

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2017

PRONOUNCED ON : 15.06.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

C.S.No. 336 of 2011

D.Gurumurthy

...Plaintiff

Vs.

1. N.Sathish
2. L.Anand
3. R.Srinivasan (Deceased)
4. R.Rajalakshmi
5. S.Vasantha
6. S.Meenakshi

...Defendants

(Defendants 4 to 6 brought on record as Legal Representatives of the Deceased 3rd Defendant as per order dated 30.01.2017 in Appl.No.468/2017)

For Plaintiff : Mr.E.Prabhu,
for Ms.V.Valarmathi

For Defendants : Mr. G.Ramdas,
for Mr. R.Saravana kumar

JUDGMENT

Suit for recovery of possession, mesne profits, both past and future and permanent injunction.

2. The averments contained in the plaint are briefly stated as follows:

The plaintiff purchased two plots of land bearing No.27 (part), measuring 2380 sq.ft. comprised in Survey No.708, which was subsequently sub divided as 708/2 and Plot No.28 measuring 4760 sq.ft. in Survey No.708, which was also subsequently sub divided as 708/1-B at Ram Nagar Velachery, Chennai – 42 by virtue of two sale deeds dated 22.01.1970 and 16.07.1970 respectively and the plaintiff sold Plot No.28 to one I.V. Lakshmi by way of a sale deed dated 19.05.1980 and had retained Plot No.27, above mentioned, for his own use, which is the suit property.

3. The plaintiff had been visiting the suit property now and then from 1980 onwards till the end of 2000 and on account of his preoccupation and other reasons, he could not visit the suit property thereafter. While so, during August, 2003 to his utter surprise, he noticed that many houses had been constructed there and consequently, he was unable to locate his plot and with the help of Govt., surveyor, he was able to locate the property i.e. the suit property and to his utter shock and dismay, he found a house with

ground and two upper floors constructed in the suit property and the defendants and one R.Lakshmi Narayanan were in occupation of different portions therein.

4. On questioning Lakshmi Narayanan, the plaintiff was informed that the defendants had purchased the suit property from the legal heirs of I.V.Lakshmi in the month of June, 1999 and put up construction thereafter. On enquiry, to the shock of the plaintiff, he found that an entry had been made in the office of Sub-Registrar, Saidapet that the plot comprised in the suit property had been sold to I.V.Lakshmi by document No.2379/1980 dated 18.07.1980 registered in the office of the Sub-Registrar, Saidapet and that, the daughters of I.V.Lakshmi, viz., Revathy and Rajeswari again sold the above said plot to the defendants 1 to 3 by way of three sale deeds vide document Nos. 2090 to 2092/1999 dated 28.06.1999 registered in the office of the Sub-Registrar, Velachery, Chennai – 42. From the above said entries, the plaintiff was given to understand that the sale deed dated 18.07.1980 had been executed by impersonating him and forging his signature and that, the defendants along with Revathy, Rajeswari and their husbands namely Kitcha Natesan and Subba Rao respectively committed the acts of conspiracy, fraud, cheating, forgery

and impersonation, which are penal in nature.

5. Lakshmi Narayanan is related to the defendants and he has served as a Sub-Registrar in the Registration Department and was instrumental in getting the three sale deeds in the name of the defendants 1 to 3 having the full knowledge of the fraudulent nature of the sale transaction dated 18.07.1980. On verification of the above said sale deeds dated 18.07.1980 and 28.06.1989, the plaintiff found that they did not contain any details about the documents, under which, the deceased I.V.Lakshmi had acquired title over the suit property and the property had also not been clearly described with proper measurements. The defendants had knowledge that I.V.Lakshmi died on 02.12.1988 and thereafter, patta No.861 in respect of the suit property had been fraudulently transferred in her name during the year 1998. Consequently, the plaintiff preferred a complaint to the Commissioner of Police with another complaint to the Inspector of Police, Velachery Police Station. However, on the above said penal acts of the persons involved with reference to the above said acts, the police did not register any FIR and closed the complaint as Civil dispute. Thereupon, the plaintiff preferred a private complaint before the XI Metropolitan Magistrate, Saidapet, against Revathi,

Rajeswari, Kitcha Natesan, Subba Rao, Lakshmi Narayanan and the defendants arraying them as accused Nos.1 to 8 for criminal offences under sections 120-B, 420, 467, 468 and 471 IPC.

