

A.S.No.644 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 15.09.2025
PRONOUNCED ON : 02.01.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No. 644 of 2019

Thangapandiyan
S/o.Vadivel
D.No.287, Vathiyar Vattam
Perumalmalai Adivaaram
Narasothipatti
Salem Town
Salem – 4

...Appellant

Vs.

1. Jayalakshmi
W/o.Thirunavukkarasu
Vathiyar Vattam
Narasothipatti Village,
Salem Town,
Salem – 636 004.

2. Jayakumar
S/o.Ramu
D.No.31/4, Muhil Nagar,
Narasothipatti
Salem Town
Salem – 636 004.

3. Velliyangiri
S/o.Thangavel
D.No.254, Elumalai Gounder Nagar,
Narasothipatti
Salem Town
Salem – 636 004.

... Respondents



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PRAYER in A.S.: Appeal Suit filed under Section 96 r/w OR 41 R1 of the Code of Civil Procedure 1908 to set aside the judgment and decree dated 25.01.2019 made in O.S.No.311 of 2013 on the file of the I Additional District Court, Salem and allow the Regular Appeal.

For Appellant : Mr.T.Murugamanickam
Senior Counsel for
M/s.Zeenath Begam

For Respondents : Mr.C.Jagadish for R1
R2 and R3 served

J U D G M E N T

This appeal is directed against the judgment and decree dated 25.01.2019 rendered by the learned I Additional District Judge, Salem, in O.S. No.311 of 2013.

2. The plaintiff instituted the suit seeking to set aside the sale deed dated 04.10.2013 executed by the second defendant in favour of the third defendant and registered as Document No.6407 of 2013, and for a further declaration that the sale agreement dated 04.10.2013 entered into between the first and third defendants and registered as Document No.6409 of 2013 on the file of the Sub-Registrar Office, Sooramangalam, is null and void, together with consequential reliefs.

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3. For the sake of convenience, the parties are hereinafter referred

to in accordance with their respective ranks before the trial Court.

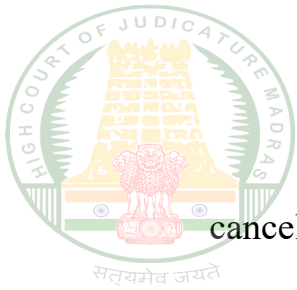
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4. Brief facts of the plaintiff's case: The plaintiff claims to be the absolute owner of the suit property. Owing to urgent family necessities, she was in need of money and, in June 2013, approached the second defendant for a loan of Rs.5,00,000/-. The second defendant advanced a sum of Rs.5,00,000/- as a loan, repayable with interest at the rate of 1.50% per month. As security for the said loan, the second defendant is stated to have obtained a sale agreement dated 17.06.2013 executed by the plaintiff in favour of the first defendant and also a power of attorney of even date in his own favour. According to the plaintiff, without her knowledge or consent, the second defendant cancelled the said sale agreement on 04.10.2013 and, on the very same day, acting under the power of attorney, executed a sale deed in favour of the third defendant without passing any consideration. The plaintiff asserts that she has at all times remained in possession of the suit property. It is further alleged that on the same day, namely 04.10.2013, the third defendant entered into a sale agreement with the first defendant and that all the aforesaid documents were brought into existence collusively by the defendants with

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a malafide intention to grab the suit property. The plaintiff claims to have become aware of these transactions only on 15.10.2013, when the third defendant came to the suit property asserting ownership. Thereafter, she obtained copies of the relevant documents and, on 25.10.2013, questioned the defendants regarding the validity of the said transactions. As there was no response, the plaintiff instituted the present suit.

