



S.A.No.509 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 26.11.2025**

CORAM

**THE HONOURABLE MR.JUSTICE P. DHANABAL**

**S.A.No.509 of 2015**

**and**

**M.P.No.1 of 2015**

Jayanthi

... Appellant

Vs.

1.Ramayammal  
2.Lakshmanan Reddy  
3.K.Palanisamy  
4.Sakthivel

... Respondents

**Prayer** : Second Appeal filed under Section 100 of the Civil Procedure Code 1908, to allow the second appeal and setting aside the judgment and decree of the learned Subordinate Judge, Bhavani dated 17.11.2014 in A.S.No.23 of 2013 confirming the judgment and decree of the learned Principal District Munsif, Bhavani, Erode District dated 21.06.2013 in O.S.No.357 of 2009 and to decree the said suit as prayed for.

For Appellant : M/s.L.Meenakshi  
for Mr.M.Dinesh

For Respondents : Mr.J.Manikandan  
for  
Mr.R.Marudhachalamurthy  
[R2 to R4]

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## **JUDGMENT**

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This second appeal has been preferred by the appellant against the decree and judgment dated 17.11.2014 passed by the first appellate Court in A.S.No.23 of 2013 on the file of the Sub-ordinate Judge, Bhavani, confirming the decree and judgment dated 21.06.2013 in O.S.No.357 of 2009 on the file of Principal District Munsif, Bhavani.

2. The case of the plaintiff before the Trial Court is that the suit properties originally belonged to one Lakshma Reddy and his two sons, namely Ramasamy Reddy and Duraisamy @ Kandasamy Reddy. The said Ramasamy Reddy is the paternal grandfather of the plaintiff. The first defendant is the mother of the plaintiff, the second defendant is his brother, and the third defendant is the proposed purchaser of the suit property. Lakshma Reddy and his two sons effected a partition of the ancestral properties under a registered partition deed dated 04.06.1927. As per the said partition deed, the B-schedule property was allotted to the plaintiff's grandfather, Ramasamy Reddy.

2.1. It is the further case of the plaintiff that Ramasamy Reddy was addicted to alcohol and was leading a wayward life. Therefore, his



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mother, Ponnammal, and his wife, Nagammal, decided to execute a sale deed in favour of Nagammal's brother, Mannar Reddy, with a view to safeguarding the property. Accordingly, a sale deed dated 06.04.1937 was executed in favour of Mannar Reddy. Though the sale deed stood in the name of Mannar Reddy, it was never acted upon and, according to the plaintiff, was only a sham and nominal document. Taking advantage of the said sale deed, Mannar Reddy executed a Will dated 22.04.1982 bequeathing the suit properties in favour of his grandson, Lakshmana Reddy, who is the second defendant. The plaintiff contends that the said Will is invalid and not binding on him.

2.2. The plaintiff further states that he came to know about the above transactions only after the first defendant filed a suit in O.S.No.284 of 2005. Consequently, the plaintiff filed O.S.No.357 of 2009 seeking to declare the sale deed dated 06.04.1937 as sham and nominal, to declare the Will dated 22.04.1982 as null and void, to grant partition of the plaintiff's 4/9 share in the suit properties, and to grant permanent injunction restraining alienation of the suit properties.

3. The brief averments of the written statement filed by the second defendant before the trial Court are as follows:

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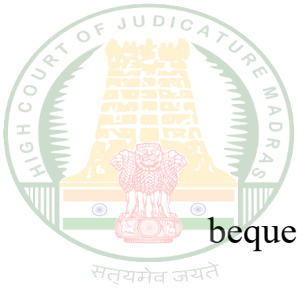


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3.1. The suit is false, frivolous, vexatious, and not maintainable either in law or on facts. The plaintiff is put to strict proof of all allegations made in the plaint, except those that are specifically admitted herein. The averments that the suit property originally belonged to Lakshma Reddy and his two sons, namely Ramasamy Reddy and Duraisamy @ Kandhasamy Reddy; that the properties were partitioned under a deed dated 04.06.1927; that the B-schedule property was allotted to Ramasamy Reddy; that a sham and nominal sale deed was executed in favour of Mannar Reddy on account of Ramasamy Reddy being a drunkard; and that the subsequent Will bequeathing the suit property in favour of the second defendant is invalid, are all denied as false and incorrect.

