

(a) To cancel the Decree dated 16.09.2008 made in O.S.No.5992 of 2007, on the file of V Assistant Judge, City Civil Court, Chennai, as the same was obtained by fraud and misrepresentation and collusion;

(b) For declaration declaring the Sale Deed dated 27.02.2012, registered as Document No.179 of 2012 on the file of Sub-Registrar, Sowcarpet, Chennai, executed by the first defendant in favour of the 7th defendant as null and void and not binding on the plaintiff;

(c) For the relief of permanent injunction restraining the Defendants, their men, servants, agents or anybody claiming under them from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property; and (d) Award the costs of the suit.

For Plaintiff	..	Mr.N.Muralikumar for M/s McGan Law Firm
For Defendants	..	No appearance

JUDGMENT

The suit is filed to cancel the Decree dated 16.09.2008 made in O.S.No.5992 of 2007, on the file of V Assistant Judge, City Civil Court, Chennai, as the same was obtained by fraud and misrepresentation and collusion; for declaration declaring the Sale Deed dated 27.02.2012, registered as Document No.179 of 2012 on the file of Sub-Registrar, Sowcarpet, Chennai, executed by the first defendant in favour of the 7th defendant as null and void and not binding on the plaintiff; and for the relief of permanent injunction

restraining the Defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property;

2. Brief facts of the plaintiff's case is as follows:- The plaintiff has purchased the suit property bearing Door No.27, Wall Tax Road, Chennai-79, comprised in R.S.No.123/9 measuring an extent of 1440 sq. ft. land and building by a Sale Deed dated 13.03.2001 registered as Document No.330 of 2001 on the file of Sub Registrar, Sowcarpet, Chennai, from the first defendant. From the date of purchase, she is in possession and enjoyment of the property as absolute owner thereof. When the matter stood thus, the first defendant filed a suit in O.S.No.439 of 2006 on the file of the XV Assistant City Civil Judge, Chennai, against the plaintiff for permanent injunction. The said suit was rejected on 15.03.2007.

2 (i). Thereafter, a suit in O.S.No.5992 of 2007 was filed against the plaintiff and the first defendant herein by one Sarojini, for declaration declaring the sale deed executed on 13.03.2001 by the first defendant in favour of the plaintiff herein as null and void and not binding her. In the above suit without serving summons to the plaintiff and first defendant herein, the said Sarojini obtained an ex parte decree. Thereafter, the when the plaintiff filed an Application in

I.IA.No.16013 of 2011 to set aside the ex parte decree. When the said Application was posted for filing counter on 6.6.2012, the counsel appearing for the Respondent in the said Application filed a Memo stating that the said Sarojini died on 20.04.2011. Therefore, she filed an Application to implead the present defendants herein as Legal Heirs of the deceased Sarojini and the said Application is still pending. Based on the ex parte decree, an endorsement was also made before the Sub-Registrar of Sowcarpet on 13.03.2001. When the matter stood thus, the suit property was again transferred vide a Family Settlement dated 24.02.2012 executed by the defendants 2 to 6 herein, in favour of first defendant and registered as Document No.176 of 2012 on the file of the Sub-Registrar, Sowcarpet.

2(ii). Again, the first defendant herein has executed a sale deed in favour of the 7th defendant herein, vide Document No.179 of 2012 dated 27.02.2012, on the file of Sub-Registrar, Sowcarpet. The suit property is entirely a different property and in no way connected with the partition deed. The suit property was not allotted to Sarojini and B.C.Sudhakar under the partition deed. Therefore, the said Sarojini is estopped from filing of the suit O.S.No.5992 of 2007 as the suit property was allotted to the said Sarojini and the first Defendant herein. She filed the suit in O.S.No.5992 of 2007 by playing fraud

upon the Court and made misrepresentation and obtained ex parte decree behind the back of the plaintiff herein. The plaintiff being the owner of the suit property based on the earlier registered sale deed dated 13.03.2001, the subsequent sale deed dated 27.02.2012 is not valid in law. Hence the suit.

