



S.A.No.407 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.No.407 of 2002
and CMP.No.3231 of 2002

1.Kathaiyya Gounder (Died)
2.Baby Ammal

...Appellants/Appellants
/Defendants

3.Sekar
4.Balaji
5.Jothi
6.Yasotha
7.Murugu

... Appellants 3 to 7

(Appellants 3 to 7 are brought on record as
LRs of the deceased first appellant vide
Court order, dated 31.08.2023 made in
C.M.P(MD)No.10066 of 2019 in S.A.No.407 of 2002

-VS-

Rajamanickathammal (Died)

... Plaintiff/Respondent
Respondent

2.Govindhasamy (Died)
3.Kannan
4.Saroja
5.Maheswari
6.Sendilkumar
7.Vijayalakshmi

1/10



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8.Panchavarnam

... Respondents 2 to 8

(Respondents 2 to 4 are brought on record as LR's of the deceased sole respondent vide Court order, dated 31.08.2023 made in C.M.P.Nos.11869 of 2002 in S.A.No.407 of 2002)

(Respondents 5 to 8 are brought on record as LR's of the deceased second respondent vide Court order, dated 31.08.2023 made in C.M.P(MD)Nos.11378 to 11380 of 2023 in S.A.No.407 of 2002)

(Second appeal is restored vide Court order dated 09.07.2025 in CMP(MD).No.3959 of 2025)

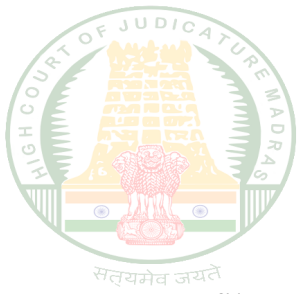
PRAYER :Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 21.02.2001 passed by the learned Subordinate Judge at Thanjavur in A.S.No.10 of 2001 concurring with the judgment and decree, dated 31.08.2000 on the file of the learned District Munsif, Thanjavur made in O.S.No.162 of 1989.

For Appellants : Mr.R.Rajaraman

For R-3 & R-5 to
R-8 : Mr.G.Karnan

JUDGMENT

The legal heirs of the first defendant in O.S.No.162 of 1989 on the

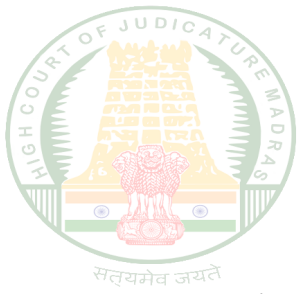


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file of the District Munsif Court, Thanjavur have filed the present second appeal challenging the concurrent findings of the trial Court as well as the appellate Court.

2.The respondent herein as plaintiff has filed the above said suit for the relief of redemption and recovery of possession. According to the plaintiff, the suit schedule property originally belonged to one Sellemmal who had sold the same in favour of Dhanathammal on 01.08.1969. Thereafter, the said Dhanathammal has mortgaged the suit schedule property in favour of the first defendant as usufructuary mortgage on 07.04.1971 for a period of six years as a security for a mortgage money of Rs.2500/-. Since the first defendant had refused to receive the mortgage money, the suit for redemption has been filed.

3.The defendants have filed a written statement contending that the suit schedule properties were not purchased by Dhanathammal out of her own funds and the same was purchased from the funds made available by her husband. Therefore, the said Dhanathammal as well as his two children have executed a sale deed in favour of the first defendant on 09.10.1978. After a sale deed has been executed in favour of the mortgagee, entire title

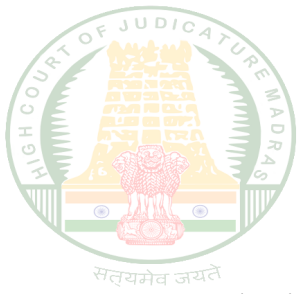


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extinguished and thereafter, further the sale deed cannot be executed in favour of the plaintiff.

4.It was further contended that the possession of the first defendant is not that of the mortgagee, but that of an absolute owner. The plaintiff's vendor namely Dhanathammal had filed O.S.No.949 of 1988 before the District Munsif Court, Thanjavur as against the present defendants and the plaintiff. That was a suit for recovery of a sum of Rs.8509/- along with interest from the defendants 1 to 4 therein who are the defendants 1 to 4 herein.

5.According to the plaintiff therein, the suit schedule property was sold by her in favour of the first defendant on 09.10.1978. However, full sale consideration was not paid by him. Therefore, the suit was filed for recovery of balance sale consideration of Rs.8509/- and to create a charge over the property for security of repayment of the sale consideration. The suit was dismissed by the trial Court on 08.02.1995 with a finding that the property has already been sold by Dhanathammal in favour of the present plaintiff on 19.06.1973. Therefore, the said Dhanathammal would not have any right to alienate for the second time in favour of the Kathaiyya Gounder



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who is arrayed as first defendant in the present suit. The sale deed in favour of the first defendant is valid in the eye of law and the sale deed was executed in favour of the first defendant only to defeat the rights of the present plaintiff.

