



SA(MD). No.262 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

Reserved On : 26.03.2026

Delivered on : 30.03.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.262 of 2020
and
CMP(MD)No.3343 of 2020

Mariappan ... Appellant/Appellant / Plaintiff
Vs.

1.Poongavanam
2.Q 816. Ramanathapuram District Co-operative
Whole Sale Stores Ltd.,
Rep. By its Secretary,
Ramanathapuram,
Ramanathapuram District.

3.MD Special 36, Kudipatti Primary Agricultural
Co-operative Credit Society,
Through its Special Officer,
Kidipatti Village, Periyur Taluk,
Madurai District. ... Respondents / Respondents / Defendants
(Respondents 2 & 3 given up)

1/10



SA(MD). No.262 of 2020

WEB COPY

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in A.S.No. 126 of 2017 dated 27.02.2019 on the file of the Subordinate Judge, Tirumangalam, confirming the judgment and decree passed in O.S.No. 370 of 2014 dated 23.01.2017 on the file of the District Munsif cum Judicial Magistrate, Peraiyur.

For Appellant : Mr.M.Divakaran

For Respondents : No appearance for R1

: R2 and R3 given up

JUDGMENT

The plaintiff, aggrieved by the findings rendered by the Courts below (O.S.No.370 of 2014 and A.S.No.126 of 2017), has come up by way of the present second appeal.

2. I have heard Mr.M.Divakaran, learned counsel for the appellant. Despite service of notice on the contesting first respondent, there is no appearance on behalf of the first respondent.



SA(MD). No.262 of 2020

WEB COPY

3. The above second appeal has been admitted on 24.06.2020 on the following substantial question of law:

(i) Whether the lower appellate Court had not accepted the setting up of oral sale by the first defendant is right in not granting relief in respect of second item of suit properties?

Arguments of the learned counsel for the appellant/plaintiff:

4. Mr.M.Divakaran, learned counsel for the appellant would contend that the appellant, as plaintiff, had exhibited the registered sale deed in his name in Ex.A2 as well as Adangal extracts in Ex.A3 and kist receipts in Ex.A4. He would further state the plaintiff had mortgaged the property under Ex.A8 and there was also an attachment vide Ex. A6. Pointing out to the written statement, Mr.M.Divakaran, learned counsel for the appellant would contend that the defendants have also admitted that they had purchased the property from the appellant/plaintiff by way of an oral sale only. The learned counsel would therefore state that when the oral sale had not been proved and in any event was not legally



SA(MD). No.262 of 2020

maintainable for want of the document to be reduced in writing and also registered, the learned counsel would state that the Courts below have erroneously denied relief to the plaintiff. He would therefore pray for the second appeal being allowed.

5. I have carefully considered the submissions advanced by the learned counsel for the appellant and I have also gone through the judgment of the trial Court as well as the first Appellate Court.

6. The second appeal has been admitted in relation to item No.2 of the suit property. The Courts below have relied on Ex.A14 to non-suit the appellant/plaintiff. Ex.A14 is an Encumbrance Certificate which reflects that the second item of the suit property has been sold by Ramanathapuram Co-operative Society in favour of Poongavanam, the first respondent and subsequently, in and by Lease deed dated 06.05.1997, registered vide document No.1/1997, in turn, the purchaser, Poongavanam also mortgaged the property on 16.11.2009 under Document No.4434 of 2009. The Courts below have found that since the



SA(MD). No.262 of 2020

property stood in favour of Poongavanam, the first defendant and the plaintiff had not challenged the said sale deed, he is not entitled to any relief.

7. Even in the plaint, I find that the appellant/plaintiff has only stated that the first defendant has no right over the suit property and that the plaintiff alone has such right, and that, by committing fraud, a patta has been obtained in the name of the first defendant. The plaintiff admits that the suit property was attached by the Ramanathapuram Co-operative Society, but it is not his case that he has redeemed the mortgage

8. It is seen from the plaintiff's own document Ex.A14 that the property has been brought for sale and ultimately, conveyed in favour of Poongavanam, the first defendant in the suit;. However, the plaintiff claimed that the first defendant fraudulently attempted to grab the suit property. Despite having knowledge of the said sale deed, as already pointed out, the Encumbrance Certificate has been marked only on the side of the plaintiff himself, the plaintiff has not challenged the sale.



SA(MD). No.262 of 2020

WEB COPY

9. The Courts below have rightly found that the revenue records are also standing in the name of the first defendant in respect of second item of the suit property and that in Ex.A14- Encumbrance Certificate, property has also been conveyed by Ramanathapuram Co-operative Society in favour of the first defendant. The Courts below have also found that the original sale deed in the name of the plaintiff, pertaining to the second item, has not been exhibited, and have consequently come to the conclusion that the plaintiff has no right to question the attachment made by the second defendant and the subsequent sale of the property in favour of the first defendant. It is not even the case of the plaintiff that he has redeemed the mortgage and therefore, the second defendant is not having any right to bring the second item of the property for sale.

10. As regards the written statement filed by the first defendant, though it has been contended by the first defendant that he has orally purchased the property for valuable consideration of Rs.10,000/- in the year 1985 and thereafter patta was also transferred in his name and that



SA(MD). No.262 of 2020

the first defendant is paying kist and there is no mention about the purchase made by the first defendant from the second defendant. I do not see how the plaintiff can take advantage of the lacuna or weakness in the defence set up by the first defendant. The plaintiff, having approached the Court seeking the reliefs of declaration and permanent injunction, is bound to establish, by satisfactory oral and documentary evidence, that he possesses valid and legal title to the suit property. By his own stand, viz., the order of attachment and the admission of the charge in favour of the second defendant and the entry in the Encumbrance Certificate in Ex.A14, the plaintiff has failed to discharge the burden upon him to establish his case. Thus, I do not see how the plea of oral sale taken by the first defendant, which has not been established, would in any manner advance the case of the plaintiff/appellant. In fact, even in the pre-suit notice, which was marked as Ex.A10, it clearly indicate that the second item of the property was brought to sale and sold to the first defendant. It was therefore absolutely necessary for the appellant / plaintiff to have challenged the sale, which admittedly, has not been done.



SA(MD). No.262 of 2020

WEB COPY

11. Accordingly, I do not see any merit in the second appeal and the substantial question of law is answered against the appellant/plaintiff.

Result:

12. In fine, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.03.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
LS



SA(MD). No.262 of 2020

WEB COPY

TO

1. The Subordinate Judge,
Tirumangalam
2. The District Munsif cum Judicial Magistrate,
Peraiyur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



SA(MD). No.262 of 2020

P.B.BALAJI,J.

LS

**Pre-delivery Judgment made in
SA(MD) No.262 of 2020**

30.03.2026