

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:06.02.2017

Pronounced on:17.02.2017

Coram

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

**Second Appeal Nos.549, 1004 and 1005 of 2006
and**

C.M.P.Nos.6827 of 2006, 204 of 2009, 63 of 2009 and 1 and 1 of 2006

S.A.No.549 of 2006

P.Chellamuthu .. Appellant

/versus/

1.Abinaya Muthusamy

2.N.Annapoorani

3.S.Natesan

4.M.Narayanasami

5.Ramaiah .. Respondents

S.A.No.1004 of 2006

M.Muthusamy .. Appellant

/versus/

1.Abinaya Muthusamy

2.N.Annapoorani

3.S.Natesan

4.M.Narayanasami

5.Ramaiah

.. Respondents

S.A.No.1005 of 2006

A.V.Rajendran

.. Appellant

/versus/

1.Abinaya Muthusamy

2.N.Annapoorani

3.S.Natesan

4.M.Narayanasami

5.Ramaiah

.. Respondents

Common Prayer: Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.11.2005 made in A.S.Nos.78 of 2003, 79 of 2003 and 80 of 2003 respectively on the file of the Principal District Judge, Dharmapuri at Krishnagiri by confirming the judgment and decree dated 21.02.2003 made in O.S.Nos.315 of 1996, 316 of 1996 and 317 of 1996 respectively on the file of the Subordinate Judge Court at Hosur.

For Appeallants :Mr.R.Gandhi, Senior Counsel for
(in all appeals) Mr.R.Ganaendhiran

For Respondents :Mr.G.T.Subramanian for R1
(in all appeals) Mr.K.Chandrasekaran for
Mr.S.Ramachandran for R2 and R3
Mr.K.Chandrasekaran for R4(Exparte)
Mr.T.Chezhiyan for R5- No appearance (Exparte)

COMMON JUDGMENT

Second Appeals filed against the judgment and decree dated 30.11.2005 made in A.S.Nos.78 of 2003, 79 of 2003 and 80 of 2003 respectively on the file of the Principal District Court, Krishnagiri by confirming the judgment and decree dated 21.02.2003 made in O.S.Nos.315 of 1996, 316 of 1996 and 317 of 1996 respectively on the file of the Subordinate Court at Hosur.

2. For the sake of convenience, the parties are described as per their rank and status shown in the original suits.

3. Suits for declaration, injunction and damages filed by the plaintiffs were dismissed by the trial Court through a common judgment passed in O.S.Nos.315 to 317 of 1996. The appeal preferred by the plaintiffs before the first appellate Court in A.S.Nos.78 to 80 of 2003 were also dismissed by confirming the common judgment of the trial Court.

4. Aggrieved by the concurrent finding of the Courts below, the plaintiff in O.S.No.315 of 1996 has preferred S.A.No.549 of 2006. This

Court, at the time of admission, has formulated the following Substantial Questions of Law for consideration:

“(1)Whether the Courts below have committed an error in ignoring the fact that the sale deed under Ex.B4, dated 29.08.1991 is void abinitio since the same was executed by the parties who were actually aware of the pendency of the Land Acquisition Proceedings at the relevant time?

(2)Whether the findings of the Courts below are erroneous, being contrary to the mandatory provisions of the Land Acquisition Act and also against the settled legal position by the Supreme Court?

(3)Whether the Courts below have justified in holding that the suit properties were not vested with the Tamil Nadu Housing Board, in spite of the fact of execution of re-conveyance deed dated 14.02.1995 under Ex.A3 executed by them?

(4)Whether the Courts below are correct in holding that the respondents 1 and 2/Defendants are in possession of the suit property without any independent evidence and proof for the same?”

5. The plaintiff in O.S.No.316 of 1996 has preferred S.A.No.1004 of 2006. Whereas, the plaintiff in O.S.No.317 of 1996 has preferred S.A.No.1005 of 2006. This Court, at the time of admission, has formulated the following common Substantial Questions of Law for

consideration in both appeals:-

“(1)Whether the Courts below have committed an error in ignoring the fact that the sale deed under Ex.B4 dated 29.08.1991 is void ab initio, since the same was executed by the parties, who were actually aware of the pendency of the Land Acquisition Proceedings at the relevant time?