3.2. The plaintiff has not approached this Court with clean hands and has suppressed material facts. The suit property, which is an agricultural land with a house, was originally purchased by Mannar Reddy, son of Narayanasamy, under a registered sale deed dated 06.04.1937. The said Mannar Reddy, who is the maternal grandfather of the second defendant, executed a registered Will dated 22.04.1982



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bequeathing the suit property in favour of the second defendant. The said Mannar Reddy died on 01.05.1982. After the demise of Mannar Reddy, the second defendant became the absolute owner of the suit property and has been in possession and enjoyment of the same without any interference. Subsequently, the second defendant and his mother jointly executed a sale agreement in favour of the third defendant. Defendants 1 and 2 also executed a power of attorney in favour of the fourth defendant, Sakthivel. The plaintiff has no right, title, or interest in the suit property and is not entitled to any relief. Hence, the suit is liable to be dismissed.

4. The brief averments of the written statement of the fourth defendant are as follows:

4.1. The suit is false, vexatious, and not sustainable either in law or on facts. The second defendant executed a power of attorney dated 28.01.2010 in favour of the fourth defendant in respect of the suit properties. By virtue of the said power of attorney, the fourth defendant sold an extent of 2400 sq.ft. of the suit property to one Perumal on 09.06.2010. The suit properties were divided into house sites and sold to third parties. The value of the suit property is about Rs.10 lakhs. The court fee paid by the plaintiff is incorrect. Hence, the fourth defendant



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prays that the suit be dismissed.

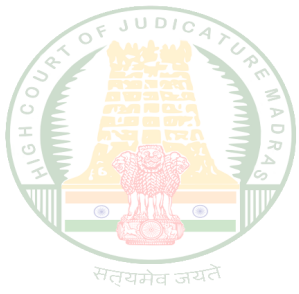
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5. Based on the above said pleadings, after hearing both sides the trial Court framed the following issues:

1. Whether the sale deed dated 06.04.1937 is not valid, binding on the plaintiff and whether the plaintiff is entitled to declaration as prayed ?
2. Whether the Will dated 22.04.1982 is not valid, and binding on the plaintiff's share and whether the plaintiff is entitled to declaration as prayed ?
3. Whether the plaintiff is entitled to partition and separate possession as prayed ?
4. Whether the plaintiff is entitled to permanent injunction as against the third defendant till partition as prayed ?
5. To what other relief ?

6. Thereafter on 09.04.2012 the trial Court has framed the additional issues which are as follows:

1. Whether the plaintiff is entitled to relief of permanent injunction as against the third defendant till the partition over the property ?
2. Whether the suit properties are joint family property of the plaintiff and defendants 1 and 2 ?



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7. Before the trial court, on the side of plaintiff P.W.1 was examined and marked Exhibits A1 to A10. On the side of defendants, D.W.1 was examined and marked exhibits B1 to B13.

8. After considering the evidences adduced on both sides, the trial Court had dismissed the suit. Aggrieved by the said decree and judgment passed by the trial Court, the plaintiff had preferred the first appeal in A.S.No.23 of 2013 on various grounds. The first appellate Court after hearing both sides and perusing the records had framed the following points for determination.

1. Whether the findings recorded by the trial Court as to the validity of the sale deed dated 06.04.1937 and the Will dated 22.04.1982 needs to be interfered ?
2. Whether the findings recorded by the trial Court with reference to the remaining issues needs to be interfered ?
3. To what other relief ?

