

S.A.No.1509 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 25.06.2025

JUDGMENT PRONOUNDED ON : 15.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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- 1.Velliammal (died)
- 2.Karuppasamy (died)
- 3.Kuppakutti (died)
- 4.Chellathai
- 5.Muthulakshmi
- 6.Chinnamuthu
- 7.Valarmathi
- 8.Selvapandi
- 9.Sivaranjani
- 10.Vellaisamy
- 11.Muthukalai
- 12.Subramani
- 13.Chitraselvi

....Appellants/Respondents/Plaintiffs

(Appellants 4 to 6 are brought on record as legal heir of the deceased 1st appellant and appellants 7 to 9 are brought on records as legal heir of the deceased 1st and 2nd appellants vide Court order dated 11.08.2023)

(Appellants 10 to 13 are also brought on record as legal heirs of the deceased 3rd appellant vide Court order dated 11.08.2023)



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Vs

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- 1.Chinnammal (died)
- 2.Subramanian (died)
- 3.Muthusamy(died)
- 4.Pappu
- 5.Balasubramanian
- 6.Malliga
- 7.Vanaja
- 8.Muthukumar
- 9.Vellaiyammal
- 10.Subbammal
- 11.Thillaiammal
- 12.Murugan
- 13.Selvam
- 14.Muthukumar

...Respondents/Appellants/Defendants

(Respondents 4 to 8 who are already on record, are recorded as legal heirs of the deceased 2nd respondent and Respondents 9 to 14 are brought on record as legal heirs of the deceased 1st respondent vide Court order dated 11.08.2023)

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the decree and judgment dated 19.06.2002 in A.S.No.58/1996 on the file of the Principal Sub Court, Dindigul reversing the decree and judgment dated 05.10.1994 in O.S.No.431/1992 on the file of the District Munsif Court, Nilakottai.



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For Appellants : Mr.P.Vinoth
For Mr.R.Subramanian

For Respondents : No appearance

JUDGMENT

The plaintiffs in a suit for bare injunction or in the alternative for recovery of possession are the appellants herein.

(A) Factual matrix:

2.The trial Court had decreed the suit as prayed for. On an appeal filed by the defendants, the First Appellate Court has allowed the appeal and dismissed the suit. Challenging the same, the plaintiffs have preferred the present second appeal.

3.The suit schedule properties are the ancestral properties of the plaintiffs. According to the plaintiffs, they approached the first defendant for loan for a sum of Rs.3500/- for which the first defendant had required them to execute a mortgage deed. Believing it to be mortgage deed, the plaintiffs are said to have executed a document on 09.10.1979 under Exhibit B1 in favour of the first defendant. According to the plaintiffs, it later turned out to be a sale deed and an agreement for reconveyance. They have never intended to execute any sale deed. The plaintiffs have further submitted that they have believed the representation of the first defendant and under the belief, they executed a mortgage deed. The plaintiffs had further contended that the



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possession was retained on them and they are regularly paying the interest to the first defendant. After payment of mortgage amount of Rs.3500/- in June 1991, when they requested the first defendant to return the mortgage deed, they came to know that it was not a mortgage deed but a sale deed. Hence, suit for injunction restraining the defendants from interfering with the plaintiffs' possession.

4.Pending suit, the plaintiffs have filed an application in I.A.No.387 of 1992 on 14.10.1992 alleging that the defendants have trespassed into the property on 16.04.1992. Therefore, a prayer was sought for recovery of possession and the amendment application was allowed on 15.10.1993.

5.The defendants have filed a written statement contending that the plaintiffs have executed Exhibit B1 sale deed knowing fully well that it is a sale deed after receiving full consideration. The possession was handed over to the first defendant on the date of sale deed. They are enjoying the suit schedule properties by cultivating millets and oleander flower. Therefore, the allegation that they have trespassed into the suit schedule properties on 16.04.1992 is false.

