

S.A.Nos.1213 and 1214 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved on : 15.04.2025

Judgment Delivered on : 18.07.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.1213 and 1214 of 2003

1. Pattathai Ammal (died)
2. Lakshmi (died)
3. Janaki (died)
4. Krishnavadivu
5. Rukmani
6. Suyambu
7. Annalakshmi
8. Saraswathi
9. Pattathai
10. Thilakavathy
11. Thangam
12. Padmavathy
13. Manavalan
14. Hemavathy

(Appellants 2 to 14 brought on record as LR's of
the deceased sole appellant,

Page No.1/36



S.A.Nos.1213 and 1214 of 2003

vide Court order dated 18.01.2010
made in M.P.Nos.2,3 5 and 6 of 2009
in S.A.No.1213 of 2003)

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15. Poonkothai

16. Mallika

17. Athisayaraj

18. Pattathai

D/o.Late Lakshmi

19. Panneer Selvam

Balakrishna (died)

Thangaiah (died)

20. Chithiraikani

21. Arunkumar

22. Sundaraselvam

23. Ramyalakshmi

24. Sudalaimuthu

(Appellants 15 to 24 are brought on record
as LR's of the deceased second appellant,
vide Court order dated 07.02.2022 made in
C.M.P.(MD)Nos.683, 684, 686 and 687/2022
in S.A.No.1213 of 2003)

25. Kasilingam

26. Jayasri

27. Dhanalakshmi

Page No.2/36



S.A.Nos.1213 and 1214 of 2003

28. Vijayaragavan

29. Thirumalaikumar

30. Thangapandian

31. Valarmathi

32. Sathiyaseelan

... Appellants in S.A.No.1213 of 2003

(Appellants 25 to 32 are brought on record
as LR's of the deceased third appellant,
vide Court Order dated 07.02.2022 made in
C.M.P.(MD).No.683, 684, 686 and 687 of 2022
in S.A.No.1213 of 2003)

1. Pattathai Ammal (died)

2. Lakshmi (died)

3. Janaki (died)

4. Krishnavadivu

5. Rukmani

6. Suyambu

7. Annalakshmi

8. Saraswathi

9. Pattathai

W/o.Chandran

10. Thilakavathy

11. Thangan

12. Padmavathy

13. Manavalan

Page No.3/36



S.A.Nos.1213 and 1214 of 2003

14. Hemavathy

15. Poonkothai

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D/o.Late Lakshmi

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Balakrishnan (died)

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21. Arunkumar

22. Sundaraselvam

23. Ramyalakshmi

24. Sudalaimuthu

(Appellants 15 to 24 are brought on record as LR's of the deceased second appellant, vide Court Order dated 25.02.2022 made in C.M.P.(MD).Nos.1096, 1102, 1109 and 1112 of 2022 in S.A.No.1214 of 2003)

25. Kasilingam

26. Jayasri

27. Dhanalakshmi

28. Vijayaragavan

29. Thirumalaikumar

30. Thangapandian

31. Valarmathi

Page No.4/36



S.A.Nos.1213 and 1214 of 2003

32. Sathiyaseelan

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(Appellants 25 to 32 are brought on record as LR's of the deceased third appellant, vide Court Order dated 25.02.2022 made in C.M.P.Nos.1096, 1102, 1109 and 1112 of 2022 in S.A.No.1214 of 2003)

... Appellants in S.A.No.1214 of 2003

Vs.

1. George (died)
2. Peniyel
3. G.Dhanapaul
4. G.Kalaiselvan
5. G.Krishdi

(Respondents 2 to 5 are brought on record as LR's of the deceased sole respondent vide Court order dated 18.01.2010 made in M.P.Nos.2,3 5 and 6 of 2009 in S.A.No.1213 of 2003)

... Respondents in S.A.No.1213 of 2003

1. George (died)
2. Peniyel
3. G.Dhanapaul
4. G.Kalaiselvan
5. G.Krishdi

(Respondents 2 to 5 brought on record as LR's of the deceased sole respondent

Page No.5/36



S.A.Nos.1213 and 1214 of 2003

- vide Order dated 18.01.2010
made in M.P.Nos.2 and 3 of 2009
in S.A.No.1214 of 2003)

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... Respondents in S.A.No.1214 of 2003

Second Appeal No.1213 of 2003 filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.04.2003 made in A.S.No.10 of 2002 on the file of the 1st Additional Subordinate Judge, Tirunelveli, confirming the judgment and decree of the District Munsif Court, Nanguneri in O.S.No.539 of 1996, dated 15.04.2002.

Second Appeal No.1214 of 2003 filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.04.2003 made in A.S.No.135 of 2002 on the file of the 1st Additional Subordinate Judge, Tirunelveli, confirming the judgment and decree dated 15.04.2002 made in O.S.No.14 of 1996 on the file of the District Munsif Court, Nanguneri.