(2)Whether the Courts below are justified in holding that the suit properties were not vested with the Tamil Nadu Housing Board, in spite of the fact of execution of re-conveyance deed dated 14.02.1995 under Ex.A3 executed by them?”

6. Since the facts are common in all these three suits, both the trial Court as well as the first appellate Court have rendered common judgment. Accordingly, this Court passes the common judgment in all these three appeals.

7. One Mr.Kandasamy was holding about 8 acres of land in S.Nos.184, 185, 186A and 186C in Hosur Village, Hosur Taluk, Krishnagiri District. After his demise, his son Venkatesamurthy was in possession of the property. While so, the Tamil Nadu Housing Board sought to acquire the suit land and published Section 4(1) notification of the Tamil Nadu Land Acquisition Act, 1894, on 13.06.1980.

8. The writ petition in W.P.No.1753 of 1983 filed by the land owner Venkatesamurthy challenging the acquisition was dismissed on 08.01.1991. The land acquisition award was passed on 30.10.1992 and the land owner has received the award amount from the Sub Court, Krishnagiri. While so, on 18.03.1991, the land owner Venkatesamurthy has executed a power of attorney in favour of one Ramaiah, who is the fifth defendant in all the suits. Ramaiah based on the said power of attorney, has sold the property to one Narayanasamy on 29.08.1991. On the very next day i.e. 30.08.1991 it appears that the land owner Venkatesamurthy has cancelled the power of attorney executed by him in favour of Ramaiah(5th defendant). After purchase, the fourth defendant Narayanasamy has executed a registered general power of attorney in favour of one Natesan (third defendant) and the third defendant, on the strength of the power of attorney document, has sold 24 plots, which are part and parcel of the suit property to one Annapooranai and Abinaya Muthusamy, defendants 2 and 1 respectively.

9. Though the power of attorney executed in favour of Ramaiah was cancelled by the land owner Venkatesamurthy on 30.08.1991, the

fifth defendant Ramaiah has moved the Government for cancellation of acquisition and pursuant to the steps initiated by him, the Government of TamilNadu has instructed the Managing Director of the Tamil Nadu Housing Board to re-convey the land to the fifth defendant Ramaiah on 17.05.1993. Based on this communication, the Tamil Nadu Housing Board has executed a re-conveyance deed in favour of Ramaiah on 14.02.1995. On the very same day the said Ramaiah has sold the suit property in three parts. Firstly, 2.59 acres in S.No.184 was executed in favour of one Chellamuthu, who is the plaintiff in O.S.No.315 of 1996 and the appellant in S.A.No.549 of 2006. Secondly, 2.97 acres in S.No.185 was executed in favour of one Muthusamy, who is the plaintiff in O.S.No.316 of 1996 and the appellant in S.A.No.1004 of 2006 and thirdly, 3 acres in S.No.186A and in 0.04 cents in S.No.186/1C respectively were sold to one Rajendran, who is the plaintiff in O.S.No.317 of 1996 and the appellant in S.A.No.1005 of 2006.

10. The Identical averment of the plaintiffs/appellants is that having purchase of the suit property from the 5th defendant, they are the absolute owner of the property, whereas defendants 1 and 2 are tracing their title over the suit property, based on the sham and nominal sale deed executed by the 5th defendant in favour of the 4th defendant on

29.08.1991.

11. The trial Court has dismissed all the three suits on the ground that Ex.B4-Sale deed executed by Ramaiah, the fifth defendant as power agent of Venkatesamurthy in favour of Narayanasamy and duly registered on 29.08.1991 is valid. Even though that transaction was effected during the pendency of the land acquisition proceedings, by virtue of withdrawal of the land acquisition proceedings by adopting the principle of "Feeding the grant by Estoppel", defendants 1 and 2 had perfected title and no right flows to the plaintiffs by virtue of Ex.A12, A14 and A15.

