

SA(MD). No.623 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.03.2026

Delivered on : 30.04.2026

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

SA(MD) No. 623 of 2022

and

CMP(MD) No. 8802 of 2022

1. R.S.Kannapiran

2.R.S.Arivalagan

... Appellants / Defendants

Vs.

M.R.Gopi

... Respondent /Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 30.11.2021 passed in A.S.No. 68 of 2019 on the file of the Additional Sub Court, Kumbakonam, Thanjavur District reversing the judgment and decree dated 28.06.2019 passed in O.S.No. 23 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Papanasam, Thanjavur District and thereby allow this second appeal.

For Appellants : Mr.Raguvaran Gopalan

For Respondent : Mr.M.Ponniah



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JUDGMENT

The defendants, who are the appellants, challenging the judgment and decree in A.S.No.68 of 2019 on the file of the Additional Sub Court, Kumbakonam, reversing the judgment and decree in O.S.No.23 of 2015 on the file of the District Munsif cum Judicial Magistrate, Papanasam.

2. The Second Appeal was admitted by this Court on 07.03.2023, on the following substantial questions of law:-

“i. Whether the lower appellate court is right in its construction of Ex.A3 especially when the possession has already been given to the appellants/ defendants.

ii. Whether the lower appellate Court is correct in decreeing the suit in the absence of a receipt showing that the possession was handed over to the appellants/ defendants on the date of Ex.A3?

iii. Whether the lower appellate Court is right in reversing the judgment and decree of the trial Court when the respondent plaintiff himself admitted the oral lease agreement and the possession and enjoyment of the



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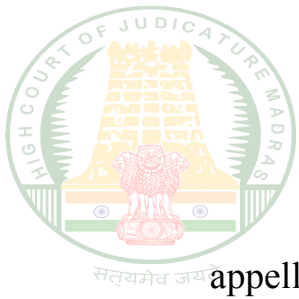
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appellants / defendants over the suit schedule property based on the said oral lease agreement through the averments in Ex.A3 filed by the respondent plaintiff?”

3. I have heard Mr.Raguvaran Gopalan, learned counsel for the appellants / defendants and Mr.M.Ponniah, learned counsel for the respondent / plaintiff.

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

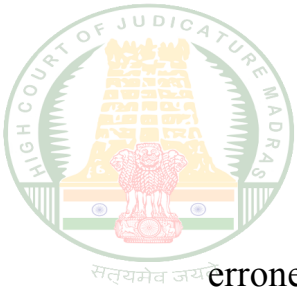
5. Mr.Raguvaran Gopalan, learned counsel for the appellants/ defendants would contend that the plaintiff had filed the suit for redemption of mortgage and for recovery of possession, contending that the lands were Nanja as well as Punja lands. The plaintiff had come to the Court with a specific case that the plaintiff had borrowed Rs.30,000/- from the mother of the defendants on 19.04.1993 and executed a simple mortgage on the same day in favour of the mother of the defendants. However, Mr.Raguvaran Gopalan, learned counsel for the



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appellants/defendants would state that the defendants had only admitted the factum of borrowing of Rs.30,000/- upon execution of a simple mortgage on 19.04.1993 and had specifically denied the self serving claims in paragraph No.5 of the plaint that the mother of the defendants has also executed a receipt for payment of interest on the said mortgage amount, consenting to cultivate the lands in lieu of payment of interest and that the usufructuary, has been created in pursuance of which the plaintiff's mother had been cultivating the lands and enjoying the same, in lieu of interest on the mortgage amount. Inviting my attention to the findings of the trial Court, Mr.Raguvaran Gopalan, would contend that the trial Court rightly found that the mortgage is only a simple mortgage and the possession of the mother of the defendants was only as a cultivating tenant and not under any usufructuary mortgage as claimed by the plaintiff. He would further state that the plaintiff had not been able to even establish even the borrowal and the self serving claim made in paragraph No.5 to impress character of usufructuary mortgage to a simple mortgage, which alone had been admitted by the defendants / appellants. He would however state that the first Appellate Court



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erroneously reversed the well considered findings of the trial Court in holding that neither the defendants' mother nor the defendants had been recognized as cultivating tenants and therefore, the possession of the defendants could only be under the mortgage as pleaded by the plaintiff in the plaint and not as cultivating tenants.

6. Inviting my attention to the substantial questions of law, Mr.Raguvaran Gopalan, learned counsel would submit that Ex.A3 simple mortgage deed alone has been marked and the alleged receipt was not even exhibited before the trial Court. He would also state that the receipt in fact was filed along with the plaint and being an unregistered document, that too, creating rights in immovable property (usufructuary mortgage), the document was not admissible in evidence and further no attempt was also made by the plaintiff to mark the said receipt. He would therefore state that the trial Court had rightly considered the pleadings, oral and documentary evidence, to deny relief to the plaintiff. He would also state that in cross examination of P.W.1, P.W.1 categorically admitted to the lands being cultivated by the defendants and

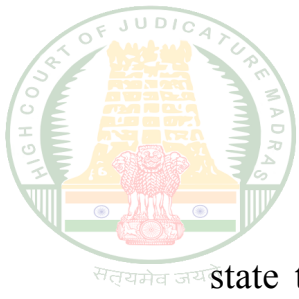


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it is therefore his submission that when the plaintiff has admitted that the appellants were cultivating the land, their refusal to recognize the appellants as cultivating tenants is unsustainable. In such circumstances, the plaintiff's case ought not to have been accepted, and the decree passed in the suit is liable to be set aside. He would therefore pray for the second appeal to be allowed.

