

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.1241 of 1998

Shanmugham

... Appellant

Vs

1.Muthusamy Udayar (Died)
2.Ammasai (Died)
3.Muniyan
4.Marimuthu
5.Velayudham (Died)
6.V.Panchi
7.V.Pichakkaran
8.K.Dhanalakshmi
9.V.Ramamurthy
10.V.Visu
11.M.Ramakrishnan

... Respondents

(RR6 to 10 brought on record as
LRs of the deceased R5 vide order
of Court dated 26.09.2012 made
in C.M.P.Nos. 769/2012 to
771/2012 in S.A.No.1241 of 1998)

(R11 Brought on record as
LR of the deceased R1 vide
order of Court dated 5.03.2015
made in C.M.P.Nos. 33 to 35 of 2015)

PRAYER: The Second Appeal filed under Section 100 of CPC,
against the judgment and degree of the Court of the Civil Judge,
Senior Division, Kallakurichi in A.S.No.243 of 1996 dated
30.06.1997 in reversing the judgment and decree of the Court of
the Additional District Munsif, kallakurichi in O.S.No.762 of
1990 dated 31.10.1994.

For Appellant : Mrs.V.Srimathi

For RR4 : Mr.V.Kunjithapatham
For RR6 - 10 : Mr.A.Sankar
For R11 : No appearance (Name printed)

JUDGEMENT

The 5th defendant in O.S.No.762 of 1990 on the file of the Additional District Munsif Court, Kallakurichi, is the appellant herein. O.S.No.762 of 1990 had been filed by the plaintiff Muthusamy Udayar, against five defendants namely, Ammasi, Muniyan, Marimuthu, Vellayutham and Shanmugham, seeking declaration of title and permanent injunction restraining the defendants or anybody acting under them from interfering with peaceful possession. This suit came up for consideration on 31.10.1994, before the Additional District Munsif Court, Kallakurichi. The learned Additional District Munsif, dismissed the suit with costs. Challenging that judgment, the plaintiffs filed A.S.No.243 of 1996, which came up for consideration before the learned Civil Judge, Senior Division Kallakurichi on 30.06.1997. The learned Civil Judge, Senior Division Kallakurichi, allowed the appeal and consequently set aside the judgment of the trial court. Aggrieved by that judgment, the 5th defendant Shanmugham had filed the present second appeal.

2. Pending the second appeal, the second respondent Ammasi, who was the first defendant in the suit died. The 5th respondent Velayutham also died and his legal representatives were brought on record as respondents 6-10. The first respondent who was the plaintiff also died and his legal representatives was brought on record as the 11th respondent. The 11th respondent M.Ramakrishnan was served with notice and his name is also printed in the cause list. He was served with notice on 04.02.2015.

3. The second appeal has been admitted on the following substantial questions of law:

- "1. Whether the lower appellate court is right in recognising the sale under Ex.A1, particularly when the deed of assignment forbid any alienation in favour of a non Scheduled Castes/Scheduled Tribes member?
2. Whether the lower appellate Court is not in error in granting a decree affirming the title of the plaintiff and whether the same is not opposed to public policy and run counter of assignment itself?
3. Whether the lower appellate Court ought not

to have seen that under the principle of IN PART DELICTO, the plaintiff is disentitled from claiming any right on the basis of Ex.A1?

4.Whether the lower appellate court has not failed to appreciate that the defendants continue to be in possession and the minors 4th and 5th defendants are entitled to ignore the sale and affirm their right in the property?"

