



SA(MD). No.5 of 2026

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**  
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DATED : 30.03.2026

CORAM

**THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**SA(MD). No.5 of 2026**  
**and**  
**CMP(MD)No.26 of 2026**

|                    |                                                                          |
|--------------------|--------------------------------------------------------------------------|
| G.Kannan           | ... Appellant/1 <sup>st</sup> Respondent /<br>Plaintiff                  |
| Vs.                |                                                                          |
| 1.M.Baskaran       | ... 1 <sup>st</sup> Respondent / Appellant/<br>4 <sup>th</sup> Defendant |
| 2.T.Thirumalai Raj |                                                                          |
| 3.V.Murugesan      |                                                                          |
| 4.U.Umavathi       |                                                                          |
| 5.M.Naduchejian    |                                                                          |
| 6.R.M.Ganesan      | ... Respondents 2 to 3/Respondents 2 to 6/<br>Defendants 1 to 3, 5 & 6   |

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the Sub Court, Bodinayakanur, passed in A.S.No.10 of 2025 dated 13.10.2025 reversing the decree and judgment of the District Munsif cum Judicial Magistrate, Bodinayakanur, Theni, passed in O.S.No.161 of 2012 dated 31.03.2016.



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For Appellant : Mr.R.Shankar Ganesh

For Respondents : Mr.S.M.Ramasiva for R1 and 3 to 6

: R2 - Unserved

### **JUDGMENT**

The plaintiff, aggrieved by the judgment and decree in A.S.No.10 of 2025 reversing the findings of the trial Court in O.S.No.161 of 2012 by the judgment and decree dated 31.03.2016, is the appellant in the present second appeal.

2. The second appeal has not yet been admitted. I have heard Mr.R.Shankar Ganesh, learned counsel for the appellant as well as Mr.S.M.Ramasiva, learned counsel for the respondents 1 and 3 to 6.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The second appeal is admitted on the the following substantial questions of law:



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*“A. Whether the first Appellate Court has right in granting the relief to the defendants 1 to 3, 5 & 6 in the absence of appeal or cross appeal, when the decree of the trial Court attained finality as against the defendants 1 to 3 and 5 and 6?*

*B. Whether the first appellate Court is right in delivering the decree and judgment in the first Appeal travelling beyond the scope of the first appeal by granting the relief to the defendants 1 to 3, 5 & 6 in the absence of evidence on record on their part?”*

5. The learned counsel for the appellant would contend that the First Appellate Court has erroneously dismissed the suit, in the appeal preferred by the 4<sup>th</sup> defendant, challenging the *exparte* judgment and decree passed in O.S. No.161 of 2012, without there being any evidence adduced on the side of the appellant. He would further contend that the First Appellate Court has exceeded its jurisdiction by granting relief despite having dismissed the suit. In this regard, the learned counsel took



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me through the judgment of the First Appellate Court and would further submit that the same necessitated a remand of the matter and the first Appellate Court ought not to have allowed the appeal by setting aside the *exparte* decree passed by the trial Court.

6. The learned counsel for the appellant would further state that the appellant was put in possession of the property under a lease deed dated 24.11.1999, which was extended up to 24.11.2004 and that in addition to the same, the vendor had also mortgaged the property in favour of the appellant and in such circumstances, unless the parties had an opportunity to lead evidence, the suit ought not to have been decided in a summary manner, as has been done by the First Appellate Court. The learned counsel has also relied on the decision of the Hon'ble Supreme Court in ***Divyagnakumari Harisinh Parmar V. Union of India*** reported in ***2025-INSC-1145***.

7. Per contra, Mr.S.M.Ramasiva, learned counsel for the respondents 1 and 3 to 6 would contend that the first Appellate Court has



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rightly taken note of the case of the appellant in a proper perspective and finding that even as per the pleadings, as per the case set up by the plaintiff, the plaintiff was not entitled to relief, has rightly allowed the first Appeal and dismissed the suit. He would further contend that in view of the powers vested under Order 41 Rule 33 CPC, the first appellate Court had committed any error in granting further directions, despite dismissing the suit. The learned counsel would further state that the plaintiff, despite seeking a declaration that the sale deed in favour of the second defendant was null and void, he had admitted to the fact that the sale deed in favour of the second defendant was in and by registered instrument and prior to the sale deed in favour of the plaintiff. The learned counsel further took me through the discussion of the first appellate Court with regard to discretion as to whether remand was necessary or not. It is the contention of Mr.S.M.Ramasiva, learned Counsel, that there is no error or infirmity in the order of the first appellant Court, warranting any interference and no substantial question of law arises for consideration.



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8. I have carefully considered the submissions advanced by the learned counsel for the parties.

9. On going through the pleadings, I find that the plaintiff admits that his purchase was subsequent to the purchase of the suit property by the second defendant. Though the plaintiff claims that there has been an unregistered mortgage, which is also marked as Ex.A1 and that the plaintiff was put in possession in pursuance of lease deed, no such lease deeds were exhibited before the trial Court.

