

S.A.No.291 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 18.08.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.291 of 2003

and

C.M.P.(MD).No.11837 of 2019

1. Petchiammal @ Vijaya

2. Vallinayagam

.. Appellants

Vs.

1. Pitchanatha Mudaliar (Died)

(Memo presented in Court and recorded

as R1-died vide Court order dated 16.08.2019 by RPAJ)

2. Pushpathammal

3. P.Kanthimathi

4. P.Palanikumarasamy

5. P.Subramanian

5. P.Indira @ Parvathy

(Respondents 3 to 6 brought on record as LR.

of deceased 1st respondent, vide Court order

dated 19.11.2019 made in CMP Nos.8374, 8376,

8377 of 2019 in SA No.291 of 2003)

.. Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code,

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against the judgment and decree dated 25.07.2000 in O.S.No.15/1999 on the file of the District Munsiff Court, Thoothukudi as confirmed by the learned Additional District Judge, Thoothukudi on 30.07.2002 in A.S.No.55/2002 and dismiss the suit O.S.No.15/1999 on the file of the District Munsif Court, Thoothukudi with cost.

For Appellants : Mr.G.Prabhu Rajadurai

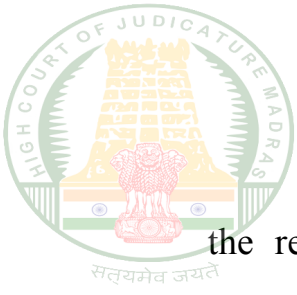
For Respondents : Mr.M.P.Senthil for RR-2 to 6

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 25.07.2000 in O.S.No.15 of 1999 on the file of the District Munsif Court, Thoothukudi as confirmed by the learned Additional District Judge, Thoothukudi on 30.07.2002 in A.S.No.55 of 2002 and dismiss the suit O.S.No.15 of 1999 on the file of the District Munsif Court, Thoothukudi with cost.

2. The averments made in the plaint in O.S.No.15 of 1999 are as follows:

The suit property absolutely belongs to the respondents/plaintiffs by virtue of the sale deed dated 27.11.1992. After purchase of the suit property,



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the respondents/plaintiffs are in absolute possession and enjoyment by fencing around the property. When the respondents/plaintiffs were not in the residence for a while, the appellants/defendants took advantage of the same and encroached upon the South-East portion of the suit property and constructed a shed therein in the month of July 1996 and claiming right over the suit property. Hence, the respondents/plaintiffs filed the suit against the appellants/defendants before the District Munsif Court, Thoothukudi seeking the relief of declaration, recovery of possession, mandatory injunction to remove the alleged encroachment in the suit schedule property and for mesne profits.

3. The averments made in the written statement filed by the first appellant/first defendant are as follows:

The suit property does not belong to the plaintiffs and they cannot claim right over the suit property by way of sale deed dated 27.11.1992. The appellants/defendants purchased the suit property in the year 1990 itself and from the date of purchase, they are in the possession and enjoyment of the same. At no point of time, the defendants encroached upon the property of the plaintiffs and that the construction was put up only in the property belonging to the defendants.

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4. The averments made in the reply statement filed by the respondents/plaintiffs are as follows:

The suit property originally belonged to the Aandi Subramania Chettiar. He, along with his sons, namely, Ramasamy Chettiar and Bramanayagam Chettiar, partitioned the properties by way of registered partition deed dated 05.02.1900, whereby the suit property was allotted to the share of the Ramasamy Chettiar. The said Ramasamy Chettiar died leaving behind his brother viz., Bramanayagam Chettiar as his legal heir. After the demise of the Bramanayagam Chettiar, the suit properties devolved upon his two sons, viz., Chithambaram Chettiar and Ganapathy Chettiar. The said Chidambaram Chettiar passed away leaving behind his daughter Ramalakshmi as his legal heir. It is thereafter, the said Ramalakshmi and Ganapathy Chettiar, executed a sale deed in favour of the respondents/plaintiffs on 27.11.1992. The properties described as item Nos. 1 and 2, mentioned in the written statement, do not belong to the respondents/plaintiffs. Item No.3 alone is the subject matter in dispute, wherein, the item No.3 lies well within the boundaries of the suit schedule properties.

5. The averments made in the additional written statement filed by the

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second appellant/second defendant are as follows:

WEB COPY The respondents/plaintiffs are not entitled to the suit schedule property and the boundaries have not been properly set out in the plaint. Further, by way of reply statement, the respondents/plaintiffs had made out a new case and therefore, prayed for dismissal of the suit.

