

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.04.2026

PRONOUNCED ON :23.06.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.348 of 2021
and CMP.No.6604 of 2021

Kothandapani

... Appellant

vs.

1.S.Kuppusamy
2.G.Francis
3.S.Gnanasundaram
4.S.Ashok Kumar Birla
5.Anbu Juliet Mala
6.Armel Madharasi
7.G.Velmurugan
8.Siva Shankari

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 02.03.2020 made in A.S.No.3 of 2019 on the file of the Court of Additional Subordinate Judge, Puducherry, confirming the judgment and decree dated 22.11.2018 made in O.S.No.1433 of 2006 on the file of the Court of the I Additional District Munsif, Puducherry.



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For Appellant : Mr. T.P.Manoharan
Senior Advocate
for M/s.T.M.Naveen

For Respondents :Mr.K.S.Vaithianathan
for M/s.K.Chandrasekaran

J U D G M E N T

The unsuccessful plaintiff is the appellant. He filed a suit for declaration of title and permanent injunction. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, he has come before this Court.

2. According to the appellant/plaintiff, the suit property originally belonged to one Rosammal. W/o.Selvarathinam. She died leaving behind her son Selvamudaliar. The said Selvamudaliar had four sons viz., Anthoniraj, Susairaj Sebestian, Gandhi and Arul. In the family partition, the suit property was allotted to the share of Susairaj Sebestian. He sold the property to the plaintiff on 24.12.1980 by way of unregistered sale deed for a sale consideration of Rs.12,000/-. On the date of sale deed itself the possession of the suit property was handed



over to the plaintiff. In view of the proceedings under Pondicherry Land Ceiling Act, 1976, sale deed could not be registered, even though the same was executed by vendor in favour of the plaintiff.

3. It was further stated that the plaintiff has been in continuous possession and enjoyment of the suit property from 24.12.1980. The defendants 1 and 2 without having any manner of right attempted to interfere with possession of the plaintiff by removing the fence put up by the plaintiff encumbering the suit property. Hence, the plaintiff filed a suit for injunction restraining the defendants 1 and 2 from interfering with his possession in O.S.No.1834 of 1996 on the file of the I Additional District Munsif Court, Puducherry and the same was dismissed on 30.06.1998. Challenging the same, the plaintiff preferred an appeal in A.S.No.51 of 1998 on the file of the Principal District Court, Puducherry and the same was dismissed on 22.06.1999. Challenging the same, the plaintiff preferred a second appeal before this Court in S.A.No.1278 of 2000. However, the plaintiff withdrew the second appeal as the defendants denied the title of the plaintiff. Hence, the present suit for declaration of title and permanent injunction has been filed by impleading the defendants 3 to 6, who are all the legal



representatives of the plaintiffs' vendor. On these pleadings, the plaintiff sought for declaration of title and injunction.

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4. The defendants 1, 2 and 6 remained ex-parte. The defendants 3 and 4 filed written statement denying the title as well as possession of the plaintiff over the suit property. The allegations in the plaint that Selvamudaliar was son of Rosammal was specifically denied. According to the defendants 3 and 4, Rosammal died leaving behind her only daughter viz., Viguola Mary. The allegation in the plaint, as if Selvamudaliar had four sons and properties allotted to Susairaj Sebestian, etc., were also specifically denied in the written statement. The further allegation in the plaint, as if, the plaintiff purchased the suit property from Susairaj Sebestian under unregistered sale deed and the alleged possession of the plaintiff over the suit property was also denied.

5. It was further pleaded that there was no partition of the suit property among the legal heirs Viguola Mary and till date the same has been in custody of the said legal heirs. The defendants also specifically pleaded that above said Susairaj Sebestian did not execute any sale deed



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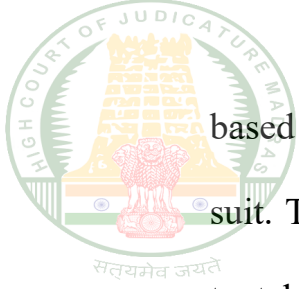
in favour of the plaintiff. The defendants also pleaded that there was no cause of action for the suit and hence sought for dismissal of the suit.

