

S.A.Nos.1105 & 1106 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 02.07.2025

JUDGMENT PRONOUNDED ON : 24.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.Nos.1105 & 1106 of 2002

S.A.No.1105 of 2002

R.Thirugnanasambandamoorthy ...appellant / appellant/ 3rd defendant

Vs.

1.N.Durai1st Respondent /1st Respondent
/Plaintiff

2.M.Govindaraj

3.R.RamadossRespondents 2 & 3/Respondents 2 & 3
/Defendants 1 & 2

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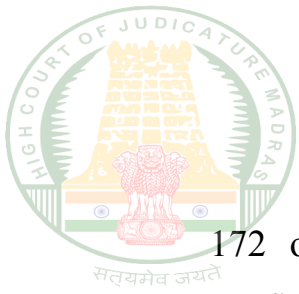
R.Thirugnanasambandamoorthy ...Appellant/Appellant/Plaintiff

Vs.

1.R.Ramadoss

2.N.Durai ...Respondents/Respondents/Defendants

PRAYER in S.A.No.1105 of 2002: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 20.12.2001 made in A.S.No.



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172 of 2001 on the file of the II Addl.District Judge, Tiruchirappalli confirming the judgment and decree dated 09.04.2001 made in O.S.No.32 of 1990 on the file of the II Addl.District Munsif Court, Tiruchirappalli.

PRAYER in S.A.No.1106 of 2002: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 20.12.2001 made in A.S.No. 173 of 2001 on the file of the II Addl.District Judge, Tiruchirappalli confirming the judgment and decree dated 09.04.2001 made in O.S.No.1437 of 1994 on the file of the II Addl.District Munsif Court, Tiruchirappalli.

For Appellant : Mr.M.Kannan
in both appeals

For Respondents : Mr.R.Devaraj for R1 in SA.No.1105 of 2002
& R2 in SA.No.1106 of 2002

: No appearance for R2 & R3 in SA.1105 of 2002

:No appearance for R1 in SA.No.1106 of 2002

COMMON JUDGMENT

One Thirugnanasambanda Moorthy who is the plaintiff in a suit for declaration and permanent injunction and a third defendant in another suit for permanent injunction is the appellant herein.

(A)Factual Matrix:

2.The suit schedule property in both the suits are one and the same and it was initially owned by one A.Krishnamurthy. The said A.Krishnamurthy had borrowed loan from M/s.Ajantha Trading Corporation. The said



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corporation had filed O.S.No.467 of 1972 for recovery of the loan amount.

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Pending suit, an order of interim attachment of the suit schedule property was passed in I.A.No.378 of 1972 on 23.06.1972. The attachment was made absolute later on 29.06.1972. While the order of interim attachment was in force, the said Krishnamurthy has executed a registered sale deed in favour of Murugan Bankers under Ex.A1 on 04.10.1972. The Murugan Bankers in turn has sold the property in favour of Durai who is the plaintiff in O.S.No.32 of 1990 under Ex.A2 dated 18.11.1972.

3.The property was brought to Court auction in E.P.No.871 of 1974 and auction was held on 12.02.1975. One Mr.N.Govindaraj was the successful purchaser. The said sale was confirmed and a sale certificate was issued in his favour on 23.04.1976.

4.The auction purchaser (Govindaraj) had entered into a sale agreement with one Ramadoss on 07.03.1983 under Exhibit B1. Thereafter, the auction purchaser/Govindaraj has executed a registered release deed in favour of the original owner/judgement debtor namely A.Krishnamurthy under Ex.B2 on 04.04.1983. Based upon the said release deed, the said Krishnamurthy had executed a registered power deed in favour of one Ramadoss under Exhibit B18 on 25.09.1989. Thereafter, the said Ramadoss had executed a registered sale deed in favour of Thirugnanasambanda Moorthy (who is the appellant in the present appeal) on 15.03.1994 under Ex.B10.



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5. Based upon the sale deed dated 18.11.1972, Durai had filed O.S.No. 32 of 1990 as against M.Govindaraj, Ramadoss and Thirugnanasambanda Moorthy seeking a prayer for declaration of title and permanent injunction. Relying upon Exhibit B10 sale deed dated 15.03.1994, Thirugnanasambanda Moorthy had filed O.S.No.1437 of 1994 seeking permanent injunction. Both the suits were tried together and a common judgment and decree was passed by the trial Court. The trial Court proceeded to decree the suit in O.S.No.32 of 1990 filed by N.Durai as prayed for and dismissed O.S.No.1437 of 1994 filed by Thirugnanasambanda Moorthy. The said Thirugnanasambanda Moorthy had filed A.S.No.172 and 173 of 2001 before the District Court, Trichy challenging the judgment and decree passed by the trial Court in both the suits. The First Appellate Court had dismissed both the appeals filed by Thirugnanasambanda Moorthy. Challenging the concurrent findings, the present second appeals have been filed by Thirugnanasambanda Moorthy.

