



S.A.No.1228 of 2002

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on : 12.06.2025

CORAM:

THE HONOURABLE MRS.JUSTICE P.VELMURUGAN

S.A.No.1228 of 2002

1. Shankar (died)
2. Muthammal
3. S.Kannan
4. Balasubramanian
5. S.Ramesh
6. S.Nagarani
7. S.Nagarajan

... Appellants

(Appellants 3 to 7 are brought on record as LR's of the deceased 1st appellant vide this Court order dated 06.06.2017 made in C.M.P. (MD).No.2087/2017)

..Vs..

1. Bhagavathi Ammal
2. Chinnathambi
3. Kalavathi
4. The Nagercoil Municipality
rep.by its Commissioner, Nagercoil
Agasthesewaram Taluk,
Kanyakumari District.
5. Chetrambalan
6. S.Kolappa Konar

... Respondents

PRAYER : Second Appeal filed under Section 100 C.P.C., against the decree and judgment dated 31.01.2002 made in A.S.No.29 of 1998 on the file of the Principal Subordinate Judge, Nagercoil, confirming the decree



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and judgment dated 04.02.1998 made in O.S.No.413 of 1996 on file of the Principal District Munisf, Nagercoil.

For Appellants : Mr.H.Thayumanasamy
For Respondents : K.P.Narayanakumar for R1& R2
R3 & R6 – Dismissed for default
R4 & R5 – No Appearance

JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal. The deceased first appellant and the second appellant are the plaintiffs, who filed the suit in O.S.No.413 of 1996 before the learned Principal District Munisff for declaration and redemption.

2 For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3 The case of the plaintiffs, in a nutshell, is as follows:

According to the plaintiffs, they are living in the suit property at Door No.23B and C, situated at S.No.B4-3/7 measuring an extent of 1.5



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cent, Agastheeswaram Taluk, Vadachery Village, which were purchased from one Rajamanickam, for Rs.24,300/- on 28.03.1994. There were four small houses bearing Door Nos.23, 23A, 23B and 23C, in which, 23 and 23A are vacant. The first defendant claims that he is the owner of the aforesaid property. The second defendant also claims right over the property relying on the sale deed dated 07.03.1978. According to the plaintiff, the property purchased by them and the property claimed by the second defendant are not the same. The earlier vendor of the plaintiffs, under the mistaken belief that the property purchased by him and the property claimed by the second defendant were one and the same, filed suit in O.S.No.1016/1981 for redemption of the property from the second defendant. In the midst of the said two properties, there is property, which belongs to Shethirabalan, who is 5th defendant therein. The said suit was decreed in favour of the plaintiff therein. As against the same, the second defendant filed an appeal before the District Court, Nagercoil, in A.S.No. 96 of 1987, where the appellate Court set aside the judgment and decree passed by the trial Court observing that there was an error in the door numbers and the plaintiff therein has to file only a suit for declaration. Further the appellate Court, in its judgment observed that in the sale deed in favour of the Rajamanickam, the Door number is mentioned as 21 and



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22 only, but he is claiming right over the property in Door Nos.23 and 23A. Therefore to resolve the confusion in the door numbers of the houses situated in the properties, the plaintiffs filed the suit for declaration and redemption, adding the fourth defendant as a party to the suit.

4 The suit was resisted by the first and second defendants denying the title of the plaintiffs stating that they are the owners of the suit properties.

5 On the basis of the above pleadings, the Trial Court framed the following issues :

1. Whether the plaintiffs are not entitled for the suit property?
2. Whether the plaintiffs are not in possession of the property in Door Nos.23B and 23C?
3. Whether the suit is hit by *res judicata*?
4. Whether the plaintiffs are entitled to the relief of declaration?
5. To what relief?

6 Before the trial Court, the first plaintiff examined



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himself as P.W.1 and one Marimuthu as P.W.2 and marked Ex.A1 to Ex.A44. The first defendant examined herself as D.W.1 and marked Ex.B1 to Ex.B24.

7 After full contest, the learned Principal District Munsiff, Nagercoil, dismissed the suit filed by the plaintiffs vide judgment and decree dated 04.02.1998 on the ground that the plaintiffs have not proved Ex.A2 the gift deed said to have been executed by Isakkiyammal in favour of Marimuthammal, who is a vendor of the plaintiffs' vendor Rajamanickam.

8 Aggrieved over the judgment and decree passed by the trial Court, the plaintiffs filed an appeal in A.S.No.29 of 1998 before the learned Principal Subordinate Judge, Nagercoil. The learned Principal Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, vide judgment and decree dated 31.01.2002 upheld the findings recorded by the trial Court.



9 As against the concurrent findings rendered by both the Courts below, now the present second appeal is filed by the plaintiffs.