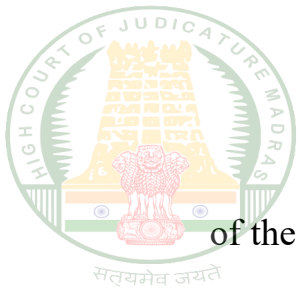
9. After hearing both sides and perusing the records, the First Appellate Court dismissed the appeal, holding that the plaintiff is not entitled to question the sale deed dated 06.04.1937. The First Appellate Court further held that since the sale deed dated 06.04.1937 is valid, the



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plaintiff cannot challenge the same and, therefore, is not entitled to any relief in the appeal. Aggrieved by the said judgment and decree, the present second appeal has been preferred by the plaintiff.

10. The learned counsel appearing for the appellant submitted that the suit property originally belonged to the plaintiff's grandfather, Ramasamy Reddy, and that Ramasamy Reddy, along with his brother and their father Lakshma Reddy, effected a partition of the ancestral properties under a partition deed dated 04.06.1927. Pursuant to the said partition, Ramasamy Reddy was in possession and enjoyment of the B-schedule property allotted to him. It was further submitted that Ramasamy Reddy was addicted to alcohol and, therefore, at the insistence of his mother and wife, he executed a sham and nominal sale deed in favour of his brother-in-law, Mannar Reddy, and that the said document was never intended to be acted upon. Thereafter, Mannar Reddy, without having any valid right or title over the property, executed a Will dated 22.04.1982 in favour of the second defendant. According to the learned counsel, all the above facts came to the knowledge of the plaintiff only in the year 2009, when the defendants filed a suit in O.S.No.284 of 2009 on the file of the District Munsif Court, Bhavani. The plaintiff also came to know that the second defendant had executed a sale agreement in favour



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of the third defendant. Since the suit properties are ancestral in nature, the plaintiff is entitled to a 4/9 share, the first defendant, who is the mother, is entitled to a 1/9 share, and the second defendant is entitled to a 4/9 share. As the defendants refused to effect partition, the plaintiff was constrained to file the suit.

10.1. Before the Trial Court, on the side of the plaintiff, P.W.1 was examined and Exhibits A1 to A10 were marked. On the side of the defendants, D.W.1 was examined and Exhibits B1 to B13 were marked. The Trial Court, without properly considering the evidence adduced by the plaintiff, erroneously dismissed the suit. The First Appellate Court also failed to properly consider the plaintiff's case and dismissed the appeal. The courts below failed to consider the pleadings and evidence of the plaintiff in their proper perspective and erred in concluding that Ex.B1 sale deed is a genuine document. The courts below erroneously relied upon the presumption attached to a thirty-year-old document produced from proper custody. The plaintiff categorically deposed about the character and conduct of Ramasamy Reddy; however, the courts below failed to appreciate and accept the said evidence. Further, the defendants failed to examine any attesting witnesses to prove the Will marked as Ex.B2 and thereby failed to establish its execution and

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attestation in the manner known to law. Despite the same, the courts below upheld the Will and ignored the vital circumstances establishing that Ex.B1 sale deed was sham and nominal. Therefore, the judgment and decree of the courts below are liable to be set aside and the second appeal deserves to be allowed.

11. Per contra, the learned counsel appearing for the respondents submitted that the plaintiff himself admitted the partition between Ramasamy Reddy and his brother, along with their father Lakshma Reddy, and also admitted the execution of the sale deed dated 06.04.1937 by Ramasamy Reddy in favour of Mannar Reddy. Subsequently, the plaintiff filed the suit contending that the said sale deed was sham and nominal on the ground that Ramasamy Reddy was a drunkard and that the document was executed only to safeguard the property. It was further submitted that the sale deed dated 06.04.1937 was validly executed for consideration, acted upon, and that Mannar Reddy was in possession and enjoyment of the property thereafter. Mannar Reddy subsequently executed a registered Will dated 22.04.1982 in favour of the second defendant and died on 01.05.1982. After his demise, the second defendant became entitled to the property and thus executed a power of attorney in favour of the fourth defendant, who in turn alienated portions of the

