



SA No. 377 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2025

Pronounced on : 24.02.2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 377 of 2016

1. V.Dasappan (Died)
2. M.Rajalakshmi
3. K.Saradha

(A2 and A3 brought on record as Lrs of the deceased 1st appellant vide order of this Court dated 04.11.2022 made in C.M.P.Nos.13075 to 13077 of 2021 and represented by their power agent S.Ravichandran, son of Late K.S.Somasundaran, residing at No.1/70, Rasipuram Main Road, Vaiyappamalai Post, Thiruchengode Taluk, Namakkal District – 637 410, presently at No.202, Mallasamudhiram Main Road, Vaiyappamalai Post, Tiruchengode taluk, Namakkal District – 637 410

..Appellant(s)

Vs

- Marayammal (died)
1. K.Ramasamy
 2. K.Subramanian (died)
 3. Selvi
 4. P.Gopinathan
 5. Sellammal
 6. Elango
 7. Thenmozhi



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(R2 died, R5 to 7 brought on record as legal heirs of deceased R2 vide order of this Court dated 23.01.2025 made in C.M.P.Nos.307, 308 and 310 of 2025)

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of C.P.C., to set aside the Decree and Judgment passed in A.S.No.81 of 2010 dated 11.03.2013 on the file of the learned First Additional District Judge, Salem, confirming the dismissal of the suit by a Judgment and Decree passed in O.S.No.25 of 2010 dated 21.10.2010 on the of the learned principal Subordinate Judge, Salem and consequently decree the suit as prayed with cost throughout.

For Appellant(s): Mr.M.L.Ramesh

For Respondent(s): Mr. T.M.Hari Haran for R1, R3 and R4
R2 – Died;
R6 and R7 – No appearance

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed in n A.S.No.81 of 2020 on the file of the First Additional District Judge, Salem.

2. The appellants are the plaintiffs in the suit and they filed the suit for declaration and for permanent injunction and the suit was dismissed by the trial court. Aggrieved by the said Judgment and decree of the trial court, the



1st plaintiff has preferred the Appeal Suit in A.S.No.81 of 2010 on the file of the First Additional District Judge, Salem and the First Appellate Court also dismissed the appeal by confirming the decree and judgment of the trial court. Aggrieved by the said judgment and decree, the present Second Appeal has been filed by the plaintiffs.

3. For the sake of convenience and brevity, the parties herein are referred as plaintiffs and defendants, as referred before the trial court.

4. The gist of the plaint filed by the plaintiffs are as follows:-

4.1. The suit properties were originally belonged to one Dasappa Chettiar and the said Dasappa Chettiar died intestate leaving behind his five sons and thereafter, the family properties were divided through the partition deed dated 01.07.1934 and through that partition, the properties were allotted to the sons of Dasappa Chettiar, namely, Ellappa Chettiar and Venkatappa Chettiar. The said Ellappa Chettiar and Venkatappa Chettiar had divided their properties through the partition deed dated 16.02.1944. The suit properties were allotted to Venkatappa Chettiar and he was in possession and enjoyment of the properties. During the life time of the said Venkatappa chettiar, he had executed a registered Will dated 15.11.1947 in favour of his wife Balammal and his two daughters, namely, Govindammal and Solaiammal, through the



said Will, life interest was given to Balammal and after her life time, the properties were given to his two daughters, namely, Solaiammal and Govindammal.

4.2. The said Venkatapa Chettiar died on 04.12.1947 and after the demise of Venkatapa chettiar, the said Balammal was entitled to right of enjoyment without any right to alienate the properties. The daughters of Venkatapa chettiar, namely, Solaimmal and Govindammal predeceased their mother, Balammal. The said Solaimamal died on 10.01.1986 and the said Govindammal died on 21.03.1969 and the said Balammal died on 06.02.1989. The said Solaimmal died intestate leaving behind the son, Balaraman and daughter-in-law, who is wife of another son namely, Amirthalingam. The said Govindammal died intestate leaving behind her legal heirs, Dasappan and Ramanathan and daughter Suseela. The said Balammal has no right to alienate and encumber the properties and the daughters of Balammal also have no right to alienate and encumber the properties during the life time of Balammal. While so, the said Balammal, Govindammal and Solaiyamal had executed the sale deed in favour of one Muthusamy on 30.06.1952 for a sum of Rs.15,000/- and no consideration was paid for the said Sale deed. The said purchaser Muthusamy had executed two mortgage deeds dated 30.06.1952 in favour of Balammal and another one in favour of Govindammal.



