

S.A.(MD)No.462 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 28.10.2024

Pronounced On: 08.05.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.462 of 2017

S.Murugan

... Appellant / Appellant /

2nd Defendant

Vs.

1.Arjuna Finance by its Managing Partner

P.Shanmugam,

S/o.Palaniyandi Pillai,

No.556, Theradi Kadai,

Tiruchirappalli-2.

A.Duraisamy (Died)

S/o.Arunachalam.

2.D.Siva Subramanian

S/o.A.Duraisamy Pillai,

By his power agent,

S.Ravi,

S/o.Subbaiah Pillai,

23, Williams Road,

Trichy-1.

... Respondents 1 to 2 / Respondents 1 to 3 /
Plaintiffs

3.Gandhimathi

1/12



S.A.(MD)No.462 of 2017

WEB COPY

4.Annalakshmi

5.Manimekalai

6.Dhanalakshmi

7.S.Kannan

8.S.Tamilarasan

9.S.Saravanan

S.Kumaran (Died)

S/o.Srinivasan

10.S.Sakthivel

11.S.Natarajan

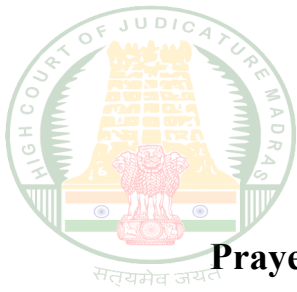
12.Natchimuthu

13.Nagarajan

14.Balu Sweet Stall,
Residing at Sannadhi Street,
Thiruvanaikoil,
Tiruchirappalli.

... Respondents 3 to 14 /
Respondents 4 to 10, 12 to 16 /
Defendants 3 to 9, 11 to 15

(Respondents 2 to 10 and 12 and 13 stood exparty before the Appellate Court and Trial Court. Hence notice dispense with)



S.A.(MD)No.462 of 2017

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed by the learned Principal District Judge, Tiruchirappalli in A.S.No.2 of 2016 with I.A.No.16 of 2017, dated 22.02.2017 confirming the Judgment and Decree of learned Second Additional Subordinate Judge, Tiruchirappalli in O.S.No.168 of 1998, dated 19.02.2013.

For Appellant : Mr.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivu Kumar

For Respondents : Mr.Raguvaran Gopalan
for Mr.K.Prabhakar
for R1

: Mr.R.Sundar
for R11

: R2 to R10, R12 & R13 – exparte.

JUDGMENT

The second defendant in O.S.No.168 of 1998 on the file of the second Additional Sub Court, Trichirappalli is the appellant in this appeal. The suit was filed by the three plaintiffs claiming declaration of title over A, B & C schedules and for recovery of possession.



S.A.(MD)No.462 of 2017

Seethalakshmi / first defendant filed written statement controverting the plaint averments. The appellant herein is one of her sons. The suit was decreed by the trial Court on 19.02.2013. Aggrieved by the same, Murugan / second defendant filed A.S.No.2 of 2016 before the Principal District Court, Trichirappalli. The first appellate Court vide Judgment and decree dated 22.02.2017 dismissed the appeal. Challenging the same, this second appeal came to be filed. The second appeal was admitted on 25.10.2017 on the following substantial questions of law:-

“1. Whether the courts below are correct in decreeing the suit holding that defendant has not disprove the case of the plaintiff?

2. Whether an affidavit filed by a third party in a proceedings under Indian Succession Act can be taken to decide the question of title especially when it was not considered by the Hon'ble Court?

3. Whether the Court fee paid is adequate when there is a building admittedly in the suit property?

4. Whether the subsequent sale deed for vacant site can be termed as valid document when the previous sale deed mentions existence of buildings?”

2. The learned senior counsel appearing for the appellants reiterated all the contentions set out in the grounds of appeal and called



S.A.(MD)No.462 of 2017

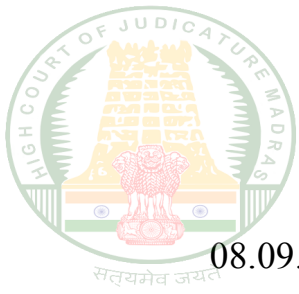
upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned Judgment and decree passed by the courts below.

3. Per contra, the learned counsel appearing for the plaintiffs submitted that the impugned Judgments are well reasoned and that they do not call for interference. He pressed for dismissal of the second appeal.

4. I carefully considered the rival contentions and went through the evidence on record.

5. The plaint averments are as follows:-

The suit schedule properties belonged to Munia Pillai Charity Trust. One Jayagopal was appointed as its trustee in the year 1977. The said Jayagopal filed O.P.No.123 of 1982 seeking permission to sell the suit properties and other adjacent properties. An advocate commissioner was appointed and eventually, the suit items were sold in favour of one R.S.House Private Limited vide registered sale deed dated



S.A.(MD)No.462 of 2017

08.09.1986. The said purchaser sold “A” schedule property in favour of the first plaintiff vide sale deed dated 21.04.1994. “B” schedule property was sold in favour of the second plaintiff and “C” schedule property was sold in favour of the third plaintiff under registered sale deeds dated 27.06.1995. In the meanwhile, Seethalakshmi claiming right over the suit schedule properties filed an injunction suit in O.S.No.2195 of 1998 to restrain R.S.House Private Limited to interfere with the possession and enjoyment of the suit properties. She even obtained an exparte interim order. According to the plaintiffs, she trespassed into the suit property on the strength of the said interim order. Seethalakshmi also managed to obtain mutation of revenue records in her favour. The plaintiffs allege that she was able to do so because her husband's name was Srinivasan and the earlier trustee of Munia Pillai Charity Trust was also one Srinivasan. In fact, Seethalakshmi's husband was also appointed as agent to manage the properties of the Trust. When R.S.House Private Limited came to know about the mutation, they got it annulled vide order dated 21.12.1990 passed by the Tahsildar, Trichy. Since Seethalakshmi questioned the plaintiffs' title, the plaintiffs chose to file a comprehensive suit for declaration, recovery of possession and for future mesne profits.