6.The first defendant had further contended that for irrigating the suit schedule properties, the water is drawn from their adjacent properties. Since patta was not transferred in the name of the first defendant, taking advantage of the same, the plaintiffs have filed the present suit. However, pending suit,



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patta has been transferred in the name of the first defendant. Hence, they prayed for dismissal of the suit.

7. Pending suit, an Advocate Commissioner was appointed to note down the physical features of the property and he has filed his report on 09.01.1992 along with rough sketch.

8. The trial Court proceeded to decree the suit believing the case of the plaintiffs that they were under the misconception that they are executing a mortgage deed. However, it later turned out to be the sale deed. The trial Court further found that the plaintiffs have established their possession over the suit schedule properties by relying upon the kist receipts.

9. The First Appellate Court after re-appreciating the oral and documentary evidence, arrived at a finding that the plaintiffs had believed Exhibit B1 to be a mortgage deed is not believable. Relying upon the oral evidence of PW1, the First Appellate Court held that even as per the case of the plaintiffs, they were aware of the sale deed in the year 1982 and therefore, it is not believable that they had paid interest for the mortgage money till 1991. In fact, the suit schedule properties are irrigated by drawing water from the adjacent property of the defendants which is reflected through the commissioner's report. Based upon the said findings, the First Appellate Court allowed the appeal and dismissed the suit. Challenging the same, the present second appeal has been filed by the plaintiffs.



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10.The second appeal was admitted on the following substantial

questions of law:

“1.Whether in law has not the lower appellate Court failed to apply the principle relating to non-est which is applicable to illiterate persons vide 1993 (1) LW-466?

2.Whether in law has not lower appellate Court omitted to see that defendants' title if any had been extinguished by Sec.27 of Limitation Act, as the plaintiffs had been in continuous possession for more than the statutory period vide AIR 1992 SC 1850?”

(B)Submissions of the learned counsel appearing for the appellants:

11.According to the learned counsel for the appellants, the plaintiffs had specifically pleaded a common law principle of *non est factum*, the plaintiffs were under the impression that they are executing only a mortgage deed. They were regularly paying interest for the mortgage money. Only later, it turned out to be a sale deed. Therefore, when the plaintiffs executed the document their mind did not go with the deed. In such circumstances, the First Appellate Court has erroneously fixed the burden of proof upon the plaintiffs. In such a case, it is settled position of law, burden would lie only upon the beneficiary of the document to establish the fact that the vendor had knowledge about the character and contents of the documents.

12.The learned counsel for the appellants relied upon a judgment of the Hon'ble Supreme Court reported in **2023 SCC Online SC 1022(Ramathal**



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and others Vs. K.Rajamani (dead) and another) in support of his contention.

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The learned counsel had further contended that the plaintiffs continue to be in possession of the suit schedule properties. That could be established by Exhibits A1 to A6 tax receipts and Exhibits A7 to A15 Adangal. On the other hand, the defendants have not even applied for mutation of patta in their name from the year 1979 till the date of filing of the suit in the year 1991. Therefore, it is clear that the transaction was only a mortgage but not a sale.

13.The learned counsel for the appellants had further submitted that when the plea of *non est factum* has been successfully taken, Exhibit B1 sale deed becomes a void document. In such circumstances, there is no necessity to seek a prayer to set aside the document or to seek declaration of title, especially when the plaintiffs are in possession of the suit schedule properties. Therefore, the First Appellate Court was not right in recording a findings that the suit for bare injunction is not maintainable without a prayer for declaration of title or a prayer to set aside Exhibit B1 sale deed.

14.The learned counsel for the appellants had further submitted that on the same day, the deed of reconveyance has been executed, it came to be registered only on the next day. Therefore, it is clear that the transaction is only a mortgage transaction and not a sale. As and when the mortgage money is refunded, the mortgagee has to return the mortgage deed. Therefore, the First Appellate Court has not properly appreciated the fact of reconveyance



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deed. Hence, he prayed for allowing the second appeal.

WEB COPY 15.Though the respondents have been served and their names are printed in the cause list, there is no representation either in person or through their counsel.

16.This Court proceeds to pass an order on merits based upon the submissions made by the learned counsel for the appellants.