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The possession was not given to the said Muthusamy and it was remained with Balammal. Since the sale deed executed by Balammal and her two daughters is not valid and it was not acted upon, the said sale deed dated 30.06.1952 has to be declared as null and void. The said sale deed does not confer any title on the said Muthusamy and on his successors, the defendants.

4.3. After commencement of Hindu Succession Act, 1956, [for brevity, herein after referred to as Act] as per Section 14 of the Act, the said Balammal had become absolute owner of the properties. The limited interest given under the Will dated 15.11.1947 has been enlarged into absolute in favour of the said Balammal. The said Balammal was in possession and enjoyment of the property. After the demise of Balammal, the legal heirs of Govindammal and Solaiammal have succeeded to their properties. The legal heirs of Govindammal had released their share and interest over suit properties in favour of the plaintiff, viz., Dasappan, under the release deed dated 11.08.2003. Pursuant to the said release deed, the said Dasappan is the absolute owner of the property and he is in possession and enjoyment of the property. The defendants have no right, title, interest, or possession over the property. On 08.03.2007, the defendants have attempted to alienate the properties and have attempted to interfere with the possession and enjoyment



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of the plaintiff, therefore, the plaintiff had filed the suit.

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5. The gist of the written statement filed by the 2nd defendant and adopted by the other defendants are as follows:-

5.1. The averments made in the plaint are denied as false and the plaintiff is put to strict proof of the averments made in the plaint, except those that are specifically admitted or traversed herein. It is true that the said Venkatapa Chettiar executed the Will dated 15.11.1947 in favour of his wife Balammal and his daughters, Govindammal and Solaiammal and life interest was given to the said Balammal and thereafter the daughters, Govindammal and Solaiammal are entitled to the properties. The said Venkatapa Chettiar died and thereafter, the Will came into effect. The said Balammal indebted and borrowed money for the conduct of the death ceremonies of deceased Vekatapa Chettiar. The paternal grand father of the defendants, namely, Muthusamy Gounder purchased the property through sale deed dated 30.06.1952 from the said Balammal and her daughters, Solaiammal and Govindammal and he had been in possession and enjoyment of the property, from the date of sale deed.

5.2. The said Balammal, after sale of the property never been in possession and enjoyment of the property. The Hindu Succession Act will not



be applicable to this case as the property was sold prior to commencement of the Act. The alleged release deed dated 11.08.2003 is not valid in the eye of Law and will not be binding upon the defendants. It is false to state that no consideration has been passed through the sale deed dated 30.06.1952. In fact, grand father of the defendants, viz., Muthusamy Gounder after purchase of the property, effected partition deed between the sons of Muthusamy Gounder namely Palani Gounder and Kali Gounder through partition deed dated 17.04.1953 and from the said partition deed, the suit properties were allotted to the share of the father of the defendants 2 and 3. After partition, the father of the defendants 2 and 3 enjoyed the properties and thereafter, he executed the settlement deed dated 27.10.2005 in favour of the his sons, defendants 2 and 3 along with their deceased brother Palanisamy, who is the husband of the 4th defendant and father of 5th defendant. Thereafter, the defendants are in possession and enjoyment of the properties and patta also granted in favour of the defendants. The plaintiff has no right, title or interest over the properties, therefore, the suit is liable to be dismissed.

6. Based on the above said pleadings and upon hearing both sides, the trial court framed the following issues :-

- "1. Whether the Sale deed dated 30.06.1952 is null and void?*
- 2. Whether the plaintiff is the absolute owner of the suit properties?*



3. Whether the plaintiff is entitled to get declaration in respect of the suit properties as well as the sale deed dated 30.06.1952?

