



S.A.(MD)No.416 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.08.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.416 of 2018
and
C.M.P.(MD)No.11834 of 2018

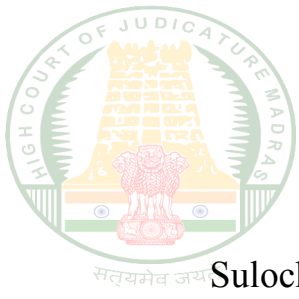
1.Rajendran
2.Pandiyan
3.Ganesan
4.Manickam(died) ... Appellants/Respondents 1 to 3 &5/
Defendants 1 to 3 &5

5.Shanmugam ... Appellant /4th Respondent/ 4th Defendant

(second respondent is transposed
as 5th appellant vide common order
dated 02.06.2025, made in
C.M.P.(MD)Nos.5835 to 5837 of 2025)

6.Chinnathal ... Appellant
(6th appellant is brought on
record as LR of the deceased
4th appellant vide common order
dated 02.06.2025 made in
C.M.P.(MD)Nos.5835 to 5837 of 2025)

VS



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Sulochana

... 1st Respondent/Appellant/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree rendered in A.S.No.102 of 2017 by Sub-Court, Aranthangi, dated 09.07.2018, reversing the judgment and decree rendered in O.S.No.20 of 2006, dated 16.02.2016, by the District Munsif Court, Aranthangi.

For Appellants : Mr.N.Balakrishnan

For Respondent : Mr.M.Rameshkumar

JUDGMENT

The defendants are before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 09.07.2018 in A.S.No.102 of 2017, on the file of the Subordinate Court, Aranthangi, reversing the judgment and decree dated 16.02.2016 in O.S.No.20 of 2006, on the file of the District Munsif Court, Aranthangi.



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3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. The case of the plaintiff is that she has purchased the items 1 to 6 of the suit properties through a registered sale deed dated 21.02.2005 in Ex.A.1 from one Ramasamy, Amirthalingam and Velu for a valuable consideration. Since there was an error that crept in the sale deed in Ex.A.1, the same was rectified through a rectification deed dated 03.03.2005 in Ex.A.2. Pursuant to the purchase, the plaintiff was put in possession of the suit properties and the revenue documents were mutated in her favour and Patta No.528 was also issued. The plaintiff's vendors were paying the taxes for the suit properties prior to the purchase and patta stood in their names for fasli 1395, 1396, 1411, 1412, 1413 and 1414. Pursuant to her purchase, the same has been transferred in favour of the plaintiff and she had been in possession and enjoyment of the suit properties. It is the further case of the plaintiff that on 20.01.2006, the defendants came and interfered with the possession of the plaintiff over the suit properties. As such, the plaintiff had come with the suit seeking for permanent injunction.



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5. The defendants resisted the suit by filing a written statement. They disputed that the properties in S.No.83/3A, 83/3C belonged to three persons, who are claimed to be the vendors of the plaintiff. It is the specific case of the defendants that the first item of the suit properties in S.No.83/3A belonged to one Arunachala Thevar which was purchased by him on 17.07.1963 for a valuable consideration. The legal heirs of the first defendant represented by the first defendant's wife, on 25.07.2005 had purchased that item of the suit properties from the vendor – Arunachala Thevar on 25.07.2005. Further the east of the first item having 37 cents in S.No.83/6 are lying as one plot. The plaintiff did not have any right over the third item of the suit properties, as the vendors do not have any right. Further the third item along with S.No.83/7 was in the long possession of the fifth defendant almost for 25 years and he had planted coconut trees and is in possession, thereby, the claim made by the plaintiff in respect of these properties are not maintainable and sought for dismissal of the suit.

6. During trial, P.W.1 to P.W.3 were examined on the side of the plaintiff and Exhibits A.1 to A.11 were marked. On the side of the



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defendants D.W.1 to D.W.9 were examined and Exhibits B.1 to B.3 were marked. An Advocate Commissioner was appointed and the report, plan along with the Surveyor's plan were marked as Exs.C.1 to C.3.