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property to third parties. Therefore, the plaintiff has no right or title over the suit property. Neither the plaintiff's father nor Ramasamy Reddy challenged the sale deed during their lifetime, and the plaintiff filed the suit after an inordinate delay of several years without any valid basis. The Trial Court, after thoroughly analysing the oral and documentary evidence on both sides, rightly dismissed the suit. With regard to Ex.B2 Will, it was contended that since the plaintiff sought a declaration, the burden lies upon him to prove his case, and the non-examination of attesting witnesses would not enure to his benefit. Hence, the Courts below rightly dismissed the suit and the present appeal is liable to be dismissed.

12. Heard both sides and perused the materials available on record.

13. In this case, the plaintiff sought for declaration, that the sale deed dated 06.04.1937 in favour of Mannar Reddy was sham and nominal and claiming partition over the suit property. The sale deed is dated 06.04.1937 which is more than 30 years old document and the said document is a registered document reciting payment of consideration has a statutory presumption u/s.90 of the Evidence Act. The plaintiff, who was not born at the time of execution of sale deed challenged the said

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deed after a period of 72 years. On the side of plaintiff, he failed to produce any convincing evidence or witnesses. Neither his grandfather nor his father challenged the sale deed during their lifetime. There is no sufficient evidence to prove the plaintiff's case, unless the contrary is proved. The sale deed is presumed valid and binding.

14. The plaintiff admitted that his grand father executed a sale deed in favour of Mannar Reddy, once the sale deed is executed by the grand father of the plaintiff he has no *locus standi* to question the sale in favour of Mannar Reddy. Based on the sale deed executed in favour of Mannar Reddy, he was in possession and enjoyment of the same and after his demise his legal heirs were in possession and enjoyment of the same. During his lifetime, the Will dated 22.04.1982 was executed by Mannar Reddy. Though the defendants failed to examine the attesting witnesses to the Will, the plaintiff is not entitled to challenge it, since he is no way connected to the property and he has not filed the suit. The trial court and the first appellate court rightly appreciated the evidence and dismissed the suit and appeal.

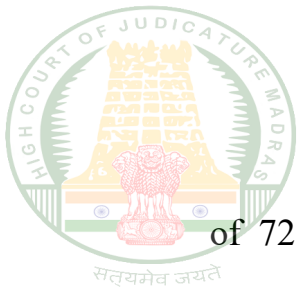
15. The learned counsel appearing for the appellant relied upon the judgment of the Hon'ble Apex Court in S.K. Golan Lalchand v. Nandu  
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Lal Shaw @ Nand Lal and others, Civil Appeal No.4177 of 2024. On a careful perusal of the said judgment, this Court is of the view that the same is not applicable to the present case, as the plaintiff is the legal heir of Ramasamy Reddy, who had already alienated the property in favour of Mannar Reddy.

16. With regard to the first substantial question of law, that *whether the courts below were right in upholding Ex.B2 Will in the absence of examination of attesting witnesses is concerned*, the plaintiff's entire case rests on the contention that the sale deed dated 06.04.1937 is sham and nominal. The plaintiff challenged the sale deed dated 06.04.1937 executed by his grandfather Ramasamy Reddy in favour of Mannar Reddy. The plaintiff himself admitted the execution of sale deed in favour of said Mannar Reddy but his contention is that the sale is sham and nominal. The said Ramasamy Reddy was a drunkard and to safeguard the property a sham and nominal sale deed was executed in favour of Mannar Reddy who is the brother-in-law of the said Ramasamy Reddy. The plaintiff who filed the suit for declaration has to prove his case through sufficient evidence, but in this case except P.W.1, no other witnesses were examined to prove the plaintiff's case. The said sale deed is dated 06.04.1937, and the suit was filed in the year 2009 which is after a period 13/18



