



S.A.(MD)No.20 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 20.06.2025

DELIVERED ON: 03.09.2025

CORAM:

THE HONOURABLE MR JUSTICE K.K.RAMAKRISHNAN

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Subbammal (Died)

1.S.Mookandi Asari

2.Rathinamani @ Easkki Rathinam

3.Pitchammal

4.Umaya Parvathi @ Malliga

5.Petchiammal

6.Valliammal @ Esakkiammal

... Appellants

Vs.

1.M.Murugan

2.M.Seethalakshmi

3.Sellaiyarajan

4.Jayakumar (Died)

(Memo dated 15.04.2024 presented before the Court on 15.04.2024 is recorded to the effect that R4 died and taking steps to bring his LRs on record is dispensed with, as he was exonerated before the 1st appellate Court)

... Respondents

Prayer: Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.190 of 2005 on the file of learned



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Subordinate Judge, Thoothukudi dated 28.11.2014 confirming the judgment and decree passed in O.S.No.108 of 2000 on the file of District Munsif Court, Srivaikuntam, dated 14.02.2005.

For Appellants : Mr.R.Venkatesan,
Legal Aid Counsel

For Respondents : Mr.G.Rajaraman

JUDGMENT

This Second Appeal has been filed by the plaintiffs in O.S.No.108 of 2000 against the judgment and decree dated 28.11.2014 passed by the learned Subordinate Judge, Thoothukudi in A.S.No.190 of 2005 confirming the judgment and decree dated 14.02.2005 passed by the learned District Munsif Court, Srivaikuntam in O.S.No.108 of 2000.

2. The plaintiffs filed a suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property. The suit schedule property originally belonged to one Subramania Asari. The said Subramania Asari, executed a registered will dated 14.06.1968 in favour of the first plaintiff viz., his wife and the



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second plaintiff viz., his son. As per the Will, the second plaintiff would enjoy the suit property without alienation, till the life time of the first plaintiff and thereafter, he is entitled to take over the possession and enjoyment of the suit schedule property. That being the situation, the defendants were trying to interfere with the suit schedule property by making an attempt on 18.08.1998. Hence, the plaintiffs filed a suit for injunction restraining the defendants from interfering with the suit schedule property.

3. The first defendant has filed his written statement stating that the second plaintiff executed a registered power deed on 21.12.1993 in favour of him, in respect of the properties mentioned in the first item of the suit scheduled property. On the basis of the said registered power deed, the first defendant executed a registered sale deed dated 30.11.1996 in favour of the second defendant. From the date of the sale deed ie., 30.11.1996, the second defendant had been in possession of the suit property on the basis of the sale deed. The second defendant also executed a sale agreement in favour of the third defendant in respect of the second item of the suit schedule property. On the basis of the said sale agreement, third defendant



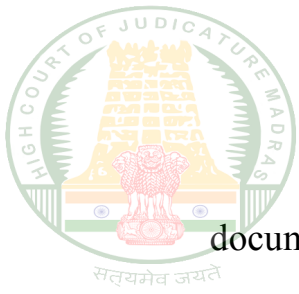
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was in possession of the second item of the suit schedule property. The remaining suit schedule of properties were purchased by the first defendant in the year 1989 from the lawful owners viz., Esakkimuthu Asari, Shanmugam Asari, Subbiah and Krishnana Asari. Therefore, the defendants seek to dismissal of the suit in respect of item Nos.1 and 2 of the suit scheduled property.

4. On the above pleadings, the trial Court framed the following issues:

- “1. Whether the plaintiffs are entitled to the relief of permanent injunction as sought for by them?*
- 2. To what other reliefs the plaintiffs are entitled to?*
- 3. What order should be issued regarding the amount of expenses?”*

5. To prove the case, on the side of the plaintiffs, second plaintiff examined himself as P.W.1 and 20 documents were marked as Ex.A1 to Ex.A20. On the side of the defendants, the first defendant examined himself as D.W.1 and the third defendant examined himself as D.W.2 and 25



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documents were marked as Ex.B1 to Ex.B.25. Official witnesses were examined as C.W.1 to C.W.5 and 25 documents were marked as Ex.C1 to Ex.C25.