6. On the complaint being forwarded, a case was registered by the Central Crime Branch, Egmore in X.Cr.No.90/2004 and without proper investigation and verification of the records, the matter had been referred as Civil dispute and the plaintiff filed a protest petition before the XI Metropolitan Magistrate, Saidapet. Following the procedure contemplated under Sections 200 and 202 Cr.P.C., the Learned Magistrate came to a conclusion that sufficient materials are available for proceeding against the accused for the above mentioned offences and accordingly, by order dated 09.07.2008 took cognizance of the said offences by assigning C.C.No.9723 of 2008 and issued summons to all the eight accused. The plaintiff had also, during the course of enquiry under section 202 Cr.P.C by the Magistrate, produced documents as exhibits with regard to the penal acts of the accused involved in the offences and that the defendants had purchased the suit property with full knowledge that their vendor had no valid documents to convey the same. The defendants and Lakshmi Narayanan, who were arrayed as accused Nos. 5 to 8 in C.C.No.9723

of 2008, moved the High Court for quashing the proceedings as against them in Crl.O.P.No.27458 of 2008 and by order dated 08.11.2010, the High Court had allowed the Crl.O.P. The plaintiff has filed a Special Leave Petition before the Hon'ble Supreme Court and the same has been numbered as S.L.P. No.1961/2011 and is pending. The defendants have suppressed various particulars in the Crl.O.P.No.27458 of 2008 and on the basis of the documents produced by the defendants in the above said proceedings, the plaintiff had moved the Revenue Authorities and had the patta cancelled in the name of the defendants in respect of the suit property and got it restored in his name. The possession of the defendants over the suit property, on the basis of the fraudulent document, is illegal and unauthorized and in this connection, the plaintiff had also preferred a Writ Petition No.18509 of 2010 for a Mandamus to the Commissioner, Corporation of Chennai to consider his representation dated 31.03.2010 as regards the demolition of the super structure found in the suit property. However, the Court had dismissed the said writ petition with a direction to seek appropriate remedy through Civil Forum. Thereupon, the plaintiff issued legal notice dated 16.02.2011 calling upon the defendants to surrender the possession of the suit property, after demolishing the unauthorized construction put up

thereon. The defendants sent a reply to the same dated 10.03.2011, containing false allegations. Hence, left with no other alternative, the plaintiff has come forward with the suit seeking for necessary reliefs.

7. The averments contained in the written statement filed by the defendants 1 to 3, which was adopted by the defendants 4 to 6, who are the legal representatives of the deceased 3rd defendant, are briefly stated as follows;

The suit is not maintainable either in law or on facts. The plaintiff has come forward with the suit for recovery of possession of the suit property after a lapse of 31 years, after he had sold the suit property to one I.V.Lakshmi on 19.05.1980 and subsequently, the legal heirs of the said I.V. Lakshmi had sold the suit property to the defendants vide three sale deeds dated 28.06.1999 and based upon the same, the defendants are in possession and enjoyment of the suit property as full owners thereof. The plaintiff had full knowledge about the sale made in favour of the defendants 1 to 3, but, did not challenge the same before the Court and on the other hand, he has only sought for the relief of recovery of possession in the present suit. Hence, the relief prayed for by the plaintiff is not maintainable and the suit is barred by limitation.

8. The plaintiff had sold both the plots bearing Nos. 27 & 28 to I.V.Lakshmi by means of sale deeds dated 19.05.1980 and 18.07.1980 and after the demise of I.V. Lakshmi, her legal heirs had sold the suit property to the defendants by means of three sale deeds dated 28.06.1999. Thereupon, the defendants obtained permission from the Corporation of Chennai and put up construction on the suit property and also obtained electricity connection and had been in peaceful possession and enjoyment of the same by paying property tax etc. It is false to state that the plaintiff did not sell the suit property to I.V.Lakshmi as claimed in the plaint and the defendants and Lakshmi Narayanan had obtained fraudulent documents in respect of the suit property from the persons, who had no title to the suit property. Further, it is false to state that the defendants along with Revathi, Rajeswari and their husbands had committed the acts of conspiracy, fraud, cheating, forgery, impersonation. The defendants are total strangers to I.V.Lakshmi and hence, the alleged role of the defendants in the forgery pleas raised by the plaintiff is only a figment of imagination of the plaintiff and has no legal basis. It is false to state that the details of the suit property had not been properly given in the sale deeds of the defendants dated 28.06.1999. It is false to state

