

SA(MD)No.297 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.08.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A.(MD)No.297 of 2025

1.Amirtham,
W/o.James,
Door No.29, Bharathi Main Road,
Thyagaraja Nagar,
Theni Town, Theni Taluk,
Theni District.

2.Vasanthu Guru,
S/o.Amirtham,
Door No.35, Bharathi Main Road,
Thyagaraja Nagar,
Theni Town, Theni Taluk,
Theni District.

James (Died)

... Appellants

Vs.

Vadivel (Died)

1.Senthilkumar @ Veerakumar,
S/o.Vadivel,
Vethiyapa Nadar Compound,
Peraiyur Town,
Peraiyur Taluk,
Madurai District.

Chellaiah (Died)

... Respondent



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PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.35 of 2019 on the file of the Sub Court, Theni dated 18.12.2024 confirming the judgment and decree passed in O.S.No.12 of 2003 on the file of the District Munsif Court, Aundipatti dated 26.07.2019 and allow the Second Appeal and pass such further or other orders as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case and thus render justice.

APPEARANCE OF PARTIES:

For Appellants : Mr.T.C.S.Thillainayagam, Advocate

For Respondent : Mr.M.Kannan, Advocate

J U D G M E N T

Heard.

2. This Second Appeal is filed against the judgment and decree of the first appellate Court / Subordinate Court, Theni in A.S. No.35 of 2019, dated 18.12.2024 which confirmed the judgment and decree of the trial court/District Munsif, Andipatti in O.S.No.12 of 2003, dated 26.07.2019.



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3. The appellants, having lost in both the courts below, filed the original suit O.S. No. 12 of 2003 seeking a bare injunction in respect of the immovable property comprised in S.Nos. 817 and 818 total measuring 5 acres and 79 cents.

4. The main contention of the appellants is that the suit property originally belonged to the first defendant, who sold it to the first appellant under an unregistered sale deed dated 05.09.1983 (Ex.A23) for a consideration of Rs.33,000/-. The said sale deed was engrossed on stamp papers worth Rs.2.50 only. The defendants, in their written statement, specifically denied the plaintiffs' title to the suit property and the execution of the sale deed. They stated that the first defendant, being employed as a warden, had entrusted the property to the third appellant to carry on agricultural activities and share the proceeds.

5. While the defendants did not dispute that the plaintiffs were in actual physical possession, they disputed the character of such possession. According to the plaintiffs, possession was obtained under the aforesaid unregistered and insufficiently stamped sale deed (Ex.A23). The defendants contended that the plaintiffs were only permissive occupiers.



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6. It is settled law that when the plaintiff's title is seriously disputed and a cloud is created over such title, a suit for bare injunction without seeking a declaration of title is not maintainable. The first appellate court, relying upon the judgment of the Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy & Ors.*, reported in *AIR 2008 SC 2033*, rightly held that since the defendants' denial was substantive and raised a real dispute regarding title, the plaintiffs could not maintain a bare injunction suit.

7. The appellants contended that Ex. A23 could be relied upon for a collateral purpose to prove possession and that they had perfected title by adverse possession. However, whether adverse possession has been perfected against the true owner can only be determined in a title suit, not in a suit for bare injunction.

8. Further, Ex. A23 is not only unregistered but also insufficiently stamped. While an unregistered document compulsorily registrable may be used for collateral purposes under Section 49 of the Indian Registration Act, 1908, an unstamped or insufficiently stamped instrument cannot be



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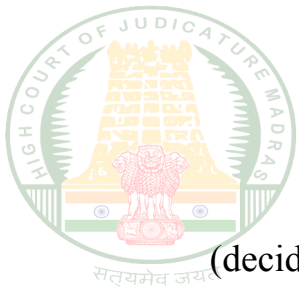
used for any purpose under Section 35 of the Indian Stamp Act, 1899, unless the deficit stamp duty and penalty are paid after impounding.

Admittedly, no such payment was made by the plaintiffs.

9. It is also noted from the trial court's judgment index that Ex. A23 was not marked as an exhibit; only the signature of a witness found on it was marked. Merely marking a signature from a document does not amount to marking the contents of that document in evidence.

10. The appellants also relied on Exs. A22 and A25 (orders of the RDO and DRO in patta proceedings). However, as repeatedly held by the Hon'ble Supreme Court, including in *Corporation of the City of Bangalore v. M. Papaiah*, reported in (1989) 3 SCC 612, revenue records do not confer title.

11. In *Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao*, reported in (2015) 16 SCC 787, the Supreme Court held that if a party wishes to rely on a document for a collateral purpose, stamp duty and penalty must be paid, and the document impounded. The Bombay High Court in *Salim Baig v. Sayyad Nawid*, 2025 SCC OnLine Bom 2819



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(decided on 29.07.2025), reiterated that there is an absolute bar to admitting an unstamped instrument unless the requirements of the provisos to Section 35 of the Indian Stamp Act are complied with, and that even admission for a collateral purpose without such compliance would violate Section 35 of the Indian Stamp Act.

12. In the present case, since Ex. A23 suffers from the aforesaid defects and the plaintiffs' title is seriously in dispute, the courts below have rightly rejected the claim.

13. The questions of law framed in the grounds of appeal are settled legal principles and do not constitute substantial questions of law under Section 100 CPC.

14. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

13.08.2025

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation : Yes / No
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Copy to

1. The Sub Ordinate Judge,
Theni.
2. The District Munsif,
Aundipatti.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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DR. A.D. MARIA CLETE, J.

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Judgment made in
S.A.(MD)No.297 of 2025

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