10. The case of the plaintiff revolves around the sale deed under which he purchased the property and merely contends that the sale deeds in favour of the defendants are only to defeat the rights of the plaintiff and will not bind the plaintiff. Though the plaintiff contends that he is in possession and enjoyment of the suit in and by a document in the nature of *Othi* under which, according to the plaintiff, he has been put in possession, not a single document has been exhibited on the side of the plaintiff to evidence lawful possession of the suit property.



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11. Before the trial Court, the defendants remained *exparte* and an *exparte* decree was passed after examining the plaintiff as P.W.1.

12. Admittedly, Ex.A1 is not even a registered instrument. However, the plaintiff's case falls back on an unregistered sale deed dated 19.09.1999 and subsequent sale deed in his favour on 27.11.2009. Even in the plaint, there is an admission of sale deed executed by the vendor, who was admittedly having valid title to the suit property in favour of the second defendant on 28.01.2009, preceding the said deed in favour of the appellant. Though the plaintiff alleges that the said sale deed in favour of the second defendant was a fraudulent document with an intention to defeat the rights of the plaintiff, admittedly, the plaintiff cannot claim or assert title and title based on the unregistered Othi by his vendor or the sale deed which will not confer the title to the suit property. It is only after the sale in favour of the second defendant that the plaintiff claims right under subsequent sale deed dated 27.11.2009. The averments and allegations in the plaint are bereft of any material



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particulars entitling the plaintiff to relief Order 6 Rule 4 CPC requires the plaintiff to specifically plead instances of fraud, which are conspicuously absent in the present case. The first Appellate Court rightly explored the possibility and permissibility of a remand of a matter to the trial Court and in my considered opinion, rightly found that even remanding the matter would not serve any purpose.

**Questions of Law A & B:**

13. As rightly contended by the learned counsel for the appellant, the first appellate Court having come to the conclusion that the suit was liable to be dismissed, I find force in the submission as to how the first Appellate Court could have travelled beyond to grant relief to the defendants in the absence of even a written statement, leaving alone any evidence being adduced by the defendants 1 to 3, 5 and 6. Once the first Appellate Court has come to the conclusion that the suit is liable to be dismissed, the only course open is to dismiss the suit, with the discretion as to award of Courts. The first appellate Court was certainly in error in



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issuing a direction to the Sub Registrar, Thevaram and also granting relief of declaration that the plaintiff's sale deed dated 27.11.2009, on the file of the Sub Registrar, Thevaram, is invalid and *non est* and also a further direction to the Sub Registrar, Thevaram, to remove the entry with regard to the said sale deed from the Register. These are clearly *ex facie*, improper and illegal.

14. Admittedly, the defendants had not even contested the suit and they suffered an *ex parte* decree. It is only the 4<sup>th</sup> defendant, who preferred an appeal before the first Appellate Court and none of the other defendants have chosen to challenge the *ex parte* decree in O.S.No.161 of 2012 dated 31.03.2016. In such circumstances, the first Appellate Court was certainly not entitled to grant relief of mandatory injunctions and also declaration regarding the plaintiff's sale deed dated 27.11.2009. The clauses 4 and 5 of the decree are therefore liable to be set aside as no such relief ought to have been granted in favour of the defendants, in the absence of any counter claim made by them. As already discussed, the defendants have not chosen to file a written statement and only the fourth



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defendant has straight away chosen to challenge *exparte* decree by way of an appeal. Though Mr.S.M.Ramasiva, learned Counsel drew my attention to Order 41 Rule 33 CPC, to justify the decree in favour of the defendants, I find that the said argument merits no consideration.

15. The circumstances, under such Order 41 Rule 33 CPC can be exercised are entirely different and cannot be applied to the facts of the present case. Despite the suit having been dismissed, the first Appellate Court proceeds to grant a decree on the ground that the sale deed itself is invalid and hit by Section 17 of the Registration Act.

16. Insofar as sustainability of clauses 4 and 5 of the decree passed by the first Appellate Court, this Court is certainly entitled to interfere with the same, exercising powers under Section 100 C.P.C.

17. Reliance has been placed on the decision of the Hon'ble Supreme Court in ***Divyagnakumari Harisinh Parmar V. Union of India*** reported in ***2025-INSC-1145***, with regard to grant of relief in the absence



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of pleadings, there can be no quarrel with the said proposition of law.

The Hon'ble Supreme Court held that pleadings, together with the issues framed thereon, serve to crystallise the points of conflict, to ensure that each side is apprised of the case it has to meet, and afford both parties a fair opportunity to lead evidence and advance submissions. To allow a party to depart from this framework at a belated stage would not only prejudice the opposite side, but also undermine the principles of predictability and consistency that the adjudicatory process seeks to avow. This decision will squarely apply to the facts of the present case. Accordingly, both the substantial questions of law are answered.

18. The appeal suit is therefore partly allowed by setting aside clauses 4 and 5 of the decree in A.S.No.10 of 2025 on the file of the Subordinate Judge, Bodinayakanur, while confirming clauses 1 to 3 of the said decree.



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19. In fine, the second appeal is partly allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

TO

1. The Sub Court,  
Bodinayakanur

2. The District Munsif cum Judicial Magistrate,  
Bodinayakanur,  
Theni

3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.B.BALAJI,J.**

LS

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