



S.A.No.789 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 22.09.2025

PRONOUNCED ON : 02.01.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No.789 of 2014

K.Kandasamy
S/o.Kannusamy
Parappalalayam
Sarkar Periyapalayam Village
Perundurai Taluk,
Erode District.

... Appellant

Versus

1. P.Natarajan
S/o.Chinnappa Naicker
Parappalalayam
Sarkar Periyapalayam Village
Perundurai Taluk
Erode District.

2. K.Palanisamy
S/o.Kancha Naicker

3. Rajamani
W/o.Palanisamy

... Respondents

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 19.10.2012 made in

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A.S.No.22 of 2009 on the file of the Principal Sub Court, Tiruppur confirming the finding of the judgment and decree dated 12.03.2008 made in O.S.no.432 of 2005 on the file of the District Munsif Court, Tiruppur by allowing the present appeal.

APPEARANCE OF PARTIES:

For Appellant : M/s.C.B.Geeth Sanchitra
for Mr.M.Guruprasad

For Respondents : Mr.Dinesh for R2 & R3
R1 – set exparte

JUDGMENT

This Second Appeal is directed against the judgment and decree dated 19.10.2012 in A.S. No. 22 of 2009 on the file of the Principal Subordinate Judge, Tiruppur, whereby the judgment and decree dated 12.03.2008 in O.S. No. 432 of 2005 passed by the District Munsif Court, Tiruppur, were confirmed.

2. For the sake of convenience, the parties are referred to according to their respective rankings in the plaint.

3. Brief facts of the plaintiff's case: The first defendant was the owner of the suit schedule property. On 17.08.1997, the plaintiff entered

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into an agreement of sale with the first defendant for a total sale consideration of Rs.60,000/-, under which a sum of Rs.30,000/- was paid as advance. The time stipulated for completion of the sale was three years. Subsequently, on 10.08.2000, the plaintiff paid a further sum of Rs.10,000/- as additional advance and the period for performance was extended by another three years. Thereafter, on 06.01.2003, the plaintiff paid an additional sum of Rs.10,000/- and the period of the agreement was again extended for a further period of three years.

4. As the first defendant evinced reluctance to receive the balance sale consideration and to complete the sale transaction, the plaintiff instituted O.S. No. 99 of 2005 on the file of the District Munsif Court, Tiruppur, seeking specific performance of the contract. The said suit was decreed on 17.03.2005. Thereafter, the plaintiff filed an execution petition to obtain the sale deed through Court. While the execution petition was pending, the defendants attempted to trespass into the suit property on 20.07.2005. Though the plaintiff lodged a police complaint, no action ensued. Consequently, the plaintiff was constrained to file the present suit for permanent injunction.



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5. The first defendant was set ex parte in the suit. The third defendant filed a written statement, which was adopted by the second defendant. The third defendant also filed a counter-claim.

6. Brief contents of the written statement and counter-claim: The third defendant denied the alleged agreement of sale said to have been entered into between the plaintiff and the first defendant and contended that the same is false. It was further contended that the decree in O.S. No. 99 of 2005 was collusively obtained by the plaintiff and the first defendant without impleading this defendant.

7. The third defendant purchased the suit schedule property under a registered sale deed dated 20.04.1998 for a consideration of Rs.1,00,000/- and has been in possession of the suit property from the date of such purchase. Mutation was effected in the revenue records, and the third defendant constructed a house and obtained electricity service connection.

8. It was further contended that the plaintiff and the first defendant, acting in collusion and by committing fraud, obtained the decree in O.S. No. 99 of 2005. Though the plaintiff was aware of the sale in favour of the third defendant under the sale deed dated 20.04.1998, the



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third defendant was not arrayed as a party in O.S. No. 99 of 2005.

Relying on the said decree, the plaintiff is alleged to have trespassed into the suit property on 07.09.2005 and caused damage to the building constructed by the third defendant.

