



S.A.(MD)No.649 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.01.2026

Pronounced on : 06.03.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.649 of 2014
and M.P.(MD)No.1 of 2014

Lakshmi

... Appellant/Appellant/
Plaintiff

Vs.

1.K.N.Kamaraj

2.Dhanalakshmi

3.Umayal

...Respondents/Respondents/
Defendants

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the Lower Appellate Court dated 10.09.2013 passed in A.S.No.116 of 2011 on the file of the Subordinate Court, Sivagangai confirming the judgment and decree of the trial Court dated 24.08.2011 passed in O.S.No.191 of 2008 on the file of the Principal District Munsif Court, Manamadurai.

For Appellant : Mr.M.R.Sreenivasan

For Respondents : Mr.Surya
for Mr.P.Ganapathi Subramanian



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JUDGMENT

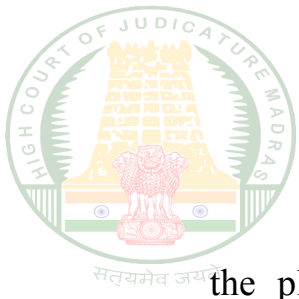
The Second Appeal is directed against the judgment and decree made in A.S.No.116 of 2011 dated 10.09.2013 on the file of the Subordinate Court, Sivagangai, confirming the judgment and decree passed in O.S.No.191 of 2008 dated 24.08.2011 on the file of the Principal District Munsif Court, Manamadurai.

2. The appellant is the plaintiff. She filed a suit claiming the reliefs to declare that the suit property belongs to her and for consequential permanent injunction restraining the respondents / defendants and their men from in any manner interfering with the appellant / plaintiff's peaceful possession and enjoyment of the suit property.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The case of the plaintiff, in short, is as follows:

(a) The suit property and other properties originally belonged to

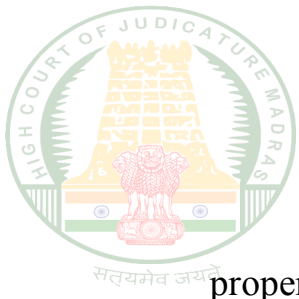


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the plaintiff's father-in-law Nallamuthu Thevar ancestrally. After the demise of the said Nallamuthu Thevar, Nallamuthu Thevar's two wives and their sons entered into a partition through an unregistered partition deed dated 19.06.1993 in the presence of relatives and village elders. In the said partition, 18 cents in Survey No.25/13 and 81 cents in Survey No.25/15 in Allinagaram Village of Manamadurai Taluk, totally 99 cents were brought for partition, wherein, Western 33 cents was allotted to the share of the first defendant, 33 cents on Eastern side was allotted to another brother Jeyachandra Bose and further Eastern 33 cents was allotted to the plaintiff's husband K.N.Rajendran.

(b) The first defendant sold his share of 33 cents to the plaintiff's husband vide an unregistered sale deed dated 30.09.1993. The plaintiff's husband had been in possession and enjoyment of the entire extent of 99 cents. The plaintiff's husband executed a settlement deed dated 24.08.2007 settling the property allotted to him and the property purchased from the first defendant in favour of the plaintiff and since then, the plaintiff has been in possession and enjoyment of the same. Since the plaintiff's husband had been in possession of the suit property for more than the statutory period, she perfected her title to the suit



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property by ouster and adverse possession. After the execution of the sale deed by the first defendant, the first defendant has absolutely no right or title over the suit property. The defendants, by creating sham and nominal documents, attempted to disturb the plaintiff's possession and enjoyment of the suit property. Hence, the plaintiff was constrained to file the above suit for declaration and consequential injunction.

5. The defendants, in their written statement, admitted that the suit property was originally owned by Nallamuthu Thevar and his legal heirs entered into an unregistered partition on 19.06.1993 and that the first defendant was allotted with 33 cents and another 33 cents was allotted to Jeyachandra Bose on the Eastern side and further Eastern 33 cents was allotted to the plaintiff's husband.

