



S.A.Nos.248 and 252 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.Nos.248 and 252 of 2026
and
C.M.P.Nos.8436 and 8512 of 2026

M.Jayakumar

... Appellant (in both SAs)

VS.

Devaki (Deceased)

Natarajan (Deceased)

1.N.Sudha

2.N.Niveditha

3.N.Krithika

4.N.Navaneethamurugan

... Respondents (in both SAs)

COMMON PRAYER: Second Appeals are filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 05.12.2025 passed in A.S.Nos.224 and 225 of 2024 by the VI Additional City Civil Court, Chennai confirming the judgment and decree of the XIV Assistant City Civil Court, Chennai dated 13.03.2024 passed in O.S.No.1462 of 2011.



S.A.Nos.248 and 252 of 2026

For Appellant : Mr.S.Baskaran
(in both SAs)

For Respondents : Mr.Kannan T
(in both SAs)

COMMON JUDGMENT

The unsuccessful plaintiff in O.S.No.1462 of 2011 is the appellant in S.A.No.248 of 2046. The suit is for declaration of title and for permanent injunction. The plaintiff had also sought for a declaration that Sale Deed dated 25.06.2008 executed by 1st defendant in favour of the 2nd defendant was null and void. The suit was dismissed by the Trial Court. The first appeal filed by the plaintiff was also dismissed. Challenging the concurrent finding against him, the appellant/plaintiff preferred second appeal in S.A.No.248 of 2026.

2. In the suit for declaration of title and permanent injunction filed by the plaintiff, the deceased 2nd defendant filed counter claim seeking recovery of possession from the plaintiff. The Trial Court decreed the counter claim. The first appeal filed by the plaintiff was also dismissed. Challenging the same, the other second appeal in S.A.No.252 of 2026 has been filed by the appellant/plaintiff.



3. According to the appellant/plaintiff, the suit property was purchased by his grandfather-Murugesu Reddiar in the name of his wife-Devaki, the 1st defendant in the suit by selling his property situated in Door No.11, Rettakula Street, Tondiarpet, Chennai on 25.06.1971. The property of Murugesu Reddiar was sold for a Sale Consideration of Rs.18,500/-. On the same date, he purchased suit property in the name of his wife-Devaki for sale consideration of Rs.4,000/-. It is also pleaded that Murugesu Reddiar and 1st defendant borrowed a sum of Rs.15,000/- from one Mayandi on 09.03.1992 and Rs.20,000/- from the very same person on 09.03.1992 by executing a Mortgage Deed. Subsequently, they borrowed a sum of Rs. 25,000/- from him by executing a Pronote on 10.09.1994. Since Mayandi demanded repayment of the amount, at his request the plaintiff paid the amount to the said Mayandi on behalf of his grandfather and grandmother. While arranging money for repayment, a Power of Attorney was executed by 1st defendant in favour of the plaintiff. It is also stated that the plaintiff paid funeral expenses during the death of Murugesu Reddiar. When the plaintiff requested his grandmother/1st defendant to execute the Sale Deed in his favour in respect of the suit property in lieu of repayment of the above said sum, she refused.



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4. At that point of time, M.Natarajan, one of the son of Muruges Reddiar obtained signature of the plaintiff in some papers. Later, it came to the knowledge of the plaintiff that the 1st defendant sold the suit property in favour of 2nd defendant on 25.06.2008. However, the 2nd defendant has not taken any legal action to enforce his right under the Sale Deed. It was also stated that the 1st defendant had got only 1/5th share in the suit property owned by Muruges Reddiar and hence, Sale Deed executed by her was not valid. It is further pleaded that the 1st defendant has no legal right, title to execute the sale deed. The recital in the Sale Deed, as if Rs.3,00,000/- was paid to the plaintiff to discharge the amount due to him was also not paid. It is further stated that the 2nd defendant attempted to interfere with the plaintiff's possession and therefore, the above said suit was filed seeking declaration of plaintiff's title over superstructure in the suit property along with leasehold right in the land. The plaintiff also sought to set aside the Sale Deed dated 25.06.2008 executed by the 1st defendant in favour of the 2nd defendant. He also sought for permanent injunction restraining the 2nd defendant from interfering with his alleged possession over the suit property.