that on account of the influence exercised by Lakshmi Narayanan and the defendants, the police did not register the FIR on the basis of the complaint given by the plaintiff. No doubt, the plaintiff preferred a private complaint and based upon the same, C.C.No.9723 of 2008 had come to be registered. Challenging the same, the defendants preferred Crl.O.P.No.27458/2008 and the High Court, by order dated 08.11.2010 was pleased to quash the proceedings pending on the file of the Magistrate as against the defendants. The defendants are not aware of any SLP preferred by the plaintiff before the Hon'ble Supreme Court against the order of the High Court in the Crl.O.P. As against the order of the Revenue Authorities deleting the name of the defendants from the patta in respect of the suit property, the defendants have preferred an appeal and the same is pending. It is false to state that the sale deed dated 18.07.1980 is null and void. The defendants have no knowledge about the writ petition filed by the plaintiff. The plaintiff has not challenged the validity of the sale deed executed in the year 1980 in favour of I.V.Lakshmi, even though, the plaintiff alleges that it is a fake one. In any event, the plaintiff has not chosen to question the sale or the possession of the suit property in favour of I.V.Lakshmi and the defendants and without prejudice to the above contentions, the defendants have also perfected their title to the suit property by

adverse possession as well. The suit is misconceived and the plaintiff is not entitled to obtain the reliefs sought for and hence, the suit is liable to be dismissed.

9. On the pleadings set out above, the following issues were framed for determination:

- 1. Whether the sale deed dated 18.07.1980 registered as Doc.No.2379 of 1980 of the S.R.O.Saidapet is a true and valid document?***
- 2. Whether the plaintiff is entitled to the relief of recovery of possession of the suit property?***
- 3. Whether the plaintiff is entitled to past and future mesne profits as prayed for?***
- 4. Whether the plaintiff is entitled to permanent injunction as prayed for?***
- 5. Whether the suit is barred by limitation?***

6. To what other reliefs the plaintiff is entitled to?

10. In support of the plaintiff's case, PW1 was examined and Exs.P1 to P37 have been marked. On the side of the defendants, DW1 was examined and Exs.D1 to D7 have been marked.

11. Issue No.1

As seen from Ex.P1, it is found that the suit property had been originally acquired by the plaintiff on 22.01.1970. Ex.P1 is the certified copy of the sale deed dated 22.01.1970 in respect of the suit property. It is the case of the plaintiff that he was the owner of the suit property as well as Plot No.28 and it is the further case of the plaintiff that he had sold Plot No.28 to one I.V.Lakshmi by virtue of the sale deed dated 19.05.1980. However, it is the specific case of the plaintiff that he had not sold the suit property to any one and the ownership of the same is still retained by him. Now, according to the plaintiff, when he had visited the area, where the suit property was lying, to his utter shock and dismay, he noticed that the defendants had put up house constructions on the suit property and residing therein along with other occupants and on inquiry found that the defendants had purchased the suit property by virtue of three sale

deeds dated 28.06.1999 from the legal heirs of I.V.Lakshmi. On further verification, according to the plaintiff, he came to understand that the defendants had purchased the suit property from the legal heirs of I.V.Lakshmi based upon the sale deed dated 18.07.1980 styled as a document under which the plaintiff is purported to have alienated the suit property in favour of I.V.Lakshmi. On further verification with the office of the Registrar concerned, according to the plaintiff, he came to understand that the defendants along with the legal heirs of I.V.Lakshmi, namely, Revathy, Rajeswari and their husbands, namely, Kitcha Natesan and Subba Rao and one Lakshmi Narayanan, a close relative of the defendants had created the sale deed dated 18.07.1980 by way of impersonation and forgery, as if the plaintiff had conveyed the suit property to I.V.Lakshmi under the same and in such view of the matter, according to the plaintiff, the defendants had not purchased the suit property from the legal owners and therefore, inasmuch as the defendants and the others above mentioned are responsible for the penal acts committed in causing the execution of the forgery document dated 18.07.1980 in document No.2379/80, according to the plaintiff, he preferred the complaint with the police against the persons involved in the same and as the police did not take up any action, according to the plaintiff, he preferred a

private complaint and the same had been taken on file in C.C.No.9723 of 2008 by the Magistrate and summons had been issued to the accused. Thus, according to the plaintiff, inasmuch as the defendants are claiming title to the suit property, based upon the sale deed created by way of impersonation and forgery as above mentioned and as the plaintiff continues to be the owner of the suit property, it is the case of the plaintiff that the defendants are liable to hand over the possession of the suit property to the plaintiff and the defendants having failed to surrender the possession and on the other hand, set up independent title in respect of the suit property based upon the forged documents, according to the plaintiff, he has been necessitated to lay the suit for the obtainment of the appropriate reliefs.