(C)Discussion:

17.The primary contention of the learned counsel for the appellants is that the plaintiffs have executed Exhibit A1 sale deed dated 09.10.1979 under the belief that it is only a mortgage deed. The first defendant has represented that it is a mortgage deed and believing the said representation, such a document had been executed and therefore, there was no intention of their part to execute a sale deed. Therefore, it is clear that the plaintiffs have pleaded the common law principle of *non est factum* in order to wriggle out of Exhibit B1 sale deed.

18.The Hon'ble Supreme Court in a judgment reported in **2023 SCC Online SC 1022(Ramathal and others Vs. K.Rajamani (dead) and another)** in Paragraph No.19 has laid down the conditions for invoking the common law principles of *non est factum* which is extracted as follows:

“19. The ingredients of the plea of non est factum as laid down not only in the case of Bismillah (supra) are existing in the



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present case, but also the three parameters as can be deduced from *Saunders(supra)* were in existence in the present case as well. The aforementioned test for a successful plea of non est factum requires that:

A. The person pleading non est factum must belong to "class of persons, who through no fault of their own, are unable to have any understanding of the purpose of the particular document because of blindness, illiteracy or some other disability". The disability must be one requiring the reliance on others for advice as to what they are signing. As Lord Pearson had aptly put:

"In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or other document to be signed. By "sufficiently understanding" I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be."

B. "The "signatory must have made a fundamental mistake as to the nature of the contents of the document being signed", including its practical effects. Lord Wilberforce has succinctly put this aspect:

"In my opinion, a document should be held to be void (as opposed to voidable) only when the element of consent to it is totally lacking, that is, more concretely, when the transaction which the document purports to effect is



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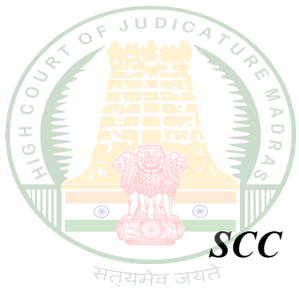
essentially different in substance or in kind from the transaction intended”

C. The document must have been radically different from one intended to be signed. As Lord Reid Remarked in the judgement:

“There must, I think, be a radical difference between what he signed and what he thought he was signing — or one could use the words “fundamental” or “serious” or “very substantial.” But what amounts to a radical difference will depend on all the circumstances.”

19.A perusal of Exhibit B1 sale deed reveals that the first plaintiff and the third plaintiff who are siblings have jointly executed the sale deed in favour of the first defendant who is a lady. They have also represented their respective minor children in the said document. The sale consideration of Rs.3500/- is recorded in the said sale deed for an extent of 94 cents. In the said document, the third plaintiff has signed and there is a “ keeral” by the first plaintiff. In the plaint, there is no averments that the plaintiffs are illiterate and they believed the representation of the first defendant. It is only pleaded that they were not aware of the contents of the document and they believed the representation of the first defendant.

20.The Hon'ble Supreme Court in a judgment reported in **(2010) 1**



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SCC 83 (Grasim Industries Limited and another Vs. Agarwal Steel) in

WEB COPY Paragraph No.6 has held as follows:

“6.In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted.....”

21.The Hon'ble Supreme Court in the judgment reported in **2023 SCC Online SC 1022** has held that, the person pleading *non est factum* must be unable to have any due to blindness, illiteracy or some other disability. In the present case, the plaintiffs have not pleaded that they are illiterate or suffering from any disability so as to solely rely upon the representation of the first defendant to believe to be a mortgage deed. When an ordinary prudent person signs a document, there is an presumption that he has read the document and understood it unless a plea of force or fraud is made out. Therefore, the ingredients relating to the plea of *non est factum* neither been pleaded nor been proved by the plaintiffs.

