A12. On the side of the defendant, the defendant examined himself as D.W.1 and one Mani as D.W.2, however, he has not marked any document. The summons issued to D.W.2 from the court has been marked as Ex.C1.

7. The trial court, after analyzing the evidence, came to the conclusion that when the plaintiff had established his title and possession over the suit property through the sale deed executed in his favour and also the revenue documents filed, the defendant having executed the document, cannot give any contra oral evidence in view of the Section 92 of the Indian Evidence Act.

8. On appeal, the lower appellate court, by relying on the admission of D.W.1, who himself has given evidence in his cross-examination that he had paid the sale price to his principal and he has also received remuneration from the principal for his job of selling the suit property to the plaintiff, dismissed the appeal, confirming the



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judgment and decree of the trial court. Assailing the concurrent findings of fact, the defendant is before this court on appeal.

9. The learned counsel for the appellant/defendant contended that no actual sale consideration was paid by the plaintiff, and in the absence of such consideration, the title to the suit property did not pass to the plaintiff under Ex.A2. It is his further contention that the plaintiff is not in possession of the suit property. When the defendant had filed a written statement disputing the title of the plaintiff and raising a cloud over his title, then the plaintiff ought to have sought a declaration of the title, and the suit for mere injunction without seeking a declaration is not maintainable. In this regard, the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of **Anathula Sudhakar vs. P.Buchi Reddy** reported in **(2008)4 SCC 594**. As such, the learned counsel for the appellant/defendant submitted that the courts below have not appreciated these legal aspects in a proper perspective, and also the decisions arrived at by the courts below are not in consonance with the law laid down by the Hon'ble Supreme Court, and therefore, the findings are perverse, and sought interference of this court.



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10. Per contra, the learned counsel for the respondent/plaintiff submitted that since a registered sale deed (Ex.A2) had been executed in favour of the plaintiff by the defendant, acting as the power of attorney holder representing the vendor, the title in the suit property had been duly passed to the plaintiff. The learned counsel further submitted that the plaintiff has marked the power deed and the sale deed executed in their favour and also filed the mutation of the revenue records and the tax receipts paid by them to evidence the possession of the plaintiff over the suit property. The learned counsel further contended that the defendant, being the party to the sale deed in Ex.A2, cannot let in any oral evidence contrary to the document itself, as he is barred from doing so in view of Sections 91 and 92 of the Evidence Act. The learned counsel further submitted that the defendant had denied the plaintiff's title only namesake, and unless the cloud is raised and as the same is true and genuine, the plaintiff is not required to seek a declaration, and for that proposition, the learned counsel also relied on the same decision of the Hon'ble Supreme Court in the case of Anathula Sudhakar vs. P.Buchi Reddy reported in **(2008)4 SCC 594**. He further submits that the courts below rightly appreciated the documents and arrived at concurrent findings, which need no interference, and sought dismissal of the appeal.

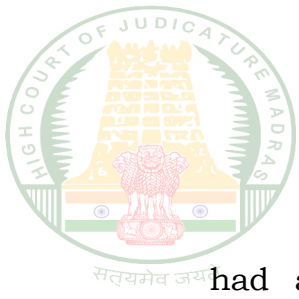


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11. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

12. Admittedly, the suit property measuring an extent of 2.79 acres comprised in [S.No.653/2](#) situated at Thevaram Village in patta No.7312, originally belonged to one Meenakshi, Parasakthi, Chandrasekaran, Ganesan, and Gunasekaran. It is also admitted by the parties that the original owners of the property had executed a registered power of attorney in favour of the defendant on 29.07.2009 in Ex.A1. Based on the power of attorney in Ex.A1, the defendant had executed a sale deed in favour of the plaintiff for a sale consideration of Rs.1,75,000/- on 31.07.2009 in Ex.A2. Pursuant to the sale deed executed, the revenue records have been mutated in favour of the plaintiff, and the patta has been issued in favour of the plaintiff on 27.03.2012 in Ex.A3. Further, Adangal had been issued on 30.03.2013 in favour of the plaintiff in Ex.A5. The plaintiff, having been put up in possession of the suit property, thereafter paid the kist receipt and had filed the kist receipt in Ex.A4. The plaintiff had also paid the electricity charges for the suit property and has filed the electricity receipt in Ex.A6. Further, as it is land, the benefit extended by the Government under various schemes in favour of the plaintiff



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had also been filed in Exs.A11 to A12. Apart from the same, subsequent Adangal and tax receipts have been filed as Exs.A9 and 10.

13. The sale deed executed in favour of the plaintiff in Ex.A2 and the patta issued, and the tax paid by the plaintiff for the suit property, and the electricity receipt would go to show that the plaintiff is the absolute owner of the property, having purchased the same from the owners on 31.07.2009 in Ex.A2, and has been put in possession of the suit property.

14. It is the case of the plaintiff that when he had been cultivating the land for merely 3 years, the defendant, who is the neighbour, had attempted to trespass and interfere with the suit property. As such, the plaintiff had come up with the suit for bare injunction.

