



SA(MD). No.182 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.03.2026

Delivered on : 30.03.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.182 of 2017
and
CMP(MD)No.3310 of 2017**

Sankaran

... Appellant/Appellant / Plaintiff

Vs.

1.Muthukrishnan (died)

2.The Sub Inspector,

District Crime Branch,

Office at Tirunelveli-Nagercoil Road,

Palayamkottai,

Nanguneri Taluk,

Tirunelveli District.

3.The Inspector,

District Crime Branch,

Office at Tirunelveli-Nagercoil Road,

Palayamkottai,

Nanguneri Taluk,

Tirunelveli District.

... Respondents / Respondents / Defendants



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4.Parvathi

5.Selvi

6.Uma

7.Thirumalai Nambi

8.Sankar

9.Petichiappan

10.Kanna

11.Senthil Arumugam

(R4 to R11 are brought on record as Lrs of deceased R1
vide Court order dated 26.02.2020 made in CMP(MD)
No.5407 of 2018)

... Respondents

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the Principal District Judge, Tirunelveli, passed in A.S.No.51 of 2015 dated 23.08.2016 confirming the decree and judgment of the Sub Court, Valliyoor, passed in O.S.No.71 of 2010 dated 02.02.2015.

For Appellant : Mr.R.T.Arivu Kumar,

For Respondents : Mr.M.P.Senthil for R9

: Mr.M.Sakthi Kumar
Government Advocate (Crl.Side) for R2 & R3

: No appearance for R4 to R8, R10 & R11

: R1 Died



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JUDGMENT

The unsuccessful plaintiff is the appellant, aggrieved by the concurrent findings of the trial Court as well as the First Appellate Court.

2. Pleadings:

The Complaint in brief::

2.1. The plaintiff sought for the relief of declaration that he is the owner of the suit property and for consequential permanent injunction to restrain the first respondent from interfering with the plaintiff's alleged peaceful possession and enjoyment, either by encroachment or in any other manner.

2.2. The case of the plaintiff is that the suit property was originally belonging to Avudaiappa Pillai, who sold the same to two brothers, namely, Bhakkir Muhaideen Rowther and Asan Mohideen Rowther. Bhakkir Muhaideen Rowther purchased $\frac{1}{2}$ share from his brother Asan Mohideen Rowther and was in enjoyment of the entire property and on



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10.08.1962, he sold it to one Pirammanayagam Pillai. On 24.05.1978, the plaintiff purchased the suit property from Pirammanayagam Pillai and the plaintiff has been in possession and enjoyment ever since. On 30.06.2010, the first defendant approached the plaintiff for purchase of the suit property. However, the plaintiff refused, which provoked the first defendant to approach the police authorities by lodging a complaint on 03.07.2010. At the enquiry, the plaintiff was put on notice about the claim of the first defendant that the plaintiff had sold the property to the first defendant in the year 1994 itself and possession has, ever since remained only with the first defendant. The plaintiff's thumb impressions were obtained out of compulsion and the plaintiff was threatened that if he did not hand over possession within one week, further complaints would be foisted against him. Contending that the plaintiff is the absolute owner and in peaceful possession, the plaintiff filed the suit.

3. Written statement filed by the 1st defendant in brief:

The contesting first defendant, meeting the plaint averments and allegations, filed a written statement, claiming absolute right under sale



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deed dated 20.05.1991 in and by which, the plaintiff executed the document in favour of Minor.Essakiraj, represented by his wife and guardian Arumugathammal and that the first defendant has purchased the property subsequently on 14.09.1994 under registered sale deed and has put in possession of the suit property. The police complaint was given only to thwart the unlawful attempt of the plaintiff to grab the suit property, having already sold the same.

4.Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff is entitled to the relief of declaration that the suit property is absolutely belonged to the plaintiff?
2. Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendant not to interfere the plaintiff by way of encroachment or in any manner ?
3. Whether it is true that the 1st defendant has purchased the suit property from the plaintiff and his family members?



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4. What other reliefs the plaintiff is entitled to ?

