



WEB COPY



S.A.No.392 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2025
PRONOUNCED ON : 12.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 392 of 2014

Anita Ranka
W/o Ashok Chand No. 1 Badriah Garden St, Park
Town Chennai 03

..Appellant(s)

Vs

1. Sumathi Vinayga Moorthy
W/o C. Vinayaga Moorthy Plot No. 75 Annai
Nagar, Korattur Agaraharam, Ch 76
2. R.Srinivasan
S/o R. Ramamoorthy Flat No. 7 IInd Floor, Priya
Ramya Aparments, 48, 3rd Main Rd, Ram
Nagar, Naganallur Ch 61
3. S.Jayakumar
S/o K.V.Sambandamurthy Old 56 New No. 170
Lake View Rd, West Mambalam Ch 33
4. H.Padmanaban
S/o P.Hari Krishnan Old 6 New No. 11 4th Cross
St, Karpagam Gardens Adyar, Ch 20
5. Miss H. Vidya
D/o P.Hari Krishnan Old 6 New No. 11 4th Cross
St, Karpagam Gardens Adyar, Ch 20



S.A.No.392 of 2014

PRAYER: Second Appeal filed praying to set aside the Judgment and decree dated 19.07.2013 in A.S. No. 5 of 2011 on the file of the Subordinate Judge, Tambaram confirming the Judgment and decree dated 26.02.2010 in O.S. No. 265 of 2006 on the file of the Principal District Munsif, Alandhur and allow the appeal and thus render justice.

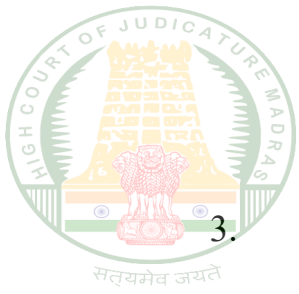
For Appellant(s): Ms.Chitra Sampath, Senior Counsel for
Mr.R.Sunil Kumar.

For Respondent(s): Mr.R.Narendran for R1 to R5.

J U D G M E N T

The present Second Appeal has been preferred by the defendant, challenging the judgment and decree dated 19.07.2013 passed in A.S. No. 5 of 2011 by the learned Subordinate Judge , Tambaram, confirming the judgment and decree dated 26.02.2010 passed in O.S. No. 265 of 2006 by the learned Principal District Munsif, Alandhur, whereby the suit for permanent injunction except by due process of law was decreed.

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

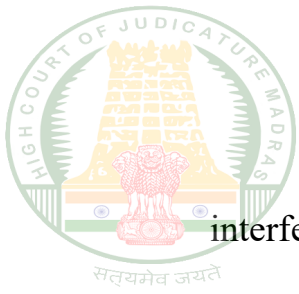


S.A.No.392 of 2014

3. Plaintiffs' Case is that they are bona fide purchasers for valuable consideration of the suit schedule properties situated at Perumbakkam Village, Tambaram Taluk, Kancheepuram District, having purchased their respective extents under registered sale deeds dated 10.06.2005. According to them, from the date of purchase, they have been in exclusive possession and enjoyment of their respective properties, and the revenue records, including patta and kist receipts, stand in their names. The defendant issued a notice dated 22.09.2005 disputing the sale in favour of the plaintiffs and alleging that the earlier documents of the vendor had been obtained from her under coercion and duress. The plaintiffs sent a reply notice dated 09.10.2005 denying the allegations and asserting their status as bona fide purchasers in possession. Thereafter, the defendant is alleged to have given a police complaint before the Central Crime Branch, pursuant to which the plaintiffs appeared and produced documents. The plaintiffs further allege that on 25.03.2006, the defendant, along with her men, attempted to trespass into the suit properties and dispossess them. Hence, the plaintiffs lodged a complaint on 26.03.2006 before the Inspector of Police, S-10 Police Station, Pallikaranai, which was acknowledged in CSR No. 156/06. On these averments, the plaintiffs filed the suit seeking permanent injunction restraining the defendant and persons claiming through her from

3/23

WEB COPY



S.A.No.392 of 2014

interfering with their peaceful possession and enjoyment of the suit properties except by due process of law.

