

S.A.(MD)No.379 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 08.08.2025

CORAM:

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.379 of 2025

and

C.M.P.(MD)Nos.12954 and 12955 of 2025

G.Thambidurai

... Appellant/
Appellant/
Defendant

Vs.

R.N.Palanichamy (Died)

1.P.Rajan

2.P.Logambal

... Respondents/
Respondents 2&3/
L.Rs of the
plaintiffs

Prayer : This Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 10.08.2023 passed in A.S.No.11 of 2021 on the file of the Subordinate Court, Melur by confirming the judgment and decree dated 05.01.2019 passed in O.S.No.206 of 2013 on the file of the District Munsif Court, Melur and to allow this appeal.



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For Appellant : Mr.C.Jeya Prakash

For Respondents : Mr.V.Janakiramulu

JUDGMENT

The defendant is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 10.08.2023 passed in A.S.No.11 of 2021 on the file of the Subordinate Court, Melur, confirming the judgment and decree, dated 05.01.2019 passed in O.S.No.206 of 2013 on the file of the District Munsif Court, Melur.

2. For the sake of convenience, the parties are referred to as per the litigative status before the trial Court.

3. It is the case of the plaintiff that he is the absolute owner of the suit property. He borrowed a sum of Rs.80,000/- from one Jeyachandran and allowed him to enjoy the said suit property in lieu of interest without payment of any rent. A varthamana letter 15.03.2001 was also executed in favour of the said Jeyachandran. He paid additional amount of Rs.10,000/- five years ago and again paid a sum of Rs.6,000/-. In all, he paid a sum of Rs.96,000/- to the plaintiff and was enjoying the suit property. The

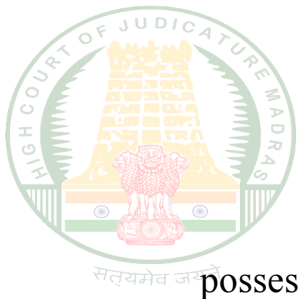


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plaintiff wanted to demolish the entire building with a view to construct a bigger building and requested the said Jeyachandran to vacate by receiving those amount. At this juncture, the defendant has approached the said Jeyachandran and had paid Rs.96,000/- to him and paid Rs.4,000/- to the son of this plaintiff and got made over of the varthamana letter. The defendant is residing in the suit property in lieu of interest of the said sum of Rs.1 lakh. The defendant has also taken lease of another portion of the building in Door No.6. The defendant has not paid rent in respect of the other portion of the property. The plaintiff had requested the defendant to vacate premises as he wanted to demolish the building. He has filed eviction petitions in respect of other tenants. The defendant had refused to receive the amount of Rs.1 lakh and vacate the suit property, when even though the plaintiff approached the defendant on 10.06.2013 personally and requested to receive those amount and vacate. As such the plaintiff has come up with this suit to direct the defendant to receive the amount and vacate the portion of the suit property.

4. The defendant resisted the suit admitting that the plaintiff had received a sum of Rs.96,000/- from one Jeyachandran and put him in



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possession of the suit property. Based on which, the said Jeyachandran was in enjoyment without paying any rent in lieu of interest. However, it is the contention of the defendant that he had paid Rs.96,000/- to the said Jeyachandran and further paid a sum of Rs.54,000/- to the plaintiff's son on 18.06.2011 and therefore, in all, he paid a sum of Rs.1,50,000/-. The defendant disputes that the plaintiff is going to demolish and construct a building. The plaintiff has never requested to hand over the possession by offering to return the amounts and he sought for dismissal of the suit.

5. During trial, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A4. On the side of the defendant, the defendant examined himself as D.W.1 and Jeyachandran as D.W.2 and marked Ex.B1. The trial Court, after analyzing the documents and evidences, came to the conclusion that the plaintiff is the absolute owner of the suit property and had decreed the suit. The trial Court also noted that the plaintiff having deposited the sum of Rs.1 lakh and also obtained the building plan approval, the defendant is entitled to receive those amount and vacate and hand over the possession within two months. The trial Court has also taken note of the categorical admission of the defendant that he will vacate

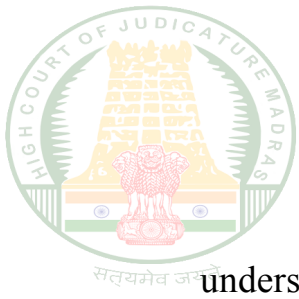


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and hand over the possession of the suit property on receiving the amount given by him. On appeal, the lower appellate Court, after reappraising the evidences, came to the conclusion that when the defendant has admitted that he paid Rs.96,000/- to D.W.2-Jeyachandran and got possession of the property except the admission of the plaintiff that his son received Rs.4,000/-, the defendant has not produced any evidence that any excess money of Rs.1 lakh was paid. Further, the appellate Court, by recording the admission of the defendant that on receipt of the amount, he will vacate the property, came to the conclusion that no further interference was required and confirmed the finding of the trial Court and dismissed the appeal. Assailing the concurrent finding on facts, the defendant has preferred the above Second Appeal.