The 7th defendant who is said to have entered into a sale agreement with the plaintiff filed a written statement supporting the plaintiff.

6. Before the Trial Court, the plaintiff was examined as PW.1 and four documents were marked on his side as Exs.A1 to A4. The 7th defendant was examined as DW.1. The 3rd defendant was examined as DW.2 and one Kural @ Ezhumalai was examined as DW.3. On behalf of the defendants, seventeen documents were marked as Exs.B1 to B17.

7. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove his title as well as possession over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.3 of 2019 on the file of the Additional Subordinate Court, Puducherry. The First Appellate Court affirm the findings of the Trial Court. Aggrieved by the concurrent findings, the plaintiff has come before this Court.

8. The learned counsel appearing for the appellant would submit that Ex.A1 unregistered sale deed can be received in evidence for collateral purpose as per proviso to Section 49 of Registration Act and

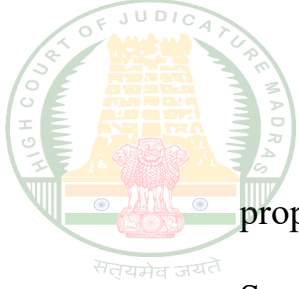


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based on the said document, the Courts below ought to have decreed the suit. The learned counsel further submitted that the Courts below failed to take into consideration the evidence available on record in proper legal perspective and hence the judgment and decree impugned in this second appeal are vitiated.

9. In support of the said contention, the learned counsel appearing for the appellant relied on the following judgments:

1. *Union of India & Ors vs. Vasavi Cooperative Housing Society Ltd. & Ors.* Reported in (2014) 2 SCC 269
2. *S. Kaladevei vs. V.R Somasundaram & Ors.* Reported in (2010) 5 SCC 401
3. *J Ganapatha and Others vs N. Selvarajalou Chetty Trust Rep by its Trustees and Others* reported in 2025 SCC OnLine SC 633
4. *Kanagambaram Ammal vs Kakammal & Ors.* Reported in 2004 (4) CTC 596
5. *Narasimhasetty vs Padmasetty* reported in ILR 1998 Kar 3230 (FB)



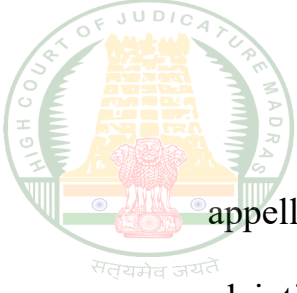
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10. It is specific case of the plaintiff that he purchased the suit property under unregistered sale deed dated 24.12.1980 from one Susairaj Sebestian.

11. It is seen from the typed set of papers, the original unregistered sale deed dated 24.12.1980 had been marked as exhibit in earlier suit for injunction filed by the plaintiff in O.S.No.1834 of 1996. Hence, the plaintiff obtained certified copy of unregistered sale deed and marked it as Ex.A1 before this Court.

12. It is settled law, an immovable property worth more than Rs.100/- can be conveyed only by way of registered instruments. In the case on hand, the plaintiff claimed right over a plot measuring 5400 sq.ft situated in Tagore Nagar, Saramveli, Pondicherry. Even as per the case of the plaintiff, he purchased the property for sale consideration of Rs.12,000/-. Therefore, the sale of the property worth of Rs.12,000/- by way of unregistered sale deed is not at all valid. Therefore, the unregistered sale deed relied on by the plaintiff will not convey any title to him. On this short ground, the prayer for declaration of title has to be negatived.