WEB COPY

4. The defendant contended that she is the absolute owner of the suit property which is the agricultural land having purchased the same from J. Saroja under a registered sale deed dated 22.08.2002. According to her, the original sale deed, patta, chitta, adangal and parent documents were forcibly taken from her under coercion and duress by G. Jayanthilal Surana and J. Vijaykumar Surana on 21.03.2003, and despite settlement of the loan amount by her husband, the documents were not returned. On obtaining encumbrance certificate on 12.09.2005, she came to know that Vijaykumar Surana had, on the strength of an alleged forged and unregistered power of attorney, sold the property to S. Tirupathi, who in turn sold the same to the plaintiffs under four sale deeds dated 10.06.2005.

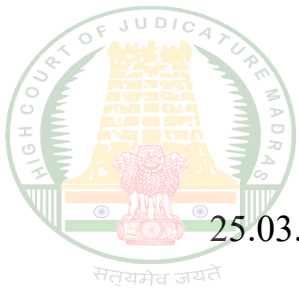
5. The defendant specifically denied having executed any power of attorney dated 20.03.2003 in favour of J. Vijaykumar Surana and any sale agreement in favour of Lakshmi Bai, who is stated to be the mother



S.A.No.392 of 2014

of Vijaykumar Surana. She pleaded that the alleged sale agreement dated 20.03.2003 in favour of Lakshmi Bai, the alleged sale receipt and the alleged power of attorney in favour of Vijaykumar Surana were all forged and fabricated documents created for grabbing her valuable property. She further stated that the property was worth about Rs.40 lakhs, whereas it was allegedly sold to Tirupathi for Rs.2,25,000/- and thereafter to the plaintiffs for a total consideration of only Rs.5,40,000/-, thereby showing that the transactions were fictitious and not bona fide. She also lodged a complaint before the Central Crime Branch, pursuant to which FIR in Crime No.762 of 2005 was registered for offences including cheating, forgery, use of forged documents and conspiracy.

6. The defendant further pleaded that she had issued notice dated 22.09.2005 to the plaintiffs informing them about the illegal transactions and had also objected before the Tahsildar for cancellation of pattas issued on the basis of forged documents. She denied that the plaintiffs were bona fide purchasers or that possession was ever delivered to Vijaykumar Surana, Lakshmi Bai, Tirupathi or the plaintiffs. According to her, she continued to be in lawful possession and enjoyment of the suit property, and the plaintiffs' allegation of attempted trespass on



S.A.No.392 of 2014

25.03.2006 and their police complaint were false and created only for the purpose of filing the suit.

WEB COPY

7. The defendant also contended that the suit was bad for non-joinder of necessary parties, namely Lakshmi Bai, Vijaykumar Surana and S. Tirupathi, through whom the plaintiffs claim title and possession. She further disputed the valuation and court fee, stating that the plaintiffs had purchased separate portions under separate sale deeds and could not maintain one joint suit. On these pleadings, she prayed for dismissal of the suit with costs.

8. Before the trial court, On the plaintiffs' side, P.W.1, namely Tmt. Sumathi Vinayagamoorthi, was examined and marked Exs. A1 to A22. On the defendant's side, D.W.1 to D.W.6, were examined and marked Exs. B1 to B20.

9. On appreciation of the oral and documentary evidence the Trial Court held that the suit was one for bare injunction and, therefore, the primary issue for consideration was possession of the suit properties. On

6/23



S.A.No.392 of 2014

appreciation of the evidence, the Court found that the plaintiffs had produced registered sale deeds(Ex.A.2 to Ex.A.5) ,pattas and kist receipts (Ex.A.12 to Ex.A.15) ,in support of their title and possession. The Court also noted that the defendant had not obtained any declaration from a competent Court setting aside the sale deeds in favour of the plaintiffs or the earlier sale deed in favour of their vendor. Since the suit properties were vacant/agricultural lands, the Court applied the principle that possession follows title and held that the plaintiffs were entitled to protection of their possession until the documents in their favour were declared invalid by a competent Court. The Trial Court rejected the defendant's objections regarding non-joinder of necessary parties, improper valuation and insufficiency of court fee, and consequently decreed the suit for permanent injunction as prayed for, directing the parties to bear their own costs.

