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S.A.No.203 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.04.2026

PRONOUNCED ON : 03.06.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.203 of 2020
and C.M.P.No.4131 of 2020
and C.M.P.No.13294 of 2022

1.Kumari @ Muniammal

2.Selvam

... Appellants

vs.

1.Manoharan
S/o.Subramanian
Represented by his Power of Attorney
Abirami
W/o.Manoharan,
No.10, K-Block, Jawahar Nagar,
Puducherry – 605 005.

2.Fleury

3.Virginia

4.Chitra Sylvania

5.Diana Yahovia

6.Antony Durairaj

... Respondents



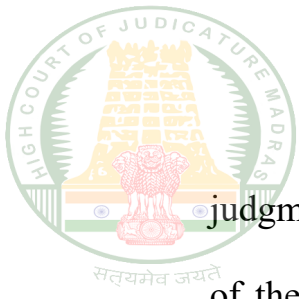
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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and the judgment dated 03.12.2019 rendered in A.S.No.14 of 2019, on the file of the Principal Subordinate Judge at Puducherry, confirming the decree and the judgment dated 18.12.2018 rendered in O.S.No.1137 of 2007, on the file of the Principal District Munsif at Puducherry by allowing this Second Appeal.

For Appellants	: Mr.S.Subbiah Senior Counsel for M/s.Elizabeth Ravi
For R1	: M/s.V.Srimathi
For R2 to R6	: No Appearance

J U D G M E N T

The defendants 1 and 2 are the appellants. The 1st respondent herein filed a suit for declaration of title and permanent injunction. The suit was partly decreed granting declaration of title. The prayer for relief of permanent injunction was negatived without prejudice to the right of the plaintiff to recover possession of the suit property in accordance with law. Aggrieved by the same, the plaintiff as well as defendants 1 and 2 filed two appeals in A.S.No.37 of 2019 and A.S.No.14 of 2019 respectively. Both the appeals were dismissed by the First Appellate Court by affirming the



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judgment and decree passed by the Trial Court. Aggrieved by the dismissal of the appeal filed by the defendants 1 and 2, they have come before this Court by way of filing this second appeal. The plaintiff has not filed any second appeal challenging the dismissal of his first appeal.

2. According to the appellants/defendants 1 and 2, the suit property originally belonged to one Navaneethakannan. The defendants 3 to 7 are the legal heirs of said Navaneethakannan. The suit property was purchased by Navaneethakannan under the Sale Deed dated 23.04.1996 and he in turn entered into Agreement of Sale with the plaintiff for sale of the property on 14.09.1996. Subsequently, the suit property was sold to the plaintiff by Navaneethakannan on 31.10.1996 under Ex.A2. The plaintiff has been in possession and enjoyment of the suit property from the date of purchase. The plaintiff started raising basement in the suit property during December-2006, the 2nd defendant attempted to commit trespass into the suit property, without having any manner of right and attempted to make further construction. The plaintiff preferred a police complaint and on enquiry, police found that 2nd defendant attempted to put up construction in the suit property on behalf of his sister, the 1st defendant. Later, the plaintiff came to know that 1st defendant said to have purchased the suit property from the legal heirs of



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plaintiff's vendor Navaneethakannan. After sale of the property in favour of the plaintiff by said Navaneethakannan, his legal heirs were not entitled to sell the property in favour of 1st defendant. Hence, the plaintiff caused a legal notice on 14.06.2007 to the defendants appraising them of the true facts. The 1st defendant issued a vague reply on 09.07.2007 with untenable allegations. Since the defendants colluded together and attempted to dispossess the plaintiff, the present suit was filed seeking above said reliefs.