12. Per contra, it is the specific case of the defendants that the plaintiff had alienated the suit property in favour of I.V.Lakshmi, under the sale deed dated 18.07.1980, the certified copy of which has been marked as Ex.P5 and further, it is the case of the defendants that thereafter, they had purchased the suit property from the legal heirs of I.V.Lakshmi by way of the sale deeds dated 28.06.1999, the certified copies of which have been marked as Exs.P6 to P8 and thereupon, according to the defendants, they had put up construction on the suit

property and residing thereon, as full owners by paying tax, effecting water connections etc. and therefore, according to the defendants, the plaintiff having alienated the suit property under Ex.P5 cannot now claim title to the suit property and seek recovery of the possession of the same from the defendants and further, according to the defendants, the plaintiff's suit simplicitor for recovery of possession is not maintainable without the plaintiff seeking the relief of declaration as regards the sale deed dated 18.07.1980 and further, according to the defendants, the suit laid by the plaintiff is hit by the law of limitation and hence, the suit is liable to be rejected.

13. A perusal of the pleadings, particularly, contained in the plaint, it is evident that the sheet anchor of the plaintiff's case is the claim of the fraudulent creation of the sale deed dated 18.07.1980 in document no.2379/1980 by the defendants and others by way of impersonation and forgery. In such view of the matter, when the defendants have challenged the above said case of the plaintiff tooth and nail, it is for the plaintiff to establish that he still retains the suit property by virtue of Ex.P1 and that he had not alienated the suit property to I.V.Lakshmi vide the sale deed dated 18.07.1980 and that the above said sale deed had been created by the defendants and

others by impersonation and forgery, as put forth in the plaint. For the above said pleas, it is found that the plaintiff, mainly, relies upon the criminal proceedings initiated by him against the defendants and others. At the beginning, it is to be noted that the plaintiff had preferred the police complaint against the defendants and others with reference to his case of impersonation and forgery. However, the police had not registered the case and closed the same as a civil dispute.

14. Aggrieved over the same, it is found that the plaintiff had preferred a private complaint before the Magistrate Court and the Magistrate Court was pleased to take cognizance of the complaint of the plaintiff in C.C.No.9723 of 2008 and directed to issue summons to all the accused including the defendants and one Lakshmi Narayanan. Challenging the same, it is found that the defendants and Lakshmi Narayanan had preferred Crl.O.P.No.27458/08 in the High Court to quash the proceedings as against them. It is found that the High Court by order dated 08.11.2010 had allowed the Crl.O.P above mentioned and quashed the proceedings as against the defendants and Lakshmi Narayanan. The certified copy of the order passed by the High Court in the above said Crl.O.P. has been marked as Ex.P21. Therefore, it could be seen that the basis on which, the plaintiff had laid the case

i.e. the criminal action against the defendants had been quashed by the High Court under Ex.P21. However, according to the plaintiff's case, he had challenged the order of the High Court passed under Ex.P21 by way of SLP in the Supreme Court. Countering the above case of the plaintiff, according to the defendants, the SLP No.1961/11 preferred by the plaintiff had come to be dismissed by the Supreme Court and the certified copy of the order has been marked as Ex.D1. It is therefore clear that the criminal action initiated by the plaintiff against the defendants and Lakshmi Narayanan had come to an end with the final order passed by the Apex Court under Ex.D1. Therefore, as on date, there is no criminal proceedings pending against the defendants and Lakshmi Narayanan as regards the pleas of the plaintiff, with reference to the impersonation and forgery of the sale deed dated 18.07.1980. The very basis of the plaintiff's case is the impersonation and forgery of the sale deed dated 18.07.1980. When that case of the plaintiff did not find approval by the High Court as well as the Apex Court and when both the High Court as well as the Apex Court have clearly held that the plea of impersonation and forgery had not been made out against the defendants and Lakshmi Narayanan, the pleas still maintained by the plaintiff that the sale deed dated 18.07.1980 had been fraudulently created by the defendants and

others by exercising impersonation and forgery as such cannot be countenanced.