5. Brief facts of the defendants' case: All the defendants filed a common written statement. According to them, the plaintiff had entered into a sale agreement with the first defendant fixing a period of eleven months for completion of the sale. However, the plaintiff and her husband, Thirunavukarasu, allegedly insisted upon completion of the transaction within three months, as a result of which the first defendant could mobilise only a sum of Rs.5,00,000/- within that short period. In view of the plaintiff's insistence on early completion, it is stated that the suit property was proposed to be sold to the third defendant, who offered a higher sale consideration of Rs.15,52,500/- as against Rs.15,00,000/- fixed under the earlier agreement. Since the first defendant was not in a position to proceed further with the transaction, and with the consent of the plaintiff and her husband, the sale agreement in his favour was

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cancelled. Thereafter, the second defendant, acting as power agent of the

plaintiff, represented her in the cancellation deed and executed the sale

deed dated 04.10.2013 in favour of the third defendant. The defendants

further contend that a life certificate dated 04.10.2013 issued by the

Medical Officer, evidencing the plaintiff's personal appearance, was

enclosed along with the sale deed at the time of registration. It is asserted

that the execution of the sale deed was within the knowledge of the

plaintiff and her husband, that the sale consideration was fixed at

Rs.15,52,500/- and that the entire amount was paid to the plaintiff by the

second defendant, for which a receipt duly attested by the plaintiff's

husband was issued. Thus, the second defendant fully complied with his

duties as power agent. According to the defendants, after execution of the

sale deed possession of the suit property was also handed over to the third

defendant on the same day i.e on 04.10.2013 and he has been in

possession and enjoyment thereafter. It is further stated that as the third

defendant had only Rs.12,00,000/- in hand, he borrowed a sum of

Rs.5,00,000/- from the first defendant to meet the balance sale

consideration and expenses, and, as security for the said loan, executed a

sale agreement dated 04.10.2013 in favour of the first defendant. The

defendants deny any collusion and contend that the suit is false,

vexatious, and liable to be dismissed.

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6. The trial Court, upon consideration of the pleadings and the evidence on record, framed the necessary issues and decreed the suit by declaring the sale deed and the sale agreement dated 04.10.2013 as null and void. The trial Court further, suo motu, directed the plaintiff to pay a sum of Rs.5,00,000/- with interest at the rate of 18% per annum from 17.06.2013 till the date of institution of the suit and thereafter at the rate of 9% per annum to the second defendant.

7. Aggrieved by the said judgment and decree, the third defendant has preferred the present appeal raising the following grounds: The trial Court ought to have dismissed the suit, as the plaintiff failed to comply with the mandatory requirement under Order VI Rule 4 of the Code of Civil Procedure and did not adduce any oral evidence to substantiate the allegations of fraud and collusion pleaded in the plaint. The plaintiff, having been admittedly present in the office of the Sub-Registrar on 04.10.2013, ought to have raised objections on that date itself. Having admitted the execution of Ex.B3 – Power of Attorney in favour of the second defendant, the plaintiff cannot dispute the authority of the second defendant to act in accordance with the powers conferred thereunder. Consequently, the sale deed Ex.B7 executed by the second defendant,

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together with all consequential transactions, is valid in law. When the

plaintiff denied Ex.B5 – Receipt, she ought to have taken steps to have

the same compared with her admitted signatures; in any event, the

plaintiff cannot disown Ex.B5, particularly when it was witnessed by her

husband. It is further submitted that D.W.3 has clearly spoken to the

passing of sale consideration and the issuance of the receipt in

acknowledgment thereof. The trial Court is also faulted for having failed

to take note of the conduct of the plaintiff and her husband in instituting

vexatious litigations and for erroneously holding the transaction to be

suspicious, when the cancellation of the earlier sale agreement and

execution of the sale deed in favour of the third defendant were

necessitated solely by the pressure exerted by the plaintiff and her

husband for early completion of the sale. The trial Court is further erred

in directing the plaintiff to pay a sum of Rs.5,00,000/-, mechanically

accepting the amount pleaded by the plaintiff without any legal or

evidentiary foundation.