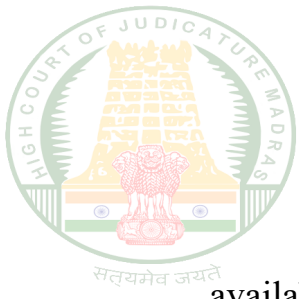
3. The 2nd defendant filed a written statement and the same was adopted by the 1st defendant. According to the contesting defendants, the suit property was originally purchased by Navaneethakannan and after his death, the same has been in possession and enjoyment of the defendants 3 to 7, the legal heirs of Navaneethakannan. The defendants 1 and 2 denied the allegation in the plaint that Navaneethakannan sold the property to plaintiff during his life time. They also denied the possession of the plaintiff over the suit property. The defendants 1 and 2 contended that the 1st defendant purchased the suit property from defendants 3 to 7 on 29.11.2002 under Ex.B2 and she was a *bonafide* purchaser of the suit property. It was contended that at the time of purchase, the defendants applied for Encumbrance Certificate for a period from 01.01.1996 to 01.05.2002 and in



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the said Encumbrance Certificate, there was only one entry that is the sale deed in favour of said Navaneethakannan. It was further contended that the defendants 1 and 2 entered into an agreement with a Builder called R.Sundar and construction has been already put up in the suit property upto the level of basement. The allegation in the plaint as if, plaintiff had been doing construction work in the suit property was specifically denied. Thus, denying alleged title and possession of the plaintiff over the suit property, the defendants 1 and 2 sought for dismissal of the suit.

4. Before the Trial Court, the plaintiff was examined as PW.1. The scribe of Ex.A2-Sale Deed in favour of plaintiff namely Ramalingam was examined as PW.2 (in the Trial Court judgment, name of PW.2 was wrongly mentioned as Ponnusamy, which is the name of father of PW.2). The attester to Ex.A2-Sale Deed was examined as PW.3. On behalf of the plaintiff, 14 documents were marked as Exs.A1 to A14. The 2nd defendant was examined as DW.1. On behalf of the defendants, 4 documents were marked as Exs.B1 to B4. The report filed by the Advocate Commissioner has been marked as Ex.C1.



5. The Trial Court on appreciation of oral and documentary evidence

available on record, came to the conclusion that the plaintiff proved his title over the suit property and declared his title accordingly. However, the Trial Court found that the plaintiff failed to establish his possession over the suit property and hence, negatived the relief of permanent injunction with liberty to recover possession of the suit property in accordance with law. Thus, the suit was partly decreed. Aggrieved by the same, as mentioned earlier, both the plaintiff and defendants 1 and 2 filed two appeals. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the dismissal of the appeal filed by the defendants 1 and 2, they have come before this Court by way of filing this second appeal.

6. At the time of admission, this Court formulated the following substantial questions of law, by order dated 05.12.2022:-

“(i) Whether the suit as framed is proper as the land had been described as vacant land and when admittedly construction had been put up by the defendants over the said land, even prior to the institution of the suit?;

(ii) Whether the suit as framed is proper as the plaintiffs have not sought the relief of recovery of possession since even



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at the time of institution of the suit, the defendants had commenced putting up construction?;

(iii) Whether both the Courts below erred in granting the relief of declaration of title when they had declined the relief of permanent injunction?;

(iv) Whether Section 34 of the Specific Relief Act, 1963, would apply insofar as the facts of this case are concerned? ”

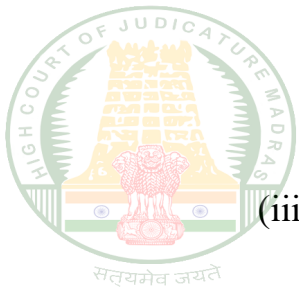
7. Pending second appeal, the 1st respondent/plaintiff filed an application in C.M.P.No.13294 of 2022 seeking amendment of the plaint so as to delete the prayer for injunction in the plaint and substitute the same with prayer for recovery of possession. The said application was opposed by the appellants/defendants 1 and 2 by filing counter affidavit and the said application is also taken up for consideration along with this second appeal.

