

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-04-2026

CORAM

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THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA Nos. 637 and 648 of 2020 and
CMP Nos.13281 and 13360 of 2020

S.A.No.637 of 2020:

S.Murugan, S/o.Subburaya Kounder,
Kanakkan Kuppam Village, Gingee Taluk,
Villupuram District.

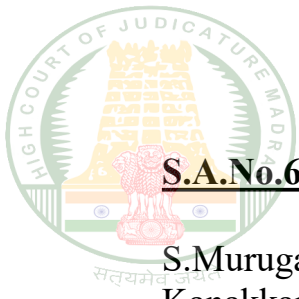
..Appellant(s)

Vs

Subburayagounder (died)

1. E.Jayalakshmi, W/o.Elumali,
Kanakkan Kuppam Village, Gingee Taluk,
Villupuram District.
2. Kuppan, S/o.Ponnan,
3. Narayanasamy, S/o.Ponnan,
4. Neelavathi, W/o.Subburaya Gounder
5. Ramsamy, S/o.Subburaya Gounder
6. Govindhan, S/o.Subburaya Gounder
7. Jayabal, S/o.Subburaya Gounder
8. Deventhiran, S/o.Subburaya Gounder
Respondents 2 to 8 are residing
at Kanakkan Kuppam Village, Gingee Taluk,
Villupuram District.

..Respondent(s)



S.A.No.648 of 2020:

S.Murugan, S/o.Subburaya Kounder,
Kanakkan Kuppam Village, Gingee Taluk,
Villupuram District.

..Appellant(s)

Vs

Subburayagounder (died)

1. E.Jayalakshmi, W/o.Elumali,
Kanakkan Kuppam Village, Gingee Taluk,
Villupuram District.

2 . Neelavathi, w/o Subburaya Kounder

3. Ramasamy, s/o Subburaya Kounder

4. Govindhan, s/o Subburaya Kounder

5. Jayabal, s/o Subburaya Kounder

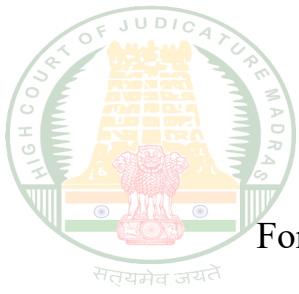
6. Deventhiran, S/o.Subburaya Gounder

Respondents 2 to 6 are residing at
Kanakkan Kuppam Village, Gingee Taluk,
Villupuram District.

..Respondent(s)

Prayer in S.A.No.637 of 2020: Second Appeal filed under Section 100 of CPC to set aside the decree and judgment dated 22.11.2019 in AS.No. 5/2015 on the file of Sub Judge, Gingee, reversing the decree and judgment dated 12.12.2014 in OS.No. 403/2005 on the file of Additional District Munsiff, Gingee.

Prayer in S.A.No.648 of 2020: Second Appeal filed under Section 100 of CPC to set aside the decree and judgment dated 22.11.2019 in AS.No. 4/2015 on the file of Sub Judge, Gingee, reversing the decree and judgment dated 12.12.2014 in OS.No. 336/2005 on the file of Additional District Munsiff, Gingee.



In both second appeal

For Appellant

: Mr.R.Rajarajan

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For Respondents

: Mr.S.Sathyaraj for R1 in both
second appeal.

Notice dispensed with for R2 to R8
in S.A.No.637 of 2020

R2 and R6 in S.A.No.648 of 2020 – Died

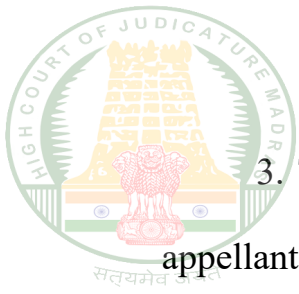
No appearance for R3, R4 and R5
in S.A.No.648 of 2020

COMMON JUDGMENT

Second Appeal No.637 of 2020 is arising out of the suit for injunction in O.S.No.403 of 2005 filed by appellant's sister Jayalakshmi and his father Subburaya Kounder against the appellant and others.