10. The First Appellate Court, on re-appreciation of the oral and documentary evidence, held that the suit filed by the plaintiffs was one for permanent injunction simpliciter and not for declaration of title. The Appellate Court found that the plaintiffs had purchased the suit schedule properties under registered sale deeds dated 10.06.2005 and had also



S.A.No.392 of 2014

produced pattas and revenue records to show their possession and enjoyment. It further observed that though the defendant disputed the transactions and alleged forgery, the sale deeds in favour of the plaintiffs and their vendor had not been set aside by any competent Court. The Appellate Court also took note of the fact that the suit properties were vacant agricultural lands and applied the principle that possession follows title. On that basis, it held that the plaintiffs were entitled to protection of their possession and that the defendant could not interfere with the same except by due process of law. Accordingly, the appeal was dismissed and the judgment and decree of the Trial Court granting permanent injunction was confirmed, without costs.

11. Aggrieved by the Judgment and decree of the First Appellate court, defendant preferred the present the Second Appeal. The Second Appeal is admitted on the following questions of law:

a) Whether the suit for bare injunction without the relief for declaration of title is maintainable in law ?

b) Whether the Courts below were right in finding possession with the plaintiffs when admittedly the power of attorney was never put in possession of the suit properties by his principals ?

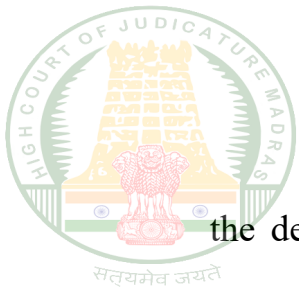


S.A.No.392 of 2014

12. The learned counsel appearing for the appellant/defendant submitted that both the Courts below committed a serious error in decreeing the suit for bare injunction, when the plaintiffs had failed to establish their actual possession over the suit properties. It was contended that even prior to the filing of the suit, the defendant had issued notice under Ex.B6 to the plaintiffs, specifically disputing their title and alleging forgery of the power of attorney. In spite of such serious cloud over title, the plaintiffs filed only a suit for bare injunction without seeking declaration of title, which is not maintainable in law. Reliance was placed on *Anathula Sudhakar v. P. Buchi Reddy*, (2008) 4 SCC 594, wherein the Supreme Court held that where title is under cloud and the defendant asserts title, the plaintiff must seek declaration and cannot maintain a mere suit for injunction.

13. It was further submitted that the alleged interference pleaded by the plaintiffs was a created cause of action only for the purpose of filing the suit. The complaint said to have been lodged by the plaintiffs on 26.03.2006 and the CSR obtained on the same date were relied upon only to make out an artificial cause of action. According to the appellant, the plaintiffs had not proved any actual attempt of trespass or interference by

9/23



S.A.No.392 of 2014

the defendant, and therefore the decree for permanent injunction could not have been granted.

WEB COPY

14. The learned counsel further contended that the appellant had never executed any power of attorney in favour of Vijayakumar Surana, nor had she handed over possession of the suit properties either to him, to Lakshmi Bai, to the plaintiffs' vendor, or to the plaintiffs. The alleged power of attorney marked as Ex.A18 was an unregistered document and the same could not have been relied upon for executing a sale deed in respect of immovable property. It was submitted that, in view of Sections 32 and 33 of the Registration Act, 1908, a person presenting or executing a document on behalf of another must be duly authorised by a valid power of attorney, and an unregistered or unauthenticated power of attorney cannot confer authority to execute a sale deed. Reliance was placed on *S. Geethan C. Winson v. Inspector General of Registration*, 2012 SCC OnLine Mad 2419, *D. Deboral v. J. Rajkumar*, S.A.No.5 of 2016 dated 23.07.2019, and *Hira Singh Rawat v. State of NCT of Delhi*, 2011 SCC OnLine Del 1023.



