



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No. 318 of 2015

and

M.P(MD)No.1 of 2015

1. V.Mallika
2. V.Shenbagam
3. G.Mallika
4. S.Lakshmi
5. M.Selvakumar
6. P.Muthukrishnan
7. S.Varadhan

...Appellants

Vs.

1. Francis Xavier
2. M.S.Srinivasan
3. Keechalam Traders of Mothi
Imnavurate Sangam,
Chengalpattu District,
Represented by J.Arulraj.



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4. S.Vallinayagam

5. V.Sankaran

6. C.R.Rajasekaran

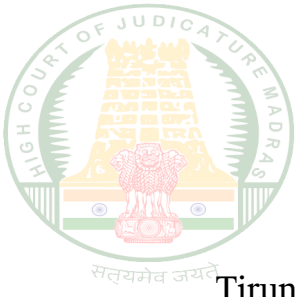
... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to allow this Second Appeal and thereby set aside the Judgment and Decree dated 20.11.2014 passed in A.S.No.110 of 2012 on the file of the Additional Sub Court, Tirunelveli confirming the Decree and Judgment dated 28.06.2012 passed in O.S.No.316 of 2004 on the file of the 2nd Additional District Munsif Court, Tirunelveli, with Costs throughout.

For Appellants : No instructions,
for A-1, A-2, A-4, A-6 & A-7
M/s.D.Vijay Antony, for A-3 & A-5
For Respondents : M/s.J.Jeyakumaran, for R-1
R-2 to R-6 – Dispensed with

JUDGMENT

This Second Appeal is filed by the defendants 3 to 6 and 9, 10, 12 in the suit to set aside the Judgment and Decree dated 20.11.2014 passed in A.S.No.110 of 2012 on the file of the Additional Sub Court,



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Tirunelveli confirming the Decree and Judgment dated 28.06.2012 passed in O.S.No.316 of 2004 on the file of the 2nd Additional District Munsif Court, Tirunelveli.

2. The Defendants 3 to 6, 9, 10 & 12 are the Appellants and the Plaintiff and Defendants 1, 2, 7, 8 and 11 are the Respondents herein. For the sake of convenience, the parties shall be referred to as Plaintiff and Defendants.

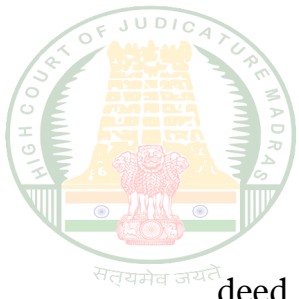
3. The suit in O.S.No.35 of 2000 was filed by the plaintiff for declaration to declare that the Power of Attorney deed, dated 22.06.1990 in favour of the 1st defendant as void abinitio and to declare that the sale deeds executed in favour of the defendants 2 to 12 are not binding on the plaintiff and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.



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4. The brief facts as stated in the plaint are that originally

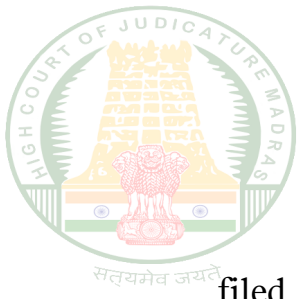
the suit property belonged to one Deva Irakka Nadar son of Nalla Thambi Nadar of Konganthanparai. The plaintiff Francis Xavier purchased from Deva Irakka Nadar vide registered sale deed dated 08.11.1971 and was in possession and enjoyment of the property by fencing the same and by paying kist to the punja land. In the 3rd week of October 2001, the plaintiff was given to understand that few people were claiming rights in the suit property as purchasers, hence the plaintiff verified with the revenue authorities who confirmed about the inclusion of the names of the defendants in 10(1) account recently, then the plaintiff applied for encumbrance certificate on 12.12.2001, to the shock of the plaintiff there were 11 encumbrances which included a power of attorney deed in favour of the 1st defendant executed by the plaintiff on 22.06.1990. But the plaintiff never executed such power of attorney at all, in fact he never knew the 1st defendant at all. Further there is no necessity to execute such POA since the plaintiff was managing his properties and business personally. The 1st defendant is conversant of real estate business, has links with several brokers. On enquiry it came to know that the 1st defendant had fabricated the POA



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deed with the help of henchmen namely O.A.Kaja, S.M.Abdul Ali, M.K.Jameed Masthan and K.Govinda Rao and on 22.06.1990 impersonated the plaintiff by forging the signature, appeared before the Sub Registrar and executed the same. Thereafter had executed sale deed in favour of 2 to 12 and the plaintiff is not aware of the defendants 2 to 12 and none of them are near the suit property or village and the plaintiff was not able to know about them. The 1st defendant has sold portion of the properties and had collected sale proceeds as if he was the owner of the property. Therefore, the power of attorney and sale deeds are illegal and ought to be cancelled and hence the suit.