8. The learned counsel for the appellant contended that the trial Court erred in discarding a series of registered documents and acted contrary to settled principles governing documentary evidence. It was

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submitted that the Power of Attorney dated 17.06.2013 (Ex.A2)

admittedly remained in force when the sale deed dated 04.10.2013

(Ex.A4) and connected documents were executed, and therefore the

plaintiff is bound by transactions lawfully entered into by her power

agent. The execution of Ex.A4 was supported by contemporaneous

documents, including a life certificate issued on the same day, forming

part of the registration bundle, which was never specifically denied nor

impeached by summoning the Medical Officer. The plaintiff neither filed

a reply statement disputing the life certificate nor subjected the attesting

witnesses, including D.W.3, to effective cross-examination. The alleged

discrepancies in oral evidence, it was argued, cannot prevail over

registered instruments, particularly in view of Sections 92 of the Indian

Evidence Act, which permit corroborative oral evidence only to explain,

and not contradict, written contracts. It was further contended that Ex.B5

receipt evidences passing of consideration, that the power agent

negotiated with third parties in the ordinary course of business, and that

the sale was concluded within four months. The appellant asserted bona

fides as a purchaser for value without notice and submitted that the trial

Court's decree rests on conjecture, ignores binding documentary

evidence, and unjustly nullifies a lawful conveyance.

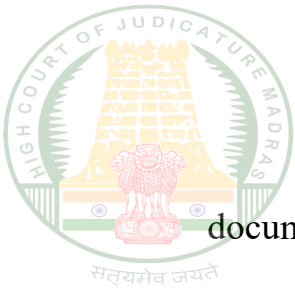
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9. Per contra, learned counsel for the respondent argued that the

entire transaction was vitiated by fraud, undue influence, and misuse of authority. Emphasis was placed on the plaintiff's illiteracy, her vulnerable financial condition following the death of her son, and the admitted close relationship between the plaintiff and the second defendant. It was submitted that the so-called sale agreement, receipt, and power of attorney were obtained as security for a loan of Rs.5,00,000/- and were never intended to effect an outright sale. The agreement to sell was assailed as incomplete and voidable, with the receipt bearing only a left-hand thumb impression, containing blanks subsequently filled, and lacking contemporaneous proof of consideration. The evidence disclosed a substantial deficit in the alleged sale consideration, and the third defendant admittedly lacked funds to complete the purchase. The presence of successive registered documents on the same day, the unexplained cancellation of the earlier agreement through the power agent, the alleged receipt with material particulars filled in ink, and the contradictory versions regarding consideration were urged as circumstances casting grave suspicion on the transaction. It was argued that if the plaintiff were truly present and consenting, there was no necessity for a life certificate or execution through a power agent.

Invoking Section 31 of the Specific Relief Act, counsel submitted that the

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documents are voidable at the instance of the plaintiff, that the power of attorney did not authorise such self-serving conveyances, and that the defendants had colluded to convert a loan transaction into a colourable sale with the object of grabbing the plaintiff's property.

10. Upon consideration of the pleadings, the grounds of appeal, and the judgment and decree of the trial Court, the following points arise for consideration in this appeal:

- i. Whether the sale deed dated 04.10.2013 (Ex. A4) executed by the second defendant in favour of the third defendant is valid in law?
- ii. Whether the agreement to sell dated 04.10.2013 (Ex. A6) entered into between the first and third defendants is valid and binding?
- iii. Whether the plaintiff is in possession and enjoyment of the suit property?
- iv. Whether the direction of the trial Court directing the plaintiff to pay a sum of Rs.5,00,000/- to the second defendant is sustainable and in accordance with law?
- v. Whether the judgment and decree of the trial Court are liable to be set aside?

11. Points Nos. (i) and (ii): The plaintiff has assailed the sale deed dated 04.10.2013 and the sale agreement dated 04.10.2013. The



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sale deed, marked as Ex.A4, was executed by the second defendant, acting as the power agent of the plaintiff, in favour of the third defendant, while the sale agreement, marked as Ex.A6, was entered into between the first and third defendants.