6. The trial Court, on the basis of the pleadings and oral and documentary evidence, decreed the suit, by judgment and decree dated 25.07.2000, with respect to three reliefs, however, the relief of mesne profits was denied. Aggrieved by the judgement and decree, the appellants/defendants preferred an appeal in A.S.No.55 of 2002 before the Additional District Court, Thoothukudi, in which, the respondents/plaintiffs preferred cross objection in A.S.No.65 of 2000. The first appellate Court, after enquiry, dismissed the appeal as well as the cross objection by judgment and decree dated 30.07.2002, against which, the defendants have preferred the second appeal before this Court.



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7. This Second Appeal was admitted by this Court on 17.08.2007 on

WEB CON the following substantial question of law:

"Whether the Court below erred in placing reliance on the incongruous documents in EX.A-1 and A4 filed by respondents/plaintiffs to prove the possession and title of the suit property with the respondents."

8. The learned counsel for the appellants/defendants submitted that the defendants purchased their property in the year 1990 and they have been in possession and enjoyment since then. At no point of time, the defendants encroached upon the property of the plaintiffs. Rather, the construction was put up only in the property belonging to the defendants. The defendants described three items of properties in the written statement, which belong to the defendants. During trial, the plaintiffs examined two witnesses and marked 4 documents as Ex.A1 to Ex.A4. On the side of the defendants, two witnesses were examined and 5 documents were marked as Ex.B1 to Ex.B5. The trial Court, on an erroneous findings of facts and law, decreed the suit by granting the relief of declaration, recovery of possession and mandatory

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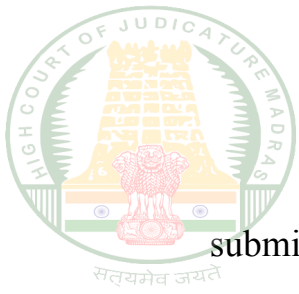
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injunction in favour of the respondents/plaintiffs. In the appeal also, the first appellate Court, erroneously confirmed the judgment and decree of the trial Court.

8.1 The learned counsel further submitted that even according to the plaintiffs, the plaintiffs had purchased the suit property by way of sale deed dated 27.11.1992 from one Ramalakshmi Ammal and Brammanayagam Chettiar. The said sale deed was marked as Ex.A1, whereas the predecessors-in-title do not have any right over the suit property and as such, they cannot convey the same to the plaintiffs and that, Ex.A1/sale deed does not confer any right on the plaintiffs over the suit property. He also submitted that the defendant's vendor, namely Muthukumarasamy, was examined as D.W.2 and he has categorically stated that the suit property never belonged to Ramalakshmi Ammal or Bramanayagam and that it was his property.

8.2. The learned counsel for the appellants/defendants further submitted that the properties purchased by the plaintiffs is different from the suit property. The second plaintiff's husband was examined as P.W.2. In his statement, he has deposed that his wife had purchased the properties comprising land and a house by way of sale deed/Ex.B1. He further

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submitted that the said properties originally belonged to one Muthukumarasamy Chettiar and his brother Bodhikannu Chettiar, who partitioned their properties by way of Ex.B2. It is categorically admitted by P.W.2 that, item No.4 in Schedule 1 in Ex.B2/partition deed, is the suit property and that his wife/second plaintiff purchased only Item Nos. 1 and 6 in Schedule 1 in Ex.B2 and not Item No.4. Further, Item No.4 was purchased by the defendant on 02.06.1999 (Ex.B5) which is the suit property. As such, the properties purchased by the plaintiffs is not the suit property as squarely admitted by P.W.2, who is none other than the husband of the second plaintiff.

8.3 The learned counsel for the appellants/defendants further submitted that the plaintiffs had consistently pleaded in their plaint that they purchased the suit property by way of sale deed dated 27.11.1992, marked as Ex.A1 and that their vendors are Ramalakshmi Ammal and Bramanayagam Chettiar. However, the learned Trial Judge erred in holding that the property in Ex.A1 encompasses the property in Ex.A4. Ex.A1 and Ex.A4 contain different vendors. The plaintiffs failed to plead the relevance of Ex.A4 or property conveyed therein. It is settled position of law that in the absence of pleadings, no amount of evidence can be let in. Even

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otherwise, it cannot be looked into by the Courts, as the same will cause great prejudice to the opposite party. The Hon'ble Apex Court laid down the said proposition in the case of ***Bachhaj Nahar vs. Nilima Mandal & anr.*** reported in ***(2008) 17 SCC491***.

8.4. The learned counsel further submitted that even as per the deposition of the second plaintiff's husband, namely P.W.2, the extent of encroachment is unknown. The plaintiffs have only put forward bald allegations of encroachment by the defendants in the suit property, but have not specifically described the extent of encroachment. They have not even taken steps to appoint an Advocate Commissioner to identify the alleged encroachment in the suit property. As such, in the absence of specific identification of the encroachment, the prayers for mandatory injunction and recovery of possession, are not maintainable. Thus, the learned counsel for the appellants/defendants prayed to set aside the judgment and decrees passed by the Courts below.