7. The trial Court, after analysing the evidences, concluded that when the defendants had claimed right over the suit properties, pursuant to a purchase and had raised a cloud on title, the plaintiff ought to have amended the relief seeking for declaration and a suit for mere injunction is not maintainable. The trial Court also on finding that the evidence of D.W.6, who is the vendor of the plaintiff, supports the case of the defendants, had dismissed the suit. On appeal, the lower appellate Court reappraised the evidences and on finding that the defendants have not established any right by filing any registered documents, came to the conclusion that the suit filed by the plaintiff for mere injunction is maintainable and further the evidence of D.W.6 will not enure to the benefit of the defendants, as the same is barred by Sections 91 and 92 of the Evidence Act and thereby allowed the appeal, reversing the judgment and decree of the trial Court and decreed the suit. Assailing the same, the defendants had preferred the above Second Appeal.



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8. The Second Appeal has been admitted on 14.12.2018 for the following Substantial Questions of Law:

“(a) Whether the suit for permanent injunction without the relief of declaration, when the appellants/defendants more particularly 1st appellant/1st defendant claim rival title based on a registered pre-suit sale deed is not maintainable in law and therefore, the judgment and decree of the lower Appellate Court are legally unsustainable in law?

(b) Whether the judgment and decree of lower Appellate Court granting permanent injunction for suit items 1, 3 to 6 based on revenue records Ex.A.2 to A.11 when they do not tally with the ground reality as noticed by the Advocate Commissioner as well as description of property in the Ex.A.1 Sale Deed is vitiated for non-consideration of relevant records and therefore liable to be set aside?

(c) Whether the suit for permanent injunction without seeking the relief of declaration is unsustainable in law and cannot be allowed to stand?

(d) Whether the suit for permanent injunction is not maintainable because the suit items 1, 3 to 6 are not separately identifiable on ground as observed by Advocate Commissioner in his report and plan?”



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9. The learned Counsel appearing for the appellants argued that the lower appellate Court had not considered the report and plan of the Advocate Commissioner in Exs.C.1 and C.2 in proper perspective and thereby the findings rendered are perverse. It is his further contention that when by evidence, the defendants have established that they are in possession of a portion of the properties, which is evident from the report of the Advocate Commissioner, then the relief of injunction for the entire suit properites cannot be sustained. The learned Counsel also contended that when the plaintiff's vendor himself was examined as D.W.6, who had clearly deposed that they had handed over the portion of the suit properites to the defendants, the same has not been considered and thereby the lower appellate Court had reversed the judgment and decree of the trial Court, which is erroneous and perverse and sought for intereferece of this Court.

10. Contending contra, the learned Counsel for the respondent argued that the plaintiff is having a valid title to the suit properites through the purchase made in Ex.A.1 sale deed and the plaintiff had filed the settlement "A" register and the patta issued in favour of the plaintiff along with the adangal extracts issued for the suit properties to evidence the right and

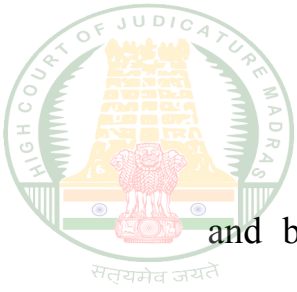


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possession of the plaintiff over the suit properties, which was not properly considered by the trial Court, but however rightly taken note of by the lower appellate Court and decreed the suit, which needs no interference and sought for dismissal of the appeal.

11. Heard the rival submissions and perused the materials available on record.

12. The plaintiff had sought for a decree of permanent injunction in respect of six items of the suit properities. The plaintiff had filed the sale deed dated dated 21.02.2005 executed in her favour in Ex.A.1. Since there was an error, the error was rectified by the plaintiff's vendors by executing the rectification deed dated 03.03.2005 in Ex.A.2. As per the documents in Exs.A.1 and A.2, the plaintiff has become the absolute owner of the suit properties. The settlement "A" register is filed as Ex.A.3 and patta has been filed in Exs.A.9 and A.10. Pursuant to the purchase, the revenue records for the suit properities have been mutated in favour of the plaintiff. The adangal extracts for the fasli 1395, 1396, 1411, 1412, 1413 and 1414 are filed in Exs.A.4 to A.8. The plaintiff, by filing the documents in Exs.A.1 to A.11



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and by examining P.W.1 to P.W.3 had established her right, title and possession over the suit properties.