On 07.08.2002, while admitting the Second Appeal, this Court has formulated the following substantial question of law:

"Having held that judgment marked in this case as Ex.B-2 would not operate on the principle of *res judicata* to decide the controversy in the present suit, have not the Courts below committed an error in law in deciding the controversy solely based on the conclusions in the judgment in A.S.No.96/1987 (Ex.B2)"

10 Learned counsel appearing for the appellants/plaintiffs would submit that the suit property originally belonged to Isakkiammal, who executed the gift deed Ex.A2 in favour of her daughter Marimuthammal, settling the suit property in favour of Marimuthammal, who in turn sold the property to Rajamanickam, who is the vendor of the plaintiffs. Both the trial Court and the lower appellate Court failed to appreciate the oral and documentary evidence of the appellants/plaintiffs in a proper perspective manner and erred in dismissing the suit. Ex.A5 is the decree passed in O.S.No.1169 of 1992, which is a partition suit filed by the sixth defendant herein and Ex.A6 is



report of the Advocate Commissioner filed in the said suit, wherein, it is clearly held that the appellants' vendor's vendor is entitled to the suit schedule property in its proper perspective, but the trial Court and the lower appellate Court erroneously held that Ex.A5 Decree will not bind the defendants 1 and 2, especially, when their vendor was a party to the aforesaid suit.

10.1 Both the Courts below erred in holding that the first and second defendants are the owners of the suit property based on Ex.B5 sale deed, which is said to be executed by all the legal heirs of the original land owner Issakiammal, while the same was not executed by all the legal heirs. A cursory perusal of Exs.A1, A2, A3, A5 and A7 and the oral evidence of P.W.2 will clearly establish the fact that the appellants are the owners of the suit schedule property.

11 Learned counsel for the defendants 1 and 2 would submit that the first plaintiff is the husband of Rajamanickam's sister. Rajamanickam is the vendor of the plaintiffs. Initially the suit property was owned by Issakkiammal, mother of the first defendant. The said Issakkiammal never executed any gift deed in favour of Marimuthammal,



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the other daughter of Isakkiammal. Isakkiammal executed a mortgage deed dated 13.06.1972 in favour of the second defendant mortgaging $\frac{3}{4}$ cent land. Therefore the vendor of the plaintiffs viz. Rajamanickam filed a suit in O.S.No.1016 of 1981 for redemption against the second defendant. Even though the trial Court decreed the suit in favour of the plaintiff therein, the second defendant herein filed an appeal, wherein, the judgment of the trial Court was set aside and the lower appellate Court held that the gift deed executed in favour of the Marimuthammal was not proved and hence she has no right to convey the property in favour of Rajamanickam. Thereafter no appeal was filed against the judgment of the lower appellate Court.

11.1 After the death of Isakkiammal, her legal heirs executed a sale deed dated 07.03.1976 in favour of the second defendant. Thereafter the second defendant constructed two more houses in the land and hence it is clear that the first and second defendants are in possession of the suit property. Therefore both the Courts below have rightly appreciated the evidence and given a finding that the plaintiffs have not proved their case. Hence this Second Appeal is liable to be dismissed.



12 Heard the learned counsel appearing for the appellants and the learned counsel for the defendants 1 and 2 and perused the materials available on record.

13 Admittedly both the plaintiffs and the defendants are claiming title through one Isakkiammal, who is the original owner of the suit property. According to the appellants/plaintiffs, the original owner Isakkiammal executed a settlement deed in favour of her daughter Marimuthammal in respect of the property situated in the western side, admeasuring an extent of 1½ cents out of six cents. Subsequently the said Marimuthammal executed a sale deed in favour of one Rajamanickam and he executed a sale deed in favour of the appellants with regard to the suit property to the extent of 1½ cents. Therefore the appellants are entitled to the suit property.

14 On the other hand, it is the case of the defendants that the Isakkiammal during her lifetime executed a mortgage(Othi) deed in favour of the second defendant Chinnathambi, who is her son-in-law mortgaging the western side of the property $\frac{3}{4}$ cents out of the six cents. After death of Isakkiammal, her husband and son Shethirabalan, in their



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capacity as legal representatives of Isakkiammal, executed a sale deed in favour of the second defendant. The Rajamanickam, who is the vendor of the plaintiffs filed a suit against the second defendant and others in O.S.No.1016 of 1981 for redemption and the same was decreed in favour of the plaintiffs therein. As against the same, the second defendant herein filed appeal in A.S.No.96 of 1987 and the same was allowed by the District Court, holding that the gift deed said to have been executed by Isakkiammal in favour of the Marimuthammal, vendor of plaintiffs' vendor is not valid and the suit filed for redemption is not maintainable. Subsequently the Rajamanickam without having any right and title, sold the suit property in favour of the appellants. Therefore the vendor of the plaintiffs had no right to convey the property and the first and second defendants are in possession of the property and the appeal has to be dismissed.