8. Mr.S.Subbiah, learned Senior Counsel appearing for the appellants would submit that original owner Navaneethakannan never sold the property to plaintiff under Ex.A2 and the said document is a concocted one and therefore, both the Courts below committed serious error in upholding title of the plaintiff over the suit property. He further submitted that both the



Courts below on facts came to the conclusion that plaintiff was not in possession over the suit property on the date of plaint and construction in the suit property was put up by the defendants 1 and 2 even prior to the filing of the suit. In such circumstances, the decree for declaration of title granted by the Courts below after negating the consequential relief of injunction is hit by Section 34 of the Specific Relief Act, 1963. He further submitted that the amendment application filed by the plaintiff in the second appellate stage is not at all maintainable as proviso to Order 6 Rule 17 of Code of Civil Procedure has not been complied with. He further submitted that both the Courts below gave a factual finding that the plaintiff was not in possession of the suit property on the date of plaint and without challenging the said finding, the plaintiff is not entitled to contend that the dispossession had taken place pending suit and hence, he sought for dismissal of the amendment application. In support of said contention, he relied on the following judgments:-

- (i) ***Janakiammal vs. Rajalakshmi (deceased), W/o.Sundarraaj and others*** reported in ***(2021) 3 MLJ 159***.
- (ii) ***Kanta and others vs. Soma Devi (D) through LR. and others*** reported in ***2026 (1) TLNJ 492 (Civil)***.



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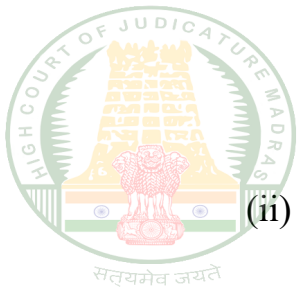
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(iii) ***Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar vs. Chandran and others*** reported in **2017 (2) CTC 678.**

(iv) ***Venkatarama vs. Vidyane Doureradjaperumal (D) thr. L.Rs. and others*** reported in **2013 (3) CTC 440.**

9. Per contra, M/s.V.Srimathi, learned counsel appearing for the 1st respondent would submit that Ex.A2-Sale Deed is a registered document and in view of the presumption attached to the registered document, the Courts below were justified in upholding the title of the plaintiff over the suit property. The learned counsel further submitted that once the title of the plaintiff over the suit property is proved, he is automatically entitled to possession of the suit property and hence, the plaintiff has filed application to amend the plaint so as to seek the relief of recovery of possession. The appellants/defendants 1 and 2 have no right to oppose the said application, in the absence of any plea of adverse possession. In support of her contention, the learned counsel relied on the following judgments:-

(i) ***Saraswathi Ammal vs. Ponnammal and another*** reported in **2000 – 2 – L.W. 794.**



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(ii) ***Mallavva and another vs. Kalsammanavara Kalamma (Since Dead)***

by Legal Heirs and others reported in ***2024 INSC 1021***.

(iii) ***Life Insurance Corporation of India vs. Sanjeev Builders Private***

Limited and another reported in ***(2022) 16 SCC 1***.

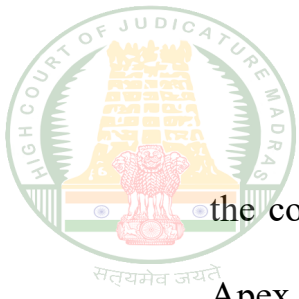
10. It is admitted case of both the parties that the suit property originally belonged to Navaneethakannan and Ex.B1-Sale Deed executed by Premraja in favour of Navaneethakannan proves the same. The plaintiff claims that he purchased the suit property under Ex.A2, dated 31.10.1996 from Navaneethakannan. The said Sale Deed was preceded by an Agreement of Sale dated 14.09.1996 marked as Ex.A1. The defendants 1 and 2 claim that the 1st defendant purchased the suit property from the legal heirs of Navaneethakannan namely defendants 3 to 7 under Ex.B2, dated 29.11.2002. Under normal circumstances, Ex.A2 is anterior in time will prevail over Ex.B2. However, in the case on hand, the defendants 1 and 2 raised a defence that Navaneethakannan never executed Sale Deed in favour of the plaintiff. In order to prove due execution of Ex.A2-Sale Deed in his favour, the plaintiff examined scribe of Ex.A2 as PW.2 and one of the attester to Ex.A2 was examined as PW.3.