4.Heard Mrs.V.Srimathi, learned counsel for the appellant. The respondents 1-10, though represented by a counsel, had not appeared before the Court for arguing the case. The 11th respondent has not chosen to participate in the present second appeal proceedings, even though he had been served with notice and his name printed in the cause list. O.S.No.762 of 1990 (Additional District Munsif Court, Kallakurichi):

5.The plaintiff has filed the above suit for declaration of title and for permanent injunction to protect possession. In the plaint, it had been stated that the suit properties originally belonged to the defendants. The first, second and third defendants, acting on their behalf and on behalf of the 4th and 5th defendants, who were minors, had sold the suit property on 30.05.1967 to the plaintiff. It was claimed that the plaintiff was in possession. It was claimed that the defendants have no manner of right or title over the property. It was also stated that the 4th and 5th defendants have not raised any objection to the sale deed, dated 30.05.1967, even after 12 years from the date of sale, and consequently they had lost any right in law to question the sale deed. It had also been stated in the plaint that the defendants had attempted to interfere with peaceful possession of the plaintiff and consequently the suit had been filed for declaration of title and for permanent injunction. The property was land in S.No.127/3 measuring 0.89 cents and land in S.No.127/B1 measuring 0.47 cents. It was stated out of the said 0.47 cents, the plaintiff had sold away 0.41 cents. Consequently, the suit had been instituted with respect to S.No.127/3 measuring 0.89 cents and in S.No.127/B1 for 0.06 cents. These lands were situated in Vanapuram Village, Kallakurichi Taluk.

6.The 4th and 5th defendants alone filed written statement. It must be mentioned that the first, second and third defendants chose to remain ex-parte in the suit. In the written statement of the 4th and 5th defendants which in effect had actually been filed by the 5th defendant and adopted by the 4th defendant, it was stated that the sale deed dated 30.05.1967 relied on by the

plaintiff, was not a true and valid document. It was stated that the plaintiff was not in possession of the suit property. It was also stated that the plaintiff did not acquire any title under the sale deed. It was also stated that the plaintiff had defrauded the first, second and third defendants who are illiterate peasants and had obtained the sale deed from them. It was also stated that patta had been assigned to the grandfather of the 4th and 5th defendants with condition that the lands should be enjoyed only by the members of the Adi-Dravidar Community and cannot be alienated to any other community people. It was stated that the plaintiff did not belong to Adi-Dravidar Community and consequently, the sale deed in favour of the plaintiff was void by statute and by law. It was also stated that the defendants have entered into the property which was lying fallow and which was not in the possession of the plaintiff. They are in possession and enjoyment of the suit properties. It was stated that suit should be dismissed. It was stated that, the plaintiff's claim that he had sold 0.41 cents in S.No.127 of B1 is not true. In effect, it was asserted that the suit should be dismissed.

7. On the basis of the above pleadings, the learned District Munsif Kallakurichi, framed the following issues for trial:-

1. Whether the plaintiff was entitled for declaration of title of the suit properties?
2. Whether the plaintiff had acquired title by long possession?
3. Whether the defendants have a right to claim title over the property? and
4. To what other reliefs are the plaintiff entitled to?

During trial, the plaintiff examined himself as PW-1. The 5th defendant examined himself as DW-1 and also examined as DW-2, the erst while Karnam of the Vanapuram Village. The plaintiff marked Ex.A1 sale deed dated 30.05.1967 and Ex.A2, kist receipts. On the side of the defendants, Exs.B1 to B5 were marked. Exs.B1 and B2 are the patta in the names of the first and second defendants. Ex.B2 is the order of the Tahsildar. Ex.B4 are the kist receipts and Ex.B5 is the assignment of lands with condition.

8. On the basis of the oral and documentary evidence, by judgment dated 31.10.1994, the learned District Munsif, Kallakurichi, dismissed the suit with costs. In the course of the judgment, the learned District Munsif Kallakurichi, found as a fact that the land has been assigned to the grandfather of the 4th and 5th defendants with condition, stating that there cannot be any sale to any individual who does not belong to Adi-

Dravidar Community. It was stated that this fact was also spoken by DW-2 in his evidence. He was the Karnam of the village from 1948 to 1980. He produced Ex.B5 which was the extract of the Register in which the lands were assigned to Veerasamy, the grandfather of the 4th and 5th defendants. The learned District Munsif, Kallakurichi also found that the tax receipts produced by the plaintiff, which have been marked as Ex.A2 series, were for the years 1968 to 1990 in irregular intervals and not for continuous period. It was also found that the plaintiff who examined himself as PW-1, was not able to identify the particular tax receipts for the lands which are the subject matter of the suit. It was also found that the witness did not know the details of the patta for the lands. It was also found that the plaintiff had not produced the copies of the sale deeds by which he had claimed that he had sold a specific portion of the land in R.S.No.127/B1. On the other hand, the learned Additional District Munsif, Kallakurichi also examined the tax receipts filed by the defendants and it was found that the Tahsildar had by Ex.B3, ordered on 14.12.1993 that the patta should be transferred in the name of the 4th and 5th defendants. It was also found that there was no evidence to show that the plaintiff was in possession for the past more than 12 years. The learned Additional District Munsif, Kallakurichi dismissed the suit.

