



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 57 of 2022 and
CMP.No.1153 of 2022**

1. P.Gopalakrishnan
2. P.Manikantan
3. P.Muthukumaran
4. P.Saroja

..Appellant(s)

Vs

1. Balu
2. P.Govindaraj
3. P. Arumugam

..Respondent(s)

Prayer :Second appeal is filed under Section 100 of Code of Civil Procedure code, praying to set aside the judgment and decree dated 27.02.2020 in AS.No. 143 of 2019 on the file of Principal District Judge, Cuddalore and the judgment and decree dated 14.08.2018 in OS.No. 355 of 2017 on the file of the II Additional Sub Judge, Cuddalore.

For Appellant(s): R.Sunilkumar

JUDGMENT

The unsuccessful defendants 1 to 4 are the appellants. The first respondent/plaintiff initially filed a suit for bare injunction. Subsequently, the prayer was amended to include the prayer for declaration of title and recovery of possession. The suit was decreed by the trial court. Aggrieved by the same. The



defendants 1 to 4 preferred first appeal. The first appellate court affirmed the judgment and decree passed by the trial court. Aggrieved by the concurrent findings, the defendants 1 to 4 have come before this court by way of second appeal.

2. According to the first respondent/ plaintiff, the suit property originally belonged to one A.S. Chockalingam and he sold the property to one Perumal by sale deed dated 05.07.1980. The said Perumal died leaving behind the defendants as his legal representatives. The defendants offered to sell the suit property to plaintiff and after negotiation, the price was fixed at Rs.2,34,000/-. The defendants executed a registered sale deed in favour of plaintiff on 26.12.2005 for valuable consideration and delivered possession. The original title document was also handed over to the plaintiff. Thus, the plaintiff has been in possession and enjoyment of the suit property. However, the defendants urged the plaintiff to pay more amount to meet their urgent expenses. Since the plaintiff refused to pay more amount as demanded, the defendants attempted to interfere with the plaintiff's possession and hence, the suit was initially filed seeking bare injunction.

3. The defendants 1 to 4 filed a written statement denying execution of sale deed in favour of plaintiff. It was the case of the defendants that plaintiff was a money lender and the defendants borrowed money from the plaintiff and in the guise of getting mortgage deed executed, the plaintiff got a sale deed registered in his name. The defendants also denied the possession of the



plaintiff over the suit property and it was their contention that no sale deed was executed in favour of plaintiff and they remained in possession of the suit property. The defendants also stated that the survey number of the suit property mentioned in the sale deed executed in favour of plaintiff was not correct and the correct survey number is New.Survey.No. 59/11G, Old.Survey.No 313/2, 3e, 4e and 5.

4. Thereafter, the plaintiff filed an application to amend the prayer in the suit seeking to include a prayer for declaration of title and recovery of possession in IA.No.949 of 2011 and the same was allowed. Therefore, the prayer in the plaint was amended for declaration of title and recovery of possession. The plaintiff also amended the description of the properties so as to include the correct survey number as mentioned by the defendants.

5. Before the trial court, the plaintiff was examined as PW1 and one Sivaguru, attester to Exhibit A2, sale deed in favour of plaintiff, was examined as PW2. Three documents were marked on the side of plaintiff as Ex.A1 to Ex.A3. On behalf of the defendants, third defendant was examined as DW1 and one Seetharaman was examined as DW2. Four documents were marked on the side of the defendants as Ex.B1 to Ex.B4.

6. The trial court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the defendants failed to prove the plea of fraud and upheld title of the plaintiff under Exhibit A2. As a necessary consequence, the trial court decreed the suit as prayed for. Aggrieved



by the same, the defendants 1 to 4 preferred an appeal in A.S. 143 of 2019 on the file of the District Court, Cuddalore. The first appellate court dismissed the appeal by affirming the judgment and decree passed by the trial court. Aggrieved by the same, the defendants 1 to 4 have come before this court.

7. The learned counsel for the appellants/defendants 1 to 4 submitted that execution of Ex.A2, sale deed in favour of plaintiff, was specifically denied by the defendants and the circumstances under which the said document was executed in favour of plaintiff was not at all appreciated by the first appellate court. The learned counsel also submitted that in the sale deed executed in favour of plaintiff, the survey number of the suit property was mentioned as New.Survey.No. 59/10, Old.Survey.No 313/1. However, the correct survey number of the suit property is 59/11. Therefore, the plaintiff is not entitled to maintain a suit without seeking rectification of the description of the property in the sale deed.

