

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2016

CORAM:

THE HONOURABLE Mr. JUSTICE **M.SATHYANARAYANAN**

C.S.No.218 of 2011

Mrs.Padmavathi Sundaresan
... Plaintiff

Vs.

1.Mrs.N.Udayakumari
2.Mr.K.Ravichandran
3.Mrs.Diana Christabel
... Defendants

For Plaintiff : Mr.J.Sivanandaraaj

For Defendants : Set exparte on 16.11.2015

J U D G M E N T

The plaintiff has averred that she is the absolute owner of the vacant land admeasuring to an extent of 2400 sq.ft in Plot No.77, S.No.14/3, situated at "THIRU-VI-KA NAGAR", Thundalam Village, Sriperumbudur Taluk, Kancheepuram District and it was purchased by her vide a registered Sale Deed bearing Document No.2185 of 1998, registered on the file of the Sub Registrar, Saidapet from one M.Gora Sinha and she would further state that she is in possession of the property right from the date of purchase.

2. The plaintiff would further state that originally the property purchased by her was part of a larger extent of land totally comprising of 41 cents belonging to one Tmt.Saroja alias Sarojini Devi, who obtained the title through a registered Partition Deed bearing Document No.1404 of 1979 dated 30.05.1979 in the office of the Sub Registrar, Saidapet. During the year 1983, Tmt.Saroja alias Sarojini Devi executed a settlement deed in favour of her husband Mr.K.Subramaniam, registered as Document No.2154 of 1983 in the office of the Joint Sub-Registrar-I, Madras South. The husband of Tmt.Saroja alias Sarojini Devi, in turn sold an extent of 11 Cents, out of 41 Cents comprised in Plot Nos.77 and 78 in favour of the 1st defendant through his authorised Power Agent Mr.M.Kaffer, vide registered sale deed bearing Doc.No.1357 of 1984 dated 10.05.1984, on the file of the District Registrar, Madras South and out of 11 Cents, the 1st defendant had sold an extent of 2400 sq.ft., comprised in Plot No.77, Survey No.14/3 to one M.Gora Sinha and the plaintiff has purchased the same from M.Gora Sinha, through registered sale deed dated 28.03.1988, bearing Doc.No.1588 of 1988 on the file of the

District Registrar, Madras South.

3. It is further stated by the plaintiff that either she or her husband frequently used to visit the vacant site and by way of abundant caution applied for Encumbrance Certificate for a period of 24 years from 01.01.1986 to 16.08.2009 and the Certificate did not reflect any mischievous or fraudulent entries. The plaintiff has also erected a board in the suit property indicating that she is the owner of the property in question. The plaintiff on 25.09.2010 came to know that Plot No.77 along with the adjoining plot No.78, were being fenced and a small hut was put up at the centre of Plot Nos.77 and 78 and a name board reflecting the name of 'Raj Associates' as the owner of the property, has been displayed. According to the plaintiff, it is nothing but an encroachment. The plaintiff in this regard has lodged a police complaint on the file of Maduravoyal Police Station and it was acknowledged in CSR No.700 of 2010 and though the police officials tried to contact any of the persons associated with 'Raj Associates', they have not been successful so far.

4. The plaintiff made further enquiry and to the

shock and surprise, she came to know through Encumbrance Certificate issued to her on 02.02.2011, reflected a settlement deed dated 15.05.2009, registered as Document No.2174 of 2009, in the office of the Joint Sub-Registrar, Saidapet, by the 1st respondent/defendant in favour of the 2nd respondent/defendant and there was also a further entry in the form of a registered sale deed bearing Document No.3515 of 2009 dated 27.07.2009, by the 2nd respondent/defendant in favour of the 3rd respondent/defendant.

5. According to the plaintiff, the address given in the documents are completely false and the 2nd defendant, who was said to be residing as a tenant, was a nefarious character and indulged in criminal activities. Therefore, both documents are sham and nominal, created and fabricated for the purpose of usurping title to the property and in this regard, a notice dated 01.03.2011 was sent by the plaintiff to the 1st defendant and it was returned on 01.03.2011 and hence, the plaintiff came forward to file the suit.