9. The ex parte judgment and decree dated 17.03.2005 passed in O.S. No. 99 of 2005 were sought to be set aside. The defendants prayed for cancellation of the said ex parte judgment and decree dated 17.03.2005 and for a permanent injunction restraining the plaintiff and the first defendant from interfering with the defendants' peaceful possession and enjoyment of the suit property. Necessary court fee was paid. The plaintiff filed a reply to the counter-claim, reiterating the averments contained in the plaint.

10. The trial Court, upon framing the necessary issues, dismissed the suit and allowed the counter-claim by cancelling the decree passed in O.S. No. 99 of 2005 and granting an injunction against the plaintiff and the first defendant. Aggrieved thereby, the plaintiff preferred an appeal, which was also dismissed. Hence, the present Second Appeal.

11. Grounds raised in the Second Appeal: The Courts below are



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stated to have set aside the civil court decree in the absence of proper pleadings and proof, notwithstanding the strict requirement of specific pleadings under Order VI Rule 4 CPC, and without assigning valid reasons. It is further contended that the Courts below misconstrued Section 41 of the Specific Relief Act and erroneously failed to grant the relief of injunction.

12. At the time of admission, the following substantial questions of law were framed:

i. Whether counter-claim is maintainable in a suit under Order XXI Rule 97 of the Civil Procedure Code, when the suit itself is barred by limitation?

ii. Whether two first appeals are to be filed or only one has to be filed?

iii. Whether the Courts below are correct in setting aside the decree of court in a casual manner without sufficient proof as to collusion or fraud?

iv. Whether the Courts below grossly erred in declining the relief of the plaintiff in a suit simpliciter seeking for protection of possession?

v. Whether the Courts below misconstrued Section 41 of the Specific Relief Act, 1963, and held that the present suit of the plaintiff is not maintainable?

vi. Whether the Courts below are correct in not allowing the cross-objection filed by the respondents herein?

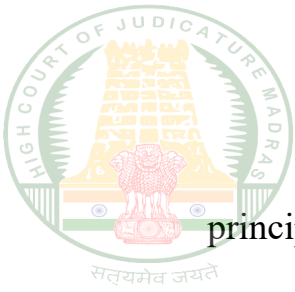


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13. The appellant advanced only brief oral submissions and relied

primarily on the written notes of submissions filed before this Court, elaborating therein the grounds of challenge to the concurrent judgments and decrees of the Courts below. The appellant contended that he entered into a valid and subsisting sale agreement dated 17.08.1997 with the first defendant, paid substantial consideration, obtained extensions by endorsements, and ultimately secured a decree for specific performance in O.S. No. 99 of 2005, which was a lawful decree presumed to be valid unless set aside in accordance with law. It was argued that the Courts below erred in casually setting aside this decree on vague allegations of fraud and collusion, contrary to Order VI Rule 4 CPC, without specific pleadings or cogent proof. The appellant submitted that when the trial court decided the suit and counter-claim together, it resulted in a single judgment and decree, and therefore filing a single first appeal was proper; any procedural irregularity in drawing decrees could not prejudice the appellant. On merits, it was urged that the appellant was in lawful possession pursuant to the agreement and decree, and even assuming for argument that title had not yet passed by way of registered sale deed, such possession deserved protection under Section 38 of the Specific Relief Act. The denial of injunction to the appellant and the simultaneous grant of injunction to defendants 2 and 3 were stated to be contrary to settled

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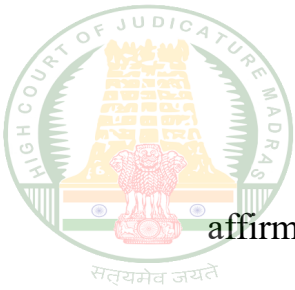
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principles, compounded by a misapplication of Section 41 of the Specific

Relief Act, as the suit was a simple action to protect possession and not a collateral attack on the decree.

