



S.A.No.1286 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

<b>Reserved on</b>	<b>16.10.2025</b>
<b>Pronounced on</b>	<b>09.01.2026</b>

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN  
THILAKAVADI**

S.A.No.1286 of 2019

C. Ravichandran

...Appellant

**Vs.**

1. E. Annamalai
2. E. Krishnan
3. E. Ramasamy
4. E. Kathiriyappan
5. E. Venkatesan @ Venkatesh Raja
6. Ponnammal
7. Karthik
8. Sundaresan
9. Sudhakar
10. Minor Surekha
11. Kathirammal
12. Motti @ Muniyammal
13. Kuppammal

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 16.10.2019 passed in A.S. No.30 of 2017, on the file of the Principal Subordinate Court, Krishnagiri, modifying the



S.A.No.1286 of 2019

**WEB COPY** Judgment and decree dated 17.03.2017 passed in O.S. No.169 of 2012, on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mr. E.V.Chandru  
For Respondents : Mrs. Chithra Sampath, Senior Advocate  
for Mr.D. Ramesh Kumar for R1 to R9  
R10 represented by R6  
R11 to R13 – No appearance

### **JUDGMENT**

The present Second Appeal is preferred against the judgment and decree in A.S. No.30 of 2017 on the file of Principle Sub Court, Krishnagiri dated 16.10.2019 modifying the Judgment and decree dated 17.03.2017 passed in O.S. No.169 of 2012, on the file of the District Munsif Court, Krishnagiri.

2. The 1<sup>st</sup> defendant is the appellant herein. The plaintiffs have preferred the above suit in O.S.No.169 of 2012 for declaration of title and for permanent injunction.

3. The case of the plaintiffs is that the suit property is comprised in S.No.71 and in S.No.269/1 measuring 1.12.5 hectre belonged to the father



S.A.No.1286 of 2019

WEB COPY

of the plaintiffs namely Eswarappa Gounder who acquired the same from an ancestral oral partition effected 60 years ago prior to the suit. After his demise, the plaintiffs succeeded the suit property and they have been in possession and enjoyment of the same by paying kists to the Government. On 21.12.1938, one Kuppanna Gounder had purchased 3 ½ /5 shares in S.No.269/1 measuring 1.96 acres and sold the same to Eswarappa Gounder and others. In pursuant to the family arrangement, the said Eswarappa Gounder, had got the above mentioned 1.92 acres in S.No.269/1. Apart from that, on 28.05.1954, one Gundi Venkatappan had gifted 0.30 cents of land in the said Survey number. Therefore, the plaintiffs' father got 2.26 acres in the said survey number 269/1. The remaining 0.48 cents land was gifted by the said Gundi Venkatappan in favour of Tirupati Sri Venkatesa Perumal Temple through a settlement deed dated 15.07.1957. The plaintiffs' father was cultivating the said temple's land and paid Rs.20/- per annum during Puratasi month for performing pooja in the said temple. After his life time, the plaintiffs have been in possession and enjoyment of the same and are paying pooja expenses to the temple. The defendants do not have any right in the suit property and had fabricated a sale deed dated 26.11.2010 in favour of the



S.A.No.1286 of 2019

WEB COPY 1<sup>st</sup> defendant with intention to grab the suit property. Under the guise of the said sale deed, the defendants are attempting to disturb the plaintiffs' peaceful possession and enjoyment of the suit property. Hence, the suit.

4. The claim of the plaintiffs was resisted by the defendants stating that, one Molagan @ Muniappan was in possession and enjoyment of the suit property. After his demise, his wife Muniammal executed a settlement deed on 06.07.1983 in favour of her daughters namely the defendants 2 to 4. Since then, the said defendants were in possession and enjoyment of the suit property. Thereafter, the 1<sup>st</sup> defendant purchased the suit property from the defendants 2 to 4 for a valid consideration under a registered sale deed dated 26.11.2010 and he is in possession and enjoyment of the same from the date of sale deed. Neither the plaintiffs' father Eswarappa Gounder nor the plaintiffs had been in possession and enjoyment of the suit property at any point of time. Their further contention is that, the suit property originally belonged to one Chinnappa Gounder who sold the same to one Gettusal Kathirappa Gounder as per the sale deed dated 14.03.1916. Thereafter, the legal heirs of the said Gettusal Kathirappa Gounder sold away their 3½ share in the suit



S.A.No.1286 of 2019

WEB COPY property to one Kuppanna Gounder under a sale deed dated 22.12.1938.