12. For determining the validity of Exs.A4 and A6, it becomes necessary to advert to two prior documents admittedly executed by the plaintiff, namely, the agreement to sell the suit property dated 17.06.2013 (Ex.A3) in favour of the first defendant and the power of attorney dated 17.06.2013 (Ex.A2) executed in favour of the second defendant.

13. The plaintiff and the second defendant are close relatives, and all the parties hail from the same village and are well acquainted with one another. According to the plaintiff, she is the owner of the suit property. About three months prior to 17.06.2013, her elder son died after undergoing unsuccessful treatment for cancer. Owing to the substantial debts incurred towards medical expenses, the plaintiff was in acute financial distress. In those circumstances, the plaintiff and her husband approached the second defendant and sought a loan of



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Rs.5,00,000/-. The second defendant is stated to have advanced the said amount as a loan, repayable with interest at 18% per annum, and, by way of security for the repayment thereof, obtained a power of attorney (Ex.A2) in his favour and a sale agreement (Ex.A3) in favour of the first defendant.

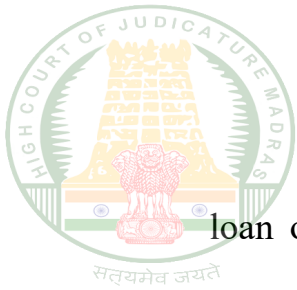
14. On the other hand, the case of the second defendant is that the plaintiff and her husband approached him with the intention of selling the suit property and requested him to identify prospective purchasers. According to him, the power of attorney Ex.A2 was executed solely for that purpose, and Ex.A3 was not intended as security for any loan transaction.

15. The second defendant, examined as D.W.1, deposed in his chief examination that on 17.06.2013 the plaintiff and the first defendant entered into a sale agreement fixing the sale consideration at Rs.15,00,000/-, that the document was registered for a value of Rs.5,00,000/- in accordance with the guideline value, that an advance of Rs.1,00,000/- was paid, and that a period of eleven months was stipulated for completion of the sale. However, in cross-examination, he resiled

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from the said version and stated that he had no knowledge of any sale agreement entered into between the plaintiff and the first defendant. This material inconsistency strikes at the root of the defence case.

16. It is also of significance that the agreement of sale (Ex.A3) executed by the plaintiff in favour of the first defendant and the power of attorney (Ex.A2) executed in favour of the second defendant are registered as successive documents. The second defendant further admitted in his chief examination that he was aware of the execution of Ex.A3. If the contention of the second defendant, that the plaintiff and her husband approached him merely to locate a purchaser for the suit property is to be accepted, the execution of a power of attorney would be wholly superfluous, as the proposed purchaser, namely the first defendant, had already been identified, the sale consideration had been fixed, and the time for completion of the sale had also been stipulated. In such circumstances, no prudent person would execute a power of attorney authorising sale in favour of third parties. The version of the second defendant that the plaintiff did not approach him for a loan but only for the purpose of selling the property therefore stands falsified. Conversely, the plaintiff's explanation that Ex.A3 was executed as security for the

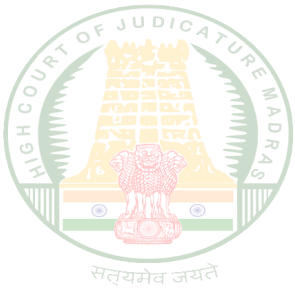
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loan of Rs.5,00,000/- advanced by the second defendant appears more probable and convincing.

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17. The plaintiff further asserts that the defendants colluded with one another and, without her knowledge, cancelled the sale agreement Ex.A3, which had been executed as security, and that on 04.10.2013 the second defendant, acting under the power of attorney, executed a sale deed in favour of the third defendant. According to the plaintiff, she became aware of these transactions only on 15.10.2013, when the third defendant came to the suit property and created a ruckus.