S.A.No.392 of 2014

15. It was also submitted that the alleged agreement of sale in favour of Lakshmi Bai, being an unregistered document, was hit by Section 17 of the Registration Act, 1908, and therefore could not be relied upon to trace possession. In view of Section 49 of the Registration Act, such an unregistered document could not affect the immovable property or confer any right to claim possession. The appellant contended that the Courts below failed to consider that the alleged sale agreement and power of attorney were contradictory and fabricated documents, created only to grab the valuable property of the appellant.

16. The learned counsel also submitted that when the very power of attorney itself is alleged to be forged and fabricated, the plaintiffs cannot rely upon the sale deed executed on the strength of such document to claim injunction. A forged document is a nullity and does not confer title or possession. It was further submitted that when the defendant's specific plea is one of forgery, she need not seek cancellation of such void documents or file a counterclaim to set them aside. Reliance was placed on *Alamelu alias Chinnakannammal v. Manickammal*, 1978 SCC OnLine Mad 259, wherein it was held that a forged document does not pass title and need not be set aside.

11/23



S.A.No.392 of 2014

WEB COPY

17. The learned counsel therefore submitted that the Courts below erred in applying the principle that possession follows title, when the plaintiffs' title itself was under serious dispute and when there was no acceptable documentary evidence to prove delivery of possession to the plaintiffs or their predecessor-in-title. Hence, the concurrent judgments and decrees of the Courts below are liable to be set aside.

18. Per contra, the learned counsel appearing for the respondents/plaintiffs submitted that the plaintiffs have clearly established their possession over the suit properties by producing registered sale deeds, pattas, adangal/chitta and kist receipts.

19. The learned counsel further submitted that the plaintiffs have not sought declaration of title, but only protection of their lawful possession until they are evicted by due process of law. Relying upon *Anathula Sudhakar v. P. Buchi Reddy*, (2008) 4 SCC 594, it was contended that in a suit for injunction, the principal question is possession, and once the plaintiffs prove possession and interference, they are entitled to



S.A.No.392 of 2014

injunction. The complaint and CSR dated 26.03.2006 were relied upon to show the attempted interference by the defendant.

WEB COPY

20. It was also submitted that the defendant's contention regarding non-registration of the power of attorney cannot be accepted. According to the respondents, the power of attorney was not compulsorily registrable under the relevant provision applicable at the time of its execution, and the amendment to Section 17 of the Registration Act is prospective and not retrospective. Reliance was placed on *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77 and *Kathirvel v. Arumugasamy*, S.A. No.814 of 2017.

21. The learned counsel further submitted that under Ex.B12, the original title deeds were handed over by the defendant to Lakshmi Bai under the sale agreement, and possession was also delivered in part performance of the agreement. Therefore, by virtue of Section 53-A of the Transfer of Property Act, the possession traceable through the agreement and subsequent sale deeds is entitled to protection. It was argued that the plaintiffs, having purchased the properties and having



S.A.No.392 of 2014

been put in possession, are entitled to an injunction against forcible interference.

WEB COPY

22. Placing reliance on Mohan Lal v. Nihal Singh, (2001) 8 SCC 584, the learned counsel submitted that the question of possession is essentially one of fact. Since both the Trial Court and the First Appellate Court, on appreciation of the documents, found that the plaintiffs are in possession, the said concurrent finding cannot be disturbed in the Second Appeal. Accordingly, the learned counsel prayed for dismissal of the Second Appeal.

Substantial Questions of Law 1 & 2:

23. The plaintiffs sought the relief of permanent injunction to protect their possession and restraining the defendant from dispossessing them, except by due process of law. If the plaintiffs prove their lawful possession as on the date of suit, they are entitled to injunction even if they have not proved their title. Section 37 of the Specific Relief Act, 1963, deals with temporary and perpetual injunctions. A temporary injunction continues until a specified time. In the present case, the plaintiffs sought injunction

14/23



S.A.No.392 of 2014

restraining the defendant from taking possession by force except through
due process of law.