22.Apart from the above said reasons, this Court is constrained to arrive a finding that the plaintiffs have executed Exhibit B1 document knowing it to be a sale deed for the following reasons.

a)PW1 has admitted that she has received a sum of Rs.3500/-



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after executing Exhibit B1 document. During cross examination, she has admitted that the value of the property was between Rs.2000/- to Rs.3000/- at the time of execution of B1. Therefore, it is clear that the total value of the property has been received by the plaintiffs after executing Exhibit B1 document. Hence, it is not believable that the plaintiffs were swayed away by misrepresentation of the first defendant that it is a mortgage deed.

b) During cross examination of PW1, has admitted that she came to know about Exhibit B1 sale deed three years after execution of the document. Therefore, it is clear that the plaintiffs had knowledge about the sale deed in the year 1982. However, the present suit has been filed in the year 1991 seeking bare injunction. If they had knowledge about the sale deed in the year 1982, they would not have paid interest for the mortgage money till 1991.

c) According to the plaintiffs, they continued it to be in possession even after execution of Ex.B1 document. However, during cross examination of PW1 has admitted that she has never gone near suit schedule property and the oleander flowers were cultivated three years after execution of Exhibit B1 document.

d) The defendants in their written statement have specifically pleaded that they are cultivating oleander flowers in the suit schedule

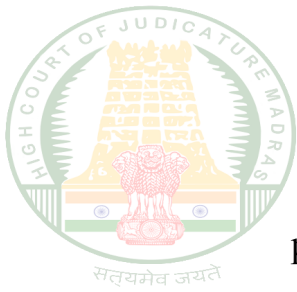


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properties by drawing water from their adjacent property. The Advocate Commissioner in his report dated 09.01.1992 has recorded that the defendants are drawing water from their adjacent property to the suit schedule properties by way of an one inch pipe which is very old. He has also recorded a finding that there is no other source of water. The said physical features recorded by the Advocate Commissioner in his report would clearly establish the fact that the property is in possession of the defendants.

e)The Commissioner has inspected the suit schedule properties on 21.12.1991. He has filed his report on 09.01.1992. The plaintiffs have filed I.A.No.387 of 1992 on 14.10.1992 alleging that the defendants have trespassed into the property on 16.04.1992. This amendment application was dismissed on 18.02.1993. The plaintiffs have preferred CRP.No.1826 of 1993 and based upon the order of the High Court, the amendment was carried out. When the Commissioner had inspected the property on 21.12.1991 itself, he has found that the water is drawn to the suit schedule properties from the adjacent properties of the defendant. However, an amendment application has been filed on 14.10.1992 as if there was a trespass by the defendants on 16.04.1992. Therefore, it is clear that the defendants are not in



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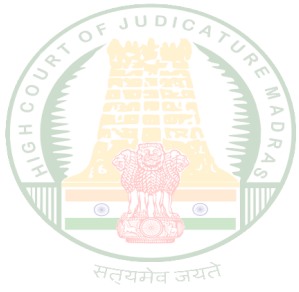
possession of the suit schedule properties.

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f)The defendants have not taken any immediate action to mutate the patta in their names. Taking advantage of the same, the plaintiffs have got tax receipts in their names. Therefore, the said documents would not in any way strengthen the case of the plaintiffs.

23.Unless the plaintiffs are able to establish the fact that Exhibit B1 document got vitiated based upon the common law principle of *non est factum* and as a consequence, it is a void document, they would not be entitled to seek a prayer for recovery of possession. In fact, the plaintiffs have admitted that they had knowledge about the sale deed in the year 1982 itself and they have conducted panchayat in the presence of elders in the year 1982 itself. In such circumstances, the plaintiffs have not explained why they had waited till 1991 to file a suit for bare injunction.

24.Though the plaintiffs have contended that they were regularly paying interest for the mortgage money from the year 1979 to 1991, they have not produced a single document. Though the plaintiffs have contended that they have paid the entire mortgage money in June 1991, no receipt has been produced for the same.



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(D)Conclusion:

WEB COPY 25. In view of the above said deliberations, both the substantial questions of law are answered as against the appellants. The second appeal stands dismissed. No costs.

15.07.2025

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

1. The Principal Subordinate Judge
Dindigul
2. The District Munsif
Nilakottai
3. The Section Officer
V.R. Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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