7. Per contra, Mr. Ponnaiah, learned counsel for the respondent/ plaintiff would state that having admitted the title of the plaintiff, the burden was only on the defendants to establish that the mortgage was only a single mortgage and not a usufructuary mortgage. He would therefore contend that Ex.A3 cannot be held fatal to the case of the plaintiff. Mr.Ponnaiah, learned counsel would also invite my attention to the cross examination of D.W.1 (second defendant), where he admits that the possession was only under oral arrangements and the lands were given to the predecessor-in-interest of the defendants for lease and that there is no lease deed in favour of either the first defendant's grandfather, father or his brother or in his name. Mr. Ponnaiah, learned counsel would



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state that the first appellate Court has rightly appreciated the oral and documentary evidence and proceeded to reverse the erroneous findings of the Trial Court. He prays for dismissal of the second appeal.

8. The case of the plaintiff was that the first defendant's father was only a Karvari (care taker), though it was contended by the plaintiff that the grandfather of the first defendant was appointed as a care taker to manage and oversee the cultivating operations on behalf of the land owners, the First appellate Court rightly found that Ex.A3 did not project such a version and clearly pointed out to the fact that predecessors-in-interest of the defendants were only cultivating the lands. Though taking note of the fact that there has been no cultivation after 2012 and in the absence of any registration, either in the name of the mother of the defendants or the defendants themselves, as cultivating tenants, it will not be open to the defendants to claim the benefits of being cultivating tenants. In that regard, the first appellate Court has also referred to the evidence of D.W.3, though in his chief examination, wherein he has stated that the defendants are in cultivation and in cross examination, he

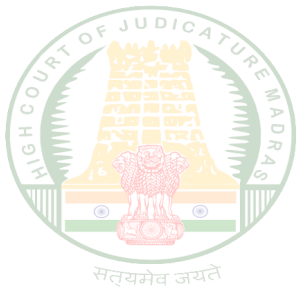


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is not able to even state, who are the owners. It was agreed between the parties that the loan would be repaid out of the income derived from the property. A receipt evidencing the loan and the agreed terms, including interest, was executed, and the said receipt is presently in the possession of the defendants.

9. In Ex.A3- mortgage deed, the plaintiff mortgaged a portion of the property given to the defendants for three years and received Rs. 30,000/- for the cultivation being carried out by R.Sundaramurthi, who was in possession as a cultivating tenant. Ex.A2 to Ex.A8 have been filed which related to the loan obtained from Primary Agricultural Co-operative Society concerning other properties. D.W.1 stated in his evidence, that he does not know which year his father was in possession of the property. He admitted that no receipts were filed up to the year 2012, and a mortgage deed was prepared jointly by the plaintiff and his mother.



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10. The Secretary of Primary Agricultural Society was examined as D.W.2. In his chief examination, he stated that crop loan granted to the defendants was only based on the tenancy details granted by V.A.O. In his cross examination, he admitted that no lease deed was obtained or perused for granting co-operative loan.

11. The defendants claimed that they have been in possession and enjoyment of the suit property as tenants from the grandfather, but, no evidence has been produced, either revenue records or the tenancy register. The defendants' father was only appointed as a care taker (Karvari) for the property and that after him, no one was appointed as care taker.

12. The plaintiff came to Court with a definite case that the property has been mortgaged in favour of the mother of the defendants for the consideration of Rs.30,000/- and in lieu of payment of interest, the mother of the defendants was permitted to cultivate the lands and it was a usufructuary mortgage. No receipt was relied upon by the plaintiff

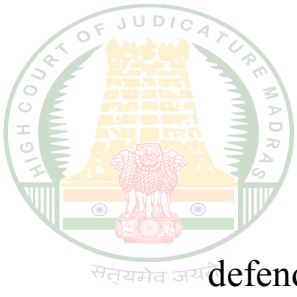


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to claim that the simple mortgage was converted into a usufructuary mortgage. It has been admitted in evidence, though the receipt has been filed along with the plaint, but it was not marked during trial.

