



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.515 of 2011

WEB COPY

1.A.K.Alagarraja Memorial Kinder Garden School,
Through its President K.A.Balaraja,
S/o.A.K.Alagarraja.

2.K.A.Balaraja

3.Geetharani

..Defendants 1-3/Appellants 1-3/

Appellants 1 to 5

-Vs-

1.D.D.89, Theni Cooperative Building Society Ltd.,
Through its Secretary N.Rajaraman,
S/o.N.R.Narayanasamy,
N.R.T.Nagar,
Theni, Theni District.

..1st Plaintiff/1st Respondent
/1st Respondent

2.The Theni Allinagaram Municipality,
through its Commissioner,
Theni, Theni District.

..4th Defendant/2nd Respondent
/2nd Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.02.2008 made in O.S.No.477 of 2006 by the learned District Munsif, Theni and confirmed by a judgment and decree dated 26.07.2010 made in A.S.No.77 of 2009 on the file of the learned Subordinate Judge, Theni.

For Appellants : Mr.PT.S.Narendravasan

For Respondent 1 : Mr.S.Thamizharasan

For Respondent 2 : No representation

JUDGMENT

The defendants 1 to 3 in the suit in O.S.No.477 of 2006 on the file the District Munsif Court, Theni, are the appellants in the above second appeal.

2.The respondent herein, as plaintiff, filed the suit in O.S.No.477 of 2006 for a declaration that the second defendant / second appellant has only a limited and restricted right to manage the school without any personal right to alienate the suit property and as such the suit property which was reserved for a school should remain only as a school site without any change and



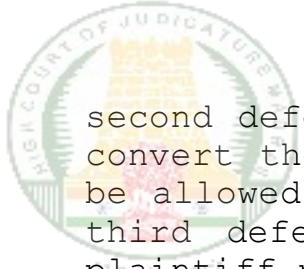
for an order of mandatory injunction directing defendants 2 and 3 to hand over the school to the plaintiff. The suit is also for a permanent injunction restraining the defendants 2 and 3 / appellants 2 and 3 from alienating the suit property to any other person.

3.The case of the plaintiff / first respondent in the plaint are as follows:

3.1.The plaintiff is a Cooperative Building Society and it has promoted a colony called NRT Nagar at Theni. The plaintiff formed a layout and got the approval of Town and Country Planning Authority for the layout. While preparing the layout plan, in compliance of the statutory requirement, the plaintiff had reserved the suit property for a public purpose of running a school.

3.2.The first defendant who is a member of the society offered to run a school in the suit property. Hence, a Committee was performed to run the school. The nominee of the plaintiff society is an Ex-Officio member of the Committee which was formed for running of the school. The Committee prepared to buy the site reserved for the school for the purpose of running a school and the suit property was purchased from the plaintiff society for running a school in the name of Alagar Raja Memorial Kinder Garden School. The sale was a conditional sale as the first defendant has to surrender the property to the society or Government in case the first defendant is not able to run the school or if the land is no more required for the school. Since there is a specific clause in the sale deed that the school site shall be used only by the member for the construction of the school, the first defendant can hold the site only for the purpose of running the school and the character of the suit property can never be changed at the instance of the first defendant. The second defendant is the elected office bearer of the first defendant namely the School Committee. Though the second defendant has no right over the suit property, knowing fully well that he has no right over the property, the second defendant made an attempt to convert the property as his private property and tried to change the nature of the property as house site in order to sell the same to private parties against the conditions found in the sale deed.

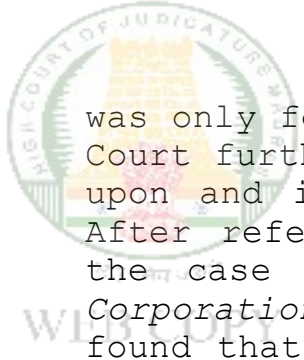
3.3.Quite surprisingly, the second defendant executed a settlement deed in favour of his daughter, the third defendant, on 13.05.2004, contrary to the conditions found in the sale deed under which the second defendant purchased the property from the plaintiff society. After the execution of the settlement deed, the defendants 2 and 3 approached the fourth defendant for an approval of a plan after changing the entire nature of the property. It is a well settled position of law that the places earmarked for a common purpose in an approved layout cannot be utilised for any other purpose. However, the second defendant had executed the settlement deed in favour of his own daughter and that such conveyance will have no legal basis and void. Since the



second defendant himself has decided not to run the school but to convert the suit property into housing plots, the property cannot be allowed to be enjoyed either by the second defendant or by the third defendant. Having regard to the factual background the plaintiff prayed for decreeing the suit.