S.A.(MD)No.462 of 2017

Seethalakshmi filed written statement questioning the maintainability of the suit. She took the stand that the suit items were never conveyed in favour of the plaintiffs. According to her, the superstructures on the vacant site were built by her husband and that he was in possession of the suit property as his own. Following his demise, the suit property devolved on her and her children (D2 to D11). The other defendants are tenants under D1 to D11. Based on the rival pleadings, the trial Court framed the necessary issues. As many as three witnesses were examined. Ex.A1 to Ex.A13 were marked. On the side of the defendants, two witnesses were examined and Ex.B1 was marked. As already mentioned, the trial Court decreed the suit as prayed for. The first appellate Court dismissed the same. Before the first appellate Court, on the side of the plaintiffs, Ex.A14 to Ex.A20 were also marked by way of additional evidence. Even though the defendants have pleaded that Seethalakshmi's husband Srinivasan put up superstructures and was in possession of the suit property as his own, not even a scrap of evidence was adduced to trace their title. The plaint in O.S.No.875 of 1982 on the file of the second Additional District Munsif Court alone was marked as Ex.B1. The extract from the property tax register was marked as Ex.C1. On the



S.A.(MD)No.462 of 2017

other hand, the plaintiffs marked Ex.A1 dated 21.04.1994, Ex.A6 & Ex.A7 dated 27.06.1995. These three sale deeds had been executed by R.S.House Private Limited in favour of the plaintiffs 1 to 3 respectively in respect of the suit schedule A, B & C. The plaintiffs have also marked Ex.A2 dated 18.08.1977, whereby, the Madras High Court appointed C.Jayapaul as trustee for the said Trust. Ex.A3 dated 20.12.1984 is the order passed by the High Court in O.P.No.123 of 1982 granting permission to sell the suit items.

6. What clinches the case in favour of the plaintiffs is Ex.A9 – affidavit filed by Seethalakshmi in O.P.No.123 of 1982. She had categorically stated therein that she has leasehold interest in the suit items and hence, she is a necessary party to O.P.No.123 of 1982. This application was dismissed. Thus, Seethalakshmi has taken two contradictory stands. One is that she is having leasehold interest in the suit property. This submission was made in the form of affidavit before the High Court in O.P.No.123 of 1982. On the other hand, in the written statement filed in the present suit, she claims that her husband was in occupation of the suit property as his own property. But she had not



S.A.(MD)No.462 of 2017

made any attempt to independently trace his title. In civil proceedings, the standard of proof is one of preponderance of probability. Therefore, the courts below rightly held that the plaintiffs have proved their case. I therefore answer the substantial questions of law 1 & 2 against the appellant.

7. The learned senior counsel appearing for the appellant pointed out that since there is a building standing on the suit property, the court fee paid is incorrect. There is not much force in this contention. The courts below have concurrently held that the suit has been properly valued. Hence, in exercise of jurisdiction under Section 100 of C.P.C, the question of non-suiting the plaintiffs on the ground of valuation will not arise at all. The third substantial question of law is also answered against the appellant.

8. If according to the appellant, the sale deed in the name of the plaintiffs is not valid, he must have raised a counter claim. When the plaintiff has not raised any counter claim, the substantial question of law cannot really arise for consideration. Hence, the fourth substantial



S.A.(MD)No.462 of 2017

question of law is also answered against the appellant.

WEB COPY

9. The courts below have concurrently held against the appellant.

Even according to the appellant, he is tracing his right only from his father Srinivasan. Srinivasan had as many as 7 legal heirs. Others have chosen to keep quiet. The appellant alone who figured as the second defendant has filed this appeal. The learned counsel for the plaintiffs would question the very maintainability of the appeal at the instance of one of the legal heirs. I am of the view that this issue need not be gone into as all the substantial questions of law formulated has been answered against the appellant. There is no merit in the appeal. The second appeal stands dismissed. No costs.

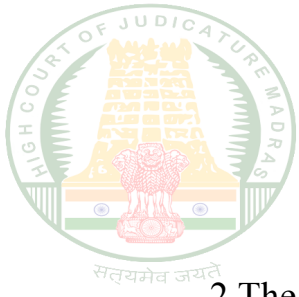
08.05.2025

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

To:

1. The Principal District Judge, Tiruchirappalli.

10/12



S.A.(MD)No.462 of 2017

2.The Second Additional Subordinate Judge, Tiruchirappalli.

WEB COPY

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.462 of 2017

G.R.SWAMINATHAN, J.

rmi

S.A.(MD)No.462 of 2017

08.05.2025