5.Trial:

At the trial, the plaintiff examined himself as P.W.1 and exhibited Ex.A1 to Ex.A27 on the side of the plaintiff. On the side of the defendants, the first defendant examined himself as D.W.1 besides six other witnesses were examined as D.W.2 to D.W.7 and Ex.B1 to Ex.B7 were marked.

6.Decision of the trial Court:

The trial Court, found that the plaintiff has not established his case, dismissed the suit.

7.Decision of the First Appellate Court:

Aggrieved by the same, the plaintiff preferred an Appeal in A.S.No.51 of 2015 before the Principal District Judge, Tirunelveli. Pending the appeal, the plaintiff also took out an application in I.A.No.65 of 2016 for adducing additional evidence, invoking Order 41 Rule 27 of



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the Code of Civil Procedure. The first Appellate Court dismissed the said application under Order 41 Rule 27 of the Code of Civil Procedure, as one being belated and proceeded to dismiss the first appeal as well, confirming the findings of the trial Court.

8. Present appeal:

As against the concurrent findings of the trial court and the first Appellate Court, the plaintiff is on Second Appeal.

9. Substantial questions of law:

On 17.04.2017, this Court admitted the Second Appeal on the following substantial questions of law:

1. Whether the 1st Appellate Court is correct in dismissing the application to send the alleged sale deed Exhibit B3 for an expert opinion to compare the thumb impression of the appellant?

2. In the absence of proof of due execution of Ex.B1 sale deed, whether the Courts below are justified in upholding the validity of Ex.B2 – gift deed?



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3. Whether the judgments of the Courts below are perverse in falling to appreciate the evidence on record properly?

10. I have heard Mr.R.T.Arivu Kumar, learned counsel for the appellant, Mr.M.P.Senthil, learned counsel for the contesting 9th respondent and Mr.M.Sakthi Kumar, learned Government Advocate for the respondents 2 and 3 on the substantial questions of law framed by this Court.

11. Arguments of the learned counsel for the appellant:

11.1. The learned counsel for the appellant would firstly submit that the plaintiff having alleged fraud and taking out an application to establish the acts of forgery and fabrication, by seeking to adduce additional evidence in the first Appeal, would contend that the first Appellate Court ought to have entertained the application in order to throw light on the facts of the case, more so, to assist the first Appellate Court in rightly adjudicating the appeal on merits.



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11.2. The learned counsel would further state that the Courts below have failed to even notice that the appellant had specifically denied the execution of gift deed in Ex.B2 and sale deed in Ex.B3 and in such circumstances, the Courts below ought to have placed the burden of proof on the defendants, to establish the sale deed in Ex.B3 under which document, the first defendant claims absolute right and title. He would also state that the plaintiff's brother was examined as P.W.4, who had admitted to the fact that the property belonged to the plaintiff and the same had been purchased out of the hard-earned money and that he was also in possession of the same. The learned counsel would further state that the alleged gift deed under Ex.B2 was not acted upon and the consequent sale deed under Ex.P3 was therefore invalid in the eye of law. The learned counsel would further state that though the scribe of the sale deed in Ex.P3 was examined as D.W.2, his evidence also did not inspire the Court to uphold due execution of the sale deed. The learned counsel would therefore pray for the appeal being allowed.



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12.Arguments of the learned counsel for the ninth respondent:

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12.1. Per contra, Mr.M.P.Senthil, learned counsel for the 9th respondent would firstly submit that the plaintiff did not even approach the Court with clean hands and had suppressed in the plaint, the very executed on the sale deed in favour of the first defendant. Taking me through the plaint averments as well as the proof affidavit and cross examination of P.W.1, Mr.M.P.Senthil, learned counsel for the 9th respondent would state that the plaintiff had categorically admitted to the execution of the settlement deed as well as the sale deed and though he pleaded *non est* factum, there was absolutely no evidence adduced towards proving the same. He would further state that one and the same person was the scribe in all the documents, viz., sale deed in favour of the plaintiff, the settlement deed executed by the plaintiff in favour of the minor, and the sale deed in favour of the first defendant and the said scribe has been examined and further the plaintiff's own brother, who was an attesting witness in Ex.A3 sale deed had also been examined and the evidence on the side of the defendant clinchingly proved that the plaintiff had no subsisting interest in the property, on the date of filing of

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the suit, having already parted with his interest, by gifting the property in favour of the first defendant.