4. Whether the plaintiff is entitled to get the relief of permanent injunction?

5. To what other reliefs, if any, the plaintiff is entitled?"

Before the trial court on the side of the plaintiff, he examined P.W.1 to P.W.3 and marked Exhibits A.1 to A.14. On the side of the defendants, they examined D.W.1 and D.W.2 and marked Exhibits B.1 to B.19. The trial court after analysing the evidences adduced on both sides, dismissed the suit without costs. Aggrieved by the said Judgment and Decree of the trial court, the plaintiffs have preferred the Appeal Suit in A.S.No.81 of 2010 on the file of the learned First Additional District Judge, Salem. The First Appellate Court, after hearing both sides and perusing the entire records, framed the following points for determination :-

"1. Whether the sale deed dated 30.06.1952 is valid and supported by sale consideration?

2. Whether there is necessity for selling the properties allotted by the grand mother of plaintiff Balammal and her daughters?

3. Whether the sale deed dated 30.06.1952 was acted upon?

4. Whether the plaintiff is in possession of the suit property?

5. Whether the Section 14 of the Hindu Succession Act is applicable to



the present case?

6. Whether the Judgment and decree passed by the trial court is liable to set aside?

7. To what other relief, the plaintiff is entitled?"

7. During the pendency of the Appeal Suit, the defendants 2 and 4 have filed an application in I.A.No.254 of 2013 to receive additional documents as evidence. The First Appellate Court after hearing both sides and perusing the records, received the documents and marked the said documents as Exs.B.20 to 24 and after perusing the records and hearing both sides, dismissed the appeal suit by confirming the Judgment and Decree passed by the trial court. Aggrieved by the said Decree and Judgment of the First Appellate Court, the present Second Appeal has been filed by the plaintiffs.

8. This Court at the time of admitting the Second Appeal on 03.11.2025, formulated the following substantial questions of law:-

"1. Whether the Courts below are right in holding that the sale under Exhibit A5 was made only for legal necessity, when the same was not pleaded and evidence was not given?

2. Whether the Courts below are right in holding that the object of Section 6(a) and (d) of the Transfer of Property Act is that the action of the life estate holder should not affect the interest of the reversionary and the act of



the reversionary should not affect the right of the life estate holder?

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3. Whether the Courts below are right in holding that creating the mortgage in lieu of the sale price amounts for passing of consideration?

4. Whether the sale of the property by life estate holder and the revisionist jointly would be valid?"

9. The learned counsel appearing for the appellants would submit that the plaintiff has filed the suit seeking the relief of declaration to declare him as an absolute owner of the suit properties, and further seeks the relief of declaration, to declare the sale deed dated 30.06.1952 as null and void; further permanent injunctions to restrain the defendants in any way to alienate or encumber the suit properties and to restrain the defendants from interfering with the plaintiff's enjoyment over the suit properties. In fact, originally, the suit property belonged to one Venkatapa Chettiar through partition deed dated 16.02.1944. The defendants also not denied the title of the properties. The said Venkatapa chettiar executed a Will dated 15.11.1947 in favour of his wife, Balammal and two daughters Solaiammal and Govindammal. The said Venkatapa Chettiar died on 04.12.1947, after his demise, the Will came into effect. As per the Will, the life estate was given to the said Balammal and after her life time, her daughters, Solaiammal and Govindammal are entitled to the properties. The daughters of the said Balammal, namely, Govindammal



and Solaiammal predeceased the said Balammal. The said Balammal died on 06.02.1989, Solaiammal died on 10.01.1986 and Govindammal died on 21.03.1969. The plaintiff is the son of Govindammal and the legal heirs of the deceased Solaiammal and Govindammal had released their share in favour of plaintiff through release deed dated 11.08.2003, therefore, the plaintiff is the absolute owner of the suit properties. The life estate holder, Balammal along with her two daughters, namely, Govindammal and Solaiammal, who have no right to transfer the property on the date of sale, had executed a sale deed in favour of one Muthusamy Gounder on 30.06.1952 and no consideration was passed through the sale deed and the said Muthusamy had executed two mortgage deeds for the sale price on 30.06.1952 and no title has been passed through the sale deed dated 30.06.1952 to the said Muthusamy. The life estate holder, Balammal has no right to alienate the property in favour of Muthusamy. On the date of execution of sale deed, either the said Balammal or her daughters, viz., Solaiammal and Govindammal had no right to execute the sale deed. After the life time of Balammal, her daughters are entitled to the property, as per the Will, therefore, the sale in favour of Muthusamy Gounder is not valid in the eye of Law.