6. The defence of the defendants is that the plaintiff's contention that her husband was in possession and enjoyment of the entire extent of 99 cents is false and untenable; that the further claim of the plaintiff that the first defendant had sold the suit property in favour of her husband under an unregistered sale deed is also false and untenable; that the

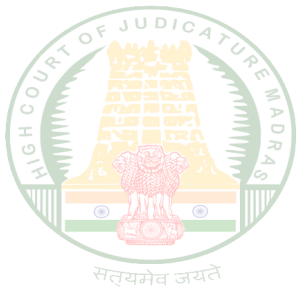


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alleged sale deed dated 30.09.1993 is a fabricated and fraudulent document and that the first defendant had not executed any such sale deed in favour of the plaintiff's husband; that the plaintiff's husband had no manner of right to settle the suit property in favour of the plaintiff; that the first defendant has been paying the requisite taxes in respect of the suit property; that the first defendant settled an extent of 28 cents in the suit property in favour of his wife, Dhanalakshmi, the second defendant herein, and sold the remaining extent of 5 cents to the third defendant, Umayal (wife of his brother), and that ever since, defendants 2 and 3 have been in possession and enjoyment of the suit property; that the first defendant had, several years earlier, obtained a loan of Rs.10,000/- by executing a blank signed Rs.20/- stamp paper, which the plaintiff's husband might have misused or on which he might have forged the signature to create the alleged sale deed; and that neither the plaintiff nor her husband has been in possession of the suit property, and hence, the suit is liable to be dismissed.

7. The learned trial Judge, upon considering the pleadings of both the parties, framed the following issues and additional issue;



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1. *Whether the plaintiff is in legal possession of the suit property?*
2. *Whether the plaintiff is entitled to get the relief of permanent injunction as against the defendants?*
3. *To what other relief, the plaintiff is entitled to?*

Additional Issue

1. *Whether the plaintiff is entitled to get the relief of declaration as prayed for?*

8. During trial, the plaintiff examined her husband Thiru.K.N.Rajendran as P.W.1 and 4 other witnesses as P.W.2 to P.W.5 respectively and exhibited 13 documents as Ex.A1 to Ex.A13. The defendants examined the first defendant as D.W.1 and exhibited 5 documents as Ex.B1 to Ex.B5.

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed a judgment and decree dated 24.08.2011 dismissing the suit with costs. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.116 of 2011 and the learned Subordinate Judge, Sivagangai,



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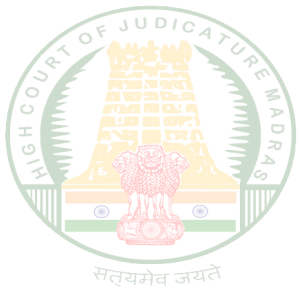
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upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 10.09.2013 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the plaintiff has preferred the present Second Appeal.

10. Though the present second appeal has been pending since 2014, the same has not yet been admitted and consequently, no Substantial Question of Law has been formulated.

11. At the outset, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of **Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.**, reported in **AIR 2019 SC 1441**, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High



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*Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of *Narayanan Rajendran v. Lekshmy Sarojini*, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”*

12. The Hon'ble Supreme Court in the case of ***Chandrabhan Vs. Saraswati and others*** reported in **2022 SCC OnLine SC 1273** has specifically held that right of appeal is not automatic and right of appeal



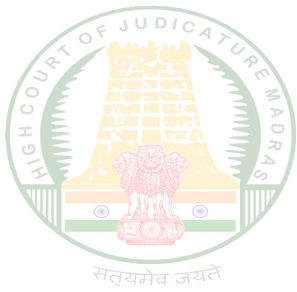
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is conferred by statute and when statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the First Appellate Court and the Hon'ble Supreme Court summarized the principles relating to Section 100 C.P.C., which are as follows;

“(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will



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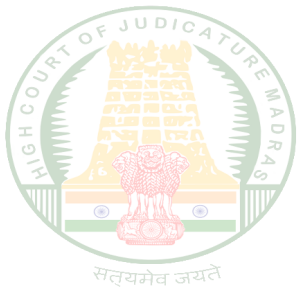


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also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