For appellants in both the appeals : Mr.S.Meenakshi Sundaram,
Senior Counsel for
Mr.N.Retnasamy

For respondents in both the appeals : Mr.D.Nallathambi

COMMON JUDGMENT

Second Appeal No.1213 of 2003 is filed against the judgment and decree dated 29.04.2003 made in A.S.No.10 of 2002 on the file of the 1st

Page No.6/36

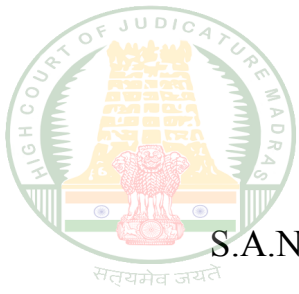


S.A.Nos.1213 and 1214 of 2003

Additional Subordinate Court, Tiruneveli, confirming the judgment and decree, dated 15.04.2002 on the file of the District Munsif Court, Nanguneri in O.S.No.539 of 1996.

2. Second Appeal No.1214 of 2003 is filed against the judgment and decree dated 29.04.2003 made in A.S.No.135 of 2002 on the file of the 1st Additional Subordinate Court, Tirunelveli, confirming the judgment and decree dated 15.04.2002 made in O.S.No.14 of 1996 on the file of the District Munsif Court, Nanguneri.

3. The first appellant – Pattathai Ammal (deceased) filed a suit in O.S.No.539 of 1996 against the first respondent – George (deceased) for declaration of title to the suit schedule property and for consequential relief of permanent injunction. In respect of the very same suit schedule property, vice versa, the first respondent - George filed the suit in O.S.No.14 of 1996 against appellants 1 to 14 herein for declaration of title, permanent injunction and also for the relief of redemption. Upon demise of first appellant, her legal heirs (appellants 2 to 14) were brought on record in



S.A.Nos.1213 and 1214 of 2003

S.A.No.1213 of 2003. Upon demise of the second appellant (Lakshmi), her legal heirs (appellants 15 to 24) were brought on record and upon demise of third appellant (Janaki) her legal heirs (appellants 25 to 32) were brought on record in both the Second Appeals. Upon demise of the first respondent (George), his legal heirs (respondents 2 to 5) were brought on record in both the Second Appeals.

4. For the sake of convenience, the parties are described as per their ranking in the Trial Court.

5. The brief averments made in O.S.No.14 of 1996, are as follows :

The suit schedule property originally belonged to one Ramalingam Asari, S/o.Narayana Asari and he had executed an usufructuary mortgage deed (Othi deed) dated 05.01.1952 for a sum of Rs.200/- in favour of one Pitchaikannu Nadar, who is the husband of first defendant (Pattathai Ammal) and father of defendants 2 to 7. Subsequently, the said Ramalingam Asari had executed two mortgage deeds, dated 02.11.1964 and 17.11.1965 in favour of one Meena Mohideen Rowther. Subsequently, both the aforesaid mortgage deeds were discharged. The said Ramalingam Asari

Page No.8/36



S.A.Nos.1213 and 1214 of 2003

died, leaving behind his sisters, namely Gomathi Ammal and Seethaiammal,

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as his surviving legal heirs. The said Gomathi Ammal executed a Power of Attorney deed in favour of one Sundaram Asari, who is the son of Seethaiammal. Later, the said Gomathi Ammal sold the suit schedule property through Sundaram Asari to one Yovan Nadar, by virtue of a registered sale deed dated 01.08.1976, and since then, he was in possession and enjoyment of the said property and mutated all Revenue Records in his name and also paid the property tax in his name. It is further stated that in the said sale deed, they have mentioned about the usufructuary mortgage deed, dated 05.01.1952. Subsequently, the said Yovan Nadar sold the said property by way of a registered sale deed dated 28.12.1981(Ex.B.47) for a valuable consideration to one Thavasikani Nadar and he was in peaceful possession and enjoyment of the said property from the date of his purchase. Thereafter, the said Thavasikani Nadar had sold the property to the deceased George, by way of registered sale deed dated 16.05.1983 (plaintiff in O.S.No.14 of 1996) and he is in possession and enjoyment of the said property and Patta was also mutated in his name and has also paid the taxes for the suit property. The said Pitchaikannu Nadar was never in possession and enjoyment of the suit schedule property. However, the first

Page No.9/36



S.A.Nos.1213 and 1214 of 2003

defendant Pattathai Ammal had filed the suit in O.S.No.539 of 1996 seeking for declaration and permanent injunction in respect of the suit schedule property against the said George. Hence, the said George filed a suit in O.S.No.14 of 1996 against the said Pattathai Ammal and others.