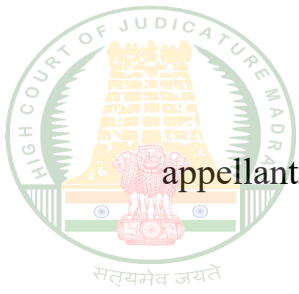
Second appeal No.648 of 2020 is arising out of the suit for specific performance in O.S.No.336 of 2005 filed by the appellant against his father Subburaya Kounder and his sister Jayalakshmi and others.

2. For the sake convenience, the parties are referred to as per their ranking in the suit for specific performance in O.S.No.336 of 2005.



3. The trial court decreed the suit for specific performance filed by the appellant and dismissed the suit for injunction filed by his sister and father. The first appellate court reversed the findings of the trial court and dismissed the suit for specific performance and decreed the suit for injunction. Aggrieved by the findings of the first appellate court, the appellant has filed the present second appeal.

4. According to the plaintiff/appellant, the agreement mentioned property in a suit for specific performance in O.S.No.336 of 2005 belonged to his father Subburaya gounder and he entered into a sale agreement with him on 21.07.2005. The consideration was fixed at Rs.25,000/- and on the date of agreement the appellant paid a sum of Rs.20,000/- as advance and it was agreed by the parties that the balance sale consideration should be paid within a period of three months from the date of agreement. It was the case of the plaintiff/appellant that though he was ready and willing to pay the balance sale consideration and get the document executed in his favour, his father/ first defendant did not effect the execution of sale deed. Hence, the appellant issued a notice to his father/the first defendant on 03.09.2005, demanding execution of sale deed by receiving the balance sale consideration. The first defendant though received the said notice, did not give any reply to the appellant, whereas, he executed a sale deed with regard to the suit property in favour of appellant's sister, namely, Jayalakshmi/ 2nd defendant, on 08.09.2005. Hence, the



appellant/plaintiff filed the above said suit.

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5. The 1st defendant Subburaya gounder filed a written statement and the same was adopted by his daughter 2nd defendant, namely Jayalakshmi. In the written statement, the defendants denied due execution of sale agreement. It was also stated by them that the property mentioned in the sale agreement was sold to the 2nd defendant on 08.09.2005. They also stated that the first defendant executed various sale deeds on 26.09.2005 in favour of his sons, including the plaintiff in respect of his properties. According to the defendant, the appellant created a forged sale agreement and filed the present suit to make an unjust claim over the suit property. The signature of first defendant Subburaya gounder in the sale agreement was specifically denied by the defendants in the written statement.

6. The defendants, namely, Jayalakshmi and Subburaya Gounder filed another suit in O.S.No.403 of 2005 seeking injunction, reiterating the stand taken by them in their written statement in O.S.No.336 of 2005. Likewise, the appellant herein resisted the above said suit by filing written statement, reiterating his stand in the suit for specific performance filed by him in O.S.No.336 of 2005.



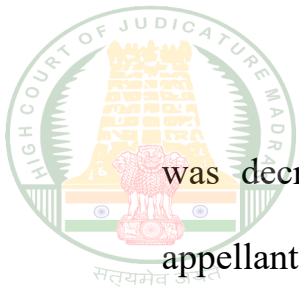
7. Before the trial court, separate trial was conducted in both the suits in O.S.No.336 of 2005 and O.S.No.403 of 2005.