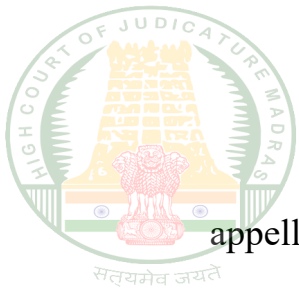
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of 72 years. Neither the said Ramasamy Reddy nor the father of the plaintiff had challenged the said sale deed in favour of Mannar Reddy during their lifetime and the plaintiff was not even born on the date of execution of sale deed has challenged the said deed without any valid ground and evidence. Per contra the defendants evidence proved the sale deed and the same was acted upon. The plaintiff is not a legal heir of the said Mannar Reddy and once the grandfather of the plaintiff Ramasamy Reddy sold the property to the Mannar Reddy, the plaintiff cannot question the will executed by the Mannar Reddy. This Court has already held, based on the available evidence, that the sale deed dated 06.04.1937 is valid, executed, and acted upon. Once the property stood vested with Mannar Reddy, he was competent to execute any kind of deeds.

17. Once the grandfather of the plaintiff sold the property to Mannar Reddy, the plaintiff has no locus standi to question the Will executed by Mannar Reddy. The plaintiff, being the legal heir of Ramasamy Reddy, has no connection with the property belonging to Mannar Reddy. Therefore, even though the defendants failed to examine the attesting witnesses to prove Ex.B2 Will, the plaintiff cannot take advantage of the same, as he has no subsisting right over the property.

Accordingly, the first substantial question of law is answered against the

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appellant.



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18. With regard to the second substantial question of law, namely, *whether the courts below have grievously erred in ignoring the vital circumstances said to establish that Ex.B1 sale deed is sham and nominal is concerned*, this Court finds that the available evidence is wholly insufficient to hold that the sale deed dated 06.04.1937 is sham and nominal. The said document, being more than thirty years old and produced from proper custody, carries a statutory presumption under Section 90 of the Indian Evidence Act. The plaintiff failed to examine any independent witnesses or adduce cogent evidence to substantiate his contention. Therefore, the plaintiff has miserably failed to discharge the burden cast upon him, and the courts below have not committed any error in upholding the execution and validity of the sale deed.

19. As regards the third substantial question of law, namely, *whether the courts below erred in assuming that the legal ingredients for proving a document as sham and nominal—such as possession, production of the original document, and production of kist receipts—would favour the respondents, overlooking the fact that the second respondent is the son of Kandasamy is concerned*, this Court, upon an 15/18



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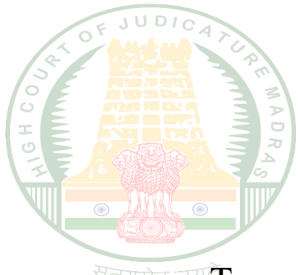
elaborate discussion of the evidence, has already come to the conclusion that Ex.B1 is not a sham and nominal document and that it was duly executed and acted upon. Based on the said sale deed, Mannar Reddy alienated the properties, and the defendants produced Ex.B1 from proper custody along with kist receipts to establish possession.

20. The plaintiff, having instituted the suit, was required to prove his case independently by adducing reliable oral and documentary evidence and cannot succeed by pointing out alleged weaknesses in the defendants' case. The plaintiff has failed to prove his case in the manner known to law and, therefore, the findings of the courts below call for no interference.

21. In view of the above said discussions and the answers to the substantial questions of law, this second appeal has no merits and the same is liable to be dismissed. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

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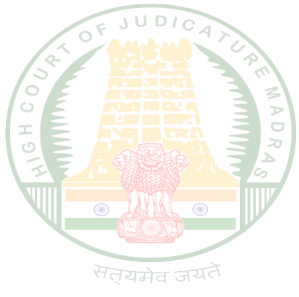
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- 1.The Subordinate Judge, Bhavani.
- 2.The Principal District Munsif, Bhavani, Erode District.



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**P. DHANABAL, J.**

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