5. The defendants 4, 5, 6, 9 & 12 had filed written statement denying the averments stated in the plaint, the plaintiff is not entitled to injunction, there is no alternative prayer of recovery of possession, hence the suit for bare injunction is not maintainable. As early as September 2001 S.No.55/1B was sub divided into 11 plots, separate patta was issued, kist has been paid. The suit is filed for two declaration and the suit is not correctly valued, correct court fees not paid. To cause loss and hardship to the defendants the present suit is



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filed. The initials to some defendants are wrongly stated. The defendants had purchased by paying adequate sale consideration and they are bonafide purchasers. There is no police complaint preferred by the plaintiff. The Power of Attorney is true and not fabricated. After 12 years the plaintiff had filed the suit in order to extract money. The plaintiff is aware of possession by the defendants from the date of sale deed and the defendants are in possession openly, continuously without for any interruption to the knowledge of the plaintiff and general public. The Tahsildar had conducted enquiry in the year 1995 when some pattadars names were deleted and the plaintiff attended the enquiry, which fact is suppressed. The plaintiff came to know only in the year 2001 is false. The other allegations are not true. Hence the defendants prayed to dismiss the suit.

6. On the side of the plaintiff Ex.A.1 to A13 were marked and PW 1 & 2 were examined and on the side of the defendants Ex.B1 to B31 were marked and DW1 was examined. The thumb impression report was marked as government document.



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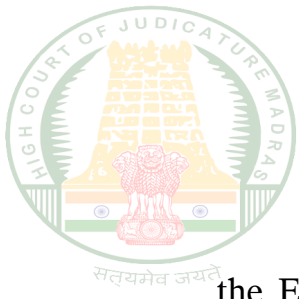
7. The Trial Court after considering the pleadings, exhibits and depositions had rendered a finding that the power of attorney is a forged one and allowed the suit. Aggrieved over the same, the defendant Nos.3 to 6, 9, 10 & 12 had preferred an appeal wherein the Appellate Court had dismissed the appeal. Aggrieved over the same, this Second Appeal is preferred by the defendant Nos.3 to 6, 9, 10 & 12.

8. The second appeal was admitted on the following questions of law:

i. Whether the Courts below have rendered a perverse finding that Ex.A.6 Deed of power of attorney is a forged one?

ii. Whether the Courts below have rendered a perverse finding that the property is in possession of the plaintiff without properly considering the revenue records standing in the name of the defendants?

9. The trial Court as well as the Appellate Court have considered the Ex.A.6 on three grounds. The disputed thumb impression of the plaintiff was compared by the admitted thumb impression. The official who rendered expert opinion also deposed before the Court and had confirmed his opinion. In the opinion, it is categorically stated that



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the Ex.A.2 thumb impression was compared with the admitted thumb impression, wherein it is stated that it is not identical. Based on the expert opinion and based on the deposition, the trial Court has come to the conclusion that the thumb impression has not tallied with the disputed thumb impression.

10. The next contention of the plaintiff is that ordinarily he used to sign in English for which he compared with 1971 document as well as the document submitted before the authorities where he has affixed signature in English.

11. The another contention of the plaintiff is that the plaintiff is residing at No.4,1591. Deluxe Bungalow, Keston Road, Devasam Board Junction, Thiruvananthapuram. But in the fabricated Power of Attorney it is stated that the petitioner is residing at in the year 1990 also the address shown by the plaintiff is residing at Aalvillai, Kalkulam Taluk, Kanyakumari Jilla. The plaintiff never resided in Kanyakumari at all. The plaintiff in order to prove his residence had marked Ex.A7, A8, A9,A10,A11,A12 and A13.



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12. Hence the Trial Court after considering the above evidences and above stated facts had rendered a finding that the Power of Attorney is forged one and the said finding is not perverse. Therefore, the first substantial question of law is answered in favour of the plaintiff and against defendants.

13. The defendants 4, 5, 6, 9 & 12 had stated in the written statement that the power deed is valid and not fabricated and the defendants are bonafide purchasers. Even though the defendants had stated that they are in possession of the property by changing the patta, but the same is not sufficient to prove their possession, since the patta was changed based of fabricated power of attorney and consequential sale deed. On the other hand the plaintiff was in possession of the land right from the purchase and had filed Ex.A3, A4 and A5 kist receipts and 10(1) account. Therefore, this Court is of the considered opinion that the possession of the plaintiff is proved and there is no perverse finding by the Trial Court, consequently the second substantial question of law is answered in favour of the plaintiff and against the defendants.



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Therefore, this Court is not inclined to interfere with the concurrent findings passed by the Courts below.

14. The Learned Counsel appearing for the purchasers submitted that they had filed a separate suit for damages and any observation in the second appeal would affects their rights in the suit for damages. Therefore, this Court is directing the Trial Court to consider the suit independently, uninfluenced by any observations made in the second appeal.

15. The Learned Counsel appearing for the 1st defendant M.S.Srinivasan had submitted that he had filed vakalat for the 1st defendant. It is seen that the 1st defendant had not filed any written statement and had remained set parte throughout, therefore the 1st defendant cannot seek opportunity at second appeal stage to file written statement.



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16. Accordingly, this Second Appeal stands dismissed by confirming the concurrent findings rendered by the Courts below. No Costs. Consequently, connected miscellaneous petition is closed.

27.01.2025

Index : Yes / No

NCC : Yes / No

KSA

TO:

1. The Subordinate Court, Sivagangai.
2. The District Munsif Cum Judicial Magistrate Court, Ilayangudi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Judgment made in
S.A.(MD)No. 318 of 2015

Dated: 27.01.2025