3.4. The appellants contested the suit on various grounds. The main ground on which the suit was contested is that the plaintiff is not a competent person to file the suit against the defendants in as much as the title of the property vested with the first defendant as early as 22.03.1990 pursuant to the sale deed executed by the plaintiff society in favour of the first defendant. Since the property vests with the first defendant pursuant to the sale, the suit property cannot be resumed. It was further contended that the plaintiff is not entitled to exercise any right over the suit property on the plea of alleged breach of terms and conditions of the sale deed after the sale is completed in all respects. Since the first defendant could not run the school for several reasons it has got every right to deal with the property as it chooses. Further contention of the first defendant was that a resolution was passed by the members of the General Body wherein a decision was taken to close the school and to entrust the property with the second defendant. Since the said resolution was passed by all the nine members including the nominee of the plaintiff, the plaintiff is estopped from contending that the closure of the school and entrusting the property with the second defendant are not proper. It was also contended by the third defendant that the third defendant would become the absolute owner of the suit property and that the plaintiff is not entitled to seek the relief without setting aside the settlement deed. Of course, the fourth defendant filed a written statement supporting the case of defendants 2 and 3. However, we are not concerned with the stand of fourth defendant having regard to the specific stand taken by the appellants now before this Court in this appeal.

4. In the trial Court, the plaintiff has filed a memo stating that the relief of mandatory injunction is not pressed. The trial Court, after framing necessary issues, found that the second defendant has committed a breach of trust by executing the settlement deed in favour of his daughter. Though a resolution passed by the first defendant was referred to, the resolution dated 31.05.2000 was not filed in Court to prove that the second defendant was put in possession of the suit property. The plaintiff has conveyed the suit property subject to certain conditions and the nominee of the plaintiff also is an Ex-Officio office bearer of the first defendant. In the said circumstances, the trial Court found that the resolution passed without any intimation or knowledge of the plaintiff is not valid. The trial Court found that the suit property was sold not at the market value but only for a paltry sum only because the suit property had already been reserved for school and that the sale of the property



was only for utilising the same for running the school. The trial Court further held that the settlement deed is not valid and acted upon and it was only intended to defraud the plaintiff society. After referring to the judgment of the Hon'ble Supreme Court in the case of *P.T.Chet Ram Vashist (Dead) by LRs v. Municipal Corporation of Delhi* reported in (1995) 1 SCC 47, the trial Court found that the second defendant after purchasing the property for the purpose of running a school cannot convert the suit property for any other purpose than the one for which the land was originally reserved in the layout. Since the trial Court found that the land which was reserved for public purpose in the approved layout cannot be utilised for any other purpose, the contention of the defendants placing reliance on the subsequent approval granted by the Town and Country Planning Authorities for conversion of the suit properties as residential plots was rejected. Having regard to the findings of the trial Court, the decree for declaration and consequential permanent injunction restraining defendants 2 and 3 from alienating the property to any other person except the plaintiff society was granted. Aggrieved by the findings of the trial Court, defendants 1 to 3 filed an appeal in A.S.No.77 of 2009 on the file of the Sub Court, Theni. The appellate Court also confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the above Second Appeal has been filed by the defendants 1 to 3.

5. At the time of admitting the second appeal, the following substantial questions of law were framed by this Court:

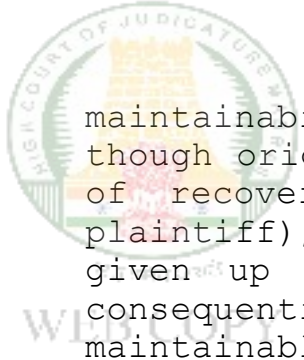
(a) Whether the first respondent / plaintiff has any power and authority to impose conditions in the absolute sale deed executed in favour of the first appellant under Ex.A3 in the absence of provisions of terms and conditions in the assignment and the Master Plan of the Government of Tamil Nadu and further in the absence of any statutory law?

(b) Whether the conditions imposed in the absolute sale deed under Ex.A.3 are void under Section 11 of the Transfer of Property Act?

(c) Whether imposing of conditions in the sale deed by vendor, restricting the manner of enjoyment of the property without there being any statutory restraint is valid in law?

(d) Whether the imposition of conditions for enjoyment of the property in A.3-Sale Deed is opposed to statutory provision 11 of Section 54 and 55 of the Transfer of Property Act?