Subsequently, the grandson of Gettusal Kathirappa Gounder namely Kuppanna Gounder sold the same 3½ share in the suit property to one Eswarappa Gounder, father of the plaintiffs, under the sale deed dated 02.05.1945. Therefore, the same property could not have been sold by the grandson of Gettusal Kathirappa Gounder to the plaintiffs' father and the same is not valid in the eye of law. Further, Gundi Venkatappan, son of Gettusal Sinthayammal executed a gift deed dated 15.07.1957 in respect of 0.40 cents in the suit Survey number, which would reveal that the suit property is not an ancestral property of the plaintiffs' father. It is further contended that the relief of declaration in respect of 'B' schedule property, which is gifted to the Tirupathi Venkateswara Perumal Temple is not maintainable. The authorities of the temple are necessary parties to the suit. Hence, the suit is bad for non joinder of necessary parties. Therefore, the defendants prays for dismissal of the above suit.

5. The trial court, considering the materials on record, concluded that the plaintiffs have got absolute title in the 'A' schedule property except the property purchased by the 1<sup>st</sup> defendant under Ex.B6 and



S.A.No.1286 of 2019

WEB COPY

granted the relief of permanent injunction and dismissed the suit in respect of the property covered under Ex.B6 sale deed. The trial court also declared the conditional enjoyment of the plaintiffs in the 'B' schedule property under the veil of Ex.A11.

6. Aggrieved by this, the plaintiffs have preferred the appeal suit in A.S. No.30/2017 before the Principal Sub Court, Krishnagiri. The first appellate court, modified the judgment and decree passed by the trial court and declared that Ex.B6 sale deed in favour of the 1<sup>st</sup> defendant as void and further declared that the plaintiffs are the absolute owners of the plaint 'A' schedule property and granted permanent injunction against the 1<sup>st</sup> defendant restraining him from interfering with the possession and enjoyment of the plaintiffs in the suit 'A' schedule property and dismissed the suit in respect of 'B' schedule property.

7. Challenging the same, the present Second Appeal is preferred by the 1<sup>st</sup> defendant.



S.A.No.1286 of 2019

**WEB COPY** 8. The following substantial questions of law were raised in the Memorandum of appeal.

- i. When the suit property was sold to the predecessor in interest of the 1<sup>st</sup> defendant much earlier to the sale made in favour of predecessor in interest of the plaintiffs, whether the judgment and decree of the lower appellate court upholding the title of the plaintiffs are not perverse?
- ii. When the materials on record clearly support the claim of the 1<sup>st</sup> defendant regarding his possession, whether the judgment and decree of the lower appellate court granting the relief of permanent injunction in favour of the plaintiffs are not contrary to the evidence?

9. Mr. E.V. Chandru, the learned counsel for the appellant / 1<sup>st</sup> defendant would submit that the suit property was sold to the predecessor in interest of the 1<sup>st</sup> defendant much earlier to the sale deed made in favour of the predecessor in interest of the plaintiffs and that the material on record clearly supports the claim of the 1<sup>st</sup> defendant regarding his possession in the said property. His further submission is that the 1<sup>st</sup>



S.A.No.1286 of 2019

WEB COPY

defendant traced his title under the registered sale deed dated 21.12.1938 marked as Ex.B2, which is much earlier in point of time to the plaintiffs' documents. Ex.B10 patta was also granted in favour of the 1<sup>st</sup> defendant which would evidence his possession in the property and therefore, the plaintiffs could not seek the relief of permanent injunction as against the 1<sup>st</sup> defendant. The title document relied by the plaintiffs marked as Ex.A9 is not valid for the reason that the same property had already been sold 7 years before to the predecessor in interest of the 1<sup>st</sup> defendant. He would further submit that the plaintiffs have relied only upon certified copies of the title deed. The plaintiffs have not explained for producing the secondary evidence to prove their title. In the absence of the original documents, a proper explanation of its absence has to be given and that the terms 'primary and secondary evidence' apply to the kinds of proofs that may be given to the contents of a document, irrespective of the purpose for which such contents, when proved, may be received. To support his contentions he has relied upon the judgment in *Vijay vs. Union of India & others* reported in *2023 LiveLaw (SC) 1022*. He contends that the first appellate court erred in modifying the well considered judgment and decree of the trial court. Hence, prayed for



S.A.No.1286 of 2019

WEB COPY setting aside the judgment and decree passed by the first appellate court.

