

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.527 of 2018

&

C.M.P.No.14586 of 2018

Balu ... Appellant/Defendant

Vs

Rajakamalanathan ... Respondent/Plaintif

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 01.02.2018 made in A.S.No.30 of 2013 on the file of the Principal District Court, Namakkal in partly confirming the Judgment and Decree dated 10.04.2013 made in O.S.No.390 of 2008 on the file of Subordinate Court, Tiruchengode.

For Appellant : Mr.T.Thirumalaisamy
For Respondent : Mr.N.Manokaran
(Caveator)

JUDGMENT

The above Second Appeal arises against the Judgment and Decree of the Principal District Judge, Namakkal in A.S.No.30 of 2013 in and by which the learned District Judge has partly dismissed the appeal filed by the appellant/defendant challenging the Judgment and Decree in O.S.No.390 of 2008 on the file of the Subordinate Court, Tiruchengode. The parties are arrayed in the same ranking as in the suit.

The facts in brief are as follows:

2.The plaintiff had filed the suit O.S.No.390 of 2008 on the file of the Subordinate Court, Tiruchengode seeking a declaration that the defendant had no right in the suit property and for a permanent injunction restraining the defendant from encumbering the suit property as well as disturbing the peaceful possession and enjoyment of the suit property. The case of the plaintiff is that the property in question is the premises in Survey No.191/3 measuring an extent of 6.98 acres situated in Kokarayanpettai Village, Tiruchengodu Taluk.

3.Marayee Ammal had purchased the western half measuring an extent of 3.49 acres under the sale deed dated 21.02.1941 and the eastern half measuring 3.49 acres was purchased by her son Nachimuthu on 22.09.1957. The plaintiff would contend that on the death of her son Nachimuthu her son's wife Saraswathy and daughters Muruganandhi and Nithiya had sold their half share to the plaintiff under a sale deed dated 21.04.1993 for a sum of Rs.1,00,000/-. Marayee Ammal had also sold her half share to the plaintiff under the sale deed dated 19.04.1993. Therefore by reason of these two sale deeds the plaintiff had become the owner of the entire extent of 6.98 acres in S.No.191/3 and he had also mutated the revenue records in his name and has been cultivating Sugar cane in the said property.

4.After having sold her share to the plaintiff representing, herself and her daughters the said Saraswathy sold the property to one Saravanan. Since the said Saravanan was interfering in the plaintiff's peaceful possession and enjoyment of the suit property the plaintiff had filed a suit O.S.No.560 of 1996 on the file of the District Munsif, Thiruchengode against the said Saravanan, in which the suit was decreed in favour of the plaintiff. After the death of Saravanan the said Saraswathy and her daughters repurchased their property from the legal heirs of the Saravanan under sale deed dated 20.02.2001 and under sale deed 25.07.2007 they had further sold the property to the defendant. The plaintiff would contend that the defendant could claim no right over the suit property on the basis of the said nominal sale deeds, therefore the suit.

5.The suit was resisted by the defendant inter alia contending that the plaintiff is not a owner of an extent of 3.49 acres in the suit S.No.191/3 it was their case that after the death of Nachimuthu his wife and daughters became entitled to the Eastern half and they had sold the same to the plaintiff. However, they had contended that the it was false to say that the plaintiff had purchased the share of Marayee Ammal on 19.04.1993 since the sale deed is a fabricated one. The reason for making these submissions was on account of the fact that the said Marayee Ammal had executed a registered release deed in favour of her daughter in law and grand daughters on 10.03.1987 under document No.33/1987 and therefore Marayee Ammal did not have any right to alienate the property. They contended that the sale deed dated 19.04.1993 executed by Marayee Ammal in favour of the plaintiff was invalid as on that date. Marayee Ammal did not have any right, title or interest to the property. The defendant would contend that the non-disclosure of the release deed was deliberate attempt to suppress the true facts. It was on account of the harassment of the plaintiff that Saraswathy and her daughters had executed a sale deed in favour of the Saravanan who was a powerful person and thereafter on the death of the said Saravanan his legal heirs sold property back to the said Saraswathy and her daughters on 22.02.2001. since then she has been in possession and enjoyment of the property which was later sold to the defendant. The defendant therefore submitted that the plaintiff was only entitled to the Eastern half of the property and not the Western half.