6.Relying upon the judgment in O.S.No.949 of 1988, the trial Court as well as the appellate Court, have arrived at a finding that the possession of the defendants are in the capacity of mortgagee and therefore, the suit for redemption filed by the plaintiff is maintainable. However, the defence raised by the defendants were rejected on the ground that already the title of the plaintiff has been confirmed in O.S.No.949 of 1988. It was further pointed out by the Courts below that the present defendants or the plaintiff Dhanathammal in O.S.No.949 of 1988 has not challenged the said decree. Challenging the concurrent findings, the present second appeal has been filed by the legal heirs of the first defendant.

7.According to the appellants, the said Dhanathammal did not have any independent income and the suit schedule properties were purchased out of the income of Dhanathammal's husband and therefore, Dhanathammal and her legal heirs have executed a sale deed in their favour

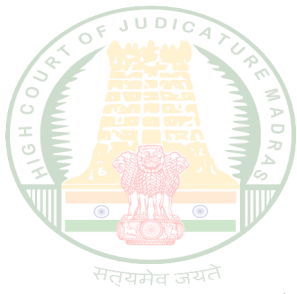


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on 09.10.1978. In such circumstance, the possession of the defendants is that of an absolute owner and not that of a mortgagee. It was further pointed out that the trial Court as well as the Appellate Court have not considered the fact that it was not the personal property of Dhanathammal. Therefore, he further contended that when it is not the absolute property of Dhanathammal, the sale deed executed by Dhanathammal in favour of the present plaintiff on 19.06.1973 is not valid in the eye of law. The suit in O.S.No.949 of 1988 does not relate to the title of the suit schedule property. Therefore, the Courts below are not right in relying upon the said decree for decreeing the present suit for redemption and recovery of possession.

8.Per contra, the learned counsel appearing for the respondents/plaintiff had submitted that the sale deed in favour of the defendant dated 09.10.1978 has been held to be illusory in O.S.No.949 of 1988 and therefore, the said plea cannot be raised again in the present suit. The sale deed dated 09.10.1978 was not at all marked before the trial Court. He further pointed out that once the first defendant is the othidhar of the property, cannot turn around and dispute the title of the mortgagor. He further contended that no substantial questions of law arises for



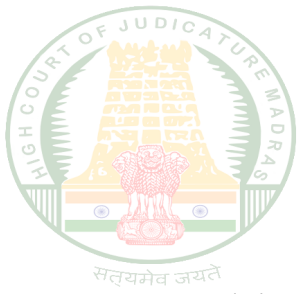
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consideration in the second appeal.

9. Heard both sides and perused the material records.

10. There is no dispute with regard to the fact that one Dhanathammal has created a usufructuary mortgage to the suit schedule property on 07.04.1971 in favour of the first defendant for a period of six years as security for the mortgage money of Rs.2500/-. According to the plaintiff, the said Dhanathammal has sold the property in her favour under Exhibit A2 on 19.06.1973 with a recital that the plaintiff has to redeem the suit mortgage as well as the other mortgages. However, the defence taken by the defendants that the suit schedule property had already been sold by Dhanathammal in their favour on 09.10.1978 and therefore, their possession is in the capacity of owner and not as mortgagee.

11. A perusal of Exhibit A1, the judgment in O.S.No.949 of 1988 reveals that the suit has been filed by the plaintiff's vendor as against the defendants for recovery of balance sale consideration on the allegation that she has sold the property in favour of the defendant on 09.10.1978. The trial Court has dismissed the suit on the ground that the sale deed dated 09.10.1978 is illusory one in order to defeat the rights of the present



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plaintiff who had purchased the property from Dhanathammal on 19.06.1973. The trial Court in O.S.No.949 of 1988 has proceeded to dismiss the suit. Neither the plaintiff nor the defendants have chosen to challenge the said decree. In such circumstances, it is clear that the present defendants cannot raise the plea again that they have purchased the property on 09.10.1978. That apart, the sale deed dated 09.10.1978 has not been produced before the trial Court.

12.The trial Court as well as the appellate Court have arrived at a concurrent finding that the possession of the defendants is that of the mortgagee and therefore, they are liable to handover possession of the property on deposit of Rs.2500/- which is the mortgage money. The substantial questions of law have been raised questioning the title of the vendor of the plaintiff. The defendants being the usufructuary mortgagees from the said Dhanathammal, cannot dispute the title of the Dhanathammal. In such circumstances, these substantial questions of law do not arise for consideration in a suit for redemption of mortgage and recovery of possession.



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13. In view of the above said deliberations, all the substantial questions of law are answered as against the appellants. The second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.07.2025

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

1. The Subordinate Judge
Thanjavur

2. The District Munsif
Thanjavur

3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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