9.1. Further, after commencement of the Hindu Succession Act, as per Section 14(1) of the Act, the property is the absolute property of the said



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Balammal, the life interest holder, Balammal has no right to alienate to property and after the death of Balammal, her two daughters, would take the property absolutely. As per Section 6(d) of the Transfer of Property Act, the life estate holder is not entitled to execute the sale deed. As per Section 6(a) of Transfer of Property Act, when life estate holder is alive, the reversionary do not have any right to sell the property, therefore, both the courts have failed to consider the above said aspects. Therefore, the decrees and Judgments passed by the trial Court as well as First Appellate Court are liable to be set aside and the Second Appeal is liable to be allowed.

10. The learned counsel appearing for the respondents would submit that originally the suit property belonged to Venkatapa Chettiar through partition deed dated 16.02.1944 and he executed a Will dated 15.11.1947 in favour of Balammal and his two daughters, viz., Govindammal and Solaiammal. The said Balammal, Solaiammal and Govindammal had jointly executed sale deed in favour of Muthusamy on 30.06.1952 for valuable consideration and substantial sale price was paid on the date of sale itself and for remaining amount, mortgage deeds were executed and thereafter the said mortgage was also redeemed after payment of money, therefore, the entire consideration was passed, through the said sale deed. Though the said Balammal had only life interest and thereafter, her daughters are entitled to



the properties since, there was a huge debt, due to the death of Venkatapa Chettiar, the said Balammal indebted and thereby sold the property for the debts incurred for the death of Venkatapa chettiar. The said sale deed was executed on 30.06.1952 and during the life time of mother of the plaintiff, namely, Govindammal, no objections have been raised in respect of the sale and after the demise of Govindammal and after 38 years, the present suit has been filed. The said Balammal died in the year 1989, whereas the suit has been filed in the year 2007.

10.1. The plaintiff himself admitted the execution of sale deed and the said sale deed was executed prior to the commencement of the Hindu Succession Act, therefore, Section 14 of the Hindu Succession Act, will not be applicable in the present case and the plaintiff has not filed the suit immediately after the demise of his mother. Neither the mother of the plaintiff nor his maternal aunt questioned the sale deed during their life time. Moreover, the plaintiff himself executed the receipt for the mortgage and therefore, now he cannot deny the sale deed executed by his predecessors. Both the courts below have correctly analysed the evidences and dismissed the suit, therefore, there is no infirmity or illegality in the Judgments and Decrees passed by the trial Court as well as First Appellate Court and there are no Substantial Questions of Law involved in this case, therefore, the



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Second Appeal is liable to be dismissed.

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11. Heard the learned counsel on either side and perused the entire documents placed on record.

12. In this case, there is no dispute that the property originally belonged to Venkatapa chettiar through partition deed dated 16.02.1944 and the said Venkatapa chettiar executed registered Will in favour of his wife, Balammal and his two daughters, Solaiammal and Govindammal. The said Solaiammal and Govindammal sold the properties to one Muthusamy, who is the grand father of the 2nd defendant through sale deed dated 30.06.1952. According to the plaintiff, the sale is not valid, since the said Balammal was only a life interest holder and after demise of Balammal, the property has to be devolved on her daughters, Govindammal and Solaiammal. The said Govindammal and Solaiammal predeceased Balammal, therefore, after demise of Balammal, the property has to be divided between the legal heirs of Govindammal and Solaiammal. The legal heirs of Govindammal and Solaiammal had executed a release deed dated 11.08.2003 in favour of the plaintiff. According to the respondents, the sale deed dated 30.06.1952 was acted upon and after sale deed, the sons of Muthusamy Gounder, namely, Palani Gounder and Kali Gounder partitioned the properties through partition



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deed dated 17.04.1953. The suit property was allotted to the father of the 1 and 2 defendants, the said Kaligounder, father of the 1 and 2 defendants executed a settlement deed in favour of the defendants 1 and 2 through settlement deed dated 27.10.1965, thereafter, they are in possession and enjoyment of the property.