A.S.No.243 of 1996 (The Civil Court, Senior Division Kallakurichi):

9.Before the Civil Judge, Senior Division, Kallakurichi, the appellant focused on the issue whether the 4th and 5th defendants had questioned the sale from the date of the sale for a period of 12 years or whether they had questioned the sale within 3 years from attaining the age of majority. The learned Judge found that the sale deed in favour of the appellant/plaintiff which was marked as Ex.A1 and which was dated 30.05.1967 had not been challenged and consequently stating that the document had been in force for well over the statutory period and that the respondents/defendants had lost right to question the sale deed by efflux of time, allowed the appeal and decreed the suit.

S.A.No.1241 of 1998:

10.Challenging that judgment, the fifth defendant in the suit had filed the present appeal. The second appeal had been admitted on 30.10.2003 by this court on the following substantial questions of law:

"1.Whether the lower appellate court is right in recognising the sale under Ex.A1, particularly when the deed of assignment forbid any alienation in favour of a non Scheduled Castes/Scheduled Tribes member?

2.Whether the lower appellate Court is not in error in granting a decree affirming the title of the plaintiff and whether the same is not opposed to public policy and run counter of assignment itself?

3.Whether the lower appellate Court ought not to have seen that under the principle of IN PART DELICTO, the plaintiff is disentitled from claiming any right on the basis of Ex.A1?

4.Whether the lower appellate court has not failed to appreciate that the defendants continue to be in possession and the minors 4th and 5th defendants are entitled to ignore the sale and affirm their right in the property?"

11.Heard arguments advanced by Mrs.V.Srimathi learned counsel for the appellant. As stated above, the contesting respondent, namely, the 11th respondent who was the legal representative of the deceased first respondent/plaintiff, did not choose to participate in the appeal proceedings before this Court. He had been duly served with notice, and his name has also been printed in the cause list. He had not appeared either person or through Court. He had been impleaded as a party, after following due process. Notice had been served on him and service had been noted in the records.

12.Ex.B5 is the assignment of the lands which are the subject matter of the suit. They are situated in Vanapuram Village, Kallakurichi Taluk. They are fallow lands in R.S.No.127/3 measuring 0.89 cents and in R.S.No.127/B1 measuring 0.06 cents. It must be mentioned that the actual extent of land in R.S.No.127/B1 was 0.47 cents. The plaintiff in the suit had claimed that he had sold 0.41 cents out of the 0.47 cents. However, it had been established as a fact that the plaintiff had not produced copies of that sale deed and this assertion of the plaintiff had been rejected by the trial court and which assertion had not been over ruled by the First Appellate Court.

13.In Ex.B5, the assignment was for "Thazthapatta Vagupar" Adi-Dravidar community. Among the conditions granted in the assignment, the following condition is reproduced verbatim:

“நிலமானது தாழ்த்தப்பட்ட வகுப்புகளைச் சேர்ந்த இதர நபர்களைத் தவிர வேறே எவருக்காகிலும் விற்பனை மூலமாகவாவது, தானுமூலமாகவாவது கொதுவைமூலமாகவாவது எவ்வகையான குத்தகை மூலமாகவாவது பராதீனம் செய்யப்பட்டாலும், சட்ட

