

S.A. No. 10 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.11.2025
Pronounced on	.02.2026

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CORAM :

THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

S.A.No.10 of 2023 and
C.M.P. No.3002 of 2023

K.S. Mohammed Saleem (died)

1. Shafia Banu

2. Minor M.S. Salman Sheriff

3. Minor M.S. Shefa Sheriff

...Appellants

Vs.

K.S. Mohammed Zackriah

....Respondent

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 23.08.2016 passed in A.S. No.9 of 2013, on the file of the District Judge and Appellate Authority of the Nilgiris at Udthagamandalam, confirming the Judgment and decree dated 12.08.2013 passed in O.S. No.140 of 2010, on the file of the Sub Court, Nilgiris at Udthagmandalam.

For Appellants : Mr. T. Karunakaran

For Respondent : Mr. J. Franklin



S.A. No. 100 of 2013

JUDGMENT

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The present Second Appeal is preferred against the decree and judgment dated 23.08.2016 passed in A.S. No.9 of 2013, on the file of the District Judge and Appellate Authority of the Nilgiris at Udthagamandalam, confirming the Judgment and decree dated 12.08.2013 passed in O.S. No.140 of 2010, on the file of the Sub Court, Nilgiris at Udthagmandalam.

2. The plaintiff in the above suit jointly purchased the suit property under Ex.A1 sale deed dated 08.05.1995 along with his brother K.S. Mohammed Salim, the defendant in the above suit. According to the plaintiff, the suit property is enjoyed jointly and the revenue records are mutated in the name of the plaintiff and the defendant. Thereafter the plaintiff demanded partition of the suit property and the defendant was not amenable for the said demand. Hence, the plaintiff issued a legal notice which was received by the defendant and was not responded. Hence, the plaintiff was constrained to file the above suit.

3. The claim of the plaintiff was resisted by the defendant stating that the entire sale consideration was paid only by the defendant and that the plaintiff was only a name lender. Ever since the purchase of the suit property, the defendant alone is in exclusive



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possession and enjoyment of the same. The plaintiff never enjoyed the suit property jointly with the defendant. Since the defendant was in continuous and exclusive enjoyment of the suit property over the statutory period with the knowledge of the plaintiff, he has acquired title over the suit property by adverse possession and ouster. Hence prayed for dismissal of the suit.

4. Based on the above pleadings, the trial court has framed necessary issues. On the side of the plaintiff, two witnesses were examined and 10 documents were marked. On the side of the defendant, no one was examined and no documentary evidence was let in. The trial court based on the materials on record, decreed the suit in favour of the plaintiff, against which, the defendant preferred the appeal suit in A.S.No.9/2013. The first appellate court also dismissed the appeal suit confirming the preliminary decree and judgment dated 12.08.2013 made in O.S.No.140/2010 by the learned Sub Judge, Udthagamandalam.

5. Challenging the above judgment and decree passed in A.S. No.9/2013, this Second Appeal is preferred under Section 100 CPC.



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6. The Second Appeal has been admitted on the following substantial questions of

law:

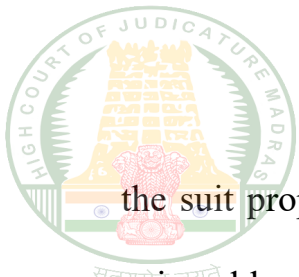
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(a) *Whether the Courts below ought to have considered that the sale consideration is paid by the respondent as per Section 54 of T.P. Act?*

(b) *Whether the courts below ought to have considered that the appellants hold adverse possession were the sale deed was effected on 08.05.1995 and thereafter the respondent is claiming title over the property by filing the suit after 15 years i.e., on 26.07.2010?*

7. The learned counsel for the appellant/defendant would submit that, the appellant/defendant alone paid the sale consideration and the respondent/plaintiff is only a name lender and that the appellant/defendant perfected title in the suit property by adverse possession since he was in exclusive and continuous possession for more than statutory period. Hence, prayed for setting aside the judgment and decree passed by the courts below.