10. On the other hand, Mrs. Chithra Sampath, learned Senior Advocate appearing for Mr.D. Ramesh Kumar, learned counsel on record for R1 to R9/plaintiffs would submit that the defendants failed to prove that the property under Ex.B6 was originally owned by the executor of Ex.B5. The executor of Ex.B5 did not have any right over the said property, unless it is shown that the executor has some right in the said property. The defendants failed to prove that the property mentioned in Ex.B5 document belongs to them. On the other hand, the plaintiffs have produced sufficient documentary evidence marked as Ex.A1 to Ex.A12 with regard to their title and possession over the suit property, which includes the property mentioned in Ex.B6. The first appellate court rightly rejected Ex.B5 and Ex.B6 documents solely on the ground that the above documents are void. The first appellate court has rightly decreed the suit in favour of the plaintiffs in respect of the 'A' schedule property, which warrants any interference by this Court.



S.A.No.1286 of 2019

**WEB COPY** 11. In spite of notice, there is no representation on the side of the respondents 11 to 13.

12. Heard on both sides. Records perused.

13. No doubt, the plaintiff who comes before the Court is the one who has to establish and prove his case on the basis of the strength of his own facts and the materials on record and the law, rather than relying on the weakness or draw back of the defendant. It is for the plaintiff who comes before the Court to produce such material before the Court to prove and establish their case of ownership of the suit schedule property by producing cogent material evidence to the satisfaction of the court and demolish any other material placed by the defendant to succeed in his case.

14. In the present case, admittedly the plaintiffs are relying upon certified copies of the documents exhibited as Ex.A8 to Ex.A10 to establish their title in the suit property. According to the plaintiffs under Ex.A8 sale deed dated 21.12.1938 one Kuppanna Gounder purchased 3 ½



S.A.No.1286 of 2019

WEB COPY /5 share in S.F. No.269/1, i.e., 1.96 acres and sold the same to Eswara Goundan and others under Ex.A9 sale deed dated 02.05.1945. The plaintiffs further states that in an oral partition which took place 60 years ago, the 'A' schedule property was allotted to the share of Eswara Goundan. The further case of the plaintiffs is that on 28.05.1954, one Gundi Venkatappan had gifted 0.30 cents of land in the said survey number in favour of Eswara Goundan and therefore, in total the father of the plaintiffs, namely Eswara Goundan had got 2.26 acres in S.No.269/1. The trial court rejected the above documents on the ground that, the secondary evidence cannot be permitted since the plaintiffs failed to establish that the original documents are lost or destroyed.

15. It is well settled law with regard to the admissibility of documents in evidence and Section 74 of the Indian Evidence Act,1872, which clearly states that the sale deed kept in the office of the Sub Registrar would become a public record and a private document and hence, the findings of the trial court and the contention of the learned counsel for the appellant that the plaintiffs have not laid any foundation for production of the same would not hold water. When a registered



S.A.No.1286 of 2019

WEB COPY

document is relied on the basis of the original document, there is always a presumption that there is due execution of the document of which certified copy is available in the public record of the Sub Registrar from where the said documents are obtained and the same is produced and rightly marked as exhibits by the trial court. Such documents produced after procuring it from the Sub Registrar Office, which is a public office, will become a public record of a private document.

16. It is necessary to extract the provisions of Sections 62, 64, 65 and 74 of the Evidence Act, 1872 :-

*"62. Primary evidence. -- Primary evidence means the document itself produced for the inspection of the Court.*

*Explanation 1. --Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.*

*Explanation 2. -- Where a number of documents are all made by*



S.A.No.1286 of 2019

**WEB COPY** *one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.*

*64. Proof of documents by primary evidence.- Documents must be proved by primary evidence except in the cases hereinafter mentioned.*

*65. Cases in which secondary evidence relating to documents may be given.--Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: --*

*(a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;*

*(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;*



S.A.No.1286 of 2019

**WEB COPY** (c) *when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;*

(d) *when the original is of such a nature as not to be easily movable;*

(e) *when the original is a public document within the meaning of section 74;*

(f) *when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;*

(g) *when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.*

*In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.*



S.A.No.1286 of 2019

WEB COPY

*In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.*

*In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.*

*74. Public documents.--The following documents are public documents:*

*(1) Documents forming the acts, or records of the acts*  
*(i) of the sovereign authority,*  
*(ii) of official bodies and tribunals, and*  
*(iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;*

