

S.A(MD)No.116 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATE : 01.07.2025

CORAM:

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A(MD)No.116 of 2025
and
C.M.P(MD)No.3603 of 2025

P.Petchiyammal

Appellant/Appellant /Defendant

Vs.

P.Parvathy

: Respondent/ Respondent /
Plaintiff

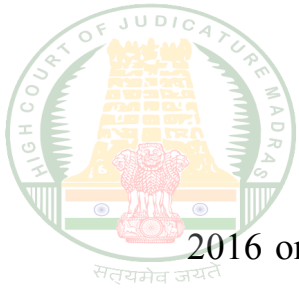
Prayer : Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the lower Appellate Court, dated 04.03.2024 made in A.S.No.15 of 2016 on the file of the Court of Subordinate Judge, Uthamapalayam, Theni District, confirming the decree and judgment, dated 21.11.2014 made in O.S.No.105 of 2013 on the file of the Court of District Munsif, Uthamapalayam, Theni District.

For Appellant : Mr.J.Priscilla Pandian

For Respondent : Mr.V.George Raja,
for M/s.Ajmal Associates.

JUDGMENT

The unsuccessful defendant is before this Court on appeal. The appeal is filed against the judgment and decree, dated 04.03.2024 in A.S.No.15 of



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2016 on the file of the Court of Subordinate Judge, Uthamapalayam, Theni District, confirming the judgment and decree, dated 21.11.2014 in O.S. No.105 of 2013 on the file of the District Munsif Court, Uthamapalayam, Theni District.

2. For the sake of convenience and brevity, the parties herein will be referred as per their status/ranking in the trial Court.

3.It is the case of the plaintiff that originally the suit properties belong to one Balagurusamy his father and he has gifted the property in favour of the plaintiff under the gift deed, dated 16.02.1979 in Ex.A1. Based on the gift deed, the plaintiff is in the exclusive possession and enjoyment of the suit property. It is the further case of the plaintiff that through a sale, 18 cents of land lying on the southern side was sold to one Pandiyan and Chinnaiyan and leaving out the sold portion, remaining 1 acre and 40 cents continue to be in possession of the plaintiff.

4.It is the further case of the plaintiff that the defendant, who has no right over the suit property attempted to interfere with the possession of the plaintiff on 10.04.2013, due to which, the plaintiff had lodged a complaint



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on 11.04.2013 before the Odaipatti Police Station and thereafter, has come with the suit for permanent injunction.

5. The defendant resisted the suit by filing a written statement contending that they had been in possession of the suit property as a cultivating tenant from 01.01.1997 and they have been paying rent of Rs.2,000/- per year. It is the further case of the defendant that they have also filed an application before the Tahsildar, Uthamapalayam on 20.03.2009 to register her as cultivating tenant. However, the said application was closed as treating it as misplaced in Ex.B.24. Thereafter, the defendant had also filed further application before the Revenue Divisional Officer and the enquiry is pending.

6. It is the further case of the defendant that a power deed has been executed in favour of one Chandraraj in Ex.B.2 and based on which, a registered sale agreement has also been executed in favour of one Thamotharan on 26.03.2009 in Ex.B.3. Based on the sale agreement, the said Thamotharan has also filed the suit in O.S.No.95 of 2010 as against the present defendant from interfering with the possession of the property. The said suit came to be dismissed on 13.08.2012 by judgment and decree in



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Ex.B.23 as such, contending that the defendant is a cultivating tenant, she sought for dismissal of the suit.

7. During trial, the first plaintiff examined herself as P.W.1 and her husband as P.W.2 and marked exhibits as Ex.A.1 to Ex.A.6. On the side of the defendant, the defendant examined herself as D.W.1 and further examined D.W.2 to D.W.5 and marked exhibits as Ex.D.1 to Ex.D.24.

8. The trial Court, after analyzing the documents and evidences, decreed the suit. The trial Court mainly came to the conclusion by placing reliance on the evidence of the plaintiff and her husband as P.W.1 and P.W.2 that since the categorical finding has been rendered in earlier judgment in Ex.B.23 holding that the defendant therein is not a cultivating tenant and further, it was held that the sale agreement entered into with the defendant has been time barred, holding that the same defence cannot be taken in the present suit had thereby decreed the suit.