13. The defendants had only denied the claim on the ground that they have purchased some items of the suit properties. In respect of their claim, the defendants have failed to produce any documents to establish that they have a valid title to the suit properties. The defendants had filed two documents in Exs.B.1 and B.2 which are admittedly unregistered documents. Any transfer of right in an immovable property, having a value of more than Rs.100/- can be only through a registered document, as per Section 17(b) of the Registration Act. Further any document which is mandatory to be registered under Section 17, cannot be received in evidence, as per Section 49 of the Registration Act, except for the collateral purpose contained in the proviso. In the instant case, the defendants have brought two unregistered documents in Exs.B.1 and B.2, which are not admissible in evidence, as they are not registered as per Section 17 of the Registration Act.



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14. The trial Court had originally dismissed the suit on the ground that when the defendants had denied the title of the plaintiff, the plaintiff ought to have sought for amendment of the relief seeking for declaration. However, the lower appellate Court had rightly reversed the same, finding that the defendants have not filed any relevant evidence to establish their right. Though a suit for mere injunction is not maintainable, where a cloud on title has been raised by the defendant, in view of the decision of the Hon'ble Supreme Court in the case of *Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs., and others* reported in (2008)4 SCC 594, only in cases where the defendant has come forward with any valid material asserting his right and the dispute raised is genuine, the plaintiff is required to seek for an amendment for declaration. A mere denial by the defendant without establishing any right will not be sufficient to mandate the plaintiff to seek for a relief of declaration. In the instant case, when the defendants had not asserted their right by any valid documents, the defence raised is a mere denial and the plaintiff having purchased the suit properites through Ex.A.1 and proved her right and title, is entitled to maintain the suit for bare injunction.



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15. Further the trial Court had relied on the evidence of D.W.6, who is one of the vendors of the plaintiff to come to a conclusion that since the vendor of the plaintiff himself had supported the defendants, the suit cannot be decreed. As rightly observed by the lower appellate Court, the vendor of the plaintiff – D.W.6 cannot give evidence contrary to the registered document to which he was a party and the same is barred under Sections 91 and 92 of the Evidence Act. When the plaintiff had establish her right and possession over the suit properties, the defendants had not defended the claim with any valid materials or evidences. The report filed by the Advocate Commissioner in Exs.C.1 and C.2 cannot enure to the benefit of the defendants, as the Advocate Commissioner's report cannot be relied for the purpose of proving the possession. In the absence of any rights established by the defendants and when the plaintiff had proved the right and title over the suit properties, the lower appellate Court had rightly reversed the judgment and decree of the trial Court and decreed the suit.

16. At this stage, the learned Counsel for the appellants submits that even beyond the lands which are suit properties, there are further extents of lands available, which are in enjoyment of the defendants. If there are any



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other properites in their enjoyment beyond the suit properties, it is for the defendants to work out their appropriate remedies in the manner known to law as against such properties.

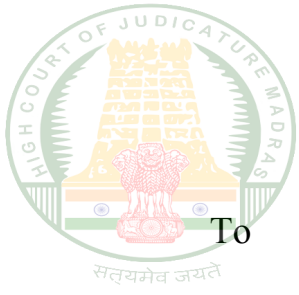
17. This Court does not find any illegality or perversity in the finding rendered by the lower appellate Court. In view of the same, the Substantial Questions of Law are answered as against the appellants and in favour of the respondent.

18. Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

06.08.2025

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

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To

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1. The Subordinate Court, Aranthangi.
2. The District Munsif Court, Aranthangi.
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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