6. After considering the oral and documentary evidence, the trial Court held that the first appellant executed a power deed on 21.12.1993 and a sale deed was executed in favour of the second defendant relating to the first item of the suit property on 30.11.1996 and the cancellation of the said power deed was done only in the year 1998, ie., after execution of the sale deed. Hence, plaintiffs have not come forward with the clean hands and they filed the plaint with suppression of the material facts relating to the execution of the power deed and the sale deed. The learned trial Judge has also held that the plaintiffs had further suppressed about the execution of the sale agreement under Ex.B4 relating to the second item of the property. On the basis of the sale agreement, the third defendant was in possession of the property. Therefore, the trial Court dismissed the suit. The learned appellate Judge also confirmed the said findings. Aggrieved over the concurrent findings of both the Courts below, the present Second Appeal is filed.

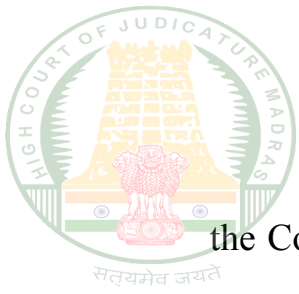


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7. This Second Appeal is in the stage of notice before admission.

WEB COPY This Second Appeal was filed before this Court on 20.12.2016 and notice was issued on 22.01.2018. Thereafter, there was no representation on the side of the appellants and hence, this Court sent notice to the appellants. Though the appellants received the notice, there was no representation on behalf of them. Therefore, this Court appointed a Legal Aid Counsel having experience of more than 20 years and served the papers and also permitted to peruse the entire records.

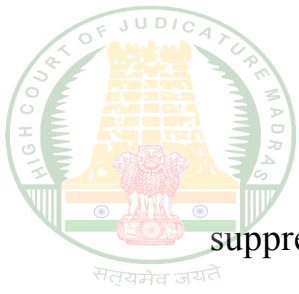
8. The learned Legal Aid Counsel Mr.R.Venkatesan, appearing for the appellants would submit that the appellants have established their title to the suit schedule property and the case of the respondents that the power deed was executed and on the basis of the power deed, the sale deed was executed in favour of second respondent, is not correct. After the execution of the power deed in the year 1993, the second plaintiff sent a communication to the first defendant not to act on the basis of the power deed, but he had acted on the basis of the power deed and executed a sale deed in favour of the second respondent, which is not valid. The Legal Aid Counsel would further submit that there is a specific plea raised before both



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the Courts below that the claim of the respondents is hit by Order 1 Rule 3 of C.P.C. and Order 2 Rule 2 of CPC. However, the same was not considered by both the Courts below. The second appellant has no right to execute the power deed in favour of first respondent and the same was executed against the terms of Will Ex.A1. The same was also not considered by both the Courts below and hence, there is a perversity in the findings of both the Courts below and there is misapplication of law on the principle of multifarious reliefs.

9. The learned counsel appearing for the respondents would submit that a sale deed was executed on the basis of the power deed dated 21.12.1993. The property is in the enjoyment of the first appellant and the first appellant has executed a sale agreement dated 07.08.1998 in favour of the third respondent. On the basis of the said sale agreement, the third respondent has filed a suit in O.S.No.32 of 2004 on the file of the District Munsif Court, Sathankulam for specific performance. Subsequently, the said suit was decreed and a sale deed was executed in favour of the third respondent. The said fact was suppressed by the appellants apart from the



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suppression of the execution of the power deed and the sale agreement.

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Therefore, the plaintiffs are guilty of suppression of the material facts.

Once, the sale deed was executed in favour of the second respondent on the basis of the power deed, before cancellation of the power deed in the year 1998, the present suit for injunction is not maintainable, more particularly, when there was no evidence adduced by the plaintiffs to prove the possession over the suit schedule property.

10. The learned counsel appearing for the respondents would also submit that Order 1 Rule 3 of C.P.C. and Order 2 Rule 2 of C.P.C. is applicable to the plaintiffs' case and not the defendants' case. The suit property covered three items of property. Item No.1 of the suit property is relating to the title of second respondent, on the basis of the execution of the sale deed in favour of second respondent by the first respondent on the basis of the power deed executed by the first appellant dated 21.12.1993. The third respondent is the power of attorney holder and he is in occupation of the property on the basis of the sale agreement dated 07.08.1998.



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Therefore, he has impleaded the two sets of defendants and each defendants have right to disclose their own case, which is not hit by either Order 1 Rule 3 of C.P.C or Order 2 Rule 2 of C.P.C. Hence, he seeks to confirm the judgments of both the Courts below and also dismissal of the second appeal with the costs.

11. This Court has carefully considered the rival submissions and framed the following substantial question of Law:

1. Whether both the Courts below are correct in dismissing the suit in respect of item No.1 of the suit scheduled property holding that the appellants have lost their right on the basis of the execution of the sale deed by the first respondent in favour of the second respondent, on the basis of the power deed executed by the first appellant on 21.12.1993?