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9. The learned counsel for the respondents/plaintiffs contended that the Courts below have categorically found that the suit property belongs to the respondents/plaintiffs by way of registered sale deeds marked as Exs.A1 and A4 which are the prior documents. The respondents/plaintiffs have categorically proved their right, interest and entitlement over the suit property by way of oral and documentary evidence. The appellants/defendants alleged in the written statement that they purchased portion of the suit property, which is described as third item in the written statement in the year 1990. But the appellants purchased the property only during the pendency of the above suit in the year 1999 and the same has also been admitted by the second appellant/second defendant in his evidence as D.W. 1. As such, the appellants/defendants have taken contradictory plea in the written statement, which itself shows the mala-fide intention of the appellants/defendants. The vendor of the respondents/plaintiffs and appellants/defendants, viz. Muthukumarasamy are one and the same, who was examined as D.W.2, wherein he has categorically admitted that the portion of suit property was sold to the respondents/plaintiffs on 29.07.1988, which has been marked as Ex.A4 and once again, the very same extent of the property has been conveyed to the appellant as well, much later

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in the year 1999 i.e. pending the above suit. The said Muthukumarasamy himself has categorically admitted that for execution of the sale deed in respect of the property i.e. Ex.B5, the stamp papers were purchased from different places, which itself would show that the purchase made by the appellants/defendants is not a bona-fide one. He also admitted that the property purchased under Ex.A4 & Ex.B5 are one and the same. As such, the said Muthukumarasamy was not entitled to sell the very same property to the appellants/defendants. Therefore, the subsequent sale deed executed by the said Muthukumarasamy in favour of the appellants/defendants under Ex.B5, is not valid and they cannot claim right over the suit property based on Ex.B5.

9.1. The learned counsel for the respondents/plaintiffs further contended that the respondents/ plaintiffs have independently proved their case by way of producing oral and documentary evidence to substantiate their right, interest and entitlement over the suit property. The second appellant/second defendant i.e., the husband of the first appellant was examined as D.W.1. who has categorically admitted that the suit property was purchased by them only during the pendency of the suit. He also admitted that they constructed a shed in the South Eastern portion of the suit

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property. Absolutely, there is no single piece of document to show that the appellants/defendants had purchased the suit property in the year 1990 and they were in possession of the same. The Court below found that the third item of the property described in the written statement is comprised with the suit schedule property. The sale deeds marked as Ex.A1 and ExA4 as well as the specific admissions of the D.W.2/ Muthukumarasamy itself are sufficient to hold that the suit property absolutely belonged to the respondents/plaintiffs. Therefore, the respondents/plaintiffs have discharged their initial burden of proof in establishing their right and entitlement over the property by way of cogent oral and documentary evidence in accordance with Sections 101 to 103 of the Indian Evidence Act (Sections 104 to 106 of BSA, 2023). The appellants/defendants have failed to substantiate their case by way of any plausible and acceptable evidence. In fact, the appellants/defendants have not stated their right and entitlement over the third item of the property which has been described in the written statement (comprises within the suit schedule property) and as such, the written statement completely is bereft of particulars with regard to the entitlement over the third item of property. The trial Court had properly appreciated the oral and documentary evidence produced by both the parties and granted

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decree in favor of the respondents/plaintiffs. The first appellate Court also concurrently held that the respondents/plaintiffs have categorically proved their case based on cogent evidence and as such, no interference is required by this Court. Therefore, the learned counsel prayed for dismissal of this appeal.

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

11. The specific case of the appellants/defendants is that in the year 1990 itself, the appellants/defendants purchased the suit property and from the date of purchase, they are in possession and enjoyment over the same and that they have not encroached upon the suit property. Even according to the respondents/plaintiffs, they purchased the suit property only on 27.11.1992, which is subsequent to the purchase of the appellants/defendants. After selling the property to the appellants/defendants, the vendor has no alienable right and interest and therefore, they cannot convey the same to any other party. Therefore, the sale deed dated 27.11.1992 executed in favour of the respondents/plaintiffs is not a valid one, as its predecessor in title have no right and title to convey the property to the respondents/plaintiffs. Further, the respondents/plaintiffs have not properly described the property and also not mentioned the exact extent of

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encroachment. As plaintiffs, they have to prove their case on their own strength and they cannot take advantage of the loopholes left by the defendants. Both the trial Court and the first appellate Court have miserably failed to appreciate the pleadings and oral and documentary evidence and erroneously decreed the suit. Therefore, the present Second Appeal is filed.

