

In the High Court of Judicature at Madras

Dated : 17.4.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

O.S.A.No.106 of 2015

M.M.S.MurugesanAppellant/Plaintiff

Vs

1.M.Meiyyappan
2.C.MuthiahRespondents/Defendants

APPEAL under Clause 15 of the Letters Patent against the judgment and decree dated 22.9.2014 made in C.S.No.106 of 2006 on the file of this Court.

For Appellant : Mr.V.Manohar

For Respondents : Mr.G.Ilamurugu

Judgment was delivered by NOOTY.RAMAMOHANA RAO,J

This original side appeal is preferred by the plaintiff in C.S.No.106 of 2006, aggrieved by the judgment and decree drawn therein on 22.9.2014 dismissing the suit.

2. The case and claim of the plaintiff/appellant is that the immovable property lying in S.F.No.299/2, Velachery Village, Saidapet Taluk of Chengalput District, was originally owned and belonged to one Saraswathi Ammal. By way of a sale deed dated 29.12.1966, the said Saraswathi Ammal sold the said property to a partnership firm known as Murugan Syndicate represented by Natana Sabapathy. In or about 1967, the said partnership firm, Murugan Syndicate developed the land by laying it out. Several plots were formed and they were also sold. One such plot was plot No.11 and it was purchased by one Sri.M.E.Govindan from the said Murugan Syndicate on 26.5.1967. He purchased one ground and 1,200 sq.ft totalling to 3,600 sq.ft area, which is the suit schedule property. The plaintiff, in turn, purchased the said 3,600 sq.ft of open plot from the said Sri.M.E.Govindan by way of sale deed dated 12.9.1990.

3. It appears that the partnership firm Murugan Syndicate and its two partners were declared insolvents by the High Court, Madras in I.P.No.76 of 1971. The assets owned by the partnership firm have been placed in the custody of the Official Assignee of the High Court and they were put up for disposal for realization of money to clear the debts due by the insolvents. In that process, the Official Assignee sold plot No.11 comprising of 3,600 sq.ft of open plot to one Sri.P.Selvaraj.

4. The said Sri.P.Selvaraj died on 7.5.2000 leaving behind three sons namely Varghese, Francis and John. These three sons of Selvaraj executed a general power of attorney on 13.9.2002 in favour of one Sri.A.Govindan. The said Sri.A.Govindan, in turn, executed a sale deed on 29.11.2002 in respect of the said 3,600 sq.ft of land, in favour of Sri.P.Gunasekaran. The said Sri.P. Gunasekaran executed a power of attorney in favour of one Sri.Kalaiappan on 06.5.2003. That Kalaiappan executed three separate sale deeds on 27.11.2003, one in favour of a third party in an extent of 350 sq.ft comprising of 10 feet narrow passage for providing access to the purchaser's property, the second sale is in favour of the first defendant to the extent of 1,225 sq.ft and the third in favour of the second defendant to the extent of remaining 2,025 sq.ft. That is how defendants 1 and 2, put together, have purchased 3,250 sq.ft out of 3,600 sq.ft comprising of plot No.11 developed and laid out by Murugan Syndicate.

5. It is in 2005, according to the plaintiff, he came to know of the construction undertaken by defendants 1 and 2 in the respective plots of land purchased by them from Kalaiappan, which plots formed part of plot No.11. Hence, he instituted the civil suit in C.S. No.106 of 2006.

6. Thus, by the time C.S.No.106 of 2006 came to be instituted, defendants 1 and 2 have constructed individual tenements entirely on their own, under a bona fide belief that they had a valid title to the land, over which, they were raising the constructions. Their confidence is possessing valid title bolstered because of the sale transaction carried out by the Official Assignee of this Court way back on 26.5.1967 pursuant to an order declaring the partnership firm Murugan Syndicate and its individual partners as insolvents in I.P.No.76 of 1971.

7. Whereas the contention of the plaintiff/appellant was that he purchased the suit schedule property comprising of 3,600 sq.ft forming part of plot No.11 of the lay out developed by Murugan Syndicate by way of a sale deed dated 26.5.1967, which is much prior to the insolvency proceedings being initiated against Murugan Syndicate in I.P.No.76 of 1971. It is,

therefore, his contention that the suit schedule immovable property is not one of the assets belonging to the insolvents and consequently, the Official Assignee could not have been entrusted custody thereof and the Official Assignee could not have disposed of the said property for realizing some money to discharge the outstanding liability of the insolvents. According to the plaintiff, he is a third party to the insolvency proceedings.

8. Thus, there was a claim made by both sides to the same immovable property. How far the acts of the Official Assignee of this Court have caused prejudice to the interests of defendants 1 and 2 and to the respective predecessors-in-interest is a debatable issue. All acts of the Official Assignee have got to be placed for approval of the Court or they may have been carried out in strict adherence and compliance of the terms and conditions of the order passed by the High Court in I.P.No.76 of 1971. There are clear laches on the part of the plaintiff/appellant in not bringing to the notice of the Court, which was dealing with I.P.No.76 of 1971 about his title to the land in question or at any by rate raising objections before the Official Assignee, who put to sale the land comprising of plot No.11. Thus, the plaintiff/appellant has contributed liberally for the unhindered sale of plot No.11 to take place and subsequently its ownership and title being effected by subsequent sales.

9. In this view of the matter, we asked the parties to negotiate and arrive at a reasonably satisfactory end for this litigation. In pursuance of various efforts made by the respective parties, their counsel as well as by this Court, it has been arrived at that the plaintiff shall be paid a sum of Rs.50 lakhs as part of full and final settlement, so that all rights existing in the past, at present as well as in future vis-a-vis the suit schedule property shall stand extinguished in so far as the plaintiff/appellant is concerned.