முறைப்படி நடத்தப்படும் விற்பனை காரணமாகவாகிலும்
மற்றபடியாகிலும் அந்த நிலமானது பிரதமத்தில் யாருக்குக்
கொடுக்கப்பட்டதோ அந்த நபருக்காயினும் சட்டசம்மதமான
அவருடைய பிரதிநிதிகளுக்காயினும் தாழ்த்தப்பட்ட வகுப்ப
களைச் சேர்ந்த இதர நபர்களுக்காயினும் சொந்தமாயிராமல்
போய்விட்டாலும், அல்லது நிர்ணயிக்கப்பட்ட தேதிகளில்
கவர்ன்மென்ட் தீர்வை செலுத்தத் தவறிப்போய்விட்டாலும்,
கொடுக்கப்பட்ட நிலமானது மீண்டும் கவர்ன்மென்ட்ாரால்
எடுத்துக்கொள்ளப்படுவதற்கு உட்பட்டதாகும் ”.”

14.From the condition extracted above, is clear that there was a prohibition to sell the lands to anybody apart from Adi-Dravidar Community people. The sale deed in Ex.A1 dated 30.05.1967 is a document which is consequently void ab initio since the purchaser Muthusamy Udayar did not belong to Adi-Dravidar community. It is void by statute. It will not give rise to any right, title or interest. It is a document which cannot convey any title. It is a document which had been executed though prohibited by law. It is a document which is against public policy. The public policy which has to be upheld and guarded is that the lands remain with the Adi-Dravidar people. The transfer of lands to any person who does not belong to Adi-Dravidar Community, is void in view of the condition of the original assignment. Such transfer was in direct violation of the conditions of the assignment. It cannot be recognized in law. Such transfer has to be prevented and prohibited by law.

15. In the written statement, there is a very significant assertion made namely,

“The plaintiff ought to have manoured to defraud the defendants 1 to 3 who are illiterate peasants and farm servants, to get at the document malafide from them.”

This assertion in the written statement has not been countered by any reply statement by the plaintiff. The 4th and 5th defendants have substantially stated that fraud had been played by the plaintiff taking advantage of the plight of the first, second and third defendants who are “illiterate peasants and farm servants to get the documents malafide”. I hold that once a document had been obtained by fraud and when such document was specifically prohibited by law and by a deed of assignment which has the force of law, then no right of title can flow from such document.

16.The learned First Appellate Judge had referred to the

Judgment reported in 1991 (2) MLJ 538 [C.Arumughathan Vs. S.Muthusami Naidu and others], wherein it is held by the this Court that transfer in contravention to any specific condition is void and the land granted to Harijans therein should not be alienated to any person who is other than the Harijans and such transfer is void. Having referred to that judgment, I hold it was highly inappropriate on the part of the First Appellate Court to justify the sale by stating that the defendants had not questioned the same for a period of 12 years.

17.It is to be mentioned that 4th and 5th defendants have not approached the Court seeking assertion of title on the basis of the assignment. On the other hand, the plaintiff has come to Court on the basis of a document which is void in law and document is void ab initio. It is not a document void by an act of a party but void by statute. The plaintiff cannot claim any relief based on such document. I hold that the First Appellate Court had erred in holding that the said document conveyed title and that it is a valid document. It is thus seen that the very basis of the conclusion arrived at by the learned First Appellate Judge is based on a premise which is legally not permissible. When the document is void, since it breaches condition of assignment, then no title of right would flow in it.

18.As a matter of fact, the learned Additional District Munsif had found that the Revenue documents were still in the names of the 4th and 5th defendants. In the suit, the First Appellate Court had not even examined and rendered any finding on this fact. The substantial question of law which had been framed at the time of admission revolves around only one aspect, whether any right can flow from a document which cannot convey any title and when it is opposed to public policy.

19.As discussed above, no right or title can flow from the said document. In the present case, Ex.A1, sale deed dated 30.05.1967 is opposed to public policy. To reiterate, the public policy which was meant to be upheld was that the lands should be continued to be vested with the people belonging to the Adi-Dravidar Community. It is a beneficial policy and any encumbrance or any contravention of such policy, cannot be upheld by any Court of Law. When a document is void ab-initio, the issue of limitation cannot be agitated. The document is void from the date and from the time when it had been registered. It is void from that minute. No right or title flows from it though it is registered. Consequently, it is held with respect to the first substantial question of law, namely, alienation in favour of Non-Scheduled Caste/Scheduled Tribe members, that the First Appellate Court had erred in recognizing the sale deed.