15. The defendant, who admitted that he was the power holder of the original owners of the suit property, had only resisted the suit, contending that the sale executed in favour of the plaintiff had been executed only for namesake, and it is only symbolic and nominal, and no title has been passed onto the plaintiff, as no consideration has been paid.



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16. The learned counsel for the appellant/defendant vehemently contended that since the consideration has not been paid, the plaintiff has not become the owner of the property, as the title has not been passed in Ex.A2. In this regard, it is useful to refer to Sections 91 and 92 of the Evidence Act.

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. — *When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.*

92. Exclusion of evidence of oral agreement. — *When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:”*

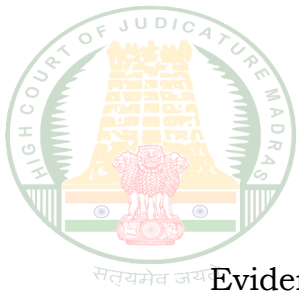


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17. When admittedly the defendant is the party to the document who has executed the sale deed in favour of the plaintiff in Ex.A2, the defendant is barred from letting in any oral evidence contrary to the document in Ex.A2 itself. In the present case, the defendant only tries to deny the title of the plaintiff on the ground that the sale transaction is sham and nominal. It is also to be noted that when the sale deed had been executed as early as 31.07.2009, the defendant had not challenged the sale executed in favour of the plaintiff. Further, it is to be noted that the original owners of the suit property, from whom the plaintiff had purchased, had not disputed the same, and there is no dispute between the plaintiff and the original vendors.

18. In this regard, the defendant himself, who was examined as D.W.1, during his cross-examination had categorically admitted that he had received the sale price as mentioned in the sale deed from the plaintiff and had also accounted for and handed over the sale consideration to the principals. Further, he had also admitted that he had received remuneration from the plaintiff for his job of selling the property to the plaintiff. When the defendant had in categorical terms admitted that he had received the sale consideration from the plaintiff and handed it over to the original vendors and he had also received the remuneration, apart from the bar under Sections 91 and 92 of the



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Evidence Act, the defendant could not make the present plea in view of his own admission.

19. It is the contention of the appellant/defendant that once the defendant had disputed the title of the plaintiff in the written statement and raised a cloud on the title, then it was for the plaintiff to seek a declaration, otherwise the suit for mere injunction is not maintainable. In this regard, the learned counsel relied on the above-referred decisions. It is true that when a cloud is raised on the title and the title is disputed, the plaintiff has to seek a declaration of title. But it is not in every case, wherever the plea is made simply disputing the title of the plaintiff, then, in all such cases, the suit has to be amended and the relief of declaration is sought to be made. The plea of the defendant in denying the title has to be true and genuine. Unless the defendant disputes the title with any sufficient and proper materials to claim his right, it will amount to raising a cloud on the title. It is not a universal rule that in all cases, wherever for namesake, averment is made disputing the title, then the plaintiff is expected to seek a declaration. Even in the decision relied on by the learned counsel for the appellant also, it is made clear that only in cases where title is disputed raising a valid cloud on title, then it is for the plaintiff to seek a declaration.

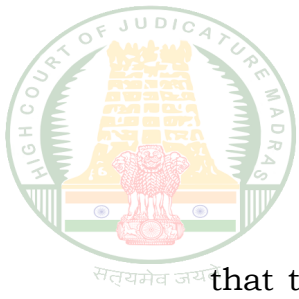


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20. In the instant case, when the defendant, being the power agent, had executed the sale deed in favour of the plaintiff in Ex.A2, even the original owners had not disputed the same, and even the defendant had also admitted that the entire sale consideration had been passed to the vendors pursuant to the sale executed in Ex.A2, then the mere averments made by the defendant in the written statement disputing the title would not amount to raising a cloud on the title, and therefore, the suit filed by the plaintiff for bare injunction is maintainable. Even as per the averments made in the sale deed in Ex.A2, the plaintiff has been put in possession of the suit property on the date of sale. Further, the plaintiff has filed documents marked Exs.A3 to A10, which, on evidence, demonstrate the plaintiff's possession over the suit property.

21. In fact, the plaintiff had also examined P.W.2, who is the defendant's own brother, who had let in evidence in respect of the sale executed by the vendors in favour of the plaintiff. When it is the admitted case that the parties are close relatives and the plaintiff has let in documentary and oral evidence that has established their possession based on the title that they have got through the sale deed in Ex.A2, the courts below had rightly arrived at the finding of fact



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that the plaintiff is in possession and enjoyment of the suit property and thereby decreed the suit.

22. In view of the above, this court does not find any infirmity or illegality in the finding of fact arrived at by the courts below. No substantial question of law arises for consideration in this appeal.

23. In the result, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.07.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn

To:

- 1.The Sub Judge, Bodinayakanur, Theni District.
- 2.The District Munsif, Bodinayakanur, Theni District.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in

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