9. The lower appellate Court also dismissed the appeal preferred by the defendant by confirming the judgment and decree of the trial Court. The lower appellate Court agreed with the finding that when once the defendant



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had taken a stand that she is a cultivating tenant in the earlier suit, which has been negatived and no further appeal is filed there, the defendant cannot take the same claim in the present suit.

10. Assailing the concurrent finding of the fact, the defendant is before this Court.

11. The appeal has not been admitted. The learned counsel appearing for the appellant argued that when the defendant had entered into possession of the suit property as a cultivating tenant and thereafter, had entered into a sale agreement with the plaintiff in Ex.B.10 on 08.03.2004, the defendant continue to remain in the possession of the suit property.

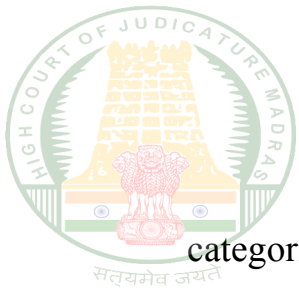
12. It is the further contention of the learned counsel that when the agreement was subsisting and the defendant was in possession of the suit property, the plaintiff had further executed a power of attorney in favour of one Chandarraaj and entered into a fresh sale agreement with one Thamotharan. The said agreement holder Dhamodharan had earlier filed a suit in O.S.No.95 of 2010 as against this defendant and ultimately, the suit came to be dismissed. It is the vehement contention of the learned counsel



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that once such a suit came to be dismissed and in that suit the plaintiff and the husband had given evidence admitting the agreement entered into with this defendant and also the receipt of the part sale consideration, the defendant is entitled to protect the possession and the present suit filed by the plaintiff seeking for permanent injunction cannot be sustained. But, However the Courts below only by relying on the proceedings in an earlier suit had erroneously decreed the suit, which are perverse and sought for interference of this Court.

13. Per contra, the learned counsel appearing for the respondent contended that the defendant had taken two inconsistent stands, one is that she is entitled to be in possession based on a sale agreement, dated 08.03.2004, which is admittedly time barred and she has not taken any proceedings based on that agreement and further it is the claim of the defendant that she had been put in possession as a cultivating tenant in the year 1997. These two pleas are contrary and in fact to claim such a right, the defendant had approached the competent authority and the applications since came to be refused, she has not chosen to take any further proceedings. It is the further contention of the respondent that even in the earlier suit filed as against the defendant, the Court by the judgment in Ex.B.23 had given a



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categorical finding that the defendant is not a cultivating tenant and therefore, the Courts below have rightly decreed the suit by rejecting the claim of the defendant, which are based on the available materials and evidences and needs no interference and sought for dismissal of the appeal.

14. Heard the rival submissions and perused the materials available on records.

15. Admittedly, the suit property originally belonged to one Balagurusamy and the said Balagurusamy had executed a registered gift deed, dated 16.02.1979 in favour of the plaintiff in Ex.A.1. Out of the said portion, 18 cents of land has been sold by the plaintiff and the balance one acre and 40 cents admittedly belongs to the plaintiff.

16. The plaintiff had come up with the suit seeking for permanent injunction as against the defendant on the ground that the defendant, who has no right over the suit property is attempting to interfere with the possession. The plaintiff had also lodged a complaint as against the defendant and thereafter, had come up with the suit.



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WEB COPY 17. It is the defence of the defendant that she had been put in possession of the suit property as a cultivating tenant as early as on 01.01.1997 and she is paying the rent of Rs.2,000/- per year. The defendant has also claimed that she has further entered into a sale agreement with the plaintiff on 08.03.2004 in Ex.B.10. As per the sale agreement, the sale consideration was fixed at Rs.3,55,000/- and an advance of Rs.66,000/- has been paid to the plaintiff and the possession of the suit property was handed over to the defendant. As such, the defendant had taken a stand that she was in possession of the suit property from the year 1997 as a cultivating tenant and secondly she had entered into a sale agreement on 08.03.2004 in Ex.B.10 and the possession was handed over in pursuance of the sale agreement. When the defendant had taken such two contrary stands, it is for the defendant to establish that she has been put in possession of the suit property by leading evidence in respect of any one claim, which she prefers to elect.