12. The specific case of the respondents/plaintiffs is that the appellants/defendants had not purchased the property in the year 1990. They purchased the property only on 02.06.1999 under Ex.B.5, whereas, the respondents/plaintiffs purchased the property in the year 1988 itself under Ex.A4. The vendor of both the documents in Exs.A4 and B5, is one and same and when the vendor was examined as D.W.2, he has categorically stated that the property purchased under Exs.A4 and B5 are one and the same. Though the appellants/defendants stated that they purchased the property in the year 1990, the document shows that the property was purchased in the year 1999. D.W.2, who is the vendor of Exs.A4 and B5, has categorically admitted that a portion of the suit property was sold to the respondents/plaintiffs on 29.07.1988 under Ex.A4 and once again, the very same extent of property was conveyed to the appellants/defendants much later in the year 1999 and therefore, the appellants/defendants are not

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entitled to the suit property. The trial Court rightly decreed the suit and the first appellate Court as a final Court of fact finding, rightly re-appreciated the entire materials and dismissed the appeal. Therefore, there is no merits in the second appeal and the same is liable to be dismissed.

13. As far as the substantial question of law is concerned, admittedly, a perusal of Exs.A4 and B5 shows the vendor of both the appellants/defendants and the respondents/plaintiffs is one and the same. They derived the title from the very same ancestors. The appellants/defendants themselves examined the said vendor as D.W.2, namely Muthukumarasamy and he has clearly stated that he sold a portion of the property to the respondents under Ex.A4 dated 29.07.1988 and the very same property was subsequently sold in the year 1999 under Ex.B5.

14. Once the vendor sold a property to the respondents/plaintiffs, he has lost his right and title in the said property and therefore, he cannot convey the same property once again to the appellants/defendants.

15. A reading of the materials shows that the respondents/plaintiffs purchased the suit property much earlier to the appellants/defendants. Though the appellants/defendants submitted that the respondents/plaintiffs purchased the property only on 27.11.1992, but the appellants/defendants



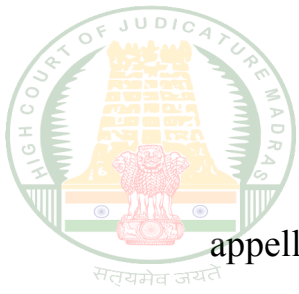
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purchased the same in the year 1990 itself, however, the appellants/defendants have not produced any document to prove that they purchased the suit property in the year 1990.

16. The appellants/defendants' document viz., Ex.B5 clearly shows that the suit property was purchased only on 02.06.1999, but the respondents/plaintiffs purchased the suit property 10 years prior to the purchase of the appellants/defendants i.e. on 29.07.1988 itself.

17. A perusal of the plaint schedule property, third item in Ex.A4 and also Ex.A1 clearly shows that the respondents/plaintiffs have got better title. Though the appellants/defendants stated that they purchased the suit property in the year 1990 itself, they have not produced any document to show that they purchased the same prior to the respondents/plaintiffs. The appellants/defendants claiming title through Ex.B5 which is only of the year 1999 and which is subsequent to Exs.A1 and A4. Therefore, at the time of execution of Ex.B5, the vendor of the appellants/defendants had no right and title to convey the property to any person including the appellants/defendants. Therefore, this Court finds that the respondents/plaintiffs have substantiated their pleadings through oral and documentary evidence that they have got better title than the

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appellants/defendants. The substantial question of law is answered in favour of the respondents/plaintiffs and against the appellants/defendants.

18. A combined reading of the pleadings, oral and documentary evidence especially the evidence of D.W.2 shows that both the Courts below rightly relied on the documents, Exs.A1 and A4 filed by the respondents/plaintiffs and decreed the suit. This Court does not find any perversity in the appreciation and re-appreciation of evidence by both the Courts below. Therefore, there is no merit in this Second Appeal and the same is liable to be dismissed.

19. Accordingly, this Second Appeal is dismissed. Consequently, the miscellaneous petition is closed.

20. Considering the facts and circumstances, both the parties are directed to bear their own costs.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

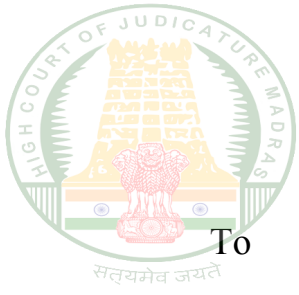
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To

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1. The District Munsiff Court,
Thoothukudi
2. The Additional District Judge,
Thoothukudi
3. The Section Officer,
V.R. Section,
High Court of Madras



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P.VELMURUGAN,J.

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Order in

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