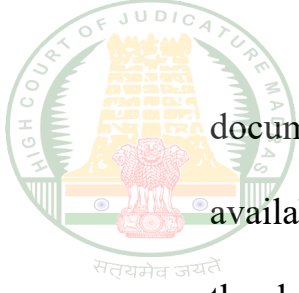
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13. Secondly, it was contended by learned counsel for the appellant that the possession of suit property was handed over to the plaintiff on the date of Ex.A1 and from that date onwards, the plaintiff has been in continuous possession and enjoyment. Therefore, according to him, the appellant prescribed title over the suit property. Ex.A1 is only an unregistered sale deed. According to the plaintiff, in view of the land ceiling proceedings initiated in respect of the suit property, the sale deed could not be registered at that point of time. Relying on the recitals in the unregistered documents regarding handing over the possession, the plaintiff said he has been in possession and enjoyment of the suit property. In the written statement filed by the respondents 3 and 4, who are the legal representatives of the plaintiff alleged vendor, they clearly denied the sale deed relied on by the plaintiff and the handing over of possession to the plaintiff. Therefore, without proving the execution and genuineness of Ex.A1 unregistered sale deed, the plaintiff cannot rely on any recitals found there on.

14. It is pertinent to mention that admittedly Ex.A1 sale deed was not a registered document and it was only an unregistered sale deed. If it is a registered document, presumption attached to the registered

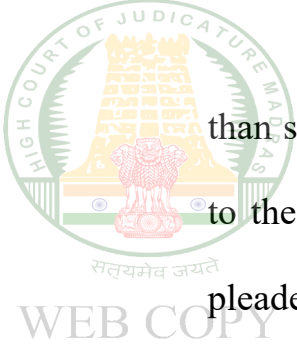


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documents will be available. However, the said presumption is not available to the unregistered sale deed. Hence, the plaintiff has to prove the documents by examining the independent witness. The plaintiff has not examined any other witness to prove the execution of unregistered sale deed by above mentioned Susairaj Sebastian in his favour and handing over of possession by him. In the absence of examination of any independent witness or attester to the documents, the execution of the said unregistered documents cannot be said to be proved. Therefore, the plaintiff is not entitled to take advantage of the recitals found thereon regarding the alleged handing over of the suit property.

15. Though it was claimed by the plaintiff that he has been in possession and enjoyment of the suit property from 1980 down to the date of filing of the suit. He has not filed any documentary evidence to prove the alleged possession over the suit property.

16. The four documents filed by the plaintiff are not at all useful to prove his possession over the suit property. He has not produced any revenue documents to establish his possession. He has not even let in any oral evidence to prove his alleged continuous possession for more



than statutory period. Therefore, this Court has no hesitation in coming to the conclusion that the plaintiff failed to prove the prescriptive title pleaded by him.

17. In *Vasavi Co-operative Housing Society case* cited by the learned counsel for the appellant, the Apex Court had held that an entry in revenue records though has got an evidentiary value that by itself would not confer title upon a person under whom the plaintiff therein claimed title. It was held that in the absence of establishment of title, the plaintiff must be non-suited, even if the defendants failed to prove their own title. The said case is not at all useful to the appellant as he failed to establish his title and possession over the suit property.

18. The decision in *S.Kaladevi Vs. V.R.Somasundaram case* was pressed into service by the learned counsel for the appellant to support his case that unregistered document could be used for collateral purpose. In the case on hand, this Court already came to the conclusion that execution of unregistered sale deed relied on by the plaintiff was not at all proved by any independent evidence. Therefore, the plaintiff is not entitled to rely on the recitals found thereon regarding delivery of

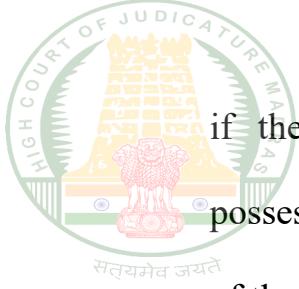
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possession. Even assuming the said document is taken into consideration that by itself is not sufficient to prove his hostile possession for continuous period of more than 12 years. Therefore, the said decision will not advance the case of appellant.