3. The defendants remain ex parte. The plaintiff examined herself as P.W.1 and marked Exs.P1 to P10. P.W.1 in her evidence has stated about the purchase of the property from the first defendant in the year 2001 and thereafter, the first defendant and one Sarojini filed a suit and obtained ex parte decree without serving summons on the plaintiff and thereafter the first defendant sold the property to the 7th defendant herein which is not valid in law. The plaintiff has also stated in her evidence that the suit property in no way connected to the partition entered between the parties. The first defendant having sold the property to the plaintiff in the year 2001, the second sale in favour of the 7th defendant in the year 2012 is null and void. The evidence of P.W.1 remains unchallenged.

4. Ex.P1 is the certified copy of partition deed dated 03.03.1994 between Sarojini and others, wherein the suit Survey Number 123/9 did not find a place. Ex.P2 is the certified copy of the decree dated 15.03.2007, passed in O.S.No.439 of 2006 filed by the first defendant

herein against the plaintiff herein. The above suit was filed for a permanent injunction against the plaintiff herein as seen from Ex.P3, certified copy of the Judgment dated 15.03.2007 rendered in O.S.No.439 of 2006. Under Ex.P4 sale deed dated 27.11.2003, one Sarojini and the first defendant sold the property in favour of one Mooli Devi, wherein they sold an extent measuring one ground and 1476 sq. ft. in R.S.No.124/4. The sale deed itself clearly mention the subject matter of the above sale deed was allotted under the partition deed dated 03.03.1994. From the recitals of the above said document it is seen that the subject matter of the partition deed in fact the suit property was sold by the first defendant in favour of the plaintiff in the year 2001. Ex.P5 is the certified copy of the ex parte decree dated 16.09.2008 passed in O.S.No.5992 of 2007, against the first defendant and the plaintiff herein, declaring the sale deed dated 13.03.2001 as null and void. Ex.P6 is the certified copy of the judgment dated 16.09.2008 passed in O.S.No.5992 of 2007 and on careful perusal of the same, the ex parte judgment was passed without considering of the documents. The judgment reads as follows:-

" P.W.1 present. Proof affidavit filed. Ex.A1 to A5 marked. Claim proved. Suit is decreed as prayed for with costs."

There was no observation with regard to the documents and the evidence and the learned V Assistant Judge has simply passed the decree. Ex.P7 is the certified copy of the settlement deed dated 24.02.2012, executed by the defendants 2 to 6 in favour of the first defendant settling their share in favour of the first defendant. From the said document it is made clear that the first defendant has become absolute owner of the property. Based on the above settlement subsequently he sold the property once again to the 7th defendant under Ex.P8 dated 27.02.2012. Exs.P9 and P10 series have been filed by the plaintiff to prove the possession of the properties.

5. From the settlement deed it could be seen that the other legal heirs of Sarojini have settled the property in favour of the first defendant. Whereas the first defendant has already sold the property in favour of the plaintiff in the year 2001. The settlement was effected as though the suit property was allotted under the partition deed. As I have already stated, the suit property did not find a place in the partition deed. Even assuming that in the year 2001 the first defendant had no absolute title to sell the property in favour of the plaintiff, by virtue of the settlement in his favour in the year 2012, he acquired interest in the property. Therefore, any such transfer made by the plaintiff in the year 2001 would be saved as provided under

Section 43 of the Transfer of Property Act. Therefore, having sold the property in the year 2001 and the subsequent sale deed in favour of the 7th defendant is not valid in the eye of law since the transfer of the subject matter of property took place in the year 2001.

6. It is also submitted by the plaintiff that ex parte decree was obtained by fraud, no summons whatsoever served on her and the Application filed by her to set aside the ex parte decree and judgment is also pending. Having sold the property and obtained the ex parte decree behind the back of the plaintiff is nothing but fraudulent act on the part of the first defendant and his mother. Hence, having regard to the nature of the documents and evidence of P.W.1 which remains unchallenged and the defendant remain ex parte, I am of the view that the plaintiff has established his case. Accordingly, the document executed in favour of the 7th defendant in the year 2012 is not valid in the eye of law. Hence, the plaintiff is entitled to declaration declaring the sale deed dated 27.02.2012 as null and void and not binding on the plaintiff and also for permanent injunction against the defendants from in any manner interfering with the peaceful possession and enjoyment of the property by the plaintiff.

7. Accordingly, the suit is decreed as prayed for with costs.

27.02.2017

gr.

N.SATHISHKUMAR, J

gr.

PRE DELIVERY JUDGMENT IN
Civil Sit No.588 of 2012

27.02.2017