13. Bearing the settled legal position in mind, let us proceed with the present case.

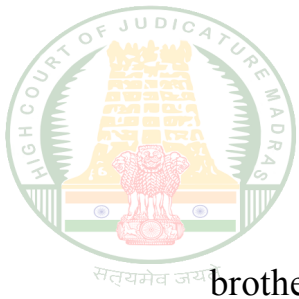


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14. The relationship not in dispute is that Nallamuthu Thevar had 2 wives, namely, Muthammal and Rukumani Ammal, that Nallamuthu Thevar had 5 sons, namely, Rajendran, Jeyachandra Bose, Muthuramalingam, Dhanasekaran and Sakthivel through his first wife, that he had 3 daughters and a son, by name, Kamaraj (first defendant) through his second wife, that the plaintiff is the wife of Rajendran, eldest son of Nallamuthu Thevar, that the second defendant is the wife of the first defendant and that the third defendant is the wife of Sakthivel, younger son of Nallamuthu Thevar.

15. It is not in dispute that the suit property and other properties originally owned by Nallamuthu Thevar ancestrally and after the demise of the said Nallamuthu Thevar, his two wives and his children born through the two wives entered into a partition through an unregistered partition deed dated 19.06.1993. It is also not in dispute that in the said partition, 18 cents in Survey No.25/13 and 81 cents in Survey No.25/15 in Allinagaram Village totally 99 cents were brought for partition and in that partition, Western 33 cents was allotted to the share of the first defendant and another 33 cents on Eastern side was allotted to another



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brother Jeyachandra Bose and further Eastern 33 cents was allotted to the share of the plaintiff's husband K.N.Rajendran.

16. It is the specific case of the plaintiff that the plaintiff's husband K.N.Rajendran purchased the suit property from his brother, the first defendant vide unregistered sale deed dated 30.09.1993 under Ex.A9. It is the further case of the plaintiff that the plaintiff's husband had been in possession and enjoyment of the entire extent of 99 cents.

17. Admittedly, Ex.A9 sale deed is an unregistered document. It is pertinent to note that the sale consideration is shown as Rs.14,850/-. In terms of Section 17 of the Registration Act read with Section 54 of the Transfer of Property Act, any sale of tangible immovable property of a value of Rs.100/- or more must be effected only by a registered instrument. No doubt, under Section 49 of the Registration Act, an unregistered document, which is required to be registered, may be received in evidence for a collateral purpose, provided it is otherwise admissible in evidence. However, in the case on hand, the document is also insufficiently stamped and, in view of Sections 33 and 35 of the



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Indian Stamp Act, it is not admissible in evidence for any purpose unless the deficit stamp duty together with the requisite penalty is paid. Even upon payment of the deficit stamp duty and penalty, the document, being unregistered, cannot be relied upon to establish title, though it may be received in evidence for such collateral purposes as are permissible in law.

18. As already pointed out, the unregistered and insufficiently stamped sale deed appears to have been received in evidence, albeit subject to the objections of the defendants. Though the precise nature of the objections is not evident, it is clear from the deposition of P.W.1 that the learned trial Judge marked Ex.A9 subject to the objections raised by the defendants' counsel. Be that as it may, the trial Court has neither considered the aspect of insufficient stamping nor directed the plaintiff to pay the deficit stamp duty and penalty. The fact remains that Ex.A9 is an unregistered and insufficiently stamped document. In view of the settled legal position, such a document is legally inadmissible in evidence and cannot be looked into for any purpose. Consequently, this Court holds that no right, title or interest in the suit property can be founded or



claimed on the basis of the said document.

19. Even assuming, for the sake of argument, that Ex.A9 could be taken into consideration, it must still be examined whether the plaintiff has proved its due execution, particularly when the same has been specifically disputed by the defendants. In this regard, the plaintiff examined P.W.2 as the scribe-cum-attesting witness to Ex.A9. However, as rightly observed by the Courts below, neither the plaintiff nor P.W.2 has produced any material to establish that P.W.2 is in fact Subramanian, S/o Velayutham Pillai, who is stated to have prepared and attested the document. Further, P.W.2, in his cross-examination, has admitted that Ex.A9 is the only document prepared by him, and has deposed,

“நான் இந்த பத்திரம் தவிர வேறு பத்திரம் எதுவும்
எழுதிப் பழக்கமில்லை.”