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i) In the suit for specific performance in O.S.No.336 of 2005, on the side of the appellant/ plaintiff, the plaintiff and one another witness were examined as PW1 and PW2 respectively and 3 documents were marked as Ex.A1 to Ex.A3. On the side of the defendants, the 2nd defendant Jayalakshmi and one another witnesses were examined as DW1 and DW2 respectively and 8 documents were marked as Ex.B1 to Ex.B8.

ii) In the suit for bare injunction O.S.No.403 of 2005, on the side of the plaintiffs therein, Jayalakshmi and two other witnesses were examined as PW1 to PW3 and 5 documents were marked as Ex.A1 to Ex.A5. On the side of the defendants therein, Murugan (appellant herein)_ and one another witness were examined as DW1 and DW2 and 2 documents were marked as Ex.B1 and Ex.B2.

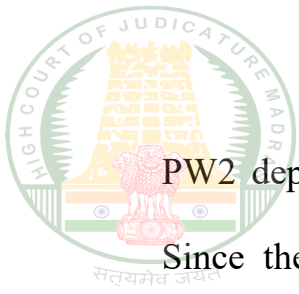
8. The trial court, on appreciation of oral and documentary evidence, decreed the suit for specific performance filed by the appellant and dismissed the suit for permanent injunction filed by his sister and father. In the first appeals, filed by the sister of appellant, namely Jayalakshmi, the findings of the trial court in both the suits were reversed by the first appellate court and the suit for specific performance filed by the appellant was dismissed and the suit for permanent injunction filed by the sister of the appellant, namely Jayalakshmi



was decreed. Aggrieved by the findings of the first appellate court, the appellant has come before this court by filing the respective present second appeals.

9. The learned counsel for the appellants would submit that the execution of sale agreement by the first defendant was duly proved by the appellant /plaintiff by examining one of the attestors to the said document and the evidence of PW2 was not properly taken into consideration by the first appellate court. The learned counsel also submitted that the sale deed said to have been executed by Subburaya Gounder in favour of 2nd defendant, namely Jayalakshmi on 08.009.2005 is a sham and nominal document and it will not confer any title to her. He further submitted that when the sale deed executed in favour of Jayalakshmi has been questioned by the appellant in the earlier suit for specific performance, the subsequent suit in O.S.No.403 of 2005 filed by her simply for bare injunction, without seeking declaration of title, was not maintainable.

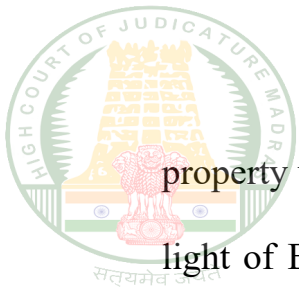
10. It is seen from the typed set of papers that in the suit for specific performance filed by the appellant/plaintiff, he was examined as PW1 and one of the attesor to the sale agreement Ex.A1 was examined as PW2. Further, the contesting 2nd defendant was examined as DW1 and another attesor to Ex.A1 was examined as DW2. It is also pertinent to mention that both the PW2 and DW2 are brothers of the appellant as well as the 2nd defendant Jayalakshmi. The



PW2 deposed as if no sale consideration was paid under the sale agreement.

Since the PW2 and DW2 are brothers of the contesting parties, they were examined on behalf of the plaintiff as well as the 2nd defendant as PW2 and DW2 respectively and thus, we need not give much importance to the evidence of PW2 and DW2.

11. Ex.A1 sale agreement said to have been executed on 21.07.2005. The plaintiff issued a legal notice to the first defendant on 03.09.2005 under Ex.A2. However, the plaintiff/appellant has not filed any postal receipt or postal acknowledgment to prove issuing of such legal notice. The plaintiff, in his examination as PW1, clearly admitted that his father/ first defendant was staying with him, while issuing the above said legal notice. Therefore, the issuance of legal notice itself is highly doubtful. It is also seen from the documents filed by the parties before the trial court that on 26.09.2005, Subburaya Gounder executed a sale deed in favour of the appellant in respect of some other properties and the said document has been marked as Ex.A3. It is also seen from the documents that Subburaya Gounder executed various sale deeds in favour of his other sons under Ex.B2 to Ex.B4 on 26.09.2005. Therefore, it is clear that on 26.09.2005, Subburaya Gounder executed sale deeds in favour of his four sons with regard to different portions of his properties. When the sale deeds have been executed by Subburaya Gounder on 26.09.2005 in favour of his sons, the plaintiff should have insisted him to convey the

