



WEB COPY

SA No. 264 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 264 of 2026

M.Narayanan, S/o.Narayanan,
No.14/50-A-1, New No.20/99,
Nellakotta Panchayat, Pandalur Tk.,
Gudalur, The Nilgiris Dist.

..Appellant(s)

Vs

1. Vasuwathi, D/o.Late Dhanasingh,
No.9/95 Gray Town, Coimbatore 641 018.
2. Karthick, S/o.Late Dhanasingh,
No.83 Convent Road,
St.Thomas Town, Kubanahalli,
Bangalore 560 023.
3. Raju Sekar. S/o.Late Dhanasingh,
No.23 Convent Road,
St.Thomas Town,
Bangalore 560 083.
4. David, S/o.Late Dhanasingh,
5. Suresh L, S/o.Late Dhanasingh,
6. Jothi, D/o.Late Dhanasingh,
7. Prema, D/o.Late Dhanasingh,
8. Nirmala @ Nimmy, D/o.Late Dhanasingh,
respondents 4 to 9 are residing at No.9/95,
Gray Town, Coimbatore 641 018.

..Respondent(s)



Prayer: Second Appeal filed under Section 100 of CPC to set aside the judgement and decree dated 28-11-2025 passed in AS.No.4 of 2024 on the file of Sub Judge, Gudalur, confirming the judgement and decree dated 17-04-2024 passed in OS.No.70 of 2016 on the file of Additional District Munsif, Gudalur.

For Appellant(s): Mr. P.Rajendran

JUDGMENT

The unsuccessful plaintiff in a suit in O.S.No.70 of 2016 is the appellant herein.

2. The appellant/plaintiff filed the above said suit seeking permanent injunction and it was dismissed by the trial court. Challenging the findings of the trial court, the plaintiff filed an appeal in A.S.No.4 of 2024 and the first appellate court dismissed the appeal, affirming the findings of the trial court. Aggrieved by the concurrent findings of the courts below, the plaintiff has filed the present second appeal.

3. According to the appellant/plaintiff, he has been in possession and enjoyment of the suit property pursuant to the sale agreement entered into with one Dhanasingh on 10.10.1973. It was the specific case of the plaintiff that, the original owner put the plaintiff in possession of the suit property, under the said



sale agreement and from the date onwards, he has been in possession and enjoyment of the suit property. The defendants, who are the legal heirs of the said Dhanasingh attempted to interfere with his possession and enjoyment and therefore, he was constrained to file the suit seeking bare injunction.

4. The defendants filed a written statement denying the right and possession of the plaintiff over the suit property. The sale agreement relied on by the plaintiff was specifically denied by the defendants. It was stated by the defendants that the possession of the suit property was not at all handed over to the plaintiff at any point of time. They further stated that the earlier suit filed by the plaintiff in O.S.No.119 of 1996 seeking permanent injunction as against one of the legal heirs of the deceased Dhanasingh, namely his wife, was dismissed and the appeal filed by the plaintiff in A.S.No.69 of 2006 was also dismissed. Therefore, according to the defendants, the findings of the court in the earlier suit would operate as *res judicata* in respect of the present suit. On these pleadings, the defendants sought for dismissal of the suit.

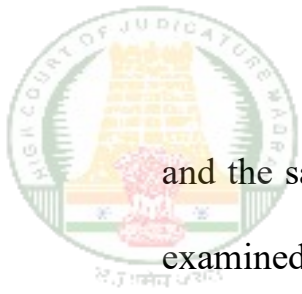
5. Before the Trial Court, the plaintiff was examined as PW1 and 12 documents were marked as Ex.A1 to Ex.A12. On the side of the defendants, the 2nd defendant was examined as DW1 and 2 documents, namely the judgment and decree passed in A.S.No.69 of 2006 had been marked as Ex.B1 and Ex.B2 respectively.



6. The trial court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff had failed to prove his right over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.4 of 2024 on the file of Subordinate Judge, Gudalur and the same was dismissed by the first appellate court, confirming the findings of the trial court. Challenging the concurrent findings of the courts below, the plaintiff has come before this court by filing the present second appeal.

7. The learned counsel for the appellant/plaintiff would submit that the 2nd defendant, when he was examined as DW1, admitted the possession of the plaintiff in the suit property and therefore, the courts below were not justified in dismissing the suit filed by the plaintiff for permanent injunction. He further submitted that the plaintiff was inducted into the suit property under the sale agreement entered into between the plaintiff and Dhanasingh and he has been in possession and enjoyment of the suit property from the year 1974. The courts below, without considering the documents filed by the plaintiff, establishing his possession, erroneously dismissed the suit.

8. It is seen from the typed set of papers that the plaintiff claims possession over the suit property under the sale agreement dated 08.10.1973 entered into with one Dhanasingh, the predecessor in interest of the defendants



and the said document has been marked as Ex.A1. The plaintiff, when he was examined as PW1, categorically admitted that he failed to pay the balance sale consideration mentioned in Ex.A1 and as per the conditions in Ex.A1, if the plaintiff failed to pay the balance sale consideration, within the time limit stipulated therein, he would lose the advance amount. The sale agreement was dated 08.10.1973 and till date, the plaintiff has not taken any steps to seek specific performance based on the sale agreement. Further, the plaintiff also admitted in his evidence as PW1 that the balance sale consideration remained to be paid. Therefore, the courts below came to the conclusion that the plaintiff failed to perform his part of contract of the sale agreement and in the absence of any acceptable evidence to prove the same, the plaintiff cannot seek permanent injunction based on the above said sale agreement. Even assuming that the plaintiff was inducted in the suit property under the sale agreement, in the absence of readiness and willingness to perform his part of contract, he is not entitled to take shelter under the doctrine of part performance. Therefore, the plaintiff is not entitled to maintain the suit for bare injunction.

9. The defendants categorically denied the execution of Ex.A1-sale agreement and disputed the same as it was a conditional agreement and also it was an unregistered document. Further, the plaintiff failed to file the original sale agreement and he filed only Xerox copy of the same and he has not stated anything about the custody of the original agreement in the plaint. Without



satisfying the condition Nos.5 and 6 of the sale agreement, the plaintiff is not entitled to lead secondary evidence of sale agreement. Apart from that, there is no recital in the sale agreement, as if the possession of the suit property was handed over to the plaintiff. Taking into consideration of all these facts, the courts below came to the correct conclusion that the plaintiff failed to establish his possession and hence the suit for bare injunction is not maintainable.

10. A perusal of the judgement passed in A.S.No.69 of 2006-Ex.B1, which is filed in the typed set of papers would indicate that the earlier suit in O.S.No.119 of 1996 filed by the plaintiff/ appellant seeking bare injunction against three persons, including one of the legal heirs of the said Dhanasingh, namely his wife Vijaya Dhanasingh was dismissed by the trial court finding that the plaintiff failed to establish his possession over the suit property. When one of the legal heirs of the said Dhanasingh was already made as a party to the earlier suit, the findings of the earlier suit certainly will operate *res judicata* against the present suit filed by the plaintiff against the other legal heirs of deceased Dhanasingh. Both the courts below, on proper appreciation of materials available on record and the exhibits marked by the parties, came to the correct conclusion that the findings of the earlier suit filed by the plaintiff will operate as *res judicata* against the plaintiff and non suited the plaintiff on the said ground also. I do not find any serious illegal error in the final conclusion reached by the courts below.



11. Accordingly, the second appeal stands dismissed. There shall be no order as to costs.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MST

1. The Subordinate Judge, Gudalur.
2. The Additional District Munsif, Gudalur.



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S.SOUNTHAR, J.

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