



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24-11-2025
PRONOUNCED ON: 30.01.2026

CORAM:
THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 21 of 2015
and
C.M.P. No.4728 of 2016 and M.P. No.1 of 2015

1. S.J.Rheeman
2. Anitha Rheeman W/o S.J.Rheeman,

..Appellant(s)

Vs

1. Indra Rajendran (died) W/o Rajendran,
No. 19, Santha Sahib St, Pondicherry 605 001.
2. V.Muthu S/o Vengatesa Muthaliar,
Old No. 112, New No. 134 Rangapillai St,
Pondicherry 605 001.
3. Rajendran, S/o.Late.Thirumala Iyer,
No.19, Belcombe Street, Puducherry-605 001.
4. Lahtha, D/o.Rajendran,
No.19, Belcombe Street, Puducherry-605 001.
5. Papitha, D/o.Rajendran,
No.19, Belcombe Street, Puducherry-605 001.
[The 1st respondent died and R3 To R5 Brought
On Record as legal representatives of 1st
respondent vide Court Order Dated 28.07.2023
Made in Cmp.No.14239/2022]

..Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Code of Civil Procedure praying to set aside the judgment and decree dated 19/12/2014 and made in AS No. 12/2012 on the file of the III Additional District Judge at



Puducherry reversing the judgment and decree dated 09/01/2012 made in EA No. 326/2008 in EP NO. 53/2008 in OS No. 128/1992 on the file of the Additional Sub Judge at Pondicherry.

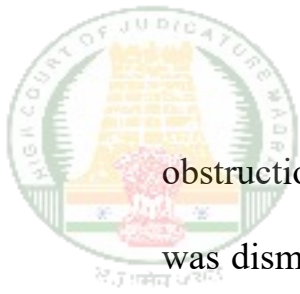
For Appellant(s): M/s. Kandhan Duraisami

For Respondent(s): R1 – died
R2 – Served – No appearance.
Mr. P.Dineshkumar for M/s.D.Ravichander
[For R3 To R5]

JUDGMENT

The Second appeal has been preferred as against the decree and judgment passed by the III Additional District Judge, Puducherry in A.S. No.12 of 2012 wherein the 1st respondent has preferred an Appeal as against the fair and decretal judgment passed by the Execution Court in E.A. No.326 of 2008 in E.P. No.53 of 2008 in O.S. No.128 of 1992 dated 09.01.2012 and the said appeal was allowed. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the appellants.

2. The appellants herein are the third parties to the proceedings. Originally the 1st respondent herein has filed a Suit in O.S. No.128 of 1992 for Specific Performance of Contract. The said Suit was decreed in favour of the 1st respondent herein and thereafter, she filed an execution petition in E.P. No.53 of 2008 and Sale Deed was executed by the Court on 05.03.2008 and thereafter, the 1st respondent filed a petition in E.A. No.326 of 2008 for removing the



obstruction under Order XXI Rule 97 of Code of Civil Procedure and the same was dismissed by the Execution Court. Aggrieved by the said order, an appeal in A.S. No.12 of 2012 was preferred by the 1st respondent and the First Appellate Court allowed the appeal and ordered for removal of third party obstructors from the Suit property along with order of police aid and break open. Aggrieved by the said order, the present second appeal has been filed.

3. The learned counsel appearing for the appellants would submit that the appellants purchased the property through a Sale Deed dated 23.01.2008 and they have been in possession and enjoyment of the property from the date of purchase. Originally, the said property belonged to one Lebrin Mouttousamy and the said Lebrin Mouttousamy had purchased the said property from one Philip @ Lazar Galiautets through a Sale Deed on 26.09.1953 and said Lebrin Mouttousamy settled his property to his daughter Rolin Mangalorin Anriette through a Settlement Deed dated 03.06.1969. In turn, the said Rolin Mangalorin Anriette sold the said property to one Aland Vinayagasamy through a Sale Deed dated 04.09.1971. The said Lebrin Mouttousamy filed a Suit in O.S. No.191 of 1981 for declaration that the settlement deed executed by him dated 03.06.1969 and the Sale Deed dated 04.09.1971 in favour of Aland Vinayagasamy as null and void. The said Suit was decreed on 12.04.1983. Thereafter, two separate appeals in A.S. No.130 and 131 of 1983 were filed by the said Aland Vinayagasamy and Rolin Mangalorin Anriette and the said