12.2. Mr.M.P.Senthil, learned counsel for the 9th respondent, would further contend that in the absence of a challenge to the gift deed as well as the sale deed, the plaintiff could not have maintained the suit for declaration as the owner and consequently the relief of permanent injunction. He would therefore state that the failure to challenge Ex.P.3 was fatal.

12.3. Mr.M.P.Senthil, learned counsel for the 9th respondent, has relied on the following decisions:

1. ***G.Rajendran and others v. Ayyanar @ Velu Ayyanar*** reported in **2019-3-MWN(Civil)768**

2. ***Chinnannan v. Paranimalai and others*** reported in **2006-5-CTC-169**;

3. ***Santhosh Devi v. Sunder*** reported in **2025-SCC OnLine SC-1808**;



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4. *Sanjay Kumar Singh v. State of Jharkhand* reported in 2022-7-
SCC-247;

5. *N.Kamalam (Dead) and another v. Ayyasamy and another*
reported in 2001-7-**SCC-503**;

6. *Gobind Singh and Others v. Union of India and Others*
reported in 2026 – **INSC-211**.

13. I have paid my anxious and careful consideration to the submissions advanced by the learned counsel for the parties, keeping in mind the substantial questions of law framed by this Court at the time of admitting the second appeal.

14. Discussion:

14.1. From the pleadings as well as the evidence, it is crystal clear that the plaintiff has admitted to the execution of the documents under Ex.P2 and Ex.P3. In such circumstances, I do not see any error committed by the first Appellate Court in dismissing the application filed

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14.2. The plaintiff has sought for the relief of declaration that he is owner of the suit property, also claiming to be in possession, besides getting a permanent injunction to restrain the contesting defendants from any manner interfering with his alleged possession. In the plaint, the plaintiff traces title to the suit property until his purchase on 24.05.1978 and claims knowledge about alleged sale in favour of the first defendant in the year 1994 only, in an enquiry, before the police authorities on a complaint given by the first defendant. Therefore, even on the date of filing of the suit, the plaintiff was aware that the property had gone out of



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his hands and two documents clearly stood as obstacles in the way of the plaintiff asserting any title over the property, one being the gift deed executed by the plaintiff in favour of his minor son, wherein his wife was appointed as the guardian of the minor and secondly, the plaintiff's sale deed in favour of the first defendant along with the other persons. Both these documents have admittedly not been challenged in the suit. Therefore, I find merit in the submission of Mr.M.P.Senthil, learned counsel for the 9th respondent, that failure to challenge Exhibits P2 and P3 was fatal to the suit for declaration of title and consequential permanent injunction.

14.3. In fact, as already pointed out, the plaintiff has not even disclosed the documents executed by him in Ex.P2 and Ex.P3 in the plaint. However, it has come out in the proof affidavit as well as in the cross examination that the plaintiff admits the execution of the document, but on afterthought claims that he was under the impression that when some other documents were being executed and registered, the alleged gift deed and sale deed were also extended fraudulently.



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14.4. In such circumstances, the burden was very heavily on the plaintiff to establish the said plea of *non est* factum. As rightly pointed out by Mr.M.P.Senthil, there is absolutely no *iota* of evidence to establish the said plea of *non est* factum.

14.5. The Courts below have rightly found that having admitted the execution of Ex.P2 and Ex.P3, it was not open to the plaintiff to contend that the plaintiff was impersonated and the sale deed was executed in favour of the first defendant. Further, under Ex.P3, find that not only the plaintiff, but also his father Velayutha Mooppanar, his brother Mani and his son represented by his wife had conveyed the property to the first defendant and delivered the possession of the suit property to him. The first defendant has also mutated the revenue records in pursuance of the said sale deed in his favour and that the plaintiff was neither in possession nor had any *iota* of right/ title and interest in the suit properties. The findings arrived at by the trial Court and confirmed by the first Appellate Court are well reasoned and based on pleadings and oral and documentary evidence adduced by the parties.'