18. Admittedly, the sale agreement, dated 08.03.2004 has not been proceeded with and any suit seeking for specific performance ought to have filed within a period of three years i.e., on or before 07.03.2007. Admittedly,



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the defendant had not chosen to come with a suit for specific performance based on the sale agreement in Ex.B.10 and therefore, the sale agreement, dated 08.03.2004 has lapsed and any relief to be sought for under the agreement is time barred. As such, the defendant had chosen to continue with her claim based on the possession handed over in the year 1997 and she is a cultivating tenant. In respect of her claim admittedly, the defendant had filed an application before the Tahsildar, Uthamapalayam on 20.03.2009 to register her as a cultivating tenant. Such an application was refused and it has been returned as misplaced.

19. In the further appeal before the Revenue Divisional Officer (RDO), the RDO had issued a letter calling for the defendant to appear for enquiry and such a letter has also been filed before the Court and marked as Ex.B.15. Even though notice issued by the RDO has been marked as Ex.B.15, there is no further proceedings or any order passed by the Revenue Divisional Officer filed in the Court. As such, admittedly, no final order has been passed by the competent authority by registering the defendant as a cultivating tenant. Though such an application came to be filed and notice came to be issued by the authorities, by such documents alone it cannot be construed that the defendant was put in possession of the suit property as a



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cultivating tenant. Any claim as a cultivating tenant is governed by the provisions of Tamil Nadu Cultivating Tenants Protection Act 1955 and the person is entitled to claim as a cultivating tenant only if they come within the purview of the provisions of the Act.

20. It is to be noted that pending these proceedings, the plaintiff had earlier issued a power of attorney in favour of one Chandarraaj on 30.10.2005 in Ex.B.2. Based on the power of attorney, he has entered into a sale agreement in favour of one Thamotharan. Contending that the defendant herein is interfering with the suit property, the said Thamotharan had filed the suit in O.S.No.95 of 2010 on 27.04.2010 as against this defendant. The copy of the plaint has been filed as Ex.B.1. In the suit filed as against this defendant, the plaintiff and her husband had let in evidence as P.W.3 and P.W.4. After trial and contest, the suit in O.S.No.95 of 2010 came to be dismissed on 13.08.2012 and the copy of the judgment and decree is marked as Ex.B.22 and Ex.B.23 respectively.

21. The perusal of the judgment in Ex.B.22 and Ex.B.23 would go to show that the trial Court in the earlier suit had given a categorical finding as against this defendant that the sale agreement, dated 08.03.2004 entered into



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by the defendant with the plaintiff in Ex.B.10 lapsed and become time barred and also further specific finding had also been given that the defendant is not a cultivating tenant. In effect a stand taken by the defendant in this suit that he is a cultivating tenant has already been negatived and such a claim came to be rejected in the earlier suit as early as in the year 2012 in Ex.B.22 and Ex.B.23. Admittedly, the defendant has not chosen to prefer any further appeal as against such a categorical finding in the earlier suit.

22. When admittedly, the defendant has not contested or filed an appeal as against such a finding in the earlier suit, definitely the defendant cannot plead the same and take the defence that she is a cultivating tenant in the suit property and she is in possession. The Courts below have rightly considered the documents filed by the plaintiff and also the evidence let in by marking the judgment and decree passed in the earlier suit and rendered the concurrent finding of the fact that the claim of the defendant is not be accepted and the plaintiff having proved title to the suit property through Ex.A.1, is entitled for the relief of consequential injunction.

23. In view of the concurrent findings, which are based on the materials available on records, this Court does not find any illegality or



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perversity in the finding arrived at by the Courts below. No substantial questions of law arises for consideration in this appeal.

24. Accordingly, the Second Appeal stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

01.07.2025

To

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



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G.ARUL MURUGAN ,J.

DAS

Order made in
S.A(MD)No.116 of 2025
and
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Dated : 01.07.2025