6. The defences raised by the first defendant in O.S.No.14 of 1996 in the written statement, *inter alia*, are as follows:

The suit filed by the plaintiff / George is not maintainable, since the said Gomathi Ammal and Seethaiammal are not the legal heirs of the deceased Ramalingam Asari and hence, the said Gomathi Ammal had no right to sell the suit schedule property through Sundaram Asari. The sale deed (Ex.B.48) dated 01.08.1976 executed in favour of Yovan Nadar is fabricated. Therefore, the subsequent transactions between Yovan Nadar, Thavasikani Nadar and George are all false and they were never in possession and enjoyment of the suit property at any point of time. Further, Patta mutation and payment of kist in respect of the said property, are also false. In fact, during the year 1961, the said Ramalingam Asari sold the property under oral sale to the first appellant's husband for valuable

Page No.10/36



S.A.Nos.1213 and 1214 of 2003

consideration. Thereafter, he constructed a tiled house bearing Door No.NR12B in the said property and had also paid the property tax. Due to heavy rain in the year 1978, the said house got collapsed and that the said Pitchaikannu Nadar and his family shifted their residence to Salainayainar Pallivasal Village. The said Pitchaikannu Nadar died in the year 1983, leaving behind the first defendant and defendants 2 to 7 as his legal heirs. Therefore, the defendants became the absolute owners of the suit schedule property by adverse possession.

7. Based on the above said pleadings, the trial Court framed the following issues (in O.S.No.14 of 1996) :

1. Whether the plaintiff is entitled to get the relief of declaration?
2. Whether the plaintiff is entitled to get the relief of permanent injunction?
3. Whether the plaintiff is entitled to redeem the usufructuary mortgage deed dated 05.01.1952?
4. Whether Ramalingam Asari sold the suit property under oral sale to the husband of the first defendant Pitchaikannu Nadar in the year 1961 ?



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S.A.Nos.1213 and 1214 of 2003

5. Whether, after the death of Pitchaikannu Nadar, the first defendant or defendants 1 to 7 are enjoying the suit property ?

6. Whether the defendants are entitled to get the suit property on the ground of adverse possession?

7. Whether the plaintiff is having the cause of action ?

8. To what other reliefs the plaintiff is entitled to ?

8. The brief averments made in O.S.No.539 of 1996, are as follows :

The suit property originally belonged to one Ramalingam Asari, and he "Othied" the same in the year 1952 in favour of one Pitchaikannu Nadar, who is the husband of Pattathai Ammal's (plaintiff) and subsequently, sold the property under oral sale to the said Pitchaikannu Nadar in the year 1961, and since from, the property was in possession and enjoyment of Pitchaikannu Nadar and his family. The said Ramalingam Asari died issueless and the claim of the defendant (George) is that he purchased the property from the legal heirs of the said Ramalingam Asari, is not true. Further, the suit property is a vacant site and the defendant was taking emergent steps to put up permanent construction and hence, the suit was filed.

Page No.12/36



S.A.Nos.1213 and 1214 of 2003

WEB COPY 9. The defendant contested the suit stating that Ramalingam Asari died, leaving behind his two sisters, namely, Gomathiammal and Seethaiammal, and his vendors purchased the suit property from the Power of Attorney of the said Gomathiammal, who is the son of Seethaiammal and that he is the absolute owner of the suit schedule property purchased from his vendors.

10. Based on the above said pleadings, the trial Court framed the following issues (in O.S.No.539 of 1996) :

1. Whether the plaintiff is entitled to get the relief of declaration?
2. Whether the plaintiff is entitled to get the relief of permanent injunction?
3. Whether the usufructuary mortgage deed dated 05.01.1952 as mentioned by the plaintiff in plaint was discharged?
4. Whether the oral sale as mentioned by the plaintiff in plaint is a valid one ?



S.A.Nos.1213 and 1214 of 2003

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5. Whether the cause of action is true ?

6. Whether the defendant is entitled to get compensatory cost ?

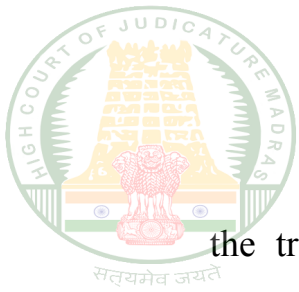
7. To what other reliefs the plaintiff is entitled to ?

11. Since the suit property is one and the same and parties are one and the same, both the suits were tried together and joint trial was conducted and evidence was recorded in O.S.No.539 of 1996.

12. After framing issues, during the course of trial, on the side of the plaintiff three witnesses were examined as P.W.1 to P.W.3 and two documents were marked as Ex.A1 and A2. On the side of the defendant four witnesses were examined as D.W.1 to D.W.4 and 49 documents were marked as Exs.B1 to B49.

13. The Trial Court, after framing issues and after hearing the submissions of the respective counsels, *vide* common judgment and decree dated 15.04.2002, dismissed the suit in O.S.No.539 of 1996 and decreed the suit in O.S.No.14 of 1996. Aggrieved by the judgment and decree passed by

Page No.14/36



S.A.Nos.1213 and 1214 of 2003

the trial Court, the plaintiff in O.S.No.539 of 1996 and defendants in O.S.No.14 of 1996 have preferred first appeals in A.S.Nos.10 of 2002 and 135 of 2002 before the I Additional Subordinate Judge, Tirunelveli. The first appellate Court had also dismissed both the appeals by common judgment and decree dated 29.04.2003 and confirmed the judgment and decree of the trial Court. Assailing the concurrent findings of both the Courts below, the plaintiff in O.S.No.539 of 1996 and defendants in O.S.No.14 of 1996 have filed the present Second Appeals.