6.The parties had gone to trial. On the side of the plaintiff the plaintiff had examined himself as P.W.1 and one Selvaraj as P.W.2. The plaintiff had marked Ex.A.1 to Ex.A.18 in support of their case. The defendant on the other hand examined himself as D.W.1 and one Nallusamy as D.W.2 and Arulmolidever as D.W.3. The defendant had marked Ex.B.1 to Ex.B.13 on his side. Ex.X.1 which is the Xerox copy of the certificate given by the Village Administrative Officer, Kokkarayanpettai Village was marked. On a detailed consideration of the evidence on record, the learned Subordinate Judge, Tiruchengode decreed the suit as prayed for. This Judgment and Decree was taken up on appeal by the defendant to the Principal District Judge, Namakkal in A.S.No.30 of 2013. The learned Principal District Judge, Namakkal after hearing both sides partly allowed the appeal. The decree with regard to the

declaration that the defendant is not the owner of the property was set aside. This was on account of the fact that the plaintiffs title had already been declared in the Judgment and Decree in O.S.No.560 of 1996 on the file of the District Munsif Court, Tiruchengode. The appeal was dismissed with reference to the rest stating that the defendant did not have any right over the property and therefore he should be prevented by way of permanent injunction.

7.Challenging the concurrent Judgment and Decree the defendant is before this Court. Heard, Mr.T.L.Tirumalaisamy, learned counsel appearing on behalf of the appellant. He would contend that under Ex.A.17, release deed dated 10.03.1987 Marayee Ammal had released her interest in favour of the Saraswathy and her daughters. He further argued that after she had relinquished her rights in the western half of the suit property, the said Marayee Ammal had executed a Power of Attorney in respect of the suit properties under Ex.A.2 and on the strength of the Ex.A.2 the Ex.A.3 sale deed came to be executed in favour of the plaintiff.

8.He would further argue that the plaintiff who claims to be in possession has not let in any evidence with reference to the possession or the date of taking possession etc. which clearly exposes that the plaintiff is not in possession of the said property. He further argued that the suit for bare injunction without seeking a declaration is liable to be dismissed. In support of the same he relied on the Judgment reported in 2008 (6) CTC 237. The Judgment of this Court in Second Appeal No.2007 of 2003 in R.Appadurai Vs. T.K.Samikkannu and T.R.Thangappan Vs. Chitra reported in 2011(5) MLJ 413 was cited in support of his case that the prayer for negative relief is not maintainable.

9.The learned counsel would also rely upon the Judgment in R.N.Shanmugavadivel, S.V.Shanmugam Vs. R.N.Myilsami, R.N.Krishnakumar, R.N.Nachammal reported in 2010 (3) MWN (Civil) 633 particularly with reference to paragraphs 10 and 11 therein. He would also contend that the Court fees under Section 25 (d) and (c) of the Tamil

Nadu Court Fees and suit Valuation Act, 1955 is not maintainable as the Court fee ought to have been paid under Section 25 (a) of the Tamil Nadu Court Fees and suit Valuation Act, 1955. He would therefore contend that the Judgment and Decree of the Courts below is to be set aside.

10. Per contra Mr. N. Manokaran, learned counsel appearing on behalf of the sole respondent would argue that the entire edifice of the defendant's argument was that Marayee Ammal did not have any right, title or interest to the Western half of the suit property on the execution of Ex.A.17 release deed. This argument falls since, the said Marayee Ammal had only released her right to claim maintenance in respect of the property in the Eastern half. Under Ex.A.17 release deed Marayee Ammal had not release her share in the immovable property. He further argued that the suit for claiming negative prayer is not maintainable as it has already been set at rest by the order of this Court in the C.M.A.Nos.344 and 744 of 2016 which is filed by the plaintiff challenging the very same order passed in A.S.No.30 of 2013 on 17.01.2015. This Court has clearly stated that the suit for the negative prayer was maintainable in the light of the Judgment in R.N. Shanmugavadivel, S.V. Shanmugam Vs. R.N. Myilsami, R.N. Krishnakumar and R.N. Nachammal reported in 2010 (3) MWN (Civil) 633. He would further argue that the defendant had no right, title or interest since he had purchased property from Saraswathy and her two daughters after they had divested all their right, title and interest in respect of the Eastern half in Ex.A.5 sale deed. He would further argue that the suit was filed only on the basis that the plaintiff had his right, title or interest to the suit property declared in the earlier suit O.S.No.560 of 1996. The learned Counsel therefore prayed for the dismissal of the suit.