18. The defence version is that, notwithstanding the stipulation of eleven months under Ex.A3, the plaintiff insisted upon completion of the sale within three months. As the first defendant was unable to mobilise the required funds within such a short period, the sale agreement was cancelled by a cancellation deed dated 04.10.2013 (Ex.A5), and the sale deed Ex.A4 was thereafter executed in favour of the third defendant. It is further stated that the sale consideration received from the third defendant was handed over to the plaintiff under an undated receipt marked as Ex.B5.

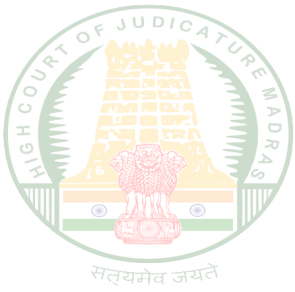
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19. Testing the correctness of the defence version, it is an admitted

position that the period stipulated under Ex.A3 was eleven months.

Though the defendants contend that the first defendant was unable to mobilise the balance sale consideration of Rs.14,00,000/-, a perusal of Ex.A3 shows that the balance payable was only Rs.4,00,000/-. Further, the cancellation deed Ex.A5 merely recites that the sale agreement was cancelled as the first defendant failed to complete the transaction in terms of the agreement, and makes no reference to refund of the advance amount. Significantly, the said cancellation deed was executed by the second defendant in his capacity as power agent of the plaintiff, and a life certificate of the plaintiff was also produced for the purpose of registration.

20. The second defendant has deposed that the plaintiff was present during all the transactions. If that were so, there was no necessity whatsoever to cancel Ex.A3 through a power agent or to produce a life certificate. This circumstance lends considerable support to the plaintiff's contention that Exs.A4 to A6 were executed without her knowledge.

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21. According to the defendants, the third defendant independently

came forward to purchase the property for a consideration of Rs.15,52,000/-. It is further pleaded that the third defendant had only Rs.12,00,000/- in hand and borrowed a sum of Rs.5,00,000/- from the first defendant, for which Ex.A6 was executed as collateral security. However, a perusal of Ex.A6 reveals that the advance shown therein is only Rs.50,000/-, and that the sale consideration is fixed at Rs.600 per sq.ft., which works out to Rs.15,51,900/-, exactly corresponding to the consideration mentioned in Ex.A4. Further, in his deposition, the third defendant stated that Ex.A6 was not executed as security but as a genuine sale agreement.

22. The pleadings and the evidence are thus mutually destructive.

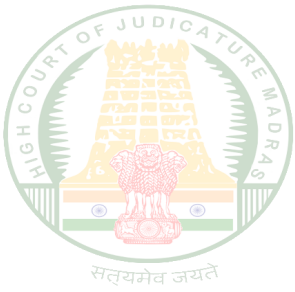
While the written statement asserts that a sum of Rs.5,00,000/- was borrowed, Ex.A6 reflects an advance of only Rs.50,000/-. There is no explanation as to how the third defendant paid the balance sale consideration or met the stamp and registration expenses. The alleged loan of Rs.5,00,000/- is unsupported by any documentary evidence, and the first defendant, who is said to be the lender, was not examined. Even after the institution of the suit, Ex.A6 was cancelled by a cancellation

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deed dated 31.07.2014 (Ex.B9), wherein the advance amount is once again shown as only Rs.50,000/-.

23. These glaring inconsistencies lend substantial support to the plaintiff's contention that the defendants, being close relatives and acting under the influence of the second defendant, colluded with one another and brought into existence Exs.A4 to A6 without passing any real consideration, with the sole object of grabbing the plaintiff's property.

24. With respect to Ex.B5, the alleged receipt for Rs.15,52,000/-, it is admittedly undated. Though the second defendant claims that it was executed on 04.10.2013, the presence of the plaintiff on that date has not been proved. Had the plaintiff been present, she would have affixed her signature on at least one of the registered documents. The plaintiff's husband, examined as P.W.2, admitted his signature in Ex.B5 but deposed that the same was obtained by concealing the contents. D.W.3 merely stated that he signed the receipt and did not speak either to the date of execution or to the passing of consideration.