15. It is also found that only after the quashing of all the criminal proceedings by the High Court as against the defendants and Lakshmi Narayanan under Ex.P21, the plaintiff has come forward with the present suit. Therefore, it could be seen that on the date of the plaint, the plaintiff's case that he still retains title of the suit property had been rejected by the High Court under Ex.P21 and later confirmed by the Apex Court under Ex.D1. In such view of the matter, when the High Court had not accepted the plea of impersonation and forgery set out by the plaintiff as regards the sale deed dated 18.07.1980, it is evident that the sale deed dated 18.07.1980 had been upheld by the High Court and in such view of the matter, it is explicit that the claim of the title over the suit property by the plaintiff under Ex.P1 is surrounded by a cloud and considering the consequences thereof, as rightly put forth by the defendants, the plaintiff should have sought the necessary reliefs as against the sale deed dated 18.07.1980, claiming the relief of declaration as regards the said sale deed as being an invalid document or a void document as the case may be. However, despite having knowledge that the High Court had quashed the

criminal proceedings as against the defendants and Lakshmi Narayanan under Ex.P21, the plaintiff had chosen to ignore the same and laid the suit simplicitor for recovery of possession. Even on the Apex Court upholding the order of the High Court passed under Ex.P21, the plaintiff has not chosen to seek the relief of declaration as regards the sale deed dated 18.07.1980 by way of amendment. When the pleas of impersonation and forgery raised by the plaintiff as regards the sale deed dated 18.07.1980 is out of picture, it is evident that the sale deed dated 18.07.1980 has been upheld and accordingly, it is found that it is only I.V.Lakshmi, who had title to the suit property under Ex.P5, after the same had been conveyed to her by the plaintiff. If the plaintiff wants to assert that still the above said sale deed is an invalid document, as rightly argued by the defendants, the plaintiff should have sought the relief of declaration as regards the sale deed. But the plaintiff has laid the suit simplicitor for recovery for possession without seeking the relief of declaration to set aside the sale deed dated 18.07.1980 on the ground that it is brought about by impersonation and forgery and that consequently, it is an invalid and a void document.

16. Be that as it may, whether the case of the plaintiff that he

still retains title to the suit property, can be accepted has to be seen. No doubt, the plaintiff was the original owner of the suit property. However, it is the specific case of the defendants that the plaintiff had conveyed the same under the sale deed marked as Ex.P5. If the plaintiff had not alienated the suit property in favour of I.V.Lakshmi under Ex.P5 and still retains the ownership of the same, as rightly argued by the defendants, the plaintiff would be having the custody of the original title deed of the suit property. However, it is found that the plaintiff had not produced the original title deed of the suit property and on the other hand, has chosen to mark only the certified copy of the sale deed in respect of the suit property dated 22.01.1970 as Ex.P1. What had happened to the original title deed, there is no proper explanation on the part of the plaintiff. However, according to the plaintiff, he had lost the original sale deed. If the above case of the plaintiff has any semblance of truth, as rightly argued by the defendants, steps would have been taken to obtain the original document by way of necessary legal action. However, the plaintiff has not chosen to take any steps to recover the original document said to have been lost by him. It is therefore evident that the plaintiff has set up a false case that he had lost the original sale deed dated 22.01.1970. On the other hand, as rightly put forth by the defendants

inasmuch as the plaintiff had parted with the original sale deed at the time of alienation of the suit property under Ex.P5 it is evident that he is not in possession of the original title deed and therefore, the present plea of the plaintiff that he still retains title to the suit property *dehors* Ex.P5 as such cannot be accepted.

17. According to the plaintiff, he still retains title to the suit property and further, according to the plaintiff, till 2000, he had been exercising possession of the suit property by visiting, now and then, to the suit property. However, as rightly put forth by the defendants, no proper documentary proof has been projected by the plaintiff to show that he had been exercising possession over the suit property right from 1980 onwards. In this connection, it is found that the plaintiff has placed reliance upon Ex.P9, which is a certified copy of the tax receipt paid by the plaintiff in respect of the suit property for the faslis 1381 to 1413. Therefore, as rightly argued by the defendants that, at one stretch, the plaintiff had paid the tax in respect of the suit property for several years vide Ex.P9 just before the issuance of the legal notice. It is therefore obvious that Ex.P9 has come to be stealthily obtained by the plaintiff and his case therefore that he had been continuously holding possession of the suit property right from

1980 onwards as such cannot be accepted.