<https://hcservices.ecourts.gov.in/hcservices/> 6. All the substantial questions of law are not sustainable. Apart from the questions of law framed, the learned counsel for the appellants raised another issue touching the



maintainability of the suit. According to the appellant, the suit though originally filed for a declaration and consequential relief of recovery of possession (to hand over the school to the plaintiff), the consequential relief of mandatory injunction was given up by the respondents. In view of the fact that the consequential prayer is withdrawn, the suit itself is not maintainable without an effective consequential relief without which the main relief of declaration will not survive. The learned counsel for the appellants also relied upon Section 34 of the Specific Relief Act, 1963. In the present case, the suit was for a declaration that the second defendant has only a limited and restricted right to manage the school without any personal right to alienate the suit property which was reserved for the purpose of school in the approved layout. Even from the cause of action paragraph, one can see that the prayer is only to protect the suit property as a public property meant to be used for a public school as per the approved layout plan. It is true that the prayer for mandatory injunction directing the defendants 2 and 3 to hand over the school to the plaintiff is given up. Since the suit property has been sold by the plaintiff to the first defendant for running a school subject to conditions and that the first defendant has no right to change the use of the land to any other purpose, the declaratory relief and the consequential relief of permanent injunction restraining the defendants 2 and 3 from in any way alienating the suit property to any other person except the plaintiff society will serve the purpose and the suit cannot be held to be defective because of absence of a consequential prayer which is effective and required. Having regard to the scope of Section 34 of the Specific Relief Act and the object behind the provisions is to avoid multiplicity of proceedings, the prayer in the suit though could have been differently couched, the suit cannot be dismissed.

7. From the pleadings, it is evident that the suit property forms part of the approved layout and that the same was reserved for the purpose of a school. The Hon'ble Supreme Court in the judgment in the case of *P.T. Chet Ram Vashist (Dead) by LRs v. Municipal Corporation of Delhi* reported in (1995) 1 SCC 47 has held as follows:

"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right



to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

8. It is well settled that the land which is reserved for a public purpose in an approved layout cannot be used for any other purpose. The sale deed alleged to have been executed by the plaintiff in favour of the first defendant specifically refers to conditions prohibiting the enjoyment of the property by the first defendant for any other purpose than for running the school is only in tune with the rights of plaintiff as promoter of layout. The conveyance cannot confer absolute right in favour of first defendant by reason of the fact that the plaintiff society has no right of ownership except to hold the property in trust for the benefit of public. From the conduct of the second defendant, it is clear that in flagrant violation of the conditions, the second defendant has executed a settlement deed in favour of his own daughter namely, the third defendant for selling the property in plots. When this kind of commercial venture either by the plaintiff or by the first defendant is prohibited in law, neither the sale deed executed by the plaintiff in favour of the first defendant nor the resolution passed by the society would come to the rescue of defendants 2 and 3 to claim any right as owner or to convert the suit property into house sites. When the relief in the suit could have been obtained by any member of the residential colony, the suit filed by the plaintiff cannot be thrown out on technicalities. No doubt it is true that the seller has no authority to impose conditions which is repugnant to the conveyance itself. In this case, even the plaintiff has only a limited interest and in such circumstances, the plaintiff cannot convey any right more than the plaintiff had over the suit property. Hence, de-hors the conditions found in the sale deed in favour of the first defendant, by applying the common law principles and limitation right of ownership that can be exercised by the plaintiff (the promoter of the layout) in respect of the properties reserved for a public purpose in an approved layout, the first defendant has no power or authority to utilise the suit



property for any other purpose than for which the suit property was reserved in the approved layout.

9. In view of the conclusions of mine that the sale deed executed by the plaintiff in favour of the first defendant will not confer any absolute right over the suit property which was reserved for a public purpose within the approved layout, the questions of law relying upon Sections 11, 54 and 54 of Transfer of Property Act, have no merits. Hence, the questions of law framed by this Court are answered against the appellants.

10. The trial Court as well as the appellate Court have considered the legal position and decided the case on merits in the light of the evidence both oral and documentary. The judgment and decree of the Courts below are supported by reasons. Hence, there is no merit in the second appeal and the Second Appeal is dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)

Madurai Bench of Madras High Court,
Madurai-23.

To

- 1 The District Munsif, Theni
- 2 The Subordinate Judge, Theni.

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.PT.S.Narendravasan, Advocate in SR.70960

Second Appeal (MD) No.515 of 2011
21.11.2016

srm

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