*(2) Public records kept[in any State] of private documents.*

*79. Presumption as to genuineness of certified copies.- The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer [of the Central Government or of a State Government, or by any officer [in the*



S.A.No.1286 of 2019

**WEB COPY** *State of Jammu and Kashmir] who is duly authorized thereto by the Central Government:*

*Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.*

*The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper."*

*Section 74(2) of the Indian Evidence Act deals with public records kept in any State of private documents. Therefore, the certified copy obtained of Ex.D.1 by the defendant would come within the definition of public document under section 74(2) of the Indian Evidence Act.*

17. In case of ***Appaiya vs. Andimuthu @ Thangapandi and Others, Civil Appeal No.14630/2015 (@ SLP (C)No.10013/2015)*** at paragraph No.29 the Hon'ble Apex Court has held as under :

*"29. Having regard to all the aforesaid circumstances and in the light of the various provisions of the Evidence Act mentioned*



S.A.No.1286 of 2019

WEB COPY

hereinbefore we will firstly consider the question whether the appellant/plaintiff had succeeded in proving the contents of Ext.A1. Going by Section 65(e) when the original of a document is a public document within the meaning of Section 74, secondary evidence relating its original viz., as to its existence, condition or contents may be given by producing its certified copy. Ext.A1, indisputably is the certified copy of sale deed No.1209/1928 dated 27.08.1928 of SRO Andipatti. In terms of Section 74(2) of the Evidence Act, its original falls within the definition of public document and there is no case that it is not certified in the manner provided under the Evidence Act. As noticed hereinbefore, the sole objection is that what was produced as Ext.A1 is only a certified copy of the sale deed and its original was not produced in evidence. The hollowness and unsustainability of the said objection would be revealed on application of the relevant provisions under the Evidence Act and the Registration Act, 1908. It is in this regard that Section 77 and 79 of the Evidence Act, as extracted earlier, assume relevance. Section 77 provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness of certified copies provided the existence of a law declaring certified copy of document of such nature to be admissible as evidence. When that be the position under the aforesaid provisions, taking note of the fact that the document in question is a registered sale deed, falling within the definition of a public document, the



S.A.No.1286 of 2019

WEB COPY

*question is whether there exists any law declaring such certified copy of a document as admissible in evidence for the purpose of proving the contents of its original document. Sub-section (5) of Section 57 of the Registration Act is the relevant provision that provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. In this context it is to be noted that certified copy issued thereunder is not a copy of the original document, but is a copy of the registration entry which is itself a copy of the original and is a public document under Section 74(2) of the Evidence Act and Sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original. There is no case that foundation for letting in secondary evidence was not laid and as noted earlier, both the trial Court and the First Appellate Court found it admissible in evidence. Thus, the cumulative effect of the aforementioned sections of the Evidence Act and Section 57(5) of the Registration Act would make the certified copy of the sale deed No.1209/1928 dated 27.08.1928 of SRO Andipatti, produced as Ext.All admissible in evidence for the purpose of proving the contents of the said original document. When this be the position in the light of the specific provisions referred hereinbefore under the Evidence Act and the Registration Act, we have no hesitation to hold that the finding of the High Court that the certified copy of Ext.11 owing to the failure in production of the original and proving through an independent*



S.A.No.1286 of 2019

WEB COPY

*witness is inadmissible in evidence, is legally unsustainable. In the other words, the acceptance of the admissibility of Ext.A1 found in favour of the appellant/plaintiff by the trial Court and confirmed by the First Appellate Court was perfectly in tune with the provisions referred hereinbefore and the High Court had committed an error in reversing the finding regarding the admissibility of Ext.A1."*

18. Therefore, though the original transfer deeds would be primary evidence in terms of Section 62 of Indian Evidence Act, 1872, in terms of Section 63, a certified copy of the said document could be marked as secondary evidence. In terms of Section 74(2) of Indian Evidence Act, 1872, all public records of private documents would amount to a public document. Thus, the transfer deeds, being a public record of a private document, would amount to a public document under Section 74 of Indian Evidence Act. In terms of Section 77 of Indian Evidence Act, certified copies of public documents can be produced in proof of the contents of the public documents and also in terms of Section 65(e) and (f) when the original is a public document, secondary evidence can be led by way of producing the certified copy there of.