15 Now this Court has to decide the issue whether the appellants/plaintiffs are entitle to the relief of redemption of the suit property from the second defendant. It is seen that the plaintiffs are claiming title through one Rajamanickam, who purchased the property from Marimuthammal, who is one of the legal representatives of the



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original owner Isakkiammal. The said Marimuthammal claimed right over the property relying on the gift deed said to have been executed by the Isakkiammal in favour of Marimuthammal.

16 It is an admitted fact that the vendor of the plaintiffs Rajamanickam filed O.S.No.1016 of 1981 for redemption of the suit property from the second defendant and two others, which was decreed in favour of the plaintiff therein and it is also an admitted fact that against the same, the second defendant filed an appeal in A.S.No.96 of 1987, before the learned District Judge, Nagercoil. The first appellate Court vide its judgment dated 19.09.1988, held that the plaintiff in that suit, who is a vendor of the appellants herein had failed to establish that he has acquired title to the property and therefore he is not entitled to the prayer sought for in the suit and thereby allowed the appeal in favour of the second defendant. Therefore it is clear that in the earlier round of litigation, the lower appellate Court already decided that the vendor of the appellants/plaintiffs has failed to prove his title to the suit property and hence vendor of the appellants/plaintiffs has no better title. Therefore the appellants are not entitled to claim the relief as sought for as against the second defendant, who in fact established the sale deed Ex.B5 executed



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by the legal representatives of the original owner Isakkiammal.

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17 Both trial Court as well as the appellate Court have held that the appellants have not produced original settlement deed said to have been executed by the Isakkiammal in favour of Marimuthammal and they have not examined the attesting witness. When the appellants have filed the suit for declaration and redemption, it is the duty of the appellants/plaintiffs to prove that they have acquired the title to the property. The earlier suit between the vendor of the appellants and the second defendant ended against the vendor of the appellants and the sale deed in favour of the second defendant also established and he has been in possession of the property.

18 The second defendant also established that during the lifetime of the original owner Isakkiammal, she executed a Mortgage (Othi) deed in favour of the second defendant, subsequently after her demise, her husband and other legal representatives executed a sale deed in favour of the second defendant. Therefore once the second defendant established his title through the legal representatives of the Isakkiammal, it is for the plaintiffs to establish that the sale deed executed in favour of



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the second defendant is not valid.

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19 The plaintiffs have not challenged the sale deed said to have been executed in favour of the second defendant by the legal representatives of the original owner Isakkiammal. Further the appellants/plaintiffs have not challenged Ex.A10 the judgment made in A.S.No.96 of 1987, wherein it was concluded that the plaintiff therein who is the vendor of the appellants herein has not established that he acquired the title to the property and hence the plaintiffs are is not entitled to the relief of redemption of mortgage against the second defendant herein. Now, taking advantage of the observations made in the judgment of the first appellate Court in A.S.No.96 of 1987, the present suit in O.S.No.413 of 1996 has been filed for declaration and to redeem the property from the second defendant.

20 As far as substantial question of law framed by this Court is concerned, the trial Court, while answering to the issues, has clearly observed that the suit is hit by the principle of *res judicata*, whereas the first appellate Court has held that the suit is not hit by principle of *res judicata*, but, however, confirmed the judgement of the



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trial Court. A reading of the entire materials and judgments of both the courts below, would reveal that even though as held by the first appellate Court, the parties to the suit in O.S.Nos.1016 of 1987 and the present suit in O.S.No.413 of 1996 and the issue involved in the two suits are not similar, with regard to the right of the vendor of the appellants herein on the suit property, the District Judge, Kanniyakumar at Nagercoil, held that the appellants' vendor has not established that he acquired the title to the property, but however it is to be noted that it also observed that the property gifted to the Marimuthammal is a different property.

21 Both the Courts below observed that the original gift deed alleged to have been executed by Isakkiammal in favour of the Marimuthammal has not been produced before the Courts below, for which no explanation was offered by the plaintiffs. Unless the gift deed said to have been executed in favour of Marimuthammal is proved in the manner known to law, the vendor of the plaintiffs would not have better and clear title to the suit properties and the plaintiffs cannot claim the relief of redemption of the suit property against the second defendant. Therefore this court does not find any merit in the second appeal and the substantial question of law is answered accordingly.



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22 In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The judgment and decree dated 31.01.2002 made in A.S.No.29 of 1998 made by the learned Principal Subordinate Judge, Nagercoil, confirming the judgment and decree dated 04.02.1998 made in O.S.No.413 of 1996 by the learned Principal District Munisf, Nagercoil, are upheld.

12.06.2025

Index : Yes/No
Internet : Yes/No

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To

1. The Principal Subordinate Judge, Nagercoil.
2. The Principal District Munisf, Nagercoil
3. The Section Officer, V.R. Section, High Court, Madras.



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P.VELMURUGAN, J.

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