

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.21 of 2006

Kausalya

... Appellant

Vs

1.Official Trustee of Tamilnadu  
Rep. by the Trust Estate of  
Kodapakkam Charities.

2.V.Raman

... Respondents

**R2 dispensed with vide court  
order dated 03.11.2016**

This appeal is filed under Section 96 of C.P.C. Against the decree and judgement dated 10.02.2003 made in O.S.No.7769 of 1996, on the file of the Additional District and Sessions Judge (Fast Track Court-II, Madras).

For Appellant

:Mr.G.Ethirajulu

for Mr.NA.Malaisaravanan

For Respondents

:Miss.R.M.Subathra

Deputy Administrator General and  
Official Trustee of Tamil Nadu  
for R1

**J U D G E M E N T**

The 2<sup>nd</sup> defendant, who suffered a decree for eviction and mense profits

in O.S.No.7769 of 1996, on the file of the Additional District and Sessions Judge (Fast Track Court-II, Madras) is the appellant. The suit was filed by the Administrator General and Official Trustee of Tamil Nadu, who has been given custody of the properties of the Trust Estate named as Kadapakkam Charities in C.S.No.200 of 1930.

2. According to the Official Trustee, the properties belonging to the Trust's Estate were in occupation of about 133 tenants, against whom an Ejectment suit in O.S.No.133 of 1971 was filed. The tenants have jointly moved this Hon'ble Court with an application in A.No.2183 of 1976 in C.S.No.200 of 1930 seeking direction for sale of the properties in their possession. This Court by an order dated 12.10.1976, permitted the sale subject to certain conditions. One of the conditions as suggested by the Official Trustee, namely, Condition No.9, reads as follows:

“ That, if any person alienates the piece of land within a period of 10 years from the date of execution of the sale deed in his favour, he is liable to be evicted without any compensation either for the land or for the superstructure, if any put up by him and the alienee will not get any title on such alienations.”

3. The suit property was sold to the 1<sup>st</sup> defendant under the sale deed dated 24.05.1983 registered as document No.667 of 1983 in the Office of the Sub Registrar, Mylapore, Madras. The 1<sup>st</sup> defendant in violation of the said

conditions, sold the suit property to the 2nd defendant on 31.12.1985. The said sale deed has been registered as document No.976 of 1986 in the office of the Sub Registrar, Mylapore, Madras. To confirm the said sale, the 1<sup>st</sup> defendant had filed an application in Appln.No.833 of 1988 seeking the following prayer:

“ Hence, it is prayed that this Hon'ble Court may be pleased to confirm the sale effected by me in favour of Smt.Kausalya on 31.12.1985 and registered as document No.976 of 1986 before the Sub-Registrar of Mylapore as valid.”

4. The said application was resisted by the learned Official Trustee and the same was dismissed by an order dated 07.10.1988. On such dismissal, the Official Trustee had filed the present suit for recovery of possession from the tenant. The tenant namely, Raman, the first defendant remained exparte.

5. The alienee was impleaded as 2<sup>nd</sup> defendant in the suit and she filed her written statement contending that she is a bonafide purchaser for valid consideration without notice of the conditions imposed by this Court. She would claim that she is an illiterate lady and inasmuch as she was not made as a party in Appln.No.833 of 1988, the order made therein is not binding on her. She also claimed that the conditions imposed by Class-9 of the order dated 12.10.1976 is unenforceable. She would also plead that the suit is barred by limitation.

6. On the above pleadings, the learned Additional District and Sessions Judge (Fast Track Court-II) Chennai framed the following issues:

- 1) Whether the plaintiff is entitled to get possession of the property?
- 2) Whether the plaintiff is entitled to past damages Rs.17,800/- for the period from 07.10.1988 to 25.09.1991?
- 3) Whether the plaintiff is entitled to future damages?
- 4) To what other reliefs, the plaintiff is entitled to?

An additional issue was also framed on 27.12.2002.

- 1) Whether the suit is barred by limitation?

7. The learned Additional District and Sessions Judge (Fast Track Court-II) Madras found that the violation of condition No.9 of the order dated 12.10.1976 made in A.No.2183 of 1976 in O.S.No.200 of 1930, having been accepted by the defendant and also in view of the fact that the application seeking to confirm the sale, filed by the 1<sup>st</sup> defendant/vendor in Appln.No.833 of 1988 having been dismissed, the claim of the plaintiff for possession has to be allowed. On the question of limitation also, the learned Additional District and Sessions Judge (Fast Track Court-II) Madras found that that the sale in favour of the 1<sup>st</sup> defendant was in the year 1983 and the suit itself, having been filed on 20.09.1991, it is well within the limitation prescribed under Article 64 of the

Limitation Act.

8. On the aforesaid findings, the learned Additional District and Sessions Judge (Fast Track Court-II) Chennai decreed the suit for possession and granted decree for past mense profits at Rs.300/- per month from 7.10.1988 till filling of the suit and for future mense profits at Rs.300/- per month till handing over possession of the suit property. Four months time has been granted to vacate and hand over vacant possession.