S.A.No.1286 of 2019

WEB COPY

19. In the present case, though the contention of the learned counsel for the appellant/1<sup>st</sup> defendant is that the first appellate court erroneously relied upon the exhibits A8 to A10 and the same are inadmissible on the ground that no valid explanation given by the plaintiffs for not producing the original documents, the certified copy proves the existence of the original document. However, the execution and genuineness of the original transaction must still be established. The defendants did not object while marking Ex.A8 to A10 during trial. When the defendant does not object to the marking of certified sale deed copies, it generally means they accept the documents' existence and its contents as presented, preventing later challenges on those grounds. But still, the plaintiffs need to lay a factual foundation to prove that it is a genuine transaction, unless the defendants admit the fact. The 'A' Register marked as Ex.A1 would reveal that the property measuring 1.96 acres in S.F. No.269/1 is in the name of Eswara Goundan. Ex.A7 kists receipts also stands in the name of Eswara Goundan and plaintiffs. The above revenue records would show that the said Eswara Goundan was in



S.A.No.1286 of 2019

WEB COPY

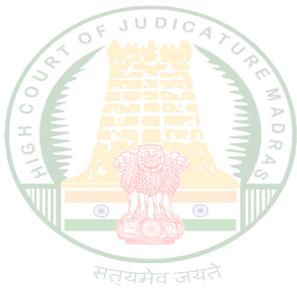
exclusive possession of plaint 'A' schedule property. Apart from that, under Ex.A10 settlement deed, 0.30 cents of land in S.F. No.269/1 was settled in favour of Eswara Goundan by one Gundi Venkatappan. He had also transferred an extent of 0.48 cents in S.F. No.269/1 to Sri Venkateswara Perumal at Tirupati under Ex.A11 gift deed. This fact is not disputed by the defendants. Therefore, under Ex.A10 and A11 sale deeds the said Gundi Venkatappan has transferred his properties in S.F. No.269/1 in favour of Eswara Goundan to an extent of 0.30 cents and in favour of Tirupati Temple to an extent of 0.48 cents. In total, the said Eswara Goundan is entitled to 2.26 acres in S.F. No.269/1 of Naralapalli Village. The plaintiffs being the legal heirs of the said Eswara Goundan have inherited the said properties after the demise of Eswara Goundan. Though the defendants claim title to an extent of 1.10 acre in the 'A' schedule property under Ex.B5 and B6 deeds, failed to establish that how the predecessor in title, namely, Molagan @ Muniappan got title and interest in the said property. There is nothing on record to prove his possession and enjoyment in the suit property. While so, the mother of the defendants 2 to 4 namely Muniammal have no right to execute a settlement deed in favour of the defendants 2 to 4. Though in Ex.B5



S.A.No.1286 of 2019

WEB COPY

settlement deed it is mentioned that the property belongs to Muniammal through her husband Molagan @ Muniappan, without establishing the title of Molagan @ Muniappan, the settlement executed by his wife Muniammal in favour of her daughters under Ex.B5 is not valid, even if it is 30 years old document. Moreover, patta is not a title for document. The 1<sup>st</sup> defendant though claims his right over the property to an extent of 1.10 acre in S.F. No.269/1 under Ex.B6 sale deed, ought to have proved the title of his predecessor. The appellant / 1<sup>st</sup> defendant failed to establish that the suit property was sold to the predecessor in interest of the 1<sup>st</sup> defendant much earlier to the sale made in favour of predecessor in interest of the plaintiffs. The documents produced on the side of the 1<sup>st</sup> defendant do not support the case of the 1<sup>st</sup> defendant with regard to tracing title and possession in the suit property. Therefore, the first appellate court has rightly set aside the findings of the trial court that, the 1<sup>st</sup> defendant has got title to an extent of 1.10 acre in 'A' schedule property, warrants any interference by this Court. No infirmity or perversity is found in the said judgment of the first appellate court.



S.A.No.1286 of 2019

WEB COPY

20. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The Judgment and decree dated 16.10.2019 passed in A.S. No.30 of 2017, on the file of the Principal Subordinate Court, Krishnagiri, is upheld.

09.01.2026

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga

To

1. The Principal Subordinate Judge, Krishnagiri.
2. The District Munsif, Krishnagiri
3. The Section Officer, VR Section, High Court, Madras.

Page 23 of 24



WEB COPY



S.A.No.1286 of 2019

**K.GOVINDARAJAN THILAKAVADI,J.**

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Pre delivery judgment in

S.A.No.1286 of 2019

09.01.2026