6. The learned counsel appearing for the appellant argued that the defendant apart from paying Rs.96,000/- to D.W.2 had paid a sum of Rs.54,000/- to the plaintiff's son which has not been taken into account by the Courts below. The learned counsel further contended that in view of the application filed in C.M.P.(MD)No.12955 of 2025 seeking to file additional document under Order 41 Rule 27 C.P.C., there is



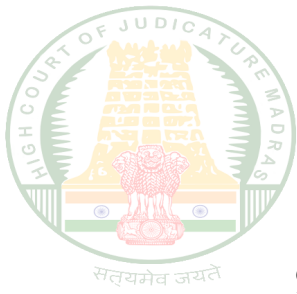
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understanding between the plaintiff's son and a third party in respect of selling the suit property and therefore, if the plaintiff's son is ready to sell, the defendant can very well purchase the same and those additional document would be crucial to consider the merits in the above Second Appeal. It is the further contention that even though the suit property is in respect of Door No.5, now the respondents are seeking to take relief more than the suit property. The Courts below have not considered those aspects. Therefore, the findings rendered by the Courts below are perverse and as such may be interfered with by this Court.

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

8. Admittedly, the plaintiff is the absolute owner of the suit property. The plaintiff had filed the sale deed dated 22.04.1965 in Ex.A1 and filed the property tax receipts in Ex.A2. The plaintiff being owner wanted to construct a building in the suit property and also filed a document in Ex.A4, which is the building permission.

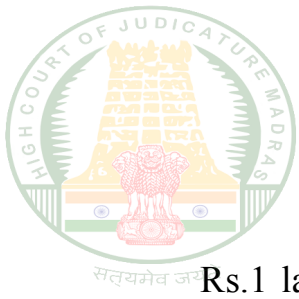


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9. The plaintiff had come up with this suit since the defendant, who is in possession of the suit property, which was handed over to him by one Jeyachandran, who was originally put in possession of the suit property on receipt of sum of Rs.96,000/- as loan by executing a varthamana letter in Ex.A3. The plaintiff had executed a varthamana letter in favour of the said Jeyachandran and based on which, the possession of the suit property was handed over to him on receipt of sum of Rs.96,000/- and the defendant was allowed to enjoy the suit property without payment of any rent in lieu of interest.

10. The plaintiff when he requested the said Jeyachandran to vacate, he was not able to immediately return the sum of Rs.96,000/- and the defendant herein had come forward and paid those amount to the said Jeyachandran. By paying a sum of Rs.96,000/-, he had made over the varthamana letter in his favour and based on which, he took the possession of the suit property. He had paid further Rs.4,000/- and in all a sum of Rs.1 lakh is due, payable by the plaintiff to the defendant. There is no dispute among the parties that there is no tenancy or any other relationship between the parties except the fact that the defendant by paying a sum of



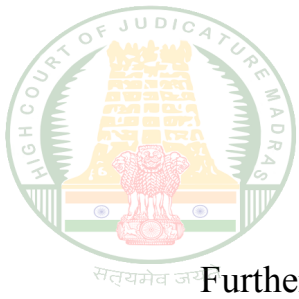
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Rs.1 lakh is in possession of the suit property, which he paid to the said Jeyachandran, who was originally inducted in the suit property. The defendant only contents that another Rs.50,000/- was given to the son of the plaintiff. In this regard, the defendant has not given any oral or documentary evidence to the effect that any additional sum of Rs.50,000/- was paid to the plaintiff's son. When the defendant comes with such claim then it is for the defendant to discharge his burden to prove the fact that such an additional sum of Rs.50,000/- was paid.

11. From the materials available on record, the plaintiff is the absolute owner of the suit property and the defendant is not a tenant but he is in possession of the suit property only in view of varthamana letter on payment of sum of Rs.1 lakh and in lieu of interest.

12. It is to be noted that, the defendant, who had examined himself as D.W.1 categorically admitted in his evidence that he is in possession of the property only based on the varthamana letter executed by the plaintiff with the said Jeyachandran and on payment of amount of Rs.96,000/- to the said Jeyachandran, the defendant was put in possession of the property.



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Further, the defendant had categorically admitted that if the amount paid by him is deposited in the Court and is permitted to withdraw, he will vacate and hand over the suit property. The defendant had also admitted that the plaintiff had come up with this suit seeking for handing over the possession of the suit property and he is prepared to hand over the same on receipt of amount. When the defendant had admitted these facts and also had come forward and admitted that on deposit of the amount, he will vacate and hand over the suit property, the Courts below have rightly considered the evidences and rendered concurrent findings in favour of the plaintiff.

13. In so far as the application filed in C.M.P.(MD)No.12955 of 2025 is concerned, which is filed under Order 41 Rule 27 C.P.C., even though the appellant is entitled to file additional documents in the appeal, but unless the documents filed come within the four corners of Order 41 Rule 27 C.P.C., the same cannot be accepted and received as additional documents in appeal. A perusal of the document filed reveals that it is a document executed by the plaintiff's son with some third parties. This document is no way relevant to the suit, which is required in deciding the



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above Second Appeal.

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14. In view of the fact that the Courts below rendered concurrent findings based on the materials available, this Court does not find any illegality or perversity in the findings rendered. No substantial question of law arises for consideration to entertain this Second Appeal.

15. Accordingly this Second Appeal is dismissed. Consequently, connected miscellaneous petition in C.M.P.(MD)No.12955 of 2025 is rejected and the petition in C.M.P.(MD)No.12954 of 2025 is closed. No costs.

08.08.2025

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

To:

- 1.The Subordinate Judge,
Melur.
- 2.The District Munsif Judge,
Melur.



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3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in
S.A.(MD)No.379 of 2025
and
C.M.P.(MD)Nos.12954 and 12955 of 2025

Dated : 08.08.2025