14. Both the Second Appeals were admitted by this Court on 01.08.2003 on the following substantial questions of law:

(i) Are the Courts below justified in holding that Ex.B.48 sale deed, under which the respondent claims title, stands proved, over-looking the various suspicious circumstances surrounding the execution of the same, especially when the sale is stoutly denied by the appellant ?

(ii) Is the lower appellate Court justified in declaring the title of the respondent, after a finding that the "Othi" executed by Ramalingam Asari, the original owner in favour of the appellant's husband is still subsisting ?



S.A.Nos.1213 and 1214 of 2003

WEB COPY 15. Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for appellants in both the appeals submitted that the Courts below failed to note that the suit property originally belonged to one Ramalingam Asari, who had 'Othied' the same to one Pitchaikannu Nadar, who is the husband of the deceased first appellant (Pattathai Ammal) in the year 1952 and subsequently, sold the property under oral sale to the first appellant's husband. The deceased first respondent (George), who had come to the Court with a specific case, must prove his case independently and he cannot take advantage of the weakness of the case of the other side. Further, the alleged discharge of "Othi" by Yovan Nadar is not proved and the burden is on the first respondent herein to discharge the same.

16. The learned Senior Counsel appearing for the appellants further stated that the first respondent herein traces his title through Gomathiammal and Seethaiammal, and he must prove that they are the legal heirs of the deceased Ramalingam Asari, especially when it is disputed by the appellants that Ramalingam Asari died issue-less and Gomathiammal and Seethaiammal are not the sisters of Ramalingam Asari, being the original owner.

Page No.16/36



S.A.Nos.1213 and 1214 of 2003

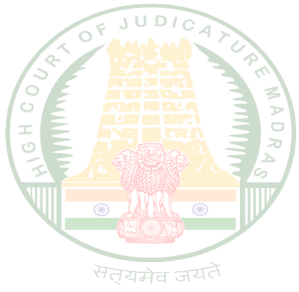
WEB COPY 17. The learned Senior Counsel also submitted that except ipse-dixit of the first respondent herein, there is no evidence on record to prove that Gomathiammal and Seethaiammal are the legal heirs of Ramalingam Asari. The evidence of P.W.3 being a close relative of Ramalinga Asari is that Ramalingam Asari has no sisters, namely Gomathiammal and Seethaiammal. Even under Ex.B.48 sale deed, which the first respondent claims title, is not traced through Ramalingam Asari. The execution of the said sale deed by Sundaram Asari, is not proved, even though it is disputed.

18. The learned Senior Counsel further submitted that the Courts below ought to have seen that there are several suspicious aspects/circumstances regarding the execution of Ex.B.48 sale deed, which are as follows:

(a) There are ten stamp papers in the sale deed, and the first stamp paper is standing in the name of Rajan for Rs.50/- purchased at Chindathripet, Chennai.

(b) The second stamp paper for Rs.35/- was purchased at Thiru Pillai, Sattar.

Page No.17/36



S.A.Nos.1213 and 1214 of 2003

(c) The seventh stamp paper was purchased in the name of Murugan, Thankarai, Villupuram District.

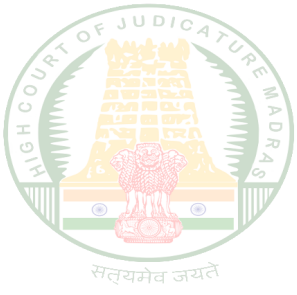
(d) The tenth stamp paper was purchased in the name of Palani of Villupuram, and

(e) The purchase of the stamp papers in the name of several persons at several places, gives rise to serious doubt.

19. The learned Senior Counsel appearing for the appellants further contended that there is no evidence on record to prove as to whether Seethaiammal had other issues and D.W.1 admits that he is not aware of the legal heirs of Seethaiammal. Further, even though the sale deed Ex.B.48 is disputed, it is bounden duty of the respondents to prove the same by examining the witnesses or anybody connected with the document.

20. It is also contended by the learned Senior Counsel that at the time of execution of Ex.B.48 sale deed, there was no building in the suit-site, but Ex.A.1 shows that there is a house in the suit property, which was assessed in the name of Pitchaikannu Nadar from 1961 to 1977.

Page No.18/36



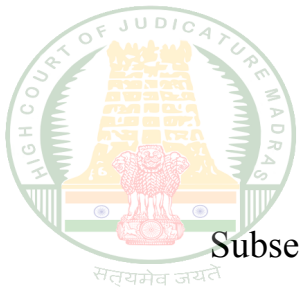
S.A.Nos.1213 and 1214 of 2003

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21. Further, according to the learned Senior Counsel, the Courts below even though accepted the case of the appellants herein that "Othi" Ex.A-2 was discharged, erred in granting a decree for declaration in favour of the first respondent without directing him to deposit the said othi amount.