18. The counsel for the plaintiff vehemently contended that as against the plaint averments, the defendants have not chosen to enter the witness box to contradict the same and on the other hand, the defendants have chosen to examine Lakshmi Narayanan as DW1 and therefore, according to the plaintiff, the defendants have impliedly accepted the case of the plaintiff and the non examination of the defendants for controverting the case of the plaintiff should be taken in favour of the plaintiff and accordingly, the plaintiff's case should be accepted. No doubt, the defendants have not entered into the witness box. However, it is found that Lakshmi Narayanan, who has been examined as DW1, is closely related to the defendants and the same has also been admitted by the plaintiff. Further, the plaintiff has preferred the criminal case even as against DW1 Lakshmi Narayanan and the defendants and others. As adverted to above, the criminal case laid against DW1 has also been quashed under Ex.P21. In such view of the matter, it is found that DW1 Lakshmi Narayanan is competent to speak about the case of the defendants as he is also aware of the facts and circumstances of the case and therefore, the defence of the defendants cannot be rejected merely on the ground

that they had not entered into the witness box and had only examined their power of attorney Lakshmi Narayanan as DW1. Further, it is also found that before choosing to examine DW1 on their part, the defendants have obtained necessary orders from the High Court in Application No.4038/14. It is also found that the said application was ordered despite the resistance put forth by the plaintiff. Further, it is also found that the plaintiff's attempt to summon the defendants for adducing evidence in Application No.2926/15 had also not been acceded to by the High Court and the same had come to be dismissed and as against the orders passed in the above said application, no appeal has been preferred by the plaintiff. It is therefore evident that as rightly held by this Court in the earlier proceedings, it is for the plaintiff to establish his case and he cannot compel the opponent party to adduce evidence in support of his pleas.

19. The counsel for the plaintiff contended that the plea of impersonation and forgery raised by the plaintiff could be accepted based upon the missing of certain pages in the parent document as mentioned in Ex.P6 to Ex.P8. No doubt, there is a reference about the missing of certain pages in the parent document in Exs.P6 to P8. However, considering the evidence of DW1 that the original documents

of the suit property had been verified before the purchase had been effected under Exs.P6 to P8 and no cross-examination of DW1 had been made with reference to the missing of certain pages in the parent document and further, when the plaintiff had filed the parent document in the form of certified copy vide Ex.P5 in its full shape, it could be seen that the present plea of the plaintiff that the plea of impersonation and forgery should be accepted based upon certain recitals found in Ex.P6 to 8 as against the missing of certain pages in the parent document as such cannot be accepted.

20. In the light of the above discussions, it is clear that when the plaintiff has not established the plea of impersonation and forgery as regards Ex.P5 sale deed and on the other hand, considering the facts and circumstances of the case as detailed above, when it is found that the plaintiff had alienated the suit property under Ex.P5 in favour of I.V.Lakshmi and thereupon, the legal heirs of I.V.Lakshmi had conveyed the suit property to the defendants vide Exs.P6 to P8 and particularly, when the plaintiff had not thrown any challenge to the sale deed marked as Exs.P5, in the manner known to law, and further, when the plaintiff has also not established his possession of the suit property from 1980 to 2003 and on the other hand, it is found that it is

only the defendants and their predecessors in title, who had been in possession of the suit property right from the inception based upon valid documents, it is found that the plaintiff's case that the sale deed dated 18.07.1980 had been brought about by the defendants and others by way of impersonation and forgery as such cannot be countenanced in any manner. In support of the defendants case, the decisions reported in **(2008) 4 Supreme Court Cases 594 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) By LRs. And Others) and 2016-5-L.W.211 (Sekar Vs. Ganesan represented by his Power Agent, Thiruvengadam) are** relied upon and in support of the plaintiff's case, the decisions reported in **1997 (4) BomCR 75 (Ravindra Lalbachan Tiwari And ... Vs. Smt.Nirmaladevi Vijaynarayan), (2000) 3 Supreme Court Cases 460 (State of Maharashtra Vs. Pravin Jethalal Kamdar (Dead) By Lrs.) AIR 1992 Delhi 118 (Sanjay Kaushish Vs. D.C.Kaushish and Others), (1918)ILR 42 Bom 638 (Narsagounda Bin Savantgounda .. Vs. Chawagounda Adgounda Patil), AIR 2006 MP 58 (Bank of India Vs. S.K.Mukherjee and Anr.) (1999) 3 SCC 457 (Iswar Bhai C.Patel & Bachu Bhai ... Vs. Harihar Behera & Anr.) 2006 (5) SCC 353 (Prem Singh & Ors Vs. Birbal & Ors), (2009) 1 SCC 229 (L.N.Aswathama & Anr. Vs. P.Prakash)**