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25. The plaintiff's explanation that blank signed papers obtained on

17.06.2013 were subsequently misused appears probable. Ex.B5 contains typed matter with material particulars filled in ink. Notably, the document number of Ex.A4 is entered in ink, suggesting that the receipt was prepared before the document number was available. The sale consideration is likewise filled in ink over dotted lines, indicating that it had not been determined at the time the document was typed. Further, the defendants' assertion that the entire sale consideration was paid without adjusting the advance of Rs.1,00,000/- under Ex.A3 adds to the doubtful nature of the transaction.

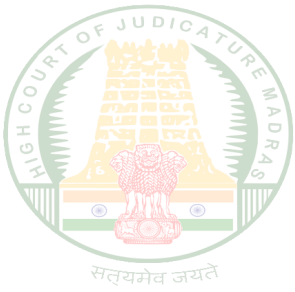
26. From the foregoing discussion, it is evident that the execution of the sale deed dated 04.10.2013 (Ex.A4) is shrouded in suspicious circumstances which the defendants have failed to satisfactorily dispel. The alleged presence of the plaintiff at the time of execution, the passing of consideration of Rs.15,52,000/-, and the claimed payment thereof under Ex.B5 have not been proved. Consequently, the sale deed dated 04.10.2013 is not valid.

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27. In so far as Ex.A6 is concerned, it is evident that the same is a sham and nominal transaction. In any event, it stood cancelled during the pendency of the suit and is no longer in force.

28. For the foregoing reasons, it is held that the sale deed dated 04.10.2013 (Ex.A4) executed by the second defendant in favour of the third defendant and the agreement to sell dated 04.10.2013 (Ex.A6) entered into between the first and third defendants are not valid in law. Accordingly, Points Nos.(i) and (ii) are answered.

29. **Point No (iii):** Both the plaintiff and the third defendant claim to be in possession of the suit property. However, neither party has produced independent documentary evidence to establish actual possession. The third defendant claims possession solely on the strength of title under the sale deed Ex.A4. As already held while answering Points Nos.1 and 2, the said sale deed is not valid in law, and consequently, the third defendant cannot derive either title or lawful possession thereunder.



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30. The suit property is a vacant site. In such circumstances, the settled principle of law is that possession follows title. As the title to the suit property continues to vest with the plaintiff, it necessarily follows that the plaintiff is deemed to be in possession thereof. Accordingly, it is held that the plaintiff is in possession of the suit property, and Point No (iii) is answered in favour of the Plaintiff.

31. **Point No (iv) :** Having concluded that the sale deed dated 04.10.2013 is void, the trial Court proceeded to grant a decree in favour of the second defendant directing the plaintiff to pay a sum of Rs.5,00,000/- with interest.

32. At the outset, it is to be noted that the second defendant neither pleaded nor asserted any claim that the plaintiff was indebted to him in a sum of Rs.5,00,000/-. On the contrary, it was the plaintiff who put forth a case that the second defendant had advanced Rs.5,00,000/- as a loan. The trial Court, in granting a money decree in favour of the second defendant despite the absence of any pleading or counter-claim, acted in derogation of the settled principle, *judex ne eat ultra petita partium*. In the absence of any counter-claim or specific plea by the second defendant seeking

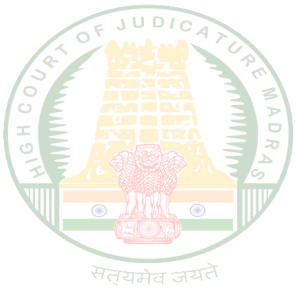
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recovery of any amount, the trial Court could not have granted a money decree in his favour merely on the basis of the plaintiff's pleadings. Such a course is wholly unsustainable in law.