6. This Court vide order dated 16.11.2012, having found that though, the defendants have been served,

they did not chose to enter appearance and file counter, had set them exparte. The plaintiff has filed proof affidavit in lieu of chief examination and marked Exhibits P1 to P17.

7. Mr.J.Sivanandaraaj, learned counsel appearing for the plaintiff has drawn the attention of this Court to the pleading, oral and documentary evidence and would submit that plaintiff is the owner of the vacant land admeasuring to an extent of 2400 sq.ft in Plot No.77, S.No.14/3, situated at "THIRU-VI-KA NAGAR", Thundalam Village, Sriperumbudur Taluk, Kancheepuram District, as per Ex.P5 and the clear title of the larger extent of the property has been placed through Ex.P1 to P4. Certificate of Encumbrance was also verified under Ex.P6 series, whereas entries do not reflect any mischievous or fraudulent entries and only on 02.02.2011, the plaintiff came to know that her Plot (Plot No.77) and adjacent plot (Plot No.78) were being fenced and a small hut was put up at the centre of both plots, reflecting the name of 'Raj Associates' and immediately has lodged a police complaint and the acknowledgment of the complaint in the form of CSR were also marked as Exs.P9 and P10, respectively and

inspite of the concerned police officials tried their level best to contact the persons associated with 'Raj Associates', they were successful and it is the further submission of the learned counsel for the petitioner that in the Encumbrance Certificate, marked as Ex.P12, the execution of the Settlement Deed dated 15.05.2009 and the Sale Deed dated 27.07.2009, copy of which are marked as Exs.P12 and P13 respectively, came to the know that the defendants have forged the documents and further added that in respect of the adjoining property, Plot No.78, concerned persons had filed C.S.No.204 of 2011 on the file of this Court, wherein this plaintiff was arrayed as a defendant and there also the defendants were called absent and were set exparte and the said Suit has been decreed as prayed for and in the light of the above facts and circumstances, prays for decree of the Suit with costs.

8. This Court has carefully considered the submissions made by the learned counsel appearing for the plaintiff and also perused the pleadings, oral and documentary evidence.

9. The following issues are framed for consideration.

1. Whether the plaintiff is the owner of the suit property?

2. Whether Ex.P13, settlement deed bearing Doc.No.2174 of 2009 dated 15.05.2009, executed by the 1st respondent/defendant in favour of the 2nd respondent/defendant, is true and valid?

3. Whether Ex.P14, Sale deed bearing Doc.No.3515 of 2009, executed by the 2nd respondent/defendant in favour of the 3rd respondent/defendant is true and valid?

4. Whether the plaintiff is entitled to get a judgment and decree as prayed for? and

5. What other relief, the plaintiff is entitled to?

Issue No.1

10. A perusal of Ex.P5 would disclose that the plaintiff has purchased a vacant land admeasuring to an extent of 2400 sq.ft 2400 sq.ft in Plot No.77, S.No.14/3, situated at "THIRU-VI-KA NAGAR", Thundalam Village, Sriperumbudur Taluk, Kancheepuram District by means of a registered Sale Deed bearing Doc.No.2185 of 1998, on the file of the District Registrar, Madras South and is in absolute possession and enjoyment of the same. The title relating to the

larger extent of land, in favour of the predecessors-in-title is also evident through Exs.P1 to P4. The plaintiff's immediate predecessor-in-title, viz., Mr.Gora Sinha, has purchased the larger extent of land under Ex.P4, Sale Deed bearing Doc.No.1588 of 1998 dated 28.03.1988 and the Encumbrance certificates marked as Ex.A6 series would also indicate that in respect of the property in question, the name of the plaintiff has been reflected.

11. In the light of the above said documents, this Court is of the view that the plaintiff is the absolute owner of the suit property. Therefore, Issue No.1, is answered in the affirmative and in favour of the plaintiff.

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Issue No.2

12. A perusal of Ex.P12, Encumbrance certificate would disclose that it reflected an entry regarding Settlement Deed, bearing Doc.No.2174 of 2009 dated 15.05.2009, marked as Ex.A13. A perusal of the said document did not tally with the title of the predecessor-in-title. As rightly contended by the

learned counsel appearing for the plaintiff, the said

document appears to be fabricated and to suit the convenience of the 1st defendant/respondent, who in turn executed the said settlement deed in favour of the 2nd defendant/respondent. Therefore, this Court is of the view that the settlement deed bearing Doc.No.2174 of 2009, dated 15.05.2009 executed by the 1st respondent/defendant in favour of the 2nd respondent/defendant, has to be declared as null and void and not binding on the plaintiff and therefore, Issue No.2, is answered in the affirmative in favour of the plaintiff.