12. On appeal, the first appellate Court has confirmed the trial Court judgment reiterating the findings of the trial Court and in addition, pointed out that the alleged re-conveyance of the acquired land itself is not in consonance with Section 48 of the Land Acquisition Act, 1894 and Sections 16 and 17(1) of the the Land Acquisition Act, 1894 and has cited the judgment of ***State Of Kerala & Ors vs M. Bhaskaran Pillai & Anr [AIR 1997 SC 2703]***, the Hon'ble Supreme Court, which has held that once the acquisition proceeding is completed, the Government becomes the absolute owner of the property. No question of reconveyance to the erstwhile owner permissible. However, the

Government shall be at liberty to withdraw the acquisition of any land of which possession has not been taken. Therefore, withdrawal of acquisition can be done by the Government, when only the possession is not taken, but after taking possession, if any excess land remains unutilised, the rest of the land could be used for any other public purpose. In case, there is no other public purpose for which the land is needed, then the land should be put to public auction and the Government cannot assign the land to the erstwhile owners. The recital of Ex.A3-reconveyance deed, reads as re-conveyance of the acquired property by the Tamil Nadu Housing Board in favour of Ramaiah. The lower appellate Court has found that though the land owner is Venkatesamurthy, the property has been conveyed in favour of Ramaiah, who is alleged to be the power agent of Venkatesamurthy. From assessing the exhibits, the lower appellate Court has held that by the very conduct of the Tamil Nadu Housing Board and the reconveyance deed indicates that the acquisition proceedings was not completed. However, instead of returning the property in favour of the original land owner after withdrawal of acquisition. They have reconveyed the property in favour of Ramaiah, who claimed himself as power agent. In fact, the power executed in his favour was cancelled on 30.08.1991 itself. Therefore, the lower appellate Court held that the purchase of part of the

suit property by the defendants 1 and 2 from the power of attorney of lawful title holder namely, 4th defendant is valid and the title deeds relied by the plaintiffs are not valid. In the above said background, the aggrieved plaintiffs are before this Court by way of second appeals.

13. It is very important to point out that the erstwhile owner of the property Venkatesamurthy was not made a party-defendant in the suit but he was examined as P.W.5. The power of attorney Ramaiah, who is the 5th defendant in the suit sails along with the plaintiffs though he has executed the sale deed on 29.08.1991 in favour of Narayanasamy the fourth defendant, pending acquisition proceeding and he has again executed sale deeds Exs.A7 to A14 and A15 in favour of the appellants herein on 14.02.1995 after the so-called reconveyance deed Ex.A3.

14. Before going into the nature of Ex.A3-deed executed by the Tamil Nadu Housing Board, it is necessary to first ascertain whether Ramaiah has any alienable right over the suit property on 14.02.1995. When the power of attorney document executed in his favour by the landlord Venkatesamurthy was cancelled as early as 30.08.1991, vide Ex.B1, there is no other document to show that on the date of executing Ex.A7, A14 and A15, the said Ramaiah was the owner of the property

(or) the power agent of the original owner.

15. From reading of Ex.A2, it is very clear that the Government in Housing and Urban Development Department has taken a policy decision to re-convey 8.60 acres of land in S.Nos.184, 185, 186A and 186C in Hosur Village, Dharmapuri District, subject to the collection of development charges. This decision has been taken by the Government, based on the representation of the 5th defendant Ramaiah requesting the Government to exclude the said land from acquisition. Based on this decision reflected in Ex.A2, the deed of re-conveyance has been effected through Ex.A3. This Court holds that this deed is a fraudulent document purported to have been executed by some officer of Tamil Nadu Housing Board, without any application of mind, but for some extraneous consideration.

16. Under Ex.A2 it is clear that Ramaiah has given a petition for exclusion of the land from the acquisition proceedings. Whereas, the Government has decided to re-convey the property to him and pursuant to that, the Executive Engineer of Hosur Housing Board attached to Tamil Nadu Housing Board has executed a deed under the caption "re-conveyance" in favour of Ramaiah describing himself as Ex-owner of the

property. This Court fails to understand how the said Ramaiah can become the land owner of the subject property, when he himself claims to be only the power agent of the original land owner Venkatesamurthy and admittedly even that power of attorney document being cancelled by Venkatesamurthy as early as 30.08.1991 vide Ex.B1. The manifestation of the above fraud is the execution of Exs.A7,A14 and A15, which are the sale deeds in favour of the appellants herein executed by Ramaiah on the very same day i.e. on 14.02.1995.