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11. It is settled law that the Sale Deed is not a document, which requires compulsory attestation. Therefore, the execution of the same need not be proved by calling one of the attessor. Nevertheless, the plaintiff attempted to prove due execution of Ex.A2 by calling scribe as well as attessor. PW.3 attessor to Ex.A2 clearly deposed about execution of Sale Deed in respect of the suit property by Navaneethakannan in favour of the plaintiff. PW.3 was cross examined as if, the person, who executed Ex.A2 was not Navaneethakannan and PW.3 had no personal acquaintance with Navaneethakannan. In the written statement, the defendants 1 and 2 simply denied Navaneethakannan executed Sale Deed in favour of plaintiff. It was not their specific case that plaintiff impersonated and got the Sale Deed executed. Even assuming, defendants 1 and 2 pleaded impersonation, it is for them to prove the same. In the case on hand, the defendants 1 and 2 miserably failed to establish alleged impersonation.

12. Further, it is settled law that registration is a *prima facie* proof for due execution in respect of the documents, which do not require compulsory attestation. The act of registration creates a presumption that document is a genuine one and it is for the person, who challenges its genuinity to prove



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the contrary. In this regard, a reference may be had to the judgment of the Apex Court in *Prem Singh and others vs. Birbal and other* reported in **(2006) 5 SCC 353** and *Rattan Singh vs. Nirmal Gill* reported in **(2021) 5 SCC 300**. Therefore, when registered Sale Deed in respect of the suit property stands in the name of plaintiff under Ex.A2, there is a general presumption attached to it that the same is a genuine document unless the contrary is proved. The defendants 1 and 2 miserably failed to prove that Ex.A2-Sale Deed was not a genuine document. Infact, the vendors of the 1st defendant namely defendants 3 to 7 remained *exparte* and failed to file any pleadings challenging the Sale Deed. The 1st defendant also failed to enter box and question the genuineness of the document. DW.1 is the 2nd defendant and he is not competent to speak about the signature of Navaneethakannan found in Ex.A2.

13. The defendants 1 and 2 for the reason best known to them, failed to examine the legal heirs of Navaneethakannan as their witness. In such circumstances, by relying on the presumption attached to the registered Sale Deed, both the Courts below rightly came to the conclusion that Ex.A2-registered Sale Deed in favour of the plaintiff executed by Navaneethakannan would convey good title to him and upheld the title of

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the plaintiff. I do not find any error in the said conclusion reached by the Courts below.

14. Apart from declaration of title, the plaintiff also sought for permanent injunction on the ground that his alleged possession over the suit property was threatened by the defendants 1 and 2. In order to succeed in his prayer for injunction, the plaintiff must prove his possession on the date of filing of the suit. Ex.A9-Closure Report prepared by Station House Officer, Mudaliarpur Police Station. A perusal of the same would indicate that even prior to the filing of the suit, there was construction activity in the suit property by 2nd defendant-Selvam and it was objected to by plaintiff-Manoharan. Therefore, it is clear that the 2nd defendant put up portion of the construction in the suit property even prior to the suit. PW.1 during the cross examination deposed as follows:-

“வழக்கு சொத்தில் தற்பொழுது வீடு கட்டி உள்ளேன். மேற்படி வீட்டில் 1,2 பிரதிவாதிகள் குடியிருக்கிறார்கள். கிரைய உடன்படிக்கை தேதி மாதம் ஞாபகமில்லை.”

15. Therefore, the plaintiff clearly admitted possession of defendants 1 and 2 on the date of his examination before the Court. When the above said admission of PW.1 is read along with Ex.A9 report of Police, the claim



made by the plaintiff regarding his possession on the date of filing of the suit is highly doubtful. Both the Courts below on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to establish his possession over the suit property on the date of plaint and hence, negated the relief of injunction. The said factual conclusion reached by the Courts below is not vitiated by any perversity and hence, requires no interference by this Court.

16. It was vehemently contended by the learned counsel appearing for the appellants that when the consequential prayer for injunction is negated by the Courts below, the Trial Court ought not have granted declaration of title. In *Venkataraja* case cited by the learned Senior Counsel appearing for the appellants, a suit for declaration of title was filed without any prayer for consequential relief, therefore, the Apex Court in the said decision by citing the proviso to Section 34 of the Specific Relief Act, 1963 came to the conclusion that the suit for declaration of title simpliciter, without any consequential prayer, which ought to have been prayed for by the plaintiff was not maintainable. The said decision has been followed by this Court in *Janakiammal* case cited supra.