Issue No.3

13. Since this Court with regard to Issue No.2 has held that Ex.P13, Settlement Deed bearing Doc.No.2174 of 2009 dated 15.05.2009, executed by the 1st respondent/defendant in favour of the 2nd respondent/defendant as null and void and not binding on the plaintiff, the 1st respondent/defendant derive no title under the settlement deed and as a consequence, the 2nd respondent/defendant cannot claim any valid title under Ex.A13 and therefore, Ex.P14, Sale deed bearing Doc.No.3515 of 2009, executed by the 2nd respondent/defendant in favour of the 3rd respondent/defendant is null and void and not

binding on the plaintiff. Therefore, issue No.3 is answered in affirmative in favour of the plaintiff.

Issue No.4

14. Since this Court has held in Issue No.1 that the plaintiff is the absolute owner of the suit property, he is entitled to get a judgment and decree as prayed for and also for permanent injunction restraining the defendants/respondents, their men, agents, assigns and representatives from in any manner, dealing with, alienating, encumbering or leasing out the suit property.

15. In the result, the Suit is decreed as prayed for. Hence, there shall be a judgment and decree declaring that the Settlement Deed dated 15.05.2009, executed by the 1st respondent/defendant in favour of the 2nd respondent/defendant, registered as Doc.No.2174 of 2009 and the Sale Deed dated 27.07.2009, executed by the 2nd respondent/defendant in favour of the 3rd respondent/defendant, registered as Doc.No.3515 of 2009, as null and void and not binding on the plaintiff. There shall be a decree

for permanent injunction restraining the defendants/respondents, their men, agents, assigns and representatives from in any manner, dealing with, alienating, encumbering or leasing out the suit property. The plaintiff is entitled to the costs of the suit.

List of Witnesses

PW1 - Padmavathi Sundaresan

List of Exhibits:

Sl.N o.	Exhibits	Description of Documents	Date
1	Ex.P1	Photocopy of the settlement deed registered as Doc.No.2154/1983	02.07.1983
2	Ex.P2	Photocopy of the General Power of Attorney registered as Doc.No.7/1984	27.01.1984
3	Ex.P3	Photocopy of the Sale deed registered as Doc.No.1357/1984	10.05.1984
4	Ex.P4	Original sale deed registered as Doc.No. 1588/19898 at District Registrar, Madras South	28.03.1988
5	Ex.P5	Original sale deed registered as Doc.No. 2185/1998 at District Registrar, Madras South	18.06.1998
6	Ex.P6 (series) (6 Nos.)	Encumbrance certificates for the period between 1977 to 2010 relating to the suit property.	-
7	Ex.P7	Photographs	-
8	Ex.P8	Photocopy of the complaint given by Meera Sinha to the Inspector of Police	29.09.2010
9	Ex.P9	Photocopy of the complaint given by the plaintiff to the Inspector of Police, Maduravoyal Police Station	30.09.2010
10	Ex.P10	Photocopy of the CSR No.700/2010	-
11	Ex.P11 (Nos)	Photographs	-

Sl.No.	Exhibits	Description of Documents	Date
12	Ex.P12	Original encumbrance certificate for the period between 01.01.1986 to 30.01.2011 issued by Joint Sub Registrar, Saidapet.	01.02.2011
13	Ex.P13	Certified copy of the Settlement deed registered as Doc.No.2174/2009 at JSRO, Saidapet	15.05.2009
14	Ex.P14	Certified copy of the Sale deed registered as Doc.No.3515/2009 at JSRO, Saidapet	27.07.2009
15	Ex.P15	Original returned cover	-
16	Ex.P16	Original returned cover	-
17	Ex.P17	Original Affidavit of N.Parthiban	01.03.2011

sd/.M.S.N.J

08.02.2016

//Certified to be a true copy//

Dated this the day of 2016

S.S/12.07.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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