6. The second appeals were admitted on the following substantial question of law:

“Whether the judgments and decrees of the Courts below are sustainable in law as they have not appreciated the entire evidence available on record and the correct proposition of law applicable to the facts of the case? “



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(B)Submissions on the side of the counsels appearing on either side are as follows:

7.The learned counsel appearing for the appellant submitted that the sale deed executed by Krishnamurthy under Ex.A1 in favour of Murugan Bankers on 04.10.1972 is a void document, in view of the fact that an order of attachment made by the trial Court was subsisting. In such circumstances, the said Murugan Bankers cannot pass on any title to Mr.N.Durai (the plaintiff in O.S.No.32 of 1990) under Ex.A2 dated 18.11.1972.

8.The learned counsel for the appellant had further submitted that before purchasing the property, he had applied for encumbrance certificate and the same has been marked as Exs.B31 and B32. Those encumbrance certificates do not reflect Exs.A1 or A2 sale deeds. Therefore, the appellant is a bonafide purchaser for valuable consideration without having any knowledge about the prior sale.

9.The learned counsel had further stated that the First Appellate Court has erroneously invoked the principle of feeding the grant by estoppel under Section 43 of Transfer of Property Act. According to him, when the appellant is a bonafide purchaser for valuable consideration, the title would not get conferred on Murugan Bankers. The learned counsel had further stated that in view of Section 64 of C.P.C, the private sale made by Krishnamurthy in favour of Murugan Bakers under Ex.A1 is void. When the sale deed is void,



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the same cannot be validated by invoking the principles of feeding the grant by estoppel, in view of the fact that there is no estoppel as against the statute.

10.The learned counsel appearing for the appellant had further stated that Ex.B12 sale certificate dated 16.02.1976 reveals various encumbrances to be cleared by the auction purchaser. Those encumbrance have been cleared by Ramadoss under Exs. B13 to B16. Therefore, it is clear that the encumbrances specified in the sale certificates have been cleared by the said Ramadoss before alienating the property in favour of appellant under Ex.B10 on 15.03.1994.

11.The learned counsel for the appellant had relied upon a judgment of the Hon'ble Supreme Court reported in **(2013) 14 SCC 689 (Jehal Tanti and others Vs. Nageshwar Singh (dead) through legal heirs)** to contend that when an alienation is made in the teeth of an order of injunction passed by the trial Court, the object or consideration has to be considered to be unlawful and therefore, the sale would be void. In the present case, according to him, the sale, having been made in violation of the attachment order, is void and therefore, Section 43 of Transfer of Property Act, cannot be invoked.

12.Per contra, the learned counsel for the respondent herein submitted that the order of attachment said to have been effected under Ex.B9 was not, informed to the office of the Sub Registrar office. Therefore, the sale made by



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Krishnamurthy in favour of Murugan Bankers under Ex.A1 is a valid document. The Murugan Bankers and in turn, the plaintiff/Durai are the bonafide purchasers. He relied upon a judgment of this Court in ***S.A.No.797 of 2017 (R.Karuppannan Vs.Natarajan (deceased) and others)*** dated 08.03.2024 wherein this Court had an occasion to consider Order 38 Rule 11-B of C.P.C, in support of his contention.

13.The learned counsel for the respondent had further submitted that a release deed can be executed only between the co-owners. Only if there is a preexisting right, the release deed can be executed. Ex.B2 release deed is said to have been executed by the auction purchaser in favour of Krishnamurthy is not valid document.

14.The learned counsel for the respondent had further submitted that Section 64 of C.P.C is procedural in nature. It can only affect the claims that arise out of the order of attachment and therefore, any sale deed in violation of the order of attachment cannot be considered to be a void document. The learned counsel had further submitted that the title of Thirugnanasambanda Moorthy has been questioned by Durai and he had filed O.S.No.32 of 1990 seeking declaration of title and permanent injunction in which Thirugnanasambanda Moorthy is arrayed as the third defendant. In such circumstances, when Thirugnanasambanda Moorthy filed O.S.No.1437 of 1994, he cannot seek the relief of bare injunction without seeking a prayer for



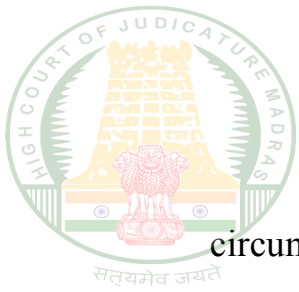
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declaration of title.