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17. In the case on hand, the suit is not for declaration of title alone.

The plaintiff laid a suit for declaration of title and also for consequential permanent injunction. The Courts below on facts held that the plaintiff failed to establish possession and hence, he could not maintain a prayer for consequential relief of injunction. Merely because, consequential relief is negatived, we cannot say the main relief of declaration of title is not maintainable. In the case on hand, the plaintiff sought for consequential relief and on facts, the Courts below held that he was not entitled to consequential relief. In such circumstances, the citation relied on by the learned Senior Counsel appearing for the appellants is not applicable to the facts of the present case. Both the Courts below after having come to the conclusion that the plaintiff failed to establish his possession on the date of presentation of the plaint, dismissed the consequential relief of injunction and granted liberty to the plaintiff to seek recovery of possession, if so advised. I do not find any error in the said conclusion reached by the Courts below.

18. A perusal of the affidavit filed by the 1st respondent/plaintiff seeking amendment of the plaint would indicate that he has not given any

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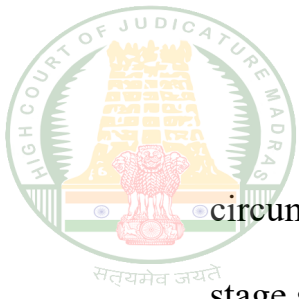


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reason for his failure to seek amendment of the plaint well before the commencement of the trial. In any event, after disposal of the suit, atleast before the First Appellate Court, the plaintiff should have accepted the findings of the Trial Court with regard to possession and sought for amendment of the plaint seeking recovery of possession. However, the plaintiff for the reason well known to him, decided to challenge the finding of the Trial Court with regard to possession and filed a separate appeal and argued the same before the First Appellate Court.

19. When the plaintiff had an opportunity to amend the plaint prior to commencement of the trial and also before the First Appellate Court, after disposal of the suit, having failed to avail the opportunity, he is not entitled to seek amendment of the plaint at the second appellate stage, so as to introduce the new relief of recovery of possession. It was contended by the learned counsel for the respondent that once the title of the plaintiff is upheld, the possession is consequential one. In case, the present amendment application is allowed and relief of possession is introduced in the plaint, necessarily, the appellants/defendants 1 and 2 shall be given an opportunity to file a written statement and they are entitled to take all the defence including the defence of adverse possession, if so advised. In such

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circumstances, there shall be a *de novo* trial. Allowing amendment at this stage so as to include new consequential prayer in the suit would deprive the defendant of opportunity to lead evidence with regard to his likely defence.

20. In the absence of any convincing reason on the part of the plaintiff, he was prevented from seeking amendment of the plaint well before commencement of the trial inspite of exercise of due diligence, this Court is not inclined to allow the amendment application. The proviso to Order 6 Rule 17 of Code of Civil Procedure has not been satisfied in this case and the plaintiff failed to show any reason that he was prevented from seeking amendment before commencement of the Trial. Therefore, this Court is not inclined to entertain the amendment application filed by the 1st respondent/plaintiff and accordingly, C.M.P.No.13294 of 2022 is dismissed.

21. In view of the discussion made earlier, all the substantial questions of law framed at the time of admission are answered against the appellants and in favour of the 1st respondent. The Second Appeal is dismissed by affirming the judgment and decree passed by the Courts below. In case, the 1st respondent/plaintiff files a fresh suit seeking recovery of possession as per the liberty granted by the Trial Court, it is always open to

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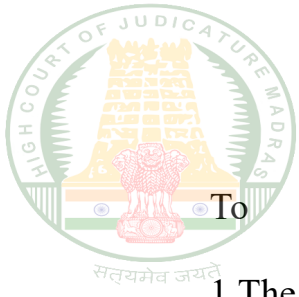
the defendants 1 and 2 to raise all the defences available to them including the question of limitation in the said suit.

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22. With this clarification, the Second Appeal stands dismissed. In the facts and circumstances of the case, there will be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
dm



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To

1.The Principal Subordinate Court,
Puducherry.

2.The Principal District Munsif,
Puducherry.



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S.SOUNTHAR, J.

dm

Pre-delivery judgment made in
S.A.No.203 of 2020

03.06.2026