P.W.2 would further say,

“எக்சிபிட் ஏ9 பத்திரத்தை நான் என் கைப்பட
எழுதி எந்த பேனாவில் எழுதினேனோ அந்த
பேனாவாலேதான் எழுதியதும், சாட்சி என எழுதி எனது
கையொப்பத்தை இதில் போட்டேன். எக்சிபிட்
ஏ9ல் ஷரத்துகள் மைப் பேனாவினாலும், எழுதியதும்
சாட்சியுமான குறியீடு செய்யப்பட்டுள்ள ஏ10 பந்துமுனைப்



பேனாவாலும் எழுதப்பட்டுள்ளது சரிதான். சாட்சிகளின் கையெழுத்து ஒரு மையாலும், முகவரி வேறு ஒரு மையாலும் எழுதப்பட்டுள்ளது சரிதான். நான்தான் வேலாயுதம் பிள்ளை மகன் சுப்ரமணியன் என்பதைக் காட்ட இன்று ஆதாரங்கள் எதுவும் கொண்டு வரவில்லை.”

20. Though it is alleged that the brothers of the plaintiff's husband had scribed and attested Ex.A9 sale deed, the plaintiff has not chosen to examine them, for reasons best known to her. Further, as rightly observed by the Courts below, Ex.A9 was not produced at the time of filing of the suit, and the plaintiff has not offered any acceptable explanation for such non-production at the earlier point of time. It is also pertinent to note, as rightly pointed out by the learned counsel appearing for the respondents / defendants, that the plaintiff, in her plaint, has not even made a whisper regarding the payment of sale consideration for the suit property to the first defendant. In view of the above circumstances, the Courts below have rightly come to the conclusion that the plaintiff has miserably failed to prove the due execution of Ex.A9.

21. Now turning to the next plea of the plaintiff that her husband



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had perfected title to the suit property by ouster and adverse possession.

A claim of adverse possession as against a co-owner is, in law, treated as a plea of ouster. It is well settled that such a plea stands on a different footing from adverse possession claimed against a stranger. In cases of co-ownership, the possession of one co-owner is, in the eye of law, deemed to be possession on behalf of all the co-owners. Therefore, mere long and continuous possession by one co-owner, even if coupled with exclusive enjoyment, payment of kist, or mutation of revenue records in his name, would not, by itself, constitute adverse possession as against the other co-owners.

22. To sustain a plea of adverse possession against a co-owner, it is incumbent upon the party to specifically plead and prove ouster. Such hostile possession must be evidenced by a clear, unequivocal assertion of exclusive title and a denial of the rights of the other co-owners, to their knowledge. In other words, there must be cogent and convincing evidence to show that the possession of the co-owner in occupation had become adverse to the knowledge of the other co-owners and that he continued in such hostile possession for the statutory period. It is equally



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well settled that ouster cannot be readily inferred from mere exclusive possession, lapse of time, or non-participation by the other co-owners in the enjoyment of the property. The burden of proving ouster is heavy and lies squarely upon the party who sets up such a plea. Thus, in cases involving co-ownership, proof of adverse possession necessarily involves proof of ouster, and the degree of proof required is higher than in ordinary cases of adverse possession. In the case on hand, though the plaintiff has alleged that her husband had been in continuous possession and enjoyment of the suit property for more than the statutory period, there is absolutely no evidence on record to substantiate the same.

23. No doubt, the plaintiff examined P.W.3 alleged to be the cultivating tenant under the plaintiff's husband. P.W.3, in his evidence, would say,

“நான் ஒத்திக்கு அனுபவம் செய்த நிலத்தின் ச.எண் என்னவென்று எனக்கு தெரியாது. அந்த சொத்தில் எத்தனை ச.எண்கள் அடங்கியுள்ளதென்று எனக்கு தெரியாது. தாவாச் சொத்தை 1ம் பிரதிவாதியும் அவரது சகோதரர்களும் 1993ம் ஆண்டே பாகம் செய்து கொண்டார்கள் என்று சொன்னால் அவர்கள் பாகம் செய்து கொண்டதை கேள்விப்பட்டேன். ரூ.25 ஆயிரம் நான்