22. Per contra, Mr.D.Nallathambi, learned counsel appearing for the respondents submitted that the suit property originally belonged to one Ramalingam Asari and his wife pre-deceased him and they had no issues and he died leaving behind his sisters, Gomathi Ammal and Seethaiammal as his legal heirs. During the lifetime of Ramalingam Asari, he mortgaged the suit schedule property by virtue of a registered mortgage deed dated 02.11.1964/Ex.B.13 in favour of one Meena Mohaideen Rowther. After the death of Ramalingam Asari, the said mortgage deed was discharged by Gomathiammal and by one Sundaram Asari, who is the son of Seethaiammal on 16.07.1976 and the registered discharged cash receipt was marked as Ex.B.14. Subsequently, the said Gomathiammal, sold the suit property through her Power of Attorney Sundaram Asari to one Yovan Nadar by way of registered sale deed, dated 01.08.1976 (Ex.B.48).

Page No.19/36



S.A.Nos.1213 and 1214 of 2003

Subsequently, he sold the property to one Thavasikani Nadar. Thereafter, the said Thavasikani Nadar had borrowed loan from the Government and also executed a mortgage deed dated 17.03.1982 in favour of the Government of Tamil Nadu, and got an approved plan from the Kalakkadu Panchayat to establish an ice factory in that property. Due to some reasons, he could not establish the said factory. Later, Thavasikani Nadar sold the property to the deceased George (first respondent herein), *vide* Ex.B.1 - registered sale deed dated 16.05.1983, and since from the date of purchase, he is in possession and enjoyment of the said property and mutated all the Revenue Records in his name. Learned counsel for the respondents further submitted that Fasli year 1394-1395 which stands in the name of George was marked as Ex.B.4, Adangal extract from 1385-1395 Fasli years which stand in the names of Ramalingam Asari, Yovan Nadar and George, were marked as Ex.B.5 and Kist receipts that stood in the name of George, was marked as Exs.B.6 and B.7. Therefore, from the oral and documentary evidence, the respondents have proved that Ex.B.48, sale deed, was acted upon continuously and it is proved beyond doubt.



S.A.Nos.1213 and 1214 of 2003

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23. Learned counsel for the respondents further submitted that the main defence taken by the appellants is that the said Ramalingam Asari sold the suit schedule property by way of oral sale to the first appellant's husband for a sum of Rs.2,000/- and promised to execute a sale deed and hence, they are tracing their title under oral sale and that too was not proved. If the immovable properties are worth more than the value of Rs. 100/-, the same can be sold by a registered sale deed. Hence, the said oral sale is not a valid one. Even though the deceased first appellant herself admitted that her husband purchased the said property as a vacant land and subsequently, he constructed a house, the same was collapsed due to heavy rain and that they left the said property and they have not been in possession and enjoyment of the suit property for the past 22 years. It is evident from the records that from the year 1976 onwards, all the Revenue Records stood only in the name of Yovan Nadar and his successors in title and hence, after 1976, neither the deceased first appellant, nor her successors, had any right or possession over the suit schedule property. Therefore, the suit filed by the appellants is not maintainable.



S.A.Nos.1213 and 1214 of 2003

24. Learned counsel for the respondents further submitted that even

assuming that if the oral sale is a valid one, the appellants ought to have produced the documents to show that the patta in respect of the said property either stands in the name of the deceased first appellant or in the name of his husband, but they did not produce any documents to prove their possession and enjoyment of the said property, except Ex.A.2 - a copy of usufructuary mortgage deed dated 05.01.1952. Once the suit is filed for declaration and permanent injunction, it is for the plaintiffs to prove their case on their own strength and they cannot take advantage of the loop-holes left by the defendants. The first respondent herein, who traces his title through Gomathiammal and Seethaiammal, had proved that they are the legal heirs of the deceased Ramalingam Asari and also proved his possession and enjoyment of the said property, by producing oral and documentary evidence, especially Ex.B.13, Ex.B14 and Ex.B.48 and therefore, the trial Court had rightly appreciated the entire oral and documentary evidence and after hearing the submissions of both sides, dismissed the suit filed by the deceased first appellant herein and decreed the suit filed by the deceased first respondent. The first appellate Court, as a fact finding Court, re- appreciated the entire evidence and materials and

Page No.22/36



S.A.Nos.1213 and 1214 of 2003

dismissed the appeals and hence, there is no merit in the present Second

Appeals and the same are liable to be dismissed.