33. Further, the trial Court granted a money decree in favour of the second defendant without insisting upon payment of the requisite court fee or compliance with the provisions of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. A decree for money cannot be granted in disregard of the mandatory fiscal requirements governing the institution and valuation of suits.

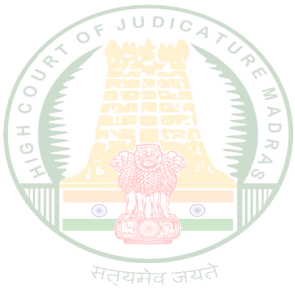
34. It is no doubt true that, in appropriate cases, a civil court may mould or modify the relief sought, either by granting a lesser relief than that prayed for or by exercising its inherent powers under Section 151 CPC. However, such power does not extend to granting a relief which has not been prayed for at all. While a court may grant a lesser relief where a party claims more than what it is legally entitled to, it cannot grant a relief which has not been specifically sought, unless the pleadings are duly amended in accordance with law prior to the pronouncement of judgment.



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35. The doctrine of alternative remedy merely regulates the maintainability of proceedings and the discretion of the Court in entertaining a claim; it does not confer any positive or substantive right upon a defendant. Granting relief to a defendant who has not sought such relief either by way of a counter-claim or through independent proceedings amounts to travelling beyond the pleadings and violates the settled principle that no party can be granted a relief which it has neither prayed for nor proved.

36. Though the Court possesses inherent power to mould the relief, such power must be exercised within the framework of the Code of Civil Procedure. The Court does not have any extraordinary authority to grant relief to a person who has neither invoked its jurisdiction in the manner known to law nor complied with the procedural and fiscal requirements mandated under the CPC and the Court-Fees Act. A money decree granted *ultra petita*, in favour of a party who has neither sought nor pleaded such relief, discloses a clear jurisdictional error. The trial Court, without advertent to these fundamental aspects, mechanically granted a money decree as though it possessed unbridled authority to do so.

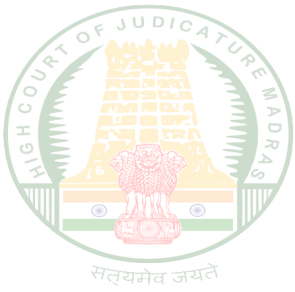


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37. In these circumstances, this Court holds that the decree granted in favour of the second defendant directing the plaintiff to pay a sum of Rs.5,00,000/- is not sustainable in law and is liable to be set aside. Accordingly, Point No.(iv) is answered against the defendants.

38. With respect to Issue No.2, it is observed that subsequent to the institution of the suit, the agreement to sell dated 04.10.2013 (Ex.A6) entered into between the first and third defendants was cancelled by a cancellation deed marked as Ex.B9, executed by the concerned parties. In view of such subsequent cancellation, the said agreement is no longer in force and has ceased to operate. Consequently, no separate decree is required declaring Ex.A6 as invalid, as the document is no longer in the field.

39. In the result, the judgment and decree passed by the trial Court in O.S. No.311 of 2013 declaring the sale deed dated 04.10.2013 (Ex.A4) as null and void is confirmed. However, the direction issued by the trial Court directing the plaintiff to pay or return a sum of Rs.5,00,000/- with interest to the second defendant is set aside.



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40. Accordingly, A.S. No.644 of 2019 is dismissed with costs, and

in consequence, the suit in O.S. No.311 of 2013 on the file of the

I Additional District Court, Salem, stands allowed, without granting any

decree/ relief in favour of the defendants. Connected miscellaneous

petition(s), if any, arising out of the appeal, shall stand closed.

02.01.2026

dpq

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No



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A.S.No.644 of 2019

DR. A.D. MARIA CLETE, J

dpq

To

1. The I Additional District Court,
Salem

PRE-DELIVERY JUDGMENT MADE IN
A.S. No. 644 of 2019

02.01.2026