2. Whether both the Courts below are correct in dismissing the suit accepting the case of the third defendant that he is in possession of the property on the basis of the sale agreement dated 07.08.1998 executed by the first appellant in favour of the third respondent in respect of the second item of



the suit scheduled property?

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12. The suit property was originally purchased by the father of the second plaintiff and husband of the first plaintiff viz., Subramania Asari. It is also admitted by both parties that Subramania Asari executed a Will dated 14.06.1968 under Ex.A1 in favour of both the plaintiffs with a condition that the first plaintiff would enjoy the property during her life time and after her life time, the second plaintiff is entitled to take over the possession and enjoyment of the suit scheduled property. The said Subramania Asari died in the year 1969. Thereafter, the second appellant executed a power deed in favour of the first respondent on 21.12.1993. On the basis of the said power deed, the first respondent executed a sale deed in favour of second respondent on 30.11.1996. The said power deed was cancelled in the year 1998.

13. It is the specific case of the second appellant that after execution of the power deed for security, he informed the first respondent not to make any alienation in the suit property on the basis of the power deed for the reason that only after the death of the first appellant, the title will be vested



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with the second appellant. Thereafter, he cancelled the said power deed in the year 1998 only. The conduct of the appellants, in not disclosing the entire fact of execution of the power deed in favour of the first respondent and his knowledge about the execution of the sale deed in favour of the second respondent on the basis of the power of attorney dated 21.12.1993, is viewed seriously.

14. In all fairness, the plaintiffs should disclose the above fact, but has not disclosed the above fact and filed the suit for bare injunction, after the alienation of the property and without any possession over the first item of the suit scheduled property. Both the Courts below correctly appreciated the said fact and correctly dismissed the suit. The power of attorney was acted in the year 1996 by execution of sale deed in favour of the second respondent and subsequently, in the year 1998 only cancellation of the power deed was effected. Therefore, both the Courts below are correct in dismissing the suit holding that the plaintiffs have no right over the suit scheduled property. Therefore, this Court finds no merit in the contention of the learned counsel for the appellants. Further, the respondents 1 and 2 established their title and possession over the first item of the suit schedule



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property. Therefore, the Second Appeal is liable to be dismissed. This

Court finds no ground to interfere with the concurrent finding rendered by both the Courts below against the appellants and in favour of the respondents 1 and 2 in respect of Item No.1 of the suit schedule property.

15. Item No.2 of the suit scheduled property is concerned, the third respondent has come forward with a specific case that the first appellant executed a sale agreement in favour of him under the Ex.B4 on 07.08.1998. As per the said sale agreement, possession was also handed over to the agreement holder viz., third respondent and he is in enjoyment of the said property as per the terms of the sale agreement. Subsequently, he filed a suit for specific performance by impleading the appellants and the said suit was decreed and execution proceedings was also effected. Thereafter, a sale deed was also executed in favour of the third respondent through the Court. Therefore, the possession of the third defendant also clearly proved through the documents. Both the Courts below considered

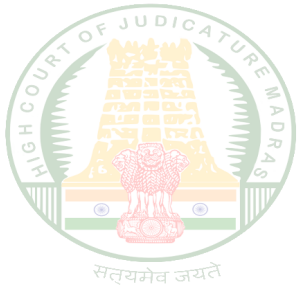


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the above aspect and dismissed the suit holding that the plaintiffs' case for injunction without possession over the suit property is not maintainable and no evidence is adduced to prove their possession of the suit schedule property. On the contrary, defendants established their *prima facie* title and possession over the suit schedule property.

16. The contention of the learned counsel for the appellants that the application of Order 1 Rule 3 and Order 2 Rule 2 of C.P.C. is misconceived one. Order 1 Rule 3 of C.P.C. is relating to the filing of different suits for different acts. Here, the present suit has been filed claiming their possession over the suit scheduled property. The officials also allowed to stay in the suit schedule premises and hence, two types of defendants taking a different defence is not hit by either Order 1 Rule 3 of CPC or Order 2 Rule 2 of C.P.C. Hence, the contention of the appellants about the doctrine of multifarious suits is not permissible under Order 1 Rule 3 of C.P.C. is not applicable to the present case.



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17. In view of the above, this Court finds no perversity in the finding rendered by both the Courts below. Therefore, this Court finds no merit in the Second Appeal and the same is liable to be dismissed. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

03.09.2025

Neutral Citation : Yes/No
Index : Yes/No
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To:

- 1.The Subordinate Judge, Thoothukudi.
- 2.The District Munsif, Srivaikuntam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Judgment made in
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