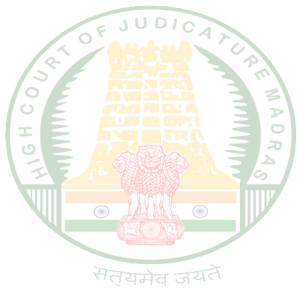


ஒத்திக்கு கொடுத்தேன் என்பதற்கு ஆதரவாக
வெண்ணிலை பத்திரம் எழுதி வாங்கியுள்ளேன்.
அப்பத்திரத்தை பணத்தை திரும்ப கொடுத்தவுடன்
அவர்களிடமே நான் திருப்பி கொடுத்துவிட்டேன். நான்
கொடுத்த 25 ஆயிரம் ரூபாய்க்கு எழுத்துபூர்வமாக
வெண்ணிலை பத்திரம் எழுதி வாங்கியதை நான் நிரூபண
வாக்குமூலத்தில் சொல்லவில்லை. வரி ரசீதில்
யாருக்காக வரி செலுத்தப்பட்டதென்று
சொல்லவில்லையென்றால் நான் எனது பெயரில்தான் வரி
செலுத்தினேன்.”

More importantly, P.W.3 would admit,

“வாதி வீட்டிற்கு நான் கூலி வேலை செய்வது
வழக்கமென்றால் சரிதான்.”

24. As rightly observed by the Courts below, neither the plaintiff nor P.W.3 has produced any material to substantiate that P.W.3 was cultivating the suit property, that he had paid Rs.25,000/- and entered into a lease deed or that he had been paying the requisite charges, including kist in respect of the land alleged to be owned by the plaintiff's husband / plaintiff. Though P.W.3 has deposed that there existed a lease deed and that the same was subsequently returned to the lessor, the plaintiff has not chosen to produce the said document.



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25. Admittedly, the revenue records continue to stand in the name of Nallamuthu Thevar. Though the plaintiff has alleged that her husband had been in possession and enjoyment of the suit property since the partition in 1993, she has not offered any reason or explanation for her failure to have the revenue records mutated either in her husband's name or in her own name subsequent to the alleged settlement in her favour.

26. Considering the evidence available on record, the Courts below have rightly held that the first defendant, the plaintiff's husband and the other brother Jeyachandra Bose, following the partition under Ex.A8, have been paying the requisite kist in respect of their respective shares of land.

27. It is pertinent to note that Jeyachandra Bose sold his share measuring 33 cents, which lies in between the lands of the plaintiff's husband and the first defendant, to Muthukalai and others on 17.09.2008 under Ex.B5 sale deed. It is the specific case of the defendants that the first defendant, under Ex.B2, settled 28 cents out of the said 33 cents in



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favour of his wife, the second defendant, and sold the remaining extent of 5 cents to the third defendant on the very same day, i.e., 10.10.2008, under Ex.B3. As rightly pointed out by the learned counsel appearing for the respondents/defendants, in both Ex.B2 settlement deed and Ex.B3 sale deed, the description of the property contains a reference to the purchasers from Jeyachandra Bose. As already noted, Jeyachandra Bose had sold his share of 33 cents on 17.09.2008 under Ex.B5 to Muthukalai, Balamurugan and Vijaya, and the said property is shown as the eastern boundary of the suit property.

28. As rightly contended by the learned counsel appearing for the respondents/ defendants, in as much as the plaintiff has miserably failed to establish the possession of her husband over the suit property, the question of claiming ouster does not arise at all.

29. As already pointed out, according to the plaintiff, her husband executed a settlement deed in respect of the suit property in her favour under Ex.A1. It is the specific case of the defendants that in the settlement deed, originally two persons, namely, Dhanasekaran and



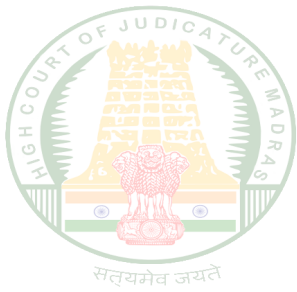
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Muthuramalingam had originally attested the settlement deed, as is evident from the registration copy of the settlement deed exhibited under Ex.B1, whereas, the original settlement deed produced and exhibited by the plaintiff contains the signature of a different attesting witness, namely, Sakthivel, the husband of the third defendant. The plaintiff as P.W.1, in her evidence, would admit,