25. Heard both sides and perused the materials available on record.

26. Admittedly, the deceased first appellant herein filed the suit in O.S.No.502 of 1985 on the file of the District Munsif Court, Ambasamudram and the same was transferred to District Munsif Court, Vallianur and later, the same was re-numbered as O.S.No.729 of 1994 and again it was transferred to District Munsif Court, Nanguneri and re-numbered as O.S.No.539 of 1996. The said suit was filed for declaration and permanent injunction as against the deceased first respondent herein. Likewise, the deceased first respondent filed the suit in O.S.No.247 of 1998 on the file of the District Munsif Court, Ambasamudram and the same was transferred and re-numbered as O.S.No.14 of 1996 on the file of the District Munsif Court, Nanguneri. The said suit was filed for declaration, permanent injunction and redemption of usufructury mortgage deed dated 05.01.1952. Since the suit property is one and the same, both the suits were tried together and joint trial was conducted and evidence was recorded in O.S.No.539 of 1996.

Page No.23/36



S.A.Nos.1213 and 1214 of 2003

WEB COPY 27. Admittedly, both the parties are tracing their title through Ramalingam Asari, S/o.Narayana Asari. According to the appellants, the said Ramalingam Asari executed a usufructuary mortgage deed dated 05.01.1952 in favour of the first appellant's husband and subsequently, during the year 1961, the property was sold under oral sale to the first appellant's husband for a valuable consideration of Rs.2,000/-. Thereafter, the first appellant's husband constructed a house in that property and due to heavy rain, the said house got collapsed and then, they shifted their residence to Salainayainar Pallivasal Village. Though the suit property is kept as a vacant land, the deceased first respondent was taking emergent steps to put up a construction in that land and the first appellant, who traces title from Ramalingam Asari, had filed the suit for declaration and permanent injunction in respect of the suit schedule property. Further, the case of the appellants is that the said Ramalingam Asari died in the year 1975 without any legal heirs, since his wife pre-deceased him and they had no issues. Till his lifetime, he has not redeemed the property, which was mortgaged to the first appellant's husband and hence, the appellants herein became the absolute owners of the suit schedule property. At this juncture,

Page No.24/36



S.A.Nos.1213 and 1214 of 2003

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the respondents are also claiming title from the legal heirs of Ramalingam Asari and they have contended that the said Ramalingam Asari died leaving behind his two sisters as his surviving legal heirs. Even though during the lifetime of the said Ramalingam Asari, he executed two mortgage deeds, dated 02.11.1964 and 17.11.1965 in favour of one Meena Mohaideen Rowther in respect of the suit property and after his demise, the said mortgage deeds were discharged by his legal heirs. Subsequently, the legal heirs of Ramalingam Asari sold the suit property to one Yovan Nadar, who in turn sold the property to one Thavasikani Nadar and subsequently, he sold the property to the deceased first respondent and that he is the absolute owner of the suit schedule property purchased from his vendors. In the case on hand, the respondents also admitted the usufructuary mortgage deed dated 05.01.1952 executed by Ramalingam Asari in favour of first appellant's husband, but however, the same was later discharged by Yovan Nadar and hence, the respondents sought the relief of redemption. After trial, the trial Court, *vide* common judgment dated 15.04.2002 dismissed the suit in O.S.No.539 of 1996 and decreed the suit in O.S.No.14 of 1996 and the said judgment and decree were confirmed by the first appellate Court.



S.A.Nos.1213 and 1214 of 2003

28. Substantial question of law No.1 : Are the Courts below

justified in holding that Ex.B.48 sale deed, under which the respondent claims title, stands proved, over-looking the various suspicious circumstances surrounding the execution of the same, especially when the sale is stoutly denied by the appellant ?

28.1. As far as the first substantial question of law is concerned, as already discussed above, both the parties are tracing their title from one Ramalingam Asari. The appellants herein had stated that the said Ramalingam Asari executed a usufructuary mortgage deed dated 05.01.1952 for a sum of Rs.200/- to the first appellant's husband (late Pitchaikannu Nadar) and subsequently, sold the property under oral sale in the year 1961 to the first appellant's husband for a valuable sale consideration of Rs.2,000/-. Therefore, the appellants became the owners of the suit property and they are tracing title from the year 1961. The respondents were also tracing title from the said Ramalingam Asari. According to the respondents, the said Ramalingam Asari never sold the property to the appellants. Even during his lifetime, the said Ramalingam Asari, executed mortgage deed dated 02.11.1964 in favour of one Meena

Page No.26/36



S.A.Nos.1213 and 1214 of 2003

Mohaideen Rowther. The said Ramalingam Asari died in the year 1975 and after his death, the said mortgage deed which was stated to have been executed, was redeemed by his legal heirs on 16.07.1976. It is the contention of the appellants that the said Ramalingam Asari has no legal heirs. No doubt, his wife pre-deceased him and they had no issues. However, at the time of recording the evidence of the first appellant, she has admitted that the said Ramalingam Asari had two sisters, but she has stated that she doesn't know the names of his sisters. Even in Ex.B.14 – registered discharged cash receipt, it was mentioned that the legal heirs of Ramalingam Asari had paid the mortgaged amount and that the said mortgage was discharged. Subsequently, the legal heirs of Ramalingam Asari sold the property to Yovan Nadar on 01.08.1976. The said sale deed was marked as Ex.B.48 and copy of the said sale deed was marked as Ex.B. 9. However, the appellants have challenged the said sale deed/Ex.B.48 on the ground that there are several suspicious aspects/circumstances regarding execution of Ex.B.48 sale deed i.e., there are ten stamp papers in the said sale, the first stamp paper is standing in the name of Rajan for Rs.50/- purchased at Chindathripet, Chennai, the second stamp paper for Rs.35/- was purchased at Thiru Pillai, Sattar, the seventh stamp paper was