11. Heard both parties and perused the records and Judgments. Given below is a small sketch showing the passing of title with reference to the two portions:

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Balu

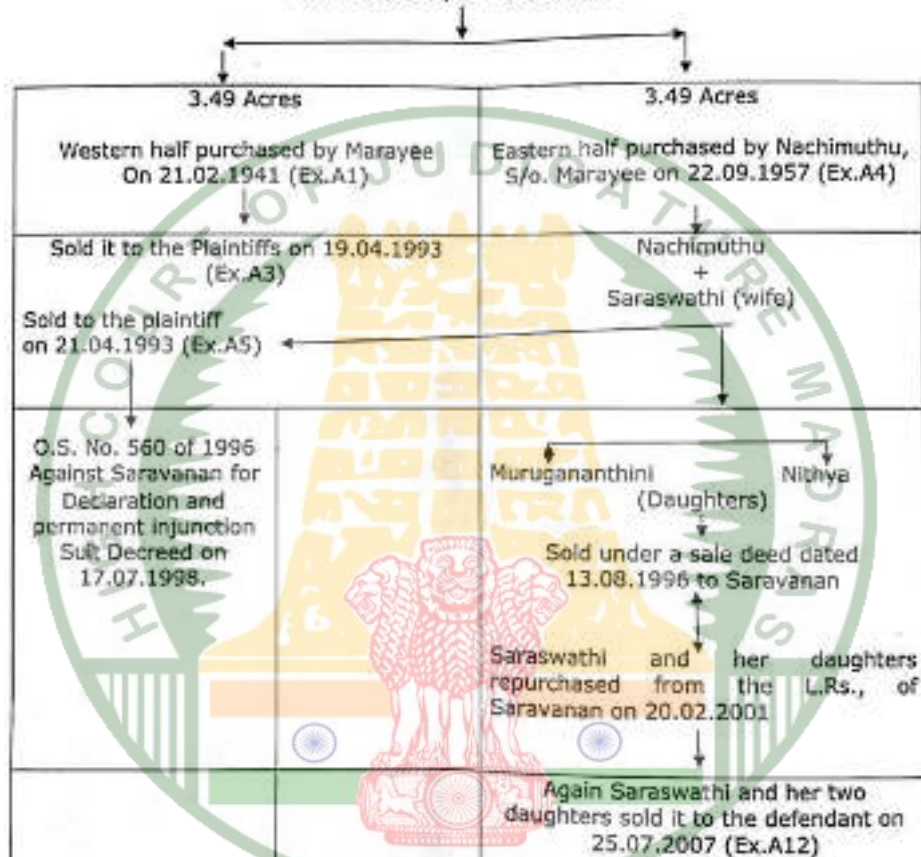
-Appellant.

Versus

Rajakamalanathan

-Respondent

S.F. No. 191/3 = 6.98 Acres



12.A perusal of the above chart would at a glance show how the property in Western half has been purchased by the plaintiff as early as in 1993 and thereafter Saraswathy and her daughters had sold the property to the plaintiff under Ex.A.5 sale deed dated 25.04.1993. Therefore, with effect from 21.04.1993 Saraswathy and her two daughters had no right, title or interest to the Eastern half of S.No.191/3 and the subsequent sales effected by her in favour of the defendant. As the defendant is claiming under one such invalid sale. Further as pointed out by the learned Counsel for the respondent that under Ex.A.17, release deed Marayee Ammal had only released her right to claim maintenance in respect of the Eastern half and not her share in the Western half of the portion. Therefore I find

no infirmity in the Judgment and Decree passed by the Courts below.

The Second Appeal does not give raise to any question of law much less a Substantial Question of law. In the result, the Second Appeal stands dismissed. However there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Namakkal

2.The Subordinate Judge,
Tiruchengode

copy to :

The section officer,
VR Section,
High court
Madras

+1cc to Mr.T.Thirumalaisamy , Advocate SR.No. 674

+1cc to Mr.N.Manokaran , Advocate SR.No. 741

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A.SK (21/03/2019)

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