14. The respondents contended that the counter-claim decree, having not been separately appealed, attained finality and operated as res judicata, relying on 1997 (1) MLJ 529 . They submitted that only one appeal was filed and that the failure to independently challenge the counter-claim barred the appellant from reopening those findings. On merits, it was argued that the third defendant purchased the property under a registered sale deed dated 20.04.1998 (Ex.B1) and remained in continuous possession till the institution of the suit, supported by ample documentary evidence. The respondents asserted collusion between the plaintiff and the first defendant, pointing to the agreement of sale dated 17.08.1997, successive extensions, and the ex parte decree for specific performance in O.S. No. 99 of 2005, which was obtained without impleading the true owner. The decree was not followed by execution of the sale deed or delivery of possession, and no execution proceedings were effectively pursued. The present suit, founded merely on the decree, was therefore untenable, as the plaintiff failed to establish possession or any act of dispossession. The trial Court's finding of collusion and fraud,

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affirmed by the appellate Court, being concurrent findings of fact, was urged not to warrant interference in second appeal

15. Among the substantial questions of law framed, Substantial Question Nos. (i), (v), and (vi) do not arise for consideration and are not necessary for the disposal of this Second Appeal.

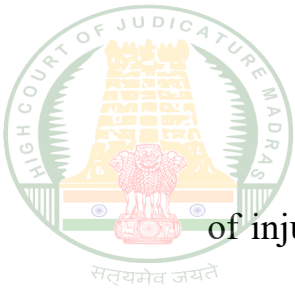
Substantial Question of Law No. (i):

16. The execution petition filed by the plaintiff under Order XXI Rule 34 CPC for execution of the sale deed through Court pursuant to the decree dated 17.03.2005 in O.S. No. 99 of 2005 is pending. No execution application seeking delivery of possession under Order XXI Rule 95 CPC is pending. Consequently, the question of resistance to delivery of possession does not arise.

Substantial Question of Law No. (v):

17. The trial Court held that, since the plaintiff had not sought the relief of injunction in O.S. No. 99 of 2005, he was barred from instituting a bare suit for injunction in view of Section 41(h) of the Specific Relief Act, 1963. This observation is not correct, inasmuch as the earlier suit was instituted only against the first defendant, whereas the present relief

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of injunction is sought primarily against the second and third defendants

on the basis of a subsequent cause of action that arose on 20.07.2005,

when the defendants allegedly attempted to trespass into the suit property.

Further Section 41(h) applies only where an equally efficacious remedy is

available. On this premise, the reasoning adopted by the trial Court on

this aspect is incorrect.

Substantial Question of Law No. (vi):

18. The trial Court decreed the counter-claim and granted relief in favour of the contesting second and third defendants, which was confirmed by the first appellate Court. The said defendants are the second and third respondents in the present appeal. Hence, this question is factually incorrect.

19. Remaining Substantial Questions of Law (ii), (iii), and (iv):
The following dates and events, as culled out from the records, are relevant:

i. Agreement to sell executed by the 1st defendant in favour of the plaintiff: 12.06.1997

ii. Another agreement to sell executed by the 1st defendant in favour of the plaintiff: 17.08.1997



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iii. Power of Attorney executed by the 1st defendant in favour of the 2nd defendant: 16.03.1998

iv. Sale deed executed by the 2nd defendant as power agent of the 1st defendant in favour of the 3rd defendant: 20.04.1998

v. Ex parte decree passed in O.S. No. 99 of 2005: 17.03.2005

vi. Deed of cancellation of Power of Attorney dated 16.03.1998 executed on: 24.08.2004.

Substantial Question of Law No. (ii):

20. The substantial question law framed: Whether a single appeal is maintainable against a common judgment passed in a suit and counter-claim? There could be no quarrel that a single appeal is maintainable against a common judgment rendered in a suit and a counter-claim. Though a counter-claim is treated as a cross-suit under Order VIII Rule 6-A CPC, it culminates in a single judgment and a composite decree, and therefore does not necessitate multiplicity of appeals. However, the maintainability of a single appeal does not absolve the appellant of the statutory obligation to value the appeal correctly and to pay court-fee in respect of all adverse reliefs granted under the decree. The right of appeal being a statutory right, it can be exercised only in the manner prescribed by law, including strict compliance with the provisions relating to court-fee.