Page No.27/36



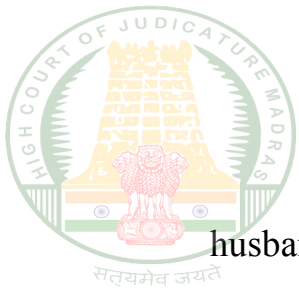
S.A.Nos.1213 and 1214 of 2003

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purchased in the name of Murugan, Thankarai, Villupuram District and the tenth stamp paper was purchased in the name of Palani of Villupuram, and the purchase of the stamp papers in the name of several persons at several places, gives rise to serious doubt. Though the stamp papers were purchased in the name of several persons and in several places, the same was registered as documents and based on that document, the purchaser of the property viz., Yovan Nadar was enjoying the property and all the Revenue Records were mutated in his name and later, the said property changed many hands. The first respondent is the subsequent purchaser.

28.2. Admittedly, the suit property is a vacant site, which is evident from Ex.A.2 and Ex.B.48 and also the appellants have not been in possession of the said property for more than 22 years and they shifted their residence to Salai Nayinar Pallivasal Village. It is the contention of the appellants that after purchase of the suit property, the husband of the deceased first appellant had constructed a house in the said property and due to heavy rain in the year 1978, it got collapsed and thereafter, they shifted their residence. If at all there was an oral sale in the year 1961, the appellants ought to have mutated all the Revenue Records in the name of

Page No.28/36



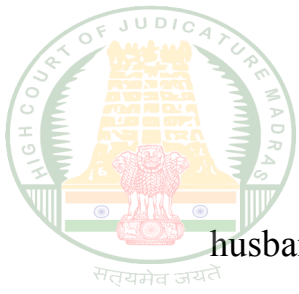
S.A.Nos.1213 and 1214 of 2003

husband of first appellant or in the name of the first appellant, but they have not produced the mutation effected in the name of the purchaser or others.

Further, the appellants have stated that the first appellant's husband constructed a house in the said property, and they ought to have got approved planning permission. However, they have not produced any document to prove the oral sale and also their possession and enjoyment of the suit property from the year 1961 onwards, except Ex.A2-registered copy of the usufructuary mortgage deed, dated 05.01.1952. The appellants/plaintiffs filed the suit for declaration and hence, it is for them to prove the case on their own strength and they cannot take advantage of the loop-holes in the case of the defendants. Except suspicious aspects/circumstances pointed out by the first appellant during cross examination regarding the stamp papers under Ex.B.48, no other materials have been produced by the appellants to establish their case.

28.3. Further, Section 54 of the Transfer of Property Act clearly shows that any immovable property of the value of one hundred Rupees and upwards, can be transferred only by a registered instrument. In the case on hand, the main contention of the appellants is that the first appellant's

Page No.29/36



S.A.Nos.1213 and 1214 of 2003

husband purchased the said property from the Ramalingam Asari by oral sale consideration of Rs.2,000/-, which is over and above of Rs.100/- and therefore, the said oral sale is not a valid one.

28.4. In the facts and circumstances, it is useful to extract Section 54 of the Transfer of Property Act, 1882, which reads as follows :

54. “Sale” defined

“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made

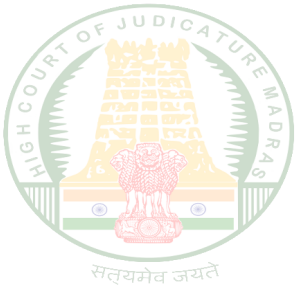
Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale

A contract for the sale of immovable property is a contract



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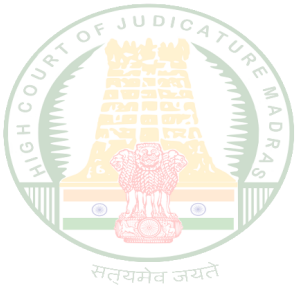
S.A.Nos.1213 and 1214 of 2003

that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

28.5. It is seen from the records that on the date of filing of the suits, the first respondent, who traces his title from Ramalingam Asari and his legal heirs, was in possession and enjoyment of the suit property. In order to prove all the transactions from the year 1976, the respondents have produced the documents viz., Ex.B.1 to Ex.B.49, which clearly show that on the date of filing the suit, the first respondent is in possession and enjoyment of the suit property. Further, the first respondent has proved the execution of sale deed / Ex.B.48 in the manner known to law. However, the appellants have not produced any document to prove the oral sale, except Ex.A2- usufructuary mortgage deed. Since the appellants herein/plaintiffs have not proved their title by way of producing any oral and documentary evidence, the trial Court, after appreciating the entire oral and documentary evidence, has rightly dismissed the suit filed by the first appellant in O.S.No.539 of 1996, which was confirmed by the first appellate Court. The first substantial question of law is answered accordingly as against the appellants herein.