13. The fact remains that no documents have been produced for proving the payment of lease amount again only probablises the case of the plaintiff that in lieu of interest, the mother of the defendants was permitted to enjoy the usufructs from the lands and that is the reason why no interest has also been paid on the mortgage amount of Rs.30,000/-. However, the specific case of the defendants is that even during the life time of the defendants' grandfather, he was only a cultivating tenant and that they have been paying lease amounts to the plaintiff. However, during the course of evidence, the defendants have not been able to substantiate the claim of payment of lease amount to the plaintiff at any point of time. Further, there is also no document on the side of the defendants to establish that the defendant's grandfather or the father of the defendants or subsequent to the demise, the defendants were registered as cultivating tenants. Therefore, in view of the fact that the

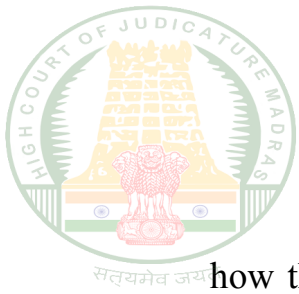


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defendants have not been able to establish the payment of lease amount and the fact that there has been no registration in favour of the defendants or the predecessor in interest as cultivating tenants as mandated under the statute, the case of the defendants that they are only cultivating tenants has not been established. At the same time, the case of the plaintiff that it is only in pursuance of the mortgage that the mother of the defendants was permitted to carry out cultivation in lieu of payment of interest is probablised. Witnesses examined on the side of the defendants, viz., D.W.2 and D.W.3 have not been able to convincingly establish the defence put forth by the appellants that the defendants are cultivating tenants alone and they have been in possession of the property in pursuance of the single mortgage in Ex.A3. The first appellate Court has rightly considered the above factors in overturning the findings of the trial Court, while allowing the appeal suit .

14. In the light of the above, when the appellants have not been able to establish that they were cultivating tenants and that their possession was only in pursuance of oral lease arrangement, I do not see



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how the first Appellate Court fell in error in construction of Ex.A3 and the absence of the receipt does not, by itself, invalidate the case of the plaintiff.

15. Mr.Ponnaiah, learned counsel for the respondent relied on the judgment in ***Pechi Ammal v. Kuluppai Ramasamy Chettiar Dharma Parbalana Sabha***, reported in ***2025-Supreme (Mad.)-3231***, where this Court held that there cannot be any presumption of person being a cultivating tenant and a person, who claims so, has to establish that besides claiming under the original cultivating tenants, the person had also exerted his or her physical labour along with the cultivating tenant. In fact, in the said case, even the appellants father's name had been recorded as a cultivating tenant. This Court held that in the absence of establishing that they had been recognised as cultivating tenant, rejected the case of the plaintiff, that they were cultivating tenants, which issue could be conclusively gone into only by authority in the Act 10 of 1969, Tamil Nadu Agricultural Lands Record of Tenancy Rights Act and not by the civil Court. In the present case also, there is no case established on



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the side of the appellants that at any point of time there exists a record of cultivating tenancy in favour of the predecessor in interest of the appellants, and also in favour of the appellants themselves.

16. In such circumstances, I do not find any error committed by the first appellate Court in reversing the findings of the trial Court warranting interference in the second appeal. Substantial questions of law are answered against the appellants.

17. In fine, the second appeal is dismissed. However, considering the fact that the appellants have been in possession of the property for the past several years, I am inclined to grant time till 30.06.2026 to enable the appellants / defendants to hand over vacant possession to the respondent / plaintiff across receipt of Rs.30,000/- which sum if not having already been paid / deposited in compliance with the judgment of the first Appellate Court, the respondent / plaintiff shall first tender the amount of Rs.30,000/- to the appellants within four weeks from the date



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of receipt of a copy of the judgment and in the event of the appellants refusing to receive the same, the said amount shall be deposited to the credit of the suit in O.S.No. 23 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Papanasam, Thanjavur District, within a period of four weeks from the date of refusal to receive the same. It is also made clear that only if the appellants / defendants receive the said sum of Rs.30,000/-, they shall be entitled to time to vacate and hand over possession on or before 30.06.2026 and in the event of their refusing to receive Rs.30,000/-, the same be deposited before the trial Court and the appellants shall not have the luxury of time up to 30.06.2026 and upon deposit of Rs.30,000/-, within the time line stipulated herein above, it is open to the respondent plaintiff to execute the decree. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

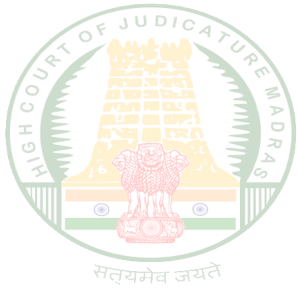
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Index: Yes/No

NCC:Yes/No

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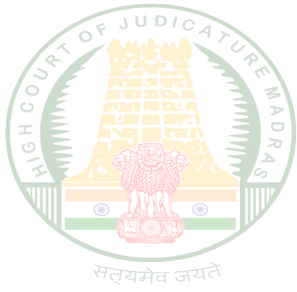
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To

1. The Additional Subordinate Judge,
Kumbakonam,
Thanjavur District.

2. The District Munsif cum Judicial Magistrate,
Papanasam,
Thanjavur District.

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



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P.B. BALAJI, J.

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**Pre-delivery Judgment made in
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30.04.2026