(2011) 5 MLJ 871 (Sekar Vs. Sivakumaran and three others), and the judgment of this Court rendered in S.A.No.215 of 2003 (Natarajan Vs. Paramasivam) are relied upon. The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand. In such view of the matter, I hold that the sale deed dated 18.07.1980 registered as document No.2379/1980 of the Sub Registrar Office, Saidapet is a true and valid document. Accordingly, issue No.1 is answered against the plaintiff and in favour of the defendants.

21. Issue No.5

The defendants have taken a plea that the suit laid by the plaintiff is barred by limitation. On the other hand, according to the plaintiff, as per the Article 65 of the Law of Limitation Act, the plaintiff has come forward with the suit in time and therefore, the suit is not barred by limitation. Article 65 contemplates the laying of the suit based upon the title. However, as seen above, the plaintiff traces his title to the suit property based upon his pleas of impersonation and forgery in respect of the sale deed dated 18.07.1980. When that plea of the plaintiff had been turned down by the High Court under Ex.P21

even before the institution of the suit, it is evident that on the date of the suit, the plaintiff's claim of title to the suit property had been already negated by the High Court. In such view of the matter, it is found that the plaintiff's claim that he had laid the suit on the basis of the title to the suit property as such cannot be countenanced.

22. When the plaintiff had been put on notice about the quashing of the criminal proceedings against the defendants and the plaintiff had no other legal title to the suit property, it is evident that the plaintiff should have sought the relief of declaration as regards the sale deed dated 18.07.1980 that it is an invalid document or a void document as the case may be. However, the plaintiff has laid the suit simplicitor for recovery of possession and not for declaration. As rightly put forth by the defendants, the plaintiff should have come forward with the suit for the relief of declaration as regards the claim of impersonation and forgery of Ex.P5 document within three years when the issue of registration became known to the plaintiff under Article 56 of the Limitation Act. Even according to the plaintiff, he had come to know about the registration of the sale deed dated 18.07.1980 in the year 2003. In such view of the matter, accordingly, the plaintiff should have come forward with the suit for the relief of declaration within

three years thereafter as against the sale deed dated 18.07.1980. However, according to the plaintiff, he has been prosecuting the criminal proceedings. But, that would not save the point of limitation. It is for the plaintiffs to decide as to which course of legal redressal, he wants to follow for the obtainment of suitable reliefs. When the plaintiff should have asked for the relief of declaration as regards the sale deed dated 18.07.1980 within three years after the same had come to his knowledge and when it is found that Article 65 of the Limitation Act is not applicable to the present case, as rightly put forth by the defendants counsel, on account of the failure of the plaintiff to prefer the suit within three years from the date of the knowledge of the sale deed dated 18.07.1980, it is clear that the suit preferred by the plaintiff is barred by limitation. Resultantly, I hold that the suit is barred by limitation and accordingly, issue No.5 is answered against the plaintiff.

23. Issue No.2

Under issue No.1, I had held that the sale deed dated 18.07.1980 is a true and valid document. Under issue no.5, I have held that the suit is barred by limitation. Resultantly, I hold that the plaintiff has no title to the suit property and that, he is not entitled to

the relief of recovery of possession of the suit property. Accordingly, issue no.2 is answered against the plaintiff.

24. Issue nos.3 and 4:

In the light of the answers given to issue Nos. 1, 2 and 5, I hold that the plaintiff is not entitled to the past and future mesne profits as prayed for and also not entitled to the relief of permanent injunction as prayed for and accordingly, issue nos.3 and 4 are answered against the plaintiff.

25. Issue no.6

The suit is dismissed with costs.

Index : yes/No
Internet: Yes/No
sms

15.06.2017

T.RAVINDRAN,J.

sms

PRE-DELIEVERY JUDGMENT
MADE IN
C.S.No. 336 of 2011

15.06.2017

<http://www.judis.nic.in>