10. As a part of this package of amicable settlement of the dispute, defendants 1 and 2 have already parted with three demand drafts drawn in a sum of Rs.16,66,667/-, Rs.16,33,333/- and Rs.15 lakhs respectively, thus putting together a sum of Rs.48 lakhs. Those three demand drafts were handed over to the learned counsel for the appellant on 24.3.2017. Those demand drafts were drawn in the name of Sr.M.M.S.Murugesan and payable to him on demand.

11. Today, when the matter is taken up, two more demand drafts drawn on 13.4.2017 and 15.4.2017 respectively on ICICI Bank and HDFC Bank have been placed before us. The first demand draft is drawn in a sum of Rs.68,056/- (Rupees sixty eight

thousand and fifty six only) while the second demand draft is drawn in a sum of Rs.1,31,945/- (Rupees one lakh thirty one thousand nine hundred and forty five only), thus totalling to a sum of Rs.2,00,001/-. The demand drafts bearing Nos.002120 and 500806 drawn in the name of Sri.M.M.S.Murugesan are also handed over to the learned counsel for the appellant in the open court today. In token of receipt of the same, the learned counsel deputizing the learned counsel for the appellant/ plaintiff has acknowledged receipt of the demand drafts on the court record. With this, defendants 1 and 2 have, put together, paid in all a sum of Rs.50,00,001/- (Rupees fifty lakhs and one rupee only) to the appellant/ plaintiff.

12. Thus, the terms of settlement arrived at by and between the parties for a mutually satisfactory and amicable settlement of the disputes existing between them have been complied with by defendants 1 and 2. Since the appellant/plaintiff has already accepted the terms of settlement and has also encashed the demand drafts handed over on 24.3.2017 in a sum of Rs.48 lakhs and the balance amount is also tendered today to the learned counsel for the appellant/plaintiff, on and effective from today, all rights, in the past, at present and in future, of the plaintiff/appellant vis-a-vis defendants 1 and 2 and in respect of the suit schedule property shall stand extinguished once and for all. No further claims whatsoever on or on behalf of the plaintiff/appellant by any person either succeeding in interest or otherwise or by any third party, vis-a-vis the suit schedule property at the instance/behest of the plaintiff/appellant is entertainable. As a token of extinguishment of rights, the plaintiff/appellant shall refrain himself from, in any manner, claiming or allowing any third party acting in succession or on his behalf to make any such claim henceforth against defendants 1 and 2.

13. Defendants 1 and 2 have brought to our notice that since the plaintiff is not agreeable for deduction of tax at source while effecting the payment, because the money has been paid as a part of amicable settlement, but not as a measure of compensation, defendants 1 and 2 have obliged the plaintiff/appellant and have not effected the deduction at source of income tax. Hence, the learned counsel for defendants 1 and 2, to save themselves of any liability for not deducting the tax deducted at source, has prayed liberty of this Court to make available a copy of this order along with the income tax returns to be filed by defendants 1 and 2. The said liberty is preserved.

14. Accordingly, the above original side appeal stands disposed of in the terms recorded by us supra. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

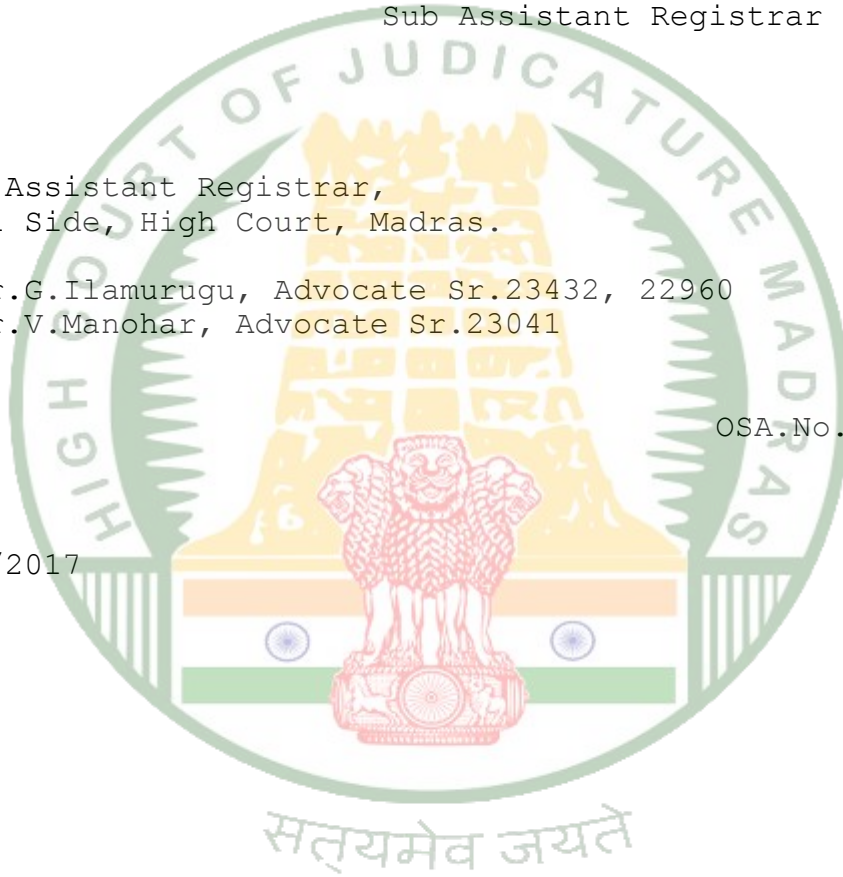
RS

1.The Sub Assistant Registrar,
Original Side, High Court, Madras.

+2cc to Mr.G.Ilamurugu, Advocate Sr.23432, 22960
+1cc to Mr.V.Manohar, Advocate Sr.23041

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