Page No.31/36



S.A.Nos.1213 and 1214 of 2003

29. **Substantial question of law No.2** : Is the lower appellate Court

justified in declaring the title of the respondent, after a finding that the "Othi" executed by Ramalingam Asari, the original owner in favour of the appellant's husband is still subsisting ?

As far as the second substantial question of law is concerned, both the parties have admitted that the original owner of the suit property is one Ramalingam Asari and they are tracing title from the said Ramalingam Asari. Though the appellants pleaded title by way of an oral sale, but as already discussed above, they have not produced any documentary evidence to prove the said oral sale. Even during the lifetime of Ramalingam Asari, he dealt with the property and mortgaged the same to third parties and later, the said mortgage was redeemed by the legal heirs of Ramalingam Asari. Since there were no materials to show that usufructuary mortgage deed said to have been executed by Ramalingam Asari in favour of Pitchaikannu Nadar, who is the husband of the deceased first appellant, was not redeemed and therefore, the trial Court granted the decree for redemption and ordered for payment of said mortgage amount of Rs.200/- with interest. Further, the respondents have proved that the said Ramalingam Asari died leaving behind his two sisters as his second class

Page No.32/36



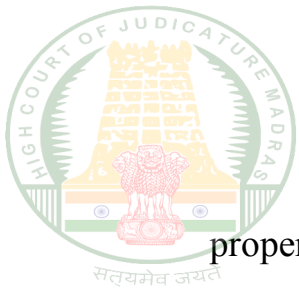
S.A.Nos.1213 and 1214 of 2003

legal heirs and they redeemed the subsequent mortgage made by

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Ramalingam Asari and also they sold the property to one Yovan Nadar in the year 1976, and since then, he was in possession and enjoyment of the said property and mutation of Revenue Records was also effected in his name. Subsequently, the property has been changed by various hands through registered documents and finally, the first respondent herein had purchased the said property and he has also produced several documents to prove all the transactions and also his possession and enjoyment of the said property and hence, the respondents have proved their title, possession and enjoyment of the said property. However, the appellants, except to prove that the said Ramalingam Asari executed a usufructuary mortgage in favour of the first appellant's husband in the year 1952, they have not produced any document to prove that they have purchased the said property and that they were in possession and enjoyment of the said property. The appellants herein are only mortgagees. Further, the said mortgage is admitted by the respondents, however, they have not produced any document for discharging the said mortgage said to have been executed by Ramalingam Asari to the first appellant's husband in the year 1952. Once it is a mortgage, it remains a mortgage, unless the mortgagor redeems the

Page No.33/36



S.A.Nos.1213 and 1214 of 2003

property. In the case on hand, the appellants have not filed any suit for foreclosure claiming title, whereas, the appellants are claiming title by way of oral sale, which is not legally a valid one and also the appellants have not produced any documents to prove their possession and enjoyment of the said property till filing of the said suit. Therefore, the trial Court rightly decreed the suit filed by the respondents herein for redemption. This Court does not find any reason to interfere with the findings of the both the Courts below. The second substantial question of law is answered accordingly as against the appellants herein.

30. For the foregoing reasons, this Court is of the view that both the Trial Court and the first Appellate Court, on proper appreciation and re-appreciation of evidence, held that the first respondent herein (plaintiff in O.S.No.14 of 1996 as well as defendant in O.S.No.539 of 1996) has proved his title and he is entitled for decree as sought for in the suit in O.S.No.14 of 1996. Accordingly, both the Second Appeals fail and the same are dismissed. There shall be no order as to costs.

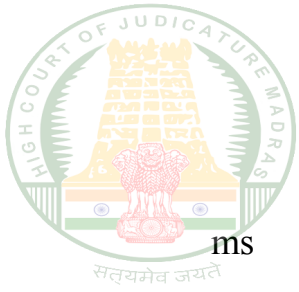
Index : Yes/No

Neutral Citation Case : Yes/No

Speaking Order : Yes/No

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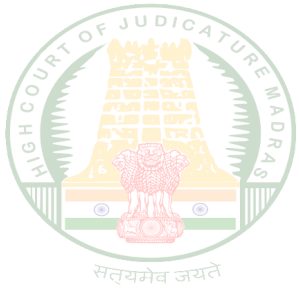
Page No.34/36



S.A.Nos.1213 and 1214 of 2003

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1. The District Munsif-cum-Judicial Magistrate, Nanguneri.
2. The First Additional Subordinate Judge, Tirunelveli.
3. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court at Madurai.



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S.A.Nos.1213 and 1214 of 2003

P.VELMURUGAN, J

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S.A.Nos.1213 and 1214 of 2003

18.07.2025

Page No.36/36