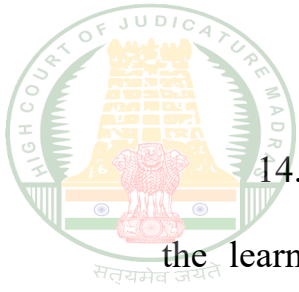


property under the sale agreement also in his favour on 26.09.2005 itself. In the light of Ex.A3 and Ex.B1 to Ex.B4, the genuineness of Ex.A1 sale agreement and the legal notice allegedly issued by the appellant under Ex.A2 are very much doubtful. The first appellate court rightly appreciated the evidence available on record and came to the conclusion that the plaintiff failed to prove due execution of sale agreement and dismissed the suit for specific performance. I don't find any error in the findings of the first appellate court.

12. As far as the suit for injunction fled by Jayalakshmi and Subburaya Gounder in O.S.No.403 of 2005 is concerned, the title of Subburaya Gounder is not disputed by the plaintiff. However, the sale deed executed by Subburaya Gounder in favour of Jayalakshmi dated 08.09.2005, marked as Ex.A1 in O.S.No.403 of 2005 has been challenged mainly on the ground that there was a sale agreement between the plaintiff and Subburaya Kounter with regard to the suit property, even prior to the above said sale deed. This court, already came to the conclusion that due execution of sale agreement dated 25.07.2005 has not been proved by the appellant and hence, as a necessary consequence, the sale deed executed by Subburaya Gounder in favour of his daughter Jayalakshmi shall be held to be valid.



13. The learned counsel for the appellant mainly contended that Ex.A1 (marked in O.S.No.403 of 2005), sale deed executed by Subburaya Gounder in favour of Jayalakshmi is a sham and nominal document. It is settled law that a registered document is presumed to be genuine and the person challenging it shall prove the contrary. In this regard, reference may be had to judgments of Apex Court in ***Prem Singh Vs Birbal*** reported in ***2006(5) SCC 353*** and ***Rattan Singh Vs. Nirmal Gill*** reported in ***2021 (15) SCC 300***. In view of the above, the burden is on the person, who challenged the registered document to prove such document was sham and nominal. Though the appellant disputed that the sale deed executed by Subburaya Gounder in favour of Jayalakshmi as it was a sham and nominal document, he failed to lead any cogent evidence to substantiate his contentions before the Trial court. There is a recital in the sale deed dated 08.09.2005 regarding delivery of possession of the property to Jayalakshmi. The present suit has been filed on 21.11.2005. In such circumstances, the possession of Jayalakshmi can be presumed based on the sale deed, which is a registered document. Further, in the suit for permanent injunction, the original owner, Subburaya Gounder was also joined as a co-plaintiff. Therefore, the submission made by the learned counsel for the plaintiff that the suit for injunction simpliciter is not maintainable without a prayer for declaration of title, is not appealable to this court.



14. In the light of the discussion made earlier, the submissions made by the learned counsel for the appellant are rejected and I do not find any substantial question of law arising for consideration in both the second appeals.

15. Accordingly, the second appeals in S.A.No.637 of 2020 and S.A.No.748 of 2020 are dismissed, confirming the findings of the first appellate court. There shall be no order as to cost. Connected miscellaneous petitions are closed.

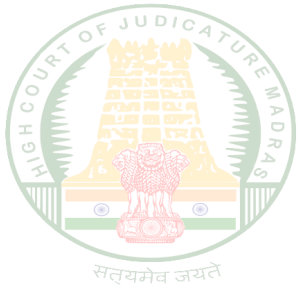
24-04-2026

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

MST

To

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



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SA Nos. 637 and 648 of 2



S.SOUNTHAR, J.

MST

SA No. 637 of 2020

24-04-2026