WEB COPY

24. In *Midnapur Zamindary Co.Ltd vs Naresh Narayan Roy* (1924) 26 BomLR651 it was observed that in India persons are not permitted to take forcible possession and they must obtain possession only through Court. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be any straitjacket formula to determine settled possession. Occupation of property by a person as an agent or servant acting at the instance of the owner will not amount to actual legal possession. Possession should contain the element of *animus possidendi*. The nature of possession has to be decided based on the facts and circumstances of each case.



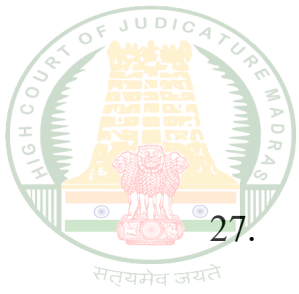
S.A.No.392 of 2014

25. In Rame Gowda(D) By Lrs vs M.Varadappa Naidu AIR 2004

S.C.4609 the Hon'ble Supreme court observed as follows:

“It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take law in his own hands and evict the trespasser or interfere with his possession.”

26. Here the plaintiffs relied upon the sale deeds dated 10.06.2005 standing in their names executed by Mr. Thirupathi, who was examined as witness. The said vendor of the plaintiffs purchased the property under Ex.B5 sale deed dated 25.06.2004 executed by the defendant through her power of attorney G.Vijayakumar Surana. The power of attorney stated to be executed by the defendant dated 20.03.2003 is marked as Ex. B12. The defendant denied the execution of the power of attorney and pleaded that the same is a forged document.



S.A.No.392 of 2014

27. The defendant has not produced title deeds to prove her title. Her specific case is that the documents were forcibly taken by the G.Jayathilal Surana and G.Vijayakumar Surana, even though the loan amount was discharged by her husband but the lender refused to return the title deeds. By making use of such title deeds, the alleged forged power deed was created and sale was executed in favour of Mr. Thirupathi.

28. The plaintiffs admitted that the defendant was the prior owner of the suit properties. According to the plaintiffs, the defendant executed the power deed Ex.B12 authorising Mr.G.Vijayakumar Surana as power agent to sell the property, and accordingly the said power agent sold the property to Mr. Thirupathi, by sale deed dated 25.06.2004, who in turn sold the property to the plaintiffs. On the side of the defendant, it is specifically contended that the power deed Ex.B12 is a forged document and that she never executed any such power deed.

29. In this background, the crux of the case relates to the genuineness and validity of the power deed. The power of attorney is dated 20.03.2003 and is a notarised document. According to the defendant, the

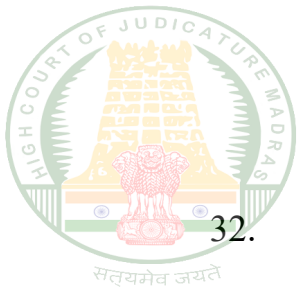


S.A.No.392 of 2014

sale deed executed on the strength of the said power deed is invalid since the power of attorney relating to immovable property is a compulsorily registrable document. The said contention cannot be accepted in the facts of the present case.

30. The power of attorney deed relating to immovable property made compulsory registrable document in Tamil Nadu by an amendment introducing Section 17(1)(g) to the Registration Act 1908 and came into force on 01.10.2010. Since the power deed in the present case is dated 20.03.2003 prior to the said amendment, amendment has only prospective effect hence for non-registration of power of attorney dated 20.03.2003 it will not affect its validity.

31. The power of attorney dated 20.03.2003 is a notarised document. Therefore, under Section 85 of the Indian Evidence Act, 1872, a presumption arises regarding its due execution and validity. The burden lies upon the person who denies the said document. In the present case, the defendant has not satisfactorily rebutted the said presumption.

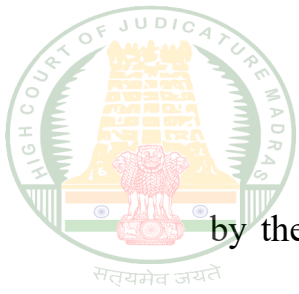


S.A.No.392 of 2014

32. The plaintiffs also produced revenue records standing in their names. In the circumstances, the plaintiffs have established their lawful possession over the suit properties.