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21. In the present case, the plaintiff preferred only one First Appeal, and the decree in A.S. No. 22 of 2009 depicts that the plaintiff, as appellant, paid court-fee both in respect of the relief claimed in the plaint (Rs.75/-) and the relief granted on the counter-claim (Rs.5,197.50), aggregating to Rs.5,273/-. Consequently, the single First Appeal filed by the plaintiff was procedurally maintainable and competent in respect of both the suit and the counter-claim.

22. The reliance placed by the second and third respondents on **Vediammal and others v. M. Kandasamy and others, 1997 (1) MLJ 529**, is misplaced. In that case, the decree passed on the counter-claim was not effectively challenged and was therefore held to have attained finality. The said decision does not lay down that two separate appeals are mandatory against a common judgment rendered in a suit and counter-claim. In the present case, the plaintiff preferred a single First Appeal, paid court-fee both in respect of the plaint relief and the counter-claim relief, and the entire decree was adjudicated and affirmed. The issue arising in the present Second Appeal is not with regard to the number of appeals, but concerns the scope of challenge in the absence of court-fee relatable to the counter-claim relief. Accordingly, the ratio in **Vediammal**



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is clearly distinguishable on facts and does not advance the case of the respondents.

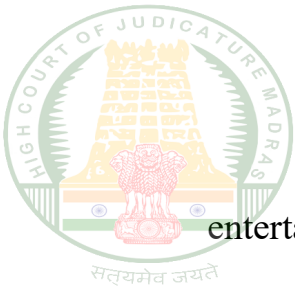
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23. Under Section 96 of the Code of Civil Procedure, an appeal lies from every decree passed by a court exercising original jurisdiction. By virtue of Order VIII Rule 6-A(2) CPC, a decree passed on a counter-claim is also included within the expression “decree”, as a counter-claim is mandated to have the same effect as a cross-suit and to be governed by the same rules applicable to suits. Consequently, the decree on the plaint and the decree on the counter-claim, though distinct in origin, together constitute a composite decree arising out of a common judgment.

24. The decision in *Vediammal* turned on the fact that the decree passed on the counter-claim was not challenged at all, and was therefore held to have attained finality and to operate as res judicata. In contrast, in the present case, the plaintiff/appellant, by preferring a single First Appeal, fully challenged both the decree passed on the plaint and the decree passed on the counter-claim after paying the requisite court-fee, and the First Appellate Court adjudicated the entire matter on merits and affirmed both decrees.

25. Once a comprehensive appeal under Section 96 CPC has been

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entertained and decided, any procedural objection as to whether two separate appeals ought to have been filed instead of a single appeal becomes academic and inconsequential, and cannot be permitted to be reopened in a Second Appeal under Section 100 CPC, particularly in the absence of any demonstrated prejudice or failure of justice. Accordingly, the single First Appeal filed by the plaintiff/appellant is held to be valid, and this substantial question of law is answered.

Substantial Question of Law No.(iii):

26. The Substantial Question of Law framed: *whether the courts below is correct in setting aside the decree of civil court in a casual manner without sufficient proof as to collusion or fraud ?* The appellant contended that the Courts below cancelled the decree passed in O.S. No. 99 of 2005 without sufficient grounds. This contention merits consideration.

27. The decree was passed by a competent civil court. Its validity and enforceability, as against the second and third defendants, stand on a different footing from the question of cancelling or setting aside the decree. The decree passed in O.S. No. 99 of 2005 is a judgment in personam and does not bind persons who were not parties to the suit.