appeals were allowed on 12.11.1983. Thereafter, the said Lebrin Mouttosamy filed a Second Appeal in S.A. No.415 of 1984. During the pendency of the said second appeal, the said Lebrin Mouttousamy died and his legal heirs i.e., wife and daughter were impleaded as parties. While so, on 31.03.1988, the wife of the Lebrin Mouttousamy sold the property to one Muthu. The said Muthu entered into an agreement for sale with one Indira Rajendran on 02.11.1988. Thereafter, the said second appeal in S.A. No.415 of 1984 was dismissed by confirming the judgment and decrees in A.S. No.130 and 131 of 1983 on 21.10.1991.

3.1. Thereafter, the said Indra Rajendran, who purchased the property from the wife of Lebrin Mouttousamy, during the pendency of the second appeal, filed a Suit in O.S. No.128 of 1992 for the Specific Performance of Contract as against the said Muthu and the same was decreed on 29.03.1996. On the date of said filing of the Suit, the property was already sold to Aland Vinayagasamy, but however he was not impleaded as party to the said Suit. Thereafter, the said Aland Vinayagasamy also filed a Suit in O.S. No.293 of 1984 for declaration of title and recovery of possession of the Suit property against all the parties including Muthu as defendants and the same was decreed on 04.11.1999. Pursuant to the said decree in O.S. No.293 of 1984, an E.P. No.165 of 2001 was filed and the possession of the property was delivered to Aland Vinayagasamy by the Court through delivery note on 03.07.2002. Thereafter, an appeal was preferred as against the decree and judgment passed



in O.P. No.293 of 1984 and the same was subsequently transferred to the District Court, Pondicherry and re-numbered as A.S. No.114 of 2006 and subsequently the said appeal was also dismissed. There was no any further appeal filed as against the judgment and decree in A.S. No.114 of 2006 and hence the matter reached finality.

3.2. Thereafter, the said original owner Aland Vinayagasamy sold the property to Anita Raheeman through her power agent Antony Gabriel Thomas on 23.01.2008. Thereafter, the said Indra Rajendiran who got decree in O.S. No.128 of 1992 got Sale Deed through E.P. No.154 of 2007 on 05.03.2008. Thereafter, she filed E.P. No.53 of 2008 for delivery of possession against the said Muthu and thereafter, the Court Amin recorded that these appellants are in possession and enjoyment of the property. When the Amin came to the spot for delivering the property, at that time, the appellants made objections. Thereafter, the 1st respondent filed an application in E.A. No.326 of 2008 as against the appellants and the said Muthu and the said application was dismissed. Aggrieved by the said order, the 1st respondent preferred an appeal.

3.3. The Appellate Court erroneously allowed the petition. The Execution Court after considering that the original owner Lebrin Mouttousamy settled his property in favour of his daughter and thereafter, the same was challenged and the matter went upto High Court and the High Court confirmed the judgment and decree of the First Appellate Court. The settlee sold the property to Aland Vinayagasamy and the Aland Vinayagasamy also filed a Suit



for recovery of possession and the possession of the property was also delivered to the said Aland Vinayagasamy as early as on 03.07.2002. Hence, Lebrin Mouttousamy had no right over property. After the demise of Lebrin Mouttousamy, his wife sold the property to one Muthu without any title over the property. The Trial Court, after considering the fact that already the High Court declared the title of the property in favour of Aland Vinayagasamy and he also got possession of the property through Court order, thereby dismissed the application filed by the 1st respondent / Decree-holder in O.S. No.128 of 1992. However, the First Appellate Court erroneously set aside the order of the trial Court and allowed the appeal along with order of removal of third party obstructors with police protection and break open. The above said judgment of the First Appellate Court has been passed by ignoring the judgment passed by this Court in S.A. No.415 of 1984. Further the First Appellate Court ignored the Suit filed by the predecessor of the appellant namely Aland Vinayagasamy in O.S. No.293 of 1984 and delivery was granted by the Court. Therefore, the judgment and decree passed by the First Appellate Court are liable to be set aside.