19. The decision in ***J.Ganapatha case*** was pressed into service to explain the power of the Court to mould relief. In the case on hand, this Court already held, the plaintiff miserably failed to prove his title and possession of the suit property. In such circumstances, there is nothing on record to mould the relief to the plaintiff. Hence, the said case law is also not useful to the appellant.

20. The decision in ***Kanagambaram Ammal case*** cited by the learned counsel for the appellant was related to the circumstance under which, adverse inference shall be drawn against the party for the failure to examine a material witness. In the case on hand, the plaintiff failed to establish his title and possession over the suit property and he cannot argue that the defendants failed to establish their case by leading material evidence and hence adverse inference shall be drawn against them. The burden of proof will get shifted to the defendants only

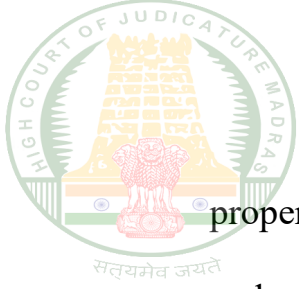


if the plaintiff discharges his initial burden of proving title and possession. Therefore, the said case law also will not advance the case of the appellant.

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21. The decision in **Narasimhasetty Vs. Padmasetty** was pressed into service for the proposition that law of limitation does not apply to the defence raised under Section 53 A of Transfer of Property Act and notwithstanding bar of remedy of specific performance, the agreement holder is entitled to take the defence of part performance. In the case on hand, the plaintiff claims title over the suit property, he also pleaded prescriptive title by long possession. As per the law settled by the Apex Court in **Roop Singh Vs. Ram Singh** reported in **2000 (3) SCC 708**, the possession under agreement will never become adverse as against the owner. The relevant observation reads as follows:

“ It is also to be stated that plea of adverse possession and retaining the Possession by operation of Section 53-A of the Transfer of Property Act are inconsistent with each other Once it is admitted by implication that Plaintiff came into possession of the land lawfully under the agreement and continued to remain in possession till the date of the suit, the plea of adverse possession would not be available to the Defendant unless it has been asserted and pointed out hostile animus of retaining possession as an owner after getting in possession of the land.”



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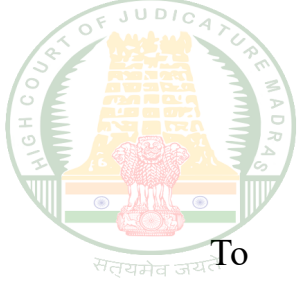
If the plaintiff submits he is a person in possession of the property under agreement of sale, he is not entitled to claim adverse title and as such, he cannot seek declaration of title. Therefore, the decision relied on by the learned counsel for the appellant is not at all helpful to him. Further in the case on hand factually this Court found due execution of unregistered sale deed has not been established by the plaintiff independent evidence. In such circumstances, he cannot claim, he is in possession of the suit property as per the recitals found in the un-registered sale. Therefore, the submission made by the learned counsel for the appellant based on the above mentioned case law is not appealable by this Court.

22. In the light of the discussion made earlier, the citations relied on by the learned counsel for the appellant in support of his case are not at all helpful to advance his case and hence the submission of the learned counsel for the appellant stands rejected. The appellant is unable to make out any substantial question of law and hence the second appeal stands dismissed.

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Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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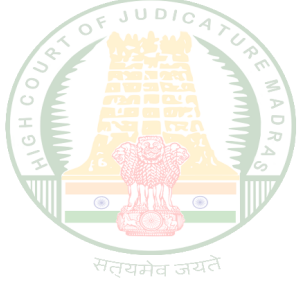


To

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1.The Additional Subordinate Judge,
Puducherry.

2.The I Additional District Munsif,
Puducherry.



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S.SOUNTCHAR, J.

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Pre-delivery order made in
S.A.No.348 of 2021

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