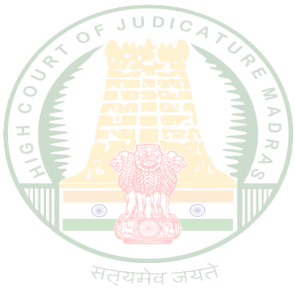
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28. At this juncture, this Court considers it appropriate to invoke its plenary powers under Order XLI Rule 33 CPC to mould the relief in accordance with settled principles of law in the interest of justice.

29. A prior purchaser who was not impleaded as a party to a suit for specific performance cannot seek cancellation of the decree passed therein; however, such purchaser is entitled to seek a declaration that the said decree is not binding on him, along with the consequential relief of injunction.

30. In the present case, the third defendant, being a prior purchaser and not a party to the suit in O.S. No. 99 of 2005, was legally entitled only to a declaration that the decree dated 17.03.2005 passed therein is not binding on her and on the second defendant, her husband, and not to a decree cancelling the said decree. Accordingly, the judgment and decree passed by the Courts below on the counter-claim of the second and third defendants, insofar as they cancel the decree passed in O.S. No. 99 of 2005, are modified to that limited extent, and it is declared instead that the decree dated 17.03.2005 in O.S. No. 99 of 2005 is not binding on the second and third defendants.



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31. This modification is made in exercise of the powers under

Order XLI Rule 33 CPC, as the issue relates only to the form of relief granted and does not necessitate any reappraisal of evidence or enlargement of the lis, and no prejudice is caused to the appellant by such modification.

Substantial Question of Law No.(iv):

32. The Substantial Question of Law framed: *Whether the Courts below grossly erred in declining the relief of the plaintiff in a suit simpliciter seeking for protection of possession?* As noted by the appellate Court, the plaintiff instituted O.S. No. 99 of 2005 on the basis of the agreement to sell dated 17.08.1997. the suit was filed only as against the first defendant. However, as on the date of institution of the suit, the suit property had already been alienated by the power agent of the first defendant, namely the second defendant, in favour of the third defendant. This alienation was within the knowledge of the plaintiff. Despite the same, the plaintiff failed to implead the third defendant, who was a necessary party to the suit. On the date of filing of O.S. No. 99 of 2005, the first defendant had no subsisting saleable right in the property, having already conveyed the same to the third defendant.



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33. The present suit is one for bare injunction founded on the decree dated 17.03.2005. The said decree was confined to specific performance and did not direct delivery of possession. The execution petition was filed only for execution of the sale deed, and the plaintiff never obtained possession of the suit property. A person not in possession is not entitled to an injunction to protect possession. There is also no evidence to show that the plaintiff was in possession of the suit property. Consequently, the concurrent findings of the Courts below refusing the relief of injunction do not warrant interference.

34. This Court finds that no substantial question of law, as contemplated under Section 100 CPC, arises for consideration in the present Second Appeal. The appeal essentially seeks a reappraisal of evidence, which is impermissible in exercise of jurisdiction under Section 100 CPC.

35. In view of the foregoing discussion, this Court holds that the findings recorded by the Courts below are well reasoned, supported by the evidence on record, and in accordance with law. No perversity is shown so as to warrant interference.



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36. In fine, the Second Appeal is dismissed with costs.

Consequently, the connected miscellaneous petition, if any, stands closed.

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Index:Yes/No

Speaking Order /Non-speaking order

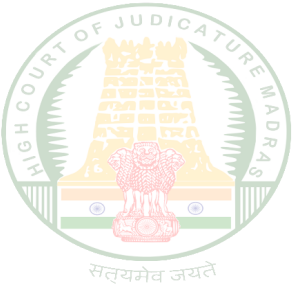
Neutral citation:Yes/No

To

1.The Principal Sub Court,
Tiruppur.

2. The District Munsif Court,
Tiruppur.

3. The Section Officer,
V.R.Records, Madras High Court.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment in
S.A. No.789 of 2014

02.01.2026