17. On thorough scrutiny of Ex.A4 power of attorney executed in favour of Ramaiah, Ex.A5-cancellation of the above power of attorney, after executing the sale deed Ex.B4 by Ramaiah in favour of Narayanasamy the fourth defendant and in the light of Ex.A3, the so called reconveyance deed in favour of Ramaiah describing him as Ex-owner, though he was neither owner of the suit property nor the power agent of the erstwhile owner, put together, clearly show that the appellants have no locus to sustain their suits. The Courts below have rightly dismissed the suits.

18. There is no error in accepting Ex.B4-sale deed, dated 29.08.1991, since the land acquisition proceedings has apparently been

withdrawn by the Tamil Nadu Housing Board and as pointed out earlier, Ex.A3-the so called reconveyance deed dated 14.02.1995 has not reconveyed the property to the erstwhile owner but, to stranger who is neither the owner nor the power agent of the erstwhile owner on the date of reconveyance. Just because, the erstwhile owner Venkatesamurthy, has signed as witness in Ex.A7,A14 and A15, it cannot be construed as a document of sale by the real owner.

19. The fifth defendant Ramaiah cannot sell the property twice. First posing as the power agent of Venkatesamurthy in the year 1991 and then again as owner of the property in the year 1995. Even otherwise, if Ramaiah still claims any right through the Ex.A3-reconveyance, then also by virtue of Section 43 of the Transfer of Property Act, 1882, the earlier sale deeds in favour of defendants 1 and 2 gets valid.

20. Section 43 of Transfer of Property Act, 1882 reads as under:-

"Section 43--- Transfer by unauthorised person who subsequently acquires interest in property transferred:- Where a person (fraudently or) erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any

time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

21. This Section embodies the rule of estoppel and enacts that a person, who makes a representation, shall not be heard to allege the contrary as against the person, who acts on such representation. It is immaterial, whether the Transferor acts bonafide or fraudulently in making the representation.

22. In the judgment of the Hon'ble Supreme Court in ***Jumma Masjid v. Kodimaniandra Deviah [1962 SC 847]***, speaking for a four-Judge Bench, Aiyar, J. opined in para 7, which reads as under:-

"Considering the scope of the section on its terms, it clearly applies whenever a person transfers property to which he has no title on a representation that he has a present and transferable interest therein, and acting on that representation, the transferee takes a transfer for consideration. When these conditions are satisfied, the section enacts that if the transferor subsequently acquires the property, the transferee becomes entitled to it, if the transfer has not meantime been thrown up or cancelled and is subsisting."

23. In fact, the Ex.A3 socalled reconveyance deed bristles with multiple infirmities. It is factually incorrect to describe Ramaiah as the erstwhile owner of the property, even if for some reason, he is construed as erstwhile owner of the property's acquired under land acquisition proceedings, it cannot be reconveyed to the erstwhile owner. Since such reconveyance is not contemplated under Section 48 of the Land Acquisition Act and in view of the judgment rendered by the Hon'ble Supreme Court in ***State Of Kerala & Ors vs M. Bhaskaran Pillai & Anr [AIR 1997 SC 2703]***, which has categorically held that "it is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the directive principles of the constitution. Therefore, the Government cannot assign the land to the erstwhile owners.", the Substantial Questions of law raised in all these three appeals are answered accordingly.

24. For the above said reasons, ***these three Second Appeals are dismissed.*** No order as to costs.

25. Pending these second appeals, the petitioner Chellamuthu has taken out the petition in C.M.P.No.204 of 2009 in S.A.No.549 of 2006 to produce two documents as additional evidence. These documents related to patta issued in the name of Tamil Nadu Housing Board, pursuant to the acquisition and regarding delivery of possession to the Tamil Nadu Housing Board, it is stated by the petitioners/appellants that these two documents he got through Right to Information Act and they should be accepted as evidence in these appeals. Since this Court has held that Ex.A3-deed is executed based on misrepresentation, no document consequence to the Ex.A3 requires consideration. Hence, this petition in C.M.P.No.204 of 2009 is dismissed. The other connected C.M.P.Nos.6827 of 2006, 63 of 2009 and 1 and 1 of 2006 are closed.

17.02.2017

Index:Yes/No
Internet:Yes/No

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To

The Principal District Judge, Dharmapuri at Krishnagiri.

The Subordinate Judge, Hosur

Dr.G.Jayachandran, J.

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S.A.Nos.549, 1004 and 1005 of 2006

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