8. On the other hand, the learned counsel for the respondent/plaintiff would submit that the plaintiff is the brother of the defendant and they have jointly purchased



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the suit property under Ex.A1 sale deed dated 08.05.1995. The suit property is jointly enjoyed by the plaintiff and the defendant and therefore, the plaintiff is entitled for half share in the suit property. The courts below have considered the above facts and circumstances of the case, rightly decreed the suit in favour of the plaintiff, which warrants any interference by this Court.

9. Heard on both sides. Records perused.

10. Now it has to be seen whether the sale consideration is paid by the respondent/plaintiff as per Section 54 of Transfer of Property Act, and whether the appellant/defendant perfected title over the suit property by adverse possession.

11. A defendant generally cannot claim exclusive ownership of the property when the sale deed lists both the plaintiff and the defendant as joint owners. When a sale deed stands in the name of both the parties, they are considered joint owners. If one co-sharer is in physical possession, the other is deemed to be in constructive possession. Mere long possession or exclusive enjoyment by one co-owner does not destroy the co-ownership right of the other, unless explicit hostile title is proven. The defendant might claim to have perfected title through adverse possession, but this requires proving that



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they held the property exclusively and against the plaintiff's knowledge for the statutory period. The defendant might also claim that he paid the full consideration and the plaintiff is merely a nominal owner, but it is difficult to prove under the Benami Transactions Prohibition Act. Without proving one of the above, the defendant cannot claim exclusive rights and the plaintiff can seek partition to divide the joint property.

12. In the present suit, though the defendant claim exclusive right to the suit property, registered jointly with the plaintiff, there is no strong, specific proof to substantiate the same. The defendant failed to prove the sale deed, despite listing both names, was intended for him alone. The defendant also failed to prove that he paid the entire sale consideration or establish ownership via adverse possession. Moreover, a sale deed in both names, normally implies joint ownership. The defendant failed to show that the plaintiff is a name lender or that a fraud was committed, proving the defendant provided entire purchase money. Further, the claim of the defendant that he has exclusive right, open, continuous and hostile possession to the exclusion of the plaintiff for a statutory period is also not proved. The burden lies heavily on the defendant to prove that he is the sole owner, often requiring evidence beyond just possession, such as evidence of exclusive payment of taxes, construction or maintenance, to show *Animus Possidendi*, which the defendant failed to prove. Moreover, Ex.A2 and Ex.A3 revenue records produced on the side of the plaintiff would reveal that they are in joint



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possession of the suit property. Further, the legal notice sent by the plaintiff demanding half share in the suit property, was also not replied by the defendant, which leads to adverse inference. The copy of Ration Card, Voter ID and Membership card issued by Tamil Nadu Agricultural Protection and Welfare Scheme marked as Ex.A5 to Ex.A7 supports the case of the plaintiff. On the other hand, the defendant has not chosen to let in any evidence in support of his contention and to non suit the claim of the plaintiff. As rightly pointed out by the learned counsel for the respondent/plaintiff, the plea of Benami transaction is barred under Sections 3 and 4 of Benami Transactions Act. Further, the defendant failed to prove the plea of ouster and adverse possession. The courts below have rightly appreciated the evidence on record and decreed the suit in favour of the plaintiff which warrants any interference by this Court. Accordingly, the substantial questions of law are answered against the appellant.

13. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 23.08.2016 passed in A.S. No.9 of 2013, on the file of the District Judge and Appellate Authority of the Nilgiris at Udthagamandalam, confirming the Judgment and decree dated



S.A. No. 12082013

12.08.2013 passed in O.S. No.140 of 2010, on the file of the Sub Court,

सत्यमेव जयते Nilgiris at Udhagamandalam, is upheld.

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.02.2026

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order
bga

To

1. The District Judge and Appellate Authority of the Nilgiris at Udhagamandalam
2. The Sub Judge, Nilgiris at Udhagamandalam
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
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Pre delivery judgment in
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