WEB COPY 15.The learned counsel for the respondent had further submitted that the suit for declaration of title and permanent injunction was filed by Durai on 04.01.1990. Thirugnanasambanda Moorthy has purchased the suit schedule property on 15.03.1994, pending suit. Therefore, he is only a *pendente lite* purchaser and he is bound by the judgment and decree in O.S.No.32 of 1990. Therefore, he cannot claim any independent right or title.

16.The learned counsel appearing for the respondent further submitted that Thirugnanasambanda Moorthy is not a bonafide purchaser. He is a close friend of Ramadoss and he was aware of the order of attachment and alienation made under Ex.A1 and A2. In such circumstances, he is not a bonafide purchaser. Hence, the First Appellate Court has rightly invoked Section 43 of Transfer of Property Act as against the present appellant.

17.The learned counsel for the respondent had further submitted that Krishnamurthy is said to have executed a power deed in favour of Ramadoss under Ex.B18 on 25.09.1989. The same has been cancelled and the paper publication has been made on 15.09.1993 under Ex.A11. After cancellation of the power deed, the said Ramadoss has executed a sale deed in favour of Thirugnanasambanda Moorthy under Ex.B10 on 15.03.1994. Therefore, on the date of execution of sale deed, the power deed in favour of the agent has been cancelled and it has been published in the newspaper also. In such



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circumstances, the sale deed in favour of Thirugnanasambanda Moorthy under Ex.B10 is not a valid document. Hence, he prayed for dismissing the appeals.

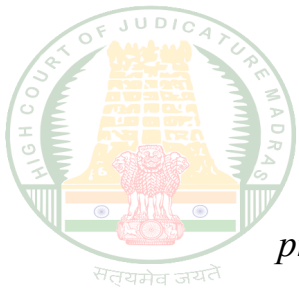
18.Heard both sides and perused the material records.

(C) Discussion:

19.The primary contention of the learned counsel for the appellant is that the suit schedule properties originally belonging to Krishnamurthy was attached in I.A.No.378 of 1978 on 25.03.1972 and it was made absolute on 29.06.1972. However, the sale deed in favour of Murugan Bankers has been executed by Krishnamurthy on 18.11.1972 under Ex.A2. Therefore, the sale deed executed by Krishnamurthy in favour of Murugan Bankers during the subsistence of the order of attachment is void, in view of Section 64 of C.P.C.

20.The Hon'ble Supreme Court in a judgment reported in **(1985) 2 SCC 167 (Balkrishan Gupta and others Vs.Swadeshi Polytex Ltd., and another)** in Paragraph No.30 has held as follows:

“30.....Section 64 of the Code of Civil Procedure, 1908 states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under section 64 of the Code of Civil Procedure is a



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private transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realisation of which the attachment is effected. A private transfer under section 64 of the Code of Civil Procedure is not absolutely void, that is, void as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold, the judgment-debtor retains title in the property attached.....

21.In view of proposition of law laid down by the Hon'ble Supreme Court cited supra, it is clear that the document executed in violation of the order of attachment is not absolutely void, but void only as against the claim enforceable under the order of attachment. Therefore, it is clear that the sale effected by Krishnamurthy under Ex.A1 would be valid in the eye of law as against the whole world except as against the decree holder in O.S.No.467 of 1972 namely Ajantha Trading Corporation. In the present case, admittedly neither the decree holder (Ajantha Trading Corporation) nor the auction purchaser (Govindaraj) have raised any objection with regard to the private alienation made by Krishnamurthy. In such circumstances, the contentions raised by learned counsel for the appellant with regard to the voidness of Ex.A1 sale deed are liable to be rejected.

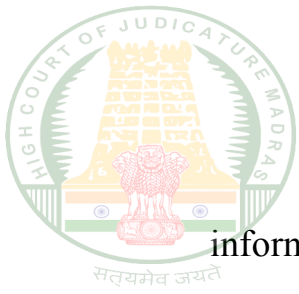
22.Admittedly, Krishnamurthy is the owner of the property. He had executed Ex.A1 sale deed on 04.10.1972 in favour of Murugan Bankers.



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Thereafter, Murugan Bankers had sold the property under Ex.A2 on 18.11.1972 in faovur of the plaintiff in O.S.No.32 of 1990. Again the same Krishnamurthy has executed a power deed in favour of Ramadoss under Ex.B18 on 25.09.1989 who in turn has sold the same property in favour of the present appellant under Ex.B10 on 15.03.1994. Therefore, it is clear that Krishnamurthy had alienated the same suit schedule property twice. In view of Section 48 of Transfer of Property Act, where the same immovable property had been transferred at different times, the second transfer will be subject to the rights of the first transfer unless there is a special contract or reservation binding the first transferee. In the present case, no such reservation or any special clause is found in Ex.A1 restricting the right of purchaser under the said document. In such circumstances, Ex.A1 and A2 sale deeds, take precedence over Ex.B10 sale deed in view of Section 48 of the Transfer of Property Act.