13. It is pertinent to point out that the trial court, mainly discussed about the sale of the property for legal necessity, but there are no issues framed by the trial court to that regard and after analysing the evidence, the trial court dismissed the suit. The First Appellate Court also dismissed the appeal by holding that the defendants are in possession and enjoyment of the property, the plaintiffs failed to prove their possession and the property was sold for legal necessity and thereby the plaintiffs are not entitled to any relief as prayed for.

14. During the pendency of the Appeal Suit, the defendants 2 and 4 have filed the additional documents and also filed Interlocutory Application No.254 of 2013 and the same was allowed and the documents were also marked as Exhibits B20 to 24. Those documents are the receipts issued by the Inspector of Assessment, TNEB and kists receipts issued by the Village



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Administrative Officer, Namakkal and name transfer order issued by Assistant Engineer, TNEB, Namakkal and the order passed by the Assistant Commissioner Urban Land Tax assessing the property. These documents were received by the First Appellate Court. According to the plaintiff, he is in possession and enjoyment of the property, according to the defendants, they are in possession and enjoyment of the property. The trial court also came to the conclusion that the defendants are in possession and enjoyment of the property. While so, the defendants have produced some additional documents before the First Appellate Court and the same were received and the First Appellate Court decided that no additional evidence is required and the said documents are only to prove the possession of the defendants, whereas the plaintiff failed to prove his possession, thereby stated that no evidence is required and received the documents.

15. As far as the reception of documents are concerned, as per Order 41 Rule 27 of C.P.C., the documents can be received, the First Appellate Court has not given any reasons for receiving those documents as to whether those documents are very essential to decide the case. If the application filed by the applicants to receive the additional documents, fulfill the conditions of Order 41 Rule 27 of C.P.C., then, the Court can receive the documents and after receipt of documents, if the evidence is necessary, then, the court has to



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follow the procedures under Order 41 Rule 28 of C.P.C., In this case, the First Appellate Court has not followed the procedures under Order 41 Rule 28 of C.P.C., however, recorded that oral evidence is not necessary. If the available documents are sufficient to prove the case of the parties, then no additional evidence is required and the First Appellate Court ought not have received the additional evidence. Once the documents are received for proving the possession of the defendants, then an opportunity has to be given to the opposite party. It is pertinent to note that the documents have been received since they are in respect of the possession of the defendants. When the plaintiff's claim is that he is in possession of the property and once the Court has decided to receive the documents, the First Appellate Court, ought to have granted opportunity to the parties to adduce evidence to deny the documents by way of evidence and an opportunity has to be given to the plaintiff / appellants to deny the documents by way of cross examination. Though according to the First Appellate Court, the 1st plaintiff has not proved his possession, once the Appellate Court, received the additional documents for proving possession of the defendants, the opposite party have to be given chance to rebut those documents, but in this case, that opportunity has not been granted, therefore, without going into the merits of the case, it is appropriate to set aside the Decree and Judgment passed by the First Appellate Court and the matter is remanded back to the First Appellate Court.



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The Appellate Court is directed to follow the procedures under Order 41 Rule 28 of C.P.C., in respect of the documents received as additional evidence and marked as documents.

16. As far as the judgment and decree passed by the trial court is concerned, the trial court has not framed issues in respect of legal necessity and therefore, the appellate court has to consider that aspect also while disposing the appeal.

17. In view of the above said discussions, the Judgment and Decree passed by the First Appellate Court in A.S.No.81 of 2010 dated 11.03.2013 are set aside and the present Second Appeal is allowed and the matter is remanded back to the First Appellate Court for consideration by following the procedure and affording opportunity to the plaintiff / appellants in respect of the documents received as additional evidence under Order 41 Rule 28 of C.P.C., and render findings and dispose of the same afresh and in accordance with law. Since the matter is pending for a long time, the First Appellate Court is directed to dispose of the Appeal Suit within a period of six months from the date of receipt of copy of this Judgment. No costs.

24-02-2026

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



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To

1. The First Additional District Judge, Salem.
2. The Principal Subordinate Judge, Salem.



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P.DHANABAL J.

ssd

**Pre-delivery Judgment in
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