20.The second substantial question of law is answered that the First Appellate Court was wrong in affirming the title of the plaintiff, particularly when such title was asserted and based on documents opposed to public policy.

21.The third substantial question of law is answered that the plaintiff cannot claim any right on the basis of Ex.A1 since the document is void ab-initio.

22.The fourth substantial question of law is answered that the finding of fact of possession of the 4th and 5th defendants have not been reversed or even examined by the First Appellate Court and it has to be held that the finding of fact has attained finality.

23.I find no reason to disagree with the judgment of the learned trial court Judge who had examined all the documents and who had given a judgment based on evidence and on law. The First Appellate Court has miserably erred in reversing the well considered judgment of the learned trial Judge. Consequently, the judgment and decree of the First Appellate Court in A.S.No.243 of 1996 dated 30.06.1997 are set aside and the judgment and decree of the Additional District Munsif, Kallakurichi in O.S.No.762 of 1990 dated 31.10.1994 is confirmed. Consequently, the Second Appeal is allowed with costs, payable by the 11th respondent/legal representative of the first respondent/plaintiff.

Smv/tta

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Civil Judge,
Senior Division,
Kallakurichi

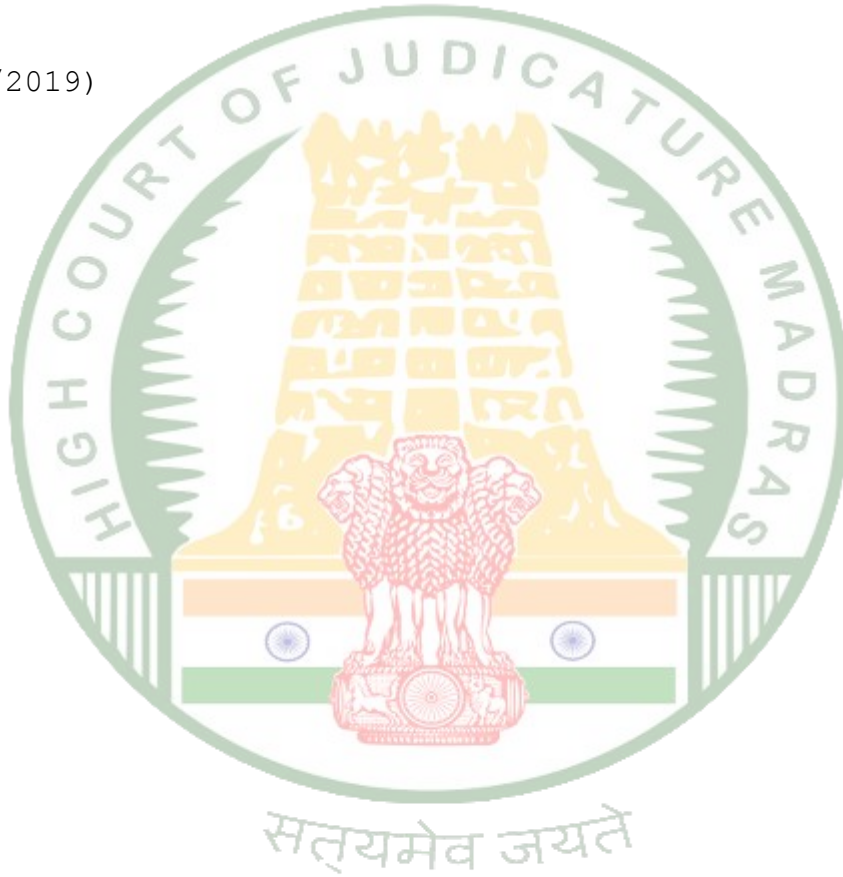
2.The Additional District Munsif,
Kallakurichi

3.The Section Officer,
VR Section,
Madras High Court.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.87281

S.A.No.1241 of 1998

KS (CO)
Kak(10/04/2019)



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