4. The learned Counsel appearing for the respondents would submit that the Lebrin Mouttousamy is governed by French Code of Civil and after marriage between the said Lebrin Mouttousamy and his wife, both are jointly entitled to the properties. Therefore the wife of Lebrin Mouttousamy namely Philomina sold the property to one Muthu. The said



Muthu entered into an agreement with the 1st respondent in respect of the property and thereafter, the 1st respondent herein filed a Suit in O.S. No.128 of 1992 for Specific Performance of Contract and the same was decreed in favour of the 1st respondent herein and thereafter, she filed an Execution Petition in E.P. No.154 of 2007 and got Sale Deed from the Court and thereafter, she filed an another Execution Petition in E.P. No.53 of 2008 for delivery of possession and at the time of taking delivery, the appellants who are the third party obstructors, obstructed the delivery of possession and thereby, she filed an E.A. No.326 of 2008 as against the third party obstructors. The trial Court without considering the case of the 1st respondent, erroneously dismissed the petition, thereby, the 1st respondent preferred an appeal before the Appellate Court in A.S. No.12 of 2012. The First Appellate Court has correctly applied law and granted relief by ordering removal of obstruction with police aid and for break open. Therefore, the First Appellate Court has correctly allowed the appeal and the appellants have no right or title over the property. The daughter of Lebrin Mouttousamy has no right or title over the property. Therefore, she cannot sell the property to the vendor of the appellants namely Aland Vinayagasamy. Therefore, the appellants are not entitled to any relief and the second appeal is liable to be dismissed.

5. This Court heard both sides and perused the entire materials materials available on record.



6. At the time admitting the second appeal, this Court has formulated the following *substantial question of law*:

“Whether the First Appellate Court was right in rejecting the claim made by the appellants when this Court in S.A. No.415 of 1984 held that the Gift Deed and the Sale Deed under which the vendor of the appellant claimed title are valid”.

7. In this case, it is an admitted fact that the property was originally purchased by one Lebrin Mouttousamy from one Philip @ Lazar Galiautets through a Sale Deed dated 26.09.1953. The said Lebrin Mouttousamy settled the said property to his daughter namely Rolin Mangalorin Anriette through a Settlement Deed dated 03.06.1969. In turn, the said Rolin Mangalorin Anriette sold the said property to one Aland Vinayagasamy through a Sale Deed dated 04.09.1971. Thereafter, the said Lebrin Mouttousamy filed a Suit in O.S. No.191 of 1981 for declaration of the above said Settlement Deed as null and void and the said Suit was decreed. As against the same, appeals were filed in A.S. No.130 and 131 of 1983 and the said appeals were allowed on 12.11.1983. Thereafter, the said Lebrin Mouttousamy filed a Second Appeal in S.A. No.415 of 1984 and during the pendency of the said appeal, the said Lebrin Mouttousamy died and his wife Philomena and daughter Charlette were brought on record as appellants. The said second appeal filed by the deceased Lebrin Mouttousamy and continued by his legal heirs i.e., his wife Philomena and daughter Charlette was dismissed by confirming the decree and judgment



passed by the First Appellate Court in A.S. Nos.130 and 131 of 1983 through a judgment dated 21.10.1991. Therefore, the title of the property of the Aland Vinayagasamy was confirmed by the High Court through its judgment dated 21.10.1991.

8. During the pendency of the appeal, the wife of the Lebrin Mouttousamy namely Philomena sold the property to one Muthu on 31.03.1988. The said Muthu entered into an agreement for sale with the 1st respondent Indra Rajendiran on 02.11.1988. Therefore, the said Sale Deed and the agreement are subject to the outcome of the result of the Second Appeal 415 of 1984. Since the said second appeal was dismissed and the title of the property was confirmed in favour of the Aland Vinayagasamy, the title of the said property was vested with the said Aland Vinayagasamy. After dismissal of the said second appeal in S.A. No.415 of 1984, the 1st respondent herein filed a Suit in O.S. No.128 of 1992 for Specific Performance of Contract against the said Muthu and the same was decreed on 29.03.1996. The original owner Aland Vinayagasamy also filed a Suit in O.S. No.293 of 1984 for declaration of title and recovery of possession of the Suit property against all parties including the said Muthu, who is the vendor of the 1st respondent and the said Suit was decreed on 04.11.1999 and thereafter, the property was delivered to Aland Vinayagasamy through Court as per the order passed by the Court in E.P. No.165 of 2001 in O.S. No.293 of 1984 on 03.07.2002.