9. Aggrieved by the said decree, the 2<sup>nd</sup> defendant has come forward with the above appeal.

9a. I have heard Mr.G.Ethirajulu for Mr.NA.Malai Saravanan, learned counsel appearing for the appellant and Mrs.R.M.Subathra, Deputy Administrator General and Official Trustee of Tamil Nadu appearing for the plaintiff Trust.

The following points arise for determination in the appeal.

1. Whether the plaintiff is entitled to a decree for recovery of possession?
2. Whether damages as fixed by the Trial Court is just and reasonable?

**Point No.1**

10. Admittedly, the properties belong to the Trust namely, Kadapakkam Charities. It is not in dispute that the properties of the said charities have been vested with the plaintiff. Upon such right, the plaintiff filed the suit for eviction of the tenants. This Court had at the instance of the tenants given them the

right to purchase the property, subject to certain conditions. The said conditions were incorporated in the sale deed executed by the Official Trustee in favour of the tenants also. Such sale deed in favour of the 1<sup>st</sup> defendant was executed on 24.05.1983. Therefore, the sale condition imposed by Class-9 of the order dated 12.10.1976 was in force till 23.05.1993 i.e. 10 years from 24.05.1982.

11. While so, the 1<sup>st</sup> defendant had chosen to alienate the property in favour of the 2<sup>nd</sup> defendant even on 31.12.1985. The 1<sup>st</sup> defendant had also moved this Hon'ble Court seeking approval for the violation committed by him in Appln.No.833 of 1988 in C.S.No.200 of 1930. The said application having been dismissed by order dated 07.10.1988, the rigour class-9 of the order dated 12.10.1976 operates, and in terms of the said clause, the sale in favour of the 2<sup>nd</sup> defendant, does not confer any title on her.

12. In the light of the factual position, the 2<sup>nd</sup> defendant, who is a purchaser had no defence in the suit. Though it is claimed by the 2<sup>nd</sup> defendant that she is an illiterate woman and she has purchased the property from the power agent of the 1<sup>st</sup> defendant, without knowledge of the conditions, particularly class-9 of the order dated 12.10.1976. In her written statement as well as oral evidence, the 2<sup>nd</sup> defendant has admitted that the power agent of the 1<sup>st</sup> defendant, who executed the sale deed is none else than her husband. In such a case, it is for her to prove her version that she was cheated by the 1<sup>st</sup>

defendant.

13. Though Mr.G.Ethirajulu, learned counsel appearing for the appellant would make attempt to defend the sale deed executed in favour of the 2<sup>nd</sup> defendant, I am unable to countenance any of his submissions, in view of the aforesaid factual position, which leads to irresistible conclusion that the sale executed in favour of the 2<sup>nd</sup> defendant is invalid in law and the same is in violation of the conditions imposed by this Court, where direction was given to the 1<sup>st</sup> defendant not to sell the properties belonging to the charities in question.

14. I have no other option except to agree with the findings of the Trial Court to the effect that the sale deed dated 31.12.1985 executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant, has not conveyed any title to the 2<sup>nd</sup> defendant and the plaintiff is entitled to recover possession of the property from the second defendant. Therefore, the first question is answered against the 1<sup>st</sup> defendant.

**Point No.2**

15. As regards the damages, the 1<sup>st</sup> defendant has claimed a sum of Rs.500/- per month. The Trial Court after considering the evidence on record has come to the conclusion that Rs.300/- per month would be a just and reasonable sum. I do not find any infirmity in the said findings also. In fact, the 2<sup>nd</sup> defendant has not challenged the quantum of damages in this appeal.

Hence, Point No.2 is answered against the appellant. Though the point of limitation was urged before the Trial Court, Mr.G.Ethirajulu, learned counsel appearing for the appellant would submit that the suit having been filed within 12 years from the date of the execution of the sale deed in favour of the 2<sup>nd</sup> defendant by the first defendant, no defence can be raised on the ground of limitation.

16. In fine, the appeal is dismissed confirming the judgement and decree of the Trial Court dated 10.02.2003 made in O.S.No.7769 of 1996, on the file of the Additional District and Sessions Judge (Fast Track Court-II), Madras.

17. Mr.G.Ethirajulu learned counsel appearing for the appellant would submit that the second defendant may be given an opportunity to approach the Official Trustee namely, the plaintiff to purchase the property. It is open to her to do so and if any application is filed, the Official Trustee shall consider the same in accordance with law. It is made clear that the above observation shall not in any manner, prevent the Official Trustee from seeking possession of the properties by executing the decree granted by the Trial Court.

18. Considering the nature of the suit, there shall be no order as to costs. Consequently the connected CMP.No.765 of 2006 is also dismissed.

08.12.2016

To

The Additional District and Sessions Judge (Fast Track Court-II), Madras.

**R.SUBRAMANIAN,J**

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