5. The 2nd defendant filed written statement denying various averments found in the plaint. The allegation in the plaint that Muruges Reddiar was the owner of the property was specifically denied by him. It was the case of the 2nd defendant that the suit property was owned by 1st defendant. It was the case of the 2nd defendant that superstructure in the suit property along with leasehold right was sold by 1st defendant to him for a valid consideration and therefore, he acquired right over the same. It was also stated that the 2nd defendant purchased the site of the property from its lawful owner-Jeevarathinam Ammal under Sale Deed dated 02.02.2009. Since he purchased the superstructure as well as site of the suit property from its lawful owner, the 2nd defendant claimed title over the same. It is also stated that at the time of sale by 1st defendant in favour of the 2nd defendant, the plaintiff received a sum of Rs.3,00,000/- from the 2nd defendant and acknowledged the receipt of the same. Based on his title, the 2nd defendant sought for recovery of possession by filing counter claim.

6. Pending suit, the 2nd defendant died and his legal representatives were brought on record as defendants 3 to 6. They also filed separate written statement elaborating the stand of the 2nd defendant.



7. The plaintiff filed reply statement to the counter claim filed by the 2nd defendant denying the right of the 2nd defendant to maintain a counter claim for recovery of possession.

8. Before the Trial Court the plaintiff was examined as PW.1 and 29 documents were marked on his side as Exs.A1 to A29. The son of 2nd defendant namely 6th defendant was examined as DW.1 and 13 documents were marked on their side as Exs.B1 to B13.

9. The Trial Court on appreciation of evidence available on record, came to the conclusion that the plaintiff failed to establish his right over the suit property and consequently, dismissed the suit. After upholding title of the defendants, the Trial Court allowed the counter claim and granted decree for delivery of possession. Aggrieved by the same, the unsuccessful plaintiff filed two first appeals in A.S.Nos.224 and 225 of 2024. The First Appellate Court affirmed the findings of the Trial Court and dismissed the appeals. Aggrieved by the same, the above second appeals are filed.

10. The learned counsel appearing for the appellant would vehemently contend that the plaintiff paid the amount to 1st defendant and discharged the loan incurred by her from one Mayandi and the status of the



S.A.Nos.248 and 252 of 2026

plaintiff is a Mortgagee and without paying the amount to the plaintiff, the 1st defendant is not entitled to sell the property in favour of the 2nd defendant. The learned counsel also submitted that though the 2nd defendant said to have purchased the property on 25.06.2008, he failed to exercise his right under the Sale Deed immediately and he has chosen to file counter claim only in the year 2013. The learned counsel also submitted that the suit was initially decreed *ex parte* against defendants 1 and 2 and lateron, the 2nd defendant alone filed a petition to set aside *ex parte* decree along with condone delay petition on 17.06.2013. Only after setting aside the *ex parte* decree, the written statement with counter claim has been filed. According to him, the counter claim preferred by the 2nd defendant is hopelessly barred by limitation and both the Courts below failed to take into consideration the question of limitation raised by the plaintiff.

11. It is seen from the typed-set of papers that the suit property (i.e., Superstructure and the Leasehold Right) have been purchased in the name of the 1st defendant-Devaki under Ex.A3, dated 25.06.1971. It is not in dispute that Devaki Ammal had only Leasehold Right over the site and site belonged to Jeevarathinam Ammal.



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12. A perusal of recital of Ex.A3 would indicate that Devaki Ammal paid a sale consideration for purchase of the property under Ex.A3. When property stands in the name of Hindu Female by virtue of Section 14 (1) of the Hindu Succession Act, 1956 the same is deemed to be her absolute property unless the contrary is proved. Based on the said presumption, the Courts below came to the conclusion that the superstructure belonged to the Devaki Ammal.

13. Ex.A14 is the copy of the Sale Deed executed by Devaki Ammal in favour of his son, 2nd defendant dated 25.06.2008. Therefore, by virtue of Ex.A3 and Ex.A14, the title of the 2nd defendant over the superstructure in the suit property has been proved. Ex.B4 is the certified copy of the Sale Deed executed by owner of the site of the suit property namely Jeevarathinam Ammal in favour of 2nd defendant. By virtue of the said document, the 2nd defendant acquired absolute right over the site of the suit property. Therefore, a conjoined reading of Ex.A3, Ex.A14 and Ex.B4 would establish that the 2nd defendant has got right and title over the suit superstructure as well as suit site.