9. Against which, the appeal in A.S. No.965 of 1996 was filed and thereafter, it was transferred and re-numbered as A. S. No.114 of 2006 and the said appeal Suit was dismissed on 30.07.2007. No further appeal has been filed as against the decree and judgment in A.S. No.114 of 2006. Therefore, the said decree and judgment attained finality. Therefore, the said Aland Vinayagasamy is the owner of the property and delivery of the property was also granted to him by the Court. The said Aland Vinayagasamy sold the property to the appellants on 23.01.2008 and thereafter, the 1st respondent filed an E.P. No.154 of 2007 to execute the Sale Deed and got Sale Deed through Court on 05.03.2008. On the date of the Sale Deed in favour of the 1st respondent, the property was sold to the appellants herein, before that, the title of the property was declared in favour of the vendor of the appellant Anitha Rheeman. Therefore, the Court cannot execute the Sale deed in favour of the 1st respondent and without ascertaining the title of the property, the Court also executed the Sale Deed. Thereafter, the 1st respondent filed a petition for delivery of property in E.P. No.53 of 2008.

10. The Court Amin recorded the possession of the appellants and then the 1st respondent filed a petition in E.A. No.326 of 2008 for removal of obstruction and the same was dismissed by the Execution Court. The Execution Court, after discussing about the history of the case, held that *the third party obstructors have purchased the EP property on 23.01.2008 from their vendor*



*Aland Vinayagasamy, who was declared to be the absolute owner and possessor of the said property by way judgment and decree dated 04.11.1999 through Ex.R.5 and the possession was also handed over to the Aland Vinayagasamy by a Delivery Note Ex.R6 and the said Aland Vinayagasamy sold the property to the obstructors through a Sale Deed and the possession was obtained from Aland Vinayagasamy and not from the judgment debtor. The Aland Vinayagasamy was the absolute owner of the property and declaration of title was upheld by the Court and possession was delivered through Court. Therefore, the petition is not maintainable as against the Obstructors / R2 and R3 i.e., appellants herein and the petition was dismissed. The First Appellate Court reversed the judgment of the Execution Court and allowed the appeal and ordered for removal of third party obstructors along with police aid and break open. The First Appellate Court observed that *the trial Court failed to note that the Power Agent of Aland Vinayagasamy was along one Jayaseelan and the J.D. handed over possession to his Jayaseelan. The Jayaseelan has not sold the property to R2 and R3, it was a stranger by name Antony Gabriel Thomas who has sold the property to R2 and R3. The decree holder has an executable decree given by the trial Court and the sale deed executed by the trial Court in favour of the decree holder. The trial Court has not declared the decree in O.S. No.128 of 1992 as null and void and has not set aside the sale deed. Therefore, the decree holder is entitled for order of removal of third party obstructors.**

The First Appellate Court failed to appreciate about the title of the property



declared by the High Court in S.A. No.415 of 1984 and also in O.S. No.293 of 1984 and the delivery granted by the Court through an order in E.P. No.165 of 2001 in O.S. No.293 of 1984.

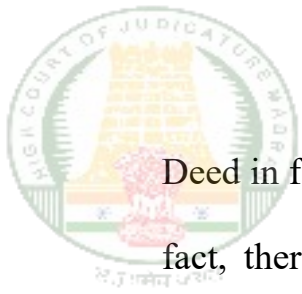
11. The Settlement executed by Lebrin Mouttousamy in favour of his daughter and the sale deed executed by the daughter of the said Lebrin Mouttousamy namely Rolin Mangalorin Anriette was already decided through Court and the Sale Deed in favour of Aland Vinayagasamy was upheld by the competent Courts and the title of the property in favour of Aland Vinayagasamy was also declared by the competent Courts and the possession of the property was handed over to the Aland Vinayagasamy as early as on 03.07.2002. The First Appellant has filed the Suit for Specific Performance of Contract in O.S. No.128 of 1992 after the second appeal in S.A. No.415 was disposed of by this Court on 21.10.1991. Thereafter, the said Aland Vinayagasamy sold the property to Anitha Rheeman, the 2nd appellant, through a Power Deed on 23.01.2008. Whereas the date of execution of the Sale Deed in favour of the 1st respondent by the Court in E.P. No.154 of 2007 in O.S. No.128 of 1992 is 05.03.2008. On the date of sale to Muthu by Philomena, the wife of Lebrin Mouttousamy, the tile of the property was vested with Aland Vinayagasamy, who is the vendor of the appellant and no title of the property was vested with Philomena, thereby she cannot sell the property to Muthu. Therefore, the title of the property has not been passed to the said Muthu and he cannot execute any