“பி1ல் தனசேகரன் முத்துராமலிங்கம் ஆகியோர் சாட்சிக் கையெழுத்து போட்டுள்ளார்கள். ஏ1ல் சக்திவேல் என்பவரின் கையொப்பமும் சாட்சியாக உள்ளதென்று சொன்னால் சரிதான். சக்திவேல் கையெழுத்து எக்சிபிட் ஏ1 பதிந்து வாங்கிய 10 நாட்கள் கழித்து போடப்பட்டதென்று சொன்னால் சரிதான்.”

30. As rightly contended by the learned counsel appearing for the respondents / defendants, in an attempt to strengthen the settlement deed, the plaintiff's husband appears to have fraudulently incorporated the signature of the third defendant's husband in the original document after its registration. Such conduct, as alleged, would indicate an intention on the part of the plaintiff and her husband to lay an unlawful claim over the property. In the light of the above circumstances, it can be safely inferred that the plaintiff has not approached the Court with clean hands.



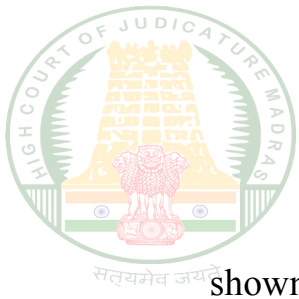
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31. It is trite law that a party cannot be permitted to approbate and reprobate by setting up mutually destructive plea. In the present case, the plaintiff claims title to the suit property on the strength of sale deed and at the same time, sets up a plea of adverse possession by way of ouster as against a co-owner. Such pleas are inherently inconsistent and mutually destructive in nature, as they operate on fundamentally different and contradictory legal principles. However, the simultaneous assertion of title under a sale deed and acquisition of title by ouster cannot be countenanced in law. In view of the settled legal position, such inconsistent pleas raised by the plaintiff are liable to be rejected.

32. On considering the entire evidence available on record and taking note of the legal position in proper perspective, the Courts below have rightly come to a decision that the plaintiff has failed to prove her claim and consequently, she is not entitled to the reliefs of declaration and injunction and that the said finding do not suffer from any infirmity warranting interference.

33. It is pertinent to note that the appellant / plaintiff has not

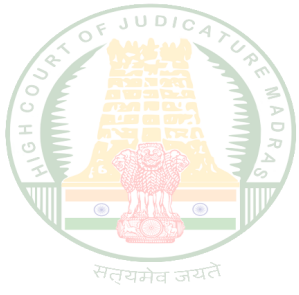


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shown that any material evidence was ignored by the Courts below or that there was no evidence. It is not her case that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. On perusal of the judgments of the Courts below and as rightly contended by the learned counsel appearing for the respondents / defendants, no question much less Substantial Question of Law is made out. Hence, this Court concludes that since no Substantial Question of Law is made out in the Second Appeal, the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the respondents / defendants are entitled to get the costs throughout.

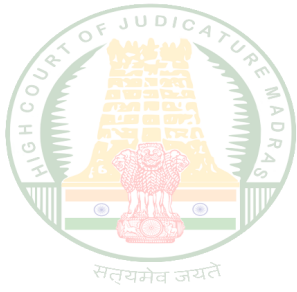
34. In the result, the Second Appeal is dismissed, confirming the judgment of the appellate Court made in A.S.No.116 of 2011, dated 10.09.2013 on the file of the Subordinate Court, Sivagangai, confirming the judgment and decree made in O.S.No.191 of 2008 dated 24.08.2011 on the file of the Principal District Munsif Court, Manamadurai. Consequently, connected Miscellaneous Petition is closed. The respondents are entitled to get the costs throughout.



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K.MURALI SHANKAR, J

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To

1. The Subordinate Judge, Sivagangai.
2. The Principal District Munsif, Manamadurai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in
S.A.(MD)No.649 of 2014
and
M.P.(MD)No.1 of 2014

Dated : 06.03.2026