23.The appellant herein was examined as DW4. During his chief examination, the appellant had deposed that he had enquired with the Ramadoss about the encumbrance that are not mentioned in Ex.B12 sale certificate and he came to know about all those encumbrances were discharged. During his cross examination, he had clearly admitted that he is having good acquaintance with Ramadoss from his childhood. He had further deposed that when he purchased the suit schedule property, Ramadoss has not



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informed about the pendency of O.S.No.32 of 1990. When the appellant admits that he knows Ramadoss from his childhood and he had verified about the encumbrances that are not even reflected in the sale certificate, is it unbelievable that he was not made known about the pendency of O.S.No.32 of 1990 or the sale deed executed by Krishnamurthy under Ex.A1. Hence, it is clear that the appellant herein is not a bonafide purchaser. In such circumstances, the First Appellate Court had rightly invoked Section 43 of the Transfer of Property Act to confer title upon Murugan Bankers and the plaintiff in O.S.No.32 of 1990 even assuming that Ex.A1 sale deed is a void document.

24.This Court had already held that the sale under Ex.A1 in violation of the order for attachment is not void. Even if the conveyance is defective, as soon as the auction purchaser had executed a release deed in favour of Krishnamurthy under Ex.B2, Krishnamurthy becomes the owner of the property. Assuming that Krishnamurthy was not the owner, when he executed Ex.A1 in favour of Murugan Bankers, when the said Krishnamurthy subsequently acquired title under Ex.B2, necessarily Section 43 of Transfer of Property Act has to be invoked. The said Krishnamurthy cannot be heard to say that when he sold the property under Ex.A1- to Murugan Bankers, he did not have any title. In such circumstances, the First Appellate Court has rightly invoked the principle of feeding the grant by

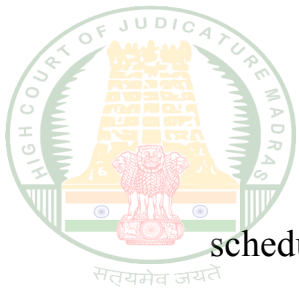


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estoppel in favour of the plaintiff in O.S.No.32 of 1990.

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26.A perusal of schedule of property reveals that there is a house property in the suit schedule property. The house tax receipts for the said house under Exs.A3, A4, A7 to A10 and the receipts for electricity consumption charges under Exs.A5 and A6 have been produced. It clearly establishes the fact that the plaintiff in O.S.No.32 of 1990 is in possession of the suit schedule property. Exs.B20 to 25 have been produced on the side of the defendants to show that the house tax receipts stand in the name of the auction purchaser namely Govindaraj. These documents relate to the year 1989 to 1991. In fact, on 04.04.1983 under Ex.B2 the said Govindaraj has executed a release deed in favour of Krishnamurthy. The recital in the release deed reveal that the auction purchaser has not taken possession of the



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schedule of properties in view of the partition suit filed by the minor sons of Krishnamurthy. Therefore, this Court is not inclined to believe the house tax receipts of the year 1989 to 1991 said to be standing in the name of Govindaraj (auction purchaser).

27.The suit in O.S.No.32 of 1990 has been filed by Durai seeking declaration of title and permanent injunction. In the said suit, the present appellant has been impleaded as a third defendant. The present appellant has filed the suit in O.S.No.1437 of 1994 seeking a prayer for bare injunction knowing fully well that his title to the schedule properties are being disputed by the plaintiff in O.S.No.32 of 1990.

28.The Hon'ble Supreme Court in a judgment reported in **2008 4 SCC 594 (Anathula Sudhakar Vs.P.Buchi Reddy (dead) by Lrs.)** in Paragraph No. 21(a) has held that where a cloud is raised over the plaintiff's title, a suit for declaration and possession with or without a consequential injunction is the remedy. In the present case, this Court has already arrived at a finding that the present appellant has not filed any document to establish his possession over the suit schedule property on the date of filing of the suit. On the other hand, the plaintiffs in O.S.No.32 of 1990 has established his possession over the suit schedule property on the date of filing of the suit. Once a cloud has been raised over the title of the appellant, the suit for bare injunction is not maintainable without a prayer for declaration of title.



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30.In view of the above said deliberations, the substantial question of law is answered as against the appellant. The judgment and decree of the Courts below are confirmed. The second appeals stand dismissed. No costs.

24.07.2025

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

- 1.The II Additional District Judge
Tiruchirappalli
- 2.The II Additional District Munsif
Tiruchirappalli
- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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S.A.Nos.1105 & 1106 of 2002

R.VIJAYAKUMAR,J.

msa

Pre-delivery Common Judgment made in
S.A.Nos.1105 & 1106 of 2002

24.07.2025