agreement to the 1st respondent. The property was not in the name of Mr.Muthu and already the property was sold to the appellants. Therefore, the Court cannot execute the Sale Deed with respect to the property, which was already declared in favour of Mr. Aland Vinayagasamy and in turn, he sold the property to the appellants.

12. The First Appellate Court failed to consider that the title of the property was already declared in favour of the vendor of the appellants and after transferring of property in the name of the appellants, the subsequent sale deed was executed without verifying the ownership of the property. Therefore, the appellants cannot be treated as obstructors and they are the original owners of the property. Therefore, the trial Court has correctly dismissed the petition. However, the First Appellate Court erroneously allowed the petition without considering the above said aspects. Therefore, the order passed by the First Appellate Court is not sustainable and the same is liable to be set aside.

13. As far as the *substantial question of law that “Whether the First Appellate Court was right in rejecting the claim made by the appellants when this Court in S.A. No.415 of 1984 held that the Gift Deed and the Sale Deed under which the vendor of the appellant claimed title are valid” is concerned*, it is an admitted fact that this Court in S.A. No.415 of 1984 upheld the Sale



Deed in favour of the vendor of the appellants namely Aland Vinayagasamy. In fact, there is no dispute that the property originally belonged to one Lebrin Mouttousamy through a Sale Deed dated 26.09.1953 and the said Lebrin Mouttousamy settled his property to his daughter Rolin Mangalorin Anriette on 03.06.1969 and thereafter, the said Rolin Mangalorin Anriette sold the property to Aland Vinayagasamy through a Sale Deed on 04.09.1971. Thereafter, the said Lebrin Mouttousamy challenged the Settlement Deed executed by him in favour of his daughter Rolin Mangalorin Anriette and the said Suit was decreed in O.S. No.191 of 1981 through a Decree and Judgement dated 12.04.1983. Against the said decree and judgment, Rolin Mangalorin Anriette and Aland Vinayagasamy have preferred separate appeals in A.S. Nos.130 and 131 of 1983 and the said appeals were allowed. Against which, a second appeal in S.A. No.415 of 1984 was preferred by Lebrin Mouttousamy. During the pendency of the said appeal, Mr. Lebrin Mouttousamy died. Thereafter, his wife Philomena and daughter Charlette were brought on record as appellants. The said appeal was dismissed by this Court by confirming the decree and judgment passed in A.S. No.130 and 131 of 1983. Therefore, the Sale Deed in the name of Aland Vinayagasamy was decided by the Courts and the Courts confirmed the Sale Deed in favour of the Aland Vinayagasamy, who is the vendor of the appellants. The First Appellate Court has not considered the above said decree and judgment passed in S.A. No.415 of 1984 and therefore, the First Appellate Court erred in rejecting the claim made by the appellants ignoring the judgment



of this Court in S.A. No.415 of 1984, thereby the order of the First Appellate Court is liable to be set aside. Thus, the substantial question of law is answered.

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14. In view of the above said discussions and answer to the substantial question of law, this *second appeal is allowed. The decree and judgment passed by the First Appellate Court i.e., III Additional District Judge at Puducherry in A.S. No.12 of 2012 dated 19.12.2014 is set aside and the fair and decretal order passed by the Execution Court in EA No. 326/2008 in EP NO. 53/2008 in OS No. 128/1992 on the file of the Additional Sub Judge at Pondicherry is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.*

30-01-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MJS



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SA No. 21 of 2



P.DHANABAL, J.

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To

1. The III Additional District Judge at Puducherry
2. The Additional Sub Judge at Pondicherry.

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30.01.2026