33. The plaintiffs did not seek perpetual injunction on the strength of title. In the present suit, they sought only an injunction restraining the defendant from taking forcible possession. Therefore, the decision relied upon by the defendant in *Anathula Sudhakar v. P. Buchi Reddy*, reported in (2008) 4 SCC 594 does not support the case of the defendant. In the said decision itself, it has been held that where the plaintiff is in lawful possession and there is only interference, a suit for injunction is maintainable.

34. The respondents/plaintiffs further relied upon the sale agreement dated 20.03.2003 stated to have been executed by the defendant in favour of Lakshmi Bai and contended that possession had been delivered under the said agreement and therefore their possession is protected under Section 53-A of the Transfer of Property Act. In the said agreement, there is recital to the effect that possession of the suit property was handed over



S.A.No.392 of 2014

by the defendant since entire sale consideration was paid. However, the said contention cannot be accepted. The said sale agreement is an unregistered document. After the amendment introduced to Section 53-A of the Transfer of Property Act read with Section 17(1A) of the Registration Act by Act 48 of 2001, from 24.09.2001 any agreement of sale relating to transfer of immovable property, where possession is delivered or agreed to be delivered in part performance of the contract, becomes a compulsorily registrable document. If such document is not registered, it cannot be relied upon for the purpose of claiming protection under Section 53-A of the Transfer of Property Act.

35. In the present case, the sale agreement relied upon by the plaintiffs' side is admittedly unregistered. Therefore, the plaintiffs cannot rely upon the said agreement for claiming possession under Section 53-A of the Transfer of Property Act. Further, even according to the recitals found in the said agreement, possession was allegedly handed over only to Lakshmi Bai. There is absolutely no material to show that possession was thereafter handed over either to G. Vijayakumar Surana, the alleged power agent, or to S. Thirupathi, the vendor of the plaintiffs. Hence, the plaintiffs cannot trace their possession through the said agreement.

20/23



S.A.No.392 of 2014

Therefore, the contention of the plaintiffs based on Section 53-A of the Transfer of Property Act is unsustainable.

WEB COPY

36. In the circumstances, the substantial questions of law are answered to the effect that a suit for bare injunction based on settled possession, without seeking declaration of title, is maintainable even as against the true owner, insofar as protection against forcible dispossession is concerned. Further, when the principal has authorised the power agent to sell the immovable property, such authority would also include the right to hand over possession to the prospective purchaser. Hence, the possession ought first to have been delivered to the power agent and thereafter to the purchaser is not acceptable. Accordingly, the second substantial question of law is answered holding that the concurrent finding of the Courts below that the plaintiffs are in possession of the suit property is proper and correct, and does not warrant interference by this Court.

37. The substantial questions of law are thus answered against the defendant. The relief of injunction granted in favour of the plaintiffs is



S.A.No.392 of 2014

confined only to the protection of their prima facie possession. Therefore,

if any comprehensive suit relating to title is filed, the observations made in this judgment shall not stand in the way of the competent Court deciding the same independently on its own merits. The said observation would equally apply to the findings rendered regarding possession.

38. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

12.06.2026

ay

Index: Yes/No

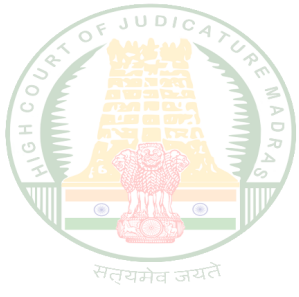
Speaking Order /Non-speaking order

Neutral citation: Yes/No

To

1. The Subordinate Judge, Tambaram.
2. The Principal District Munsif, Alandhur.
3. The Section Officer,
V.R.Records,
Madras High Court.

22/23



WEB COPY



S.A.No.392 of 2014

DR. A.D. MARIA CLETE, J

ay

PRE DELIVERY JUDGMENT
S.A. No. 392 of 2014

12.06.2026