14. Ex.B2 is a declaration of the plaintiff in a twenty rupees stamp paper, wherein he admitted that he received a sum of Rs.3,00,000/- from the 2nd defendant and agreed to handover possession of the portion of the suit property in favour of the 2nd defendant. Though the said document has been denied by the plaintiff in the pleadings itself, the plaintiff admitted that the 2nd defendant obtained his signature in certain documents.

15. Further, during the course of trial, the plaintiff has not taken any steps to compare the signature found in Ex.B2 along with his admitted signature. Based on Ex.B2 declaration, document filed by the plaintiff, the Courts below came to the conclusion that the plaintiff received a sum of Rs.3,00,000/- from the 2nd defendant and agreed to vacate the suit property.

16. In any event, even assuming that the 2nd defendant failed to prove the payment of amount due to the plaintiff from the 1st defendant that it will not enable the plaintiff to get declaration of his title. The superstructure in the suit property was purchased in the name of the 1st defendant and the same was sold to 2nd defendant by the 1st defendant. The plaintiff is not claiming any right over the suit property under registered document. In such circumstances, a prayer for declaration of his title cannot be considered.



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17. The plaintiff claims that he paid certain amount to third parties and also funeral expenses, having the suit property as a security for the same. In such circumstances, as a person, who paid money to the owner of the property, he is not entitled to seek to set aside the Sale Deed executed by 1st defendant in favour of the 2nd defendant. It is pertinent to mention that plaintiff claims himself as a Mortgagee of suit property. However, he is not able to establish his status as Mortgagee by producing any registered Mortgage Deed. Therefore, the prayer for declaration of title and prayer to declare the Sale Deed executed by the 1st defendant in favour of the 2nd defendant are clearly misconceived and plaintiff is not entitled to sustain the same. The Courts below came to the correct conclusion based on the appreciation of pleadings of the parties and also evidence available on record.

18. The 2nd defendant had also sought for recovery of possession of the suit property from the plaintiff. As mentioned earlier, the 2nd defendant purchased the property on 25.06.2008. The present suit has been filed by the plaintiff on 29.11.2010. Thereafter, the counter claim has been filed by the 2nd defendant seeking recovery of possession on 17.06.2013. Therefore, the



counter claim seeking recovery of possession has been filed within five years from the date of purchase by the 2nd defendant. In the absence of any plea or evidence to establish adverse title, the plaintiff is not entitled to resist the suit for recovery of possession filed by the original owner namely 2nd defendant in the year 2013.

19. The learned counsel for the appellant vehemently contended that the 2nd defendant failed to seek recovery of possession immediately after purchase of the property by him in the year 2008 and he filed counter claim belatedly only in the year 2013. Merely because, there is a delay in seeking recovery of possession, the original owner's right to recover possession will not be destroyed. Right to possession is one of the essential incidence of ownership. Therefore, the 2nd defendant is entitled to maintain a prayer for recovery of possession. When the plaintiff failed to establish adverse title over the suit property, he has no defence to the prayer for recovery of possession sought for by the 2nd defendant. Both the Courts below had rightly appreciated the said legal position and granted decree for recovery of possession in the counter claim preferred by the 2nd defendant. I do not find any perversity in the decree for recovery of possession granted by the Courts below and accordingly, both the second appeals are dismissed as the



S.A.Nos.248 and 252 of 2026

appellant is not able to make out any substantial question of law for consideration.

20. **In Nutshell:-**

(i) The Second Appeals are dismissed.

(ii) In the facts and circumstances of the case, there will be no order as to costs.

(iii) Consequently, the connected civil miscellaneous petitions are closed.

02.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.A.Nos.248 and 252 of 2026

To

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- 1.The VI Additional City Civil Court,
Chennai.
- 2.The XIV Assistant City Civil Court,
Chennai.



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S.A.Nos.248 and 252 of 2026

S.SOUNTHAR, J.

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S.A.Nos.248 and 252 of 2026

02.04.2026