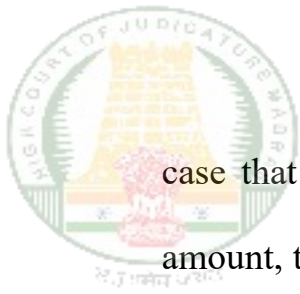
8. It is seen from the extract of the arguments advanced by the learned counsel for the appellants before the first appellate court, the only point urged before the first appellate court was with regard to the maintainability of the suit without rectifying survey number in the sale deed in favour of plaintiff. It appears that no argument was advanced on the plea of fraud raised by the defendants. Therefore, the first appellate court considered only the said point and held that the discrepancy in the survey number would not affect the maintainability of the suit. If it is the case of the appellants that other points



urged by the appellants relating to plea of fraud has not been considered by the first appellate court, the proper course open to the appellants would be to file an application for review before the concerned court on the ground that the point urged before it was not considered. From the judgment rendered by the first appellate court, it is clear that the plea of fraud raised in the written statement was not seriously urged before the first appellate court. Therefore, the same was not considered. Even otherwise, if any such question of fact has not been considered by the trial court as well as the first appellate court, this Court can very well invoke its power under Section 103 of CPC and decide the question of fact. In the case on hand, the plea of fraud was urged by the defendants before the trial court and the same was considered extensively by the trial court. Therefore, based on the evidence available on record, this Court can very well consider the plea of fraud. It is seen from the typed set of papers that plaintiff examined PW2, one of the attestors to Ex.A2, sale deed executed in favour of plaintiff and he deposed in support of the plaintiff's case.

9. It is settled law that sale deed is not a document which requires compulsory attestation. Being a registered document, it has got a prima facie value. The execution of the sale deed need not be proved by calling the attestor. In the case on hand, the plaintiff examined attestor to the sale deed as PW2 and proved due execution of the sale deed.

10. It is the specific case of the defendants that they signed Ex.A2, sale deed in favour of plaintiff, on the belief that it was a mortgage deed. It was their



case that they borrowed money from the plaintiff. As a security for the loan amount, the defendants were made to sign the mortgage deed and in the guise of getting signature in the mortgage deed, the plaintiff got the sale deed executed in his favour. In order to substantiate the borrowal of the amount from the plaintiff, the defendants have not produced any acceptable evidence. Further, there are six defendants. The point urged by the defendants as if all the six defendants are illiterates and they signed the registered document without knowing the contents of the same is not at all acceptable. It is seen from the records that the defendants signed the document. Therefore, it is clear that the defendants were able to put their signature at the time of execution and the courts below came to a factual conclusion that they are not totally illiterates. The said finding requires no interference.

11. The Hon'ble Apex Court in *Prem Singh & Ors. Vs. Birbal & Ors* reported in *2006(5) SCC 353* and in *Rattan Singh Vs. Nirmal Gill* reported in *2021 (15) SCC 300*, categorically held that the registered document has got a *prima facie* value and the person, who question the registered document must rebut the presumption in favour of registered document. In the case on hand, the defendants raised the plea of fraud and they signed the sale deed without knowing the contents of the same. Therefore, the heavy burden is on the defendants to prove the alleged act that they signed the sale deed without knowing its contents. Based on the evidence of PW1 and PW2, we cannot come to the conclusion that the defendants discharged the said burden successfully



especially when plaintiff proved the execution of sale deed by calling it's attester. Therefore, the first point urged by the learned counsel for the appellants that the sale deed in favour of plaintiff was vitiated by employment of fraud is not appealable to this court.

12. As far as the discrepancy in the survey number is concerned, in the written statement, the defendants only disputed the survey number of the suit property found in the sale deed executed in favour of plaintiff. However, the defendants have not disputed the four boundaries. Therefore, it is not the case of the defendants that the property conveyed to plaintiff is different from the property of the defendants. The defendants only raised a plea that without knowing the contents, they signed Exhibit A2, sale deed in favour of plaintiff. In the written statement also, the boundaries of the suit properties mentioned in the plaint has not been disputed. Therefore, merely because the survey number of the suit property has been wrongly mentioned in the sale deed in favour of plaintiff, it will not affect his title in view of the well recognised principle of law that boundaries will prevail over the dispute regarding the survey number and extent.

13. It is also pertinent to mention that in view of the discrepancy in the survey number, the plaintiff sought for declaration of his title. The suit has been filed in respect of property with four specified boundaries and the same has not been denied by the defendants. In such circumstances, the submission made by the learned counsel for the appellants on the ground that the discrepancy in the



survey number in the title document of the plaintiff will affect his title is also not appealable to this court.

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14. In view of the discussion made earlier, I do not find anything to differ with the final conclusion reached by the courts below. Finding no substantial question of law arising for consideration, the second appeal stands dismissed by affirming the judgment and decree dated 27.02.2020 in AS.No.143 of 2019 on the file of Principal District Judge, Cuddalore confirming the judgment and decree dated 14.08.2018 in OS.No. 355 of 2017 on the file of the II Additional Sub Judge, Cuddalore. Consequently, the connected miscellaneous petition is closed. No costs.

24-03-2026

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

1. The Principal District Judge, Cuddalore
2. The II Additional Sub Judge, Cuddalore.



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S.SOUNTHAR, J.

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