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14.6. In fact, the original document of title have been produced by the first defendant and if really the plaintiff's version that he was **duped** by his father and brother under executing the sale deed in Ex.P3 can even be considered, even then there is absolutely no explanation as to how the original documents came into the possession of the first defendant. The Courts below, on a judicious appreciation of the material evidence on record, have, in my considered opinion, rightly concluded that the plaintiff was entitled to the relief.

14.7. In **Rajendran's** case referred herein supra, this Court held that any suit for declaration of title, when the property had been dealt with already and all right / title and interest had already been alienated, the relief of subsisting sale deed ought to have been challenged and failure to seek such relief would render the suit not maintainable.



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14.8. In **Chinnannan's** case, this Court held that a sale deed was executed by the father himself and as natural guardian of the minor and the minor was a party to the sale deed, the sale deed does not become void, unless the minor filed a suit challenging the sale deed, seeking cancellation and merely seeking declaration of title would not be maintainable.

14.9. The Hon'ble supreme Court in **Santosh Devi's** case, held that when the document in question is a registered instrument, a presumption as to its due execution arises from the date of its execution, and the same can be rebutted only by leading cogent evidence to the contrary. The said ratio has also been rightly applied to the facts of the present case.

14.10. In **N.Kamalam's** case, the Hon'ble Supreme Court held that Order 41 Rule 27 CPC was not engrafted in the Code so as to patch up the weak points in the case and to fill up the omission, in the court of appeal and it is restricted only to let in fresh evidence for the purposes of pronouncement of judgment in a particular way.



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14.11. In **Sanjay Kumar Singh's** case, the Hon'ble Supreme Court held that Order 41 Rule 27 CPC is an exception to the general principle that the appellate Court should not travel outside the record of the trial Court or take additional evidence at the appellate stage. However, the parties are not entitled, as a matter of right, to adduce additional evidence in the appellate stage. The Court may permit additional evidence only when it removes the cloud of doubt over the case and when the evidence sought to be produced has a direct bearing on the main issue involved in the suit. The test, as laid down by the Hon'ble Supreme Court, is whether the appellate Court can pronounce judgment on the basis of the materials already on record, without taking into account the additional evidence sought to be adduced.

14.12. Recently, in **Gobind Singh's** case, again dealing with the provisions of Order 41 Rule 27 CPC, the Hon'ble Supreme Court reiterated that the provision contemplates only three eventualities for permitting additional evidence, viz.,



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(i) where the court which passed the decree has refused to admit evidence, which ought to have been admitted;

(ii) where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed; and

(iii) where the appellate court itself requires any document to be produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause. It has been further held that the parties do not have any right to seek additional evidence at the appellate stage and Rule 27 CPC cannot be pressed into service when the appellate Court is in a position to render a satisfactory and reasoned judgment, on the basis of the materials available on record.

14.13. Therefore, even applying the ratio laid down by the Hon'ble Supreme Court and this Court, to the facts of the present case, the Appellant was not entitled, as a matter of right, to lead additional evidence in the appeal suit.



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15. Result:

In the result, the Second Appeal is dismissed, by answering the substantial questions of law in the manner following:

(i) The first Appellate Court did not commit any error in dismissing the application under Order 41 Rule 27 CPC for seeking in Ex.P3 for comparison by expert, since the plaintiff has admitted to the execution to Ex.P3 sale deed.

(ii) The Courts below have rightly appreciated the evidence on record and due execution of sale deed has been established by the contesting defendant and no error has been committed in upholding validity to Ex.P1 and Ex.P3 gift deed and sale deed, respectively.

No costs. Consequently, connected Miscellaneous Petition is closed.

30.03.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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TO

1. The Principal District Judge,
Tirunelveli
2. The Sub Court,
Valliyoor
3. The Sub Inspector,
District Crime Branch,
Office at Tirunelveli-Nagercoil Road,
Palayamkottai,
Nanguneri Taluk,
Tirunelveli District.
4. The Inspector,
District Crime Branch,
Office at Tirunelveli-Nagercoil Road,
Palayamkottai,
Nanguneri Taluk,
Tirunelveli District.
5. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

LS

**Pre-delivery Judgment made in
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