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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.11.2015

CORAM

THE HONOURABLE MR. JUSTICE **M.SATHYANARAYANAN**

C.S.No.514 of 2013

1. C.S.Hemalatha
2. V.B.Vijayalakshmi
3.B.Santhoshkumar ... Plaintiffs

Vs.

1.G.Maluram Misser
2.Madhu Devi
3. K.Vijayalakshmi
4. M.Kannan ... Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the High Court O.S.Rules R/W Order VII Rule 1 of C.P.C. Praying for the following reliefs:-

a) Plaintiffs are the absolute owners and title holders of the suit property which is more elaborately described in the schedule of property mentioned, basing on the covenants of the settlement deed executed by late R.Kuppusamy Chetty on 09.10.1945 bearing Document No.834 of 1945 ; b) For a declaration that the sale certificate issued on 04.01.1975 in E.P.No.797 of 1973 in O.S.No.3352 of 1971 will not bind the plaintiffs' right, title and ownership in the suit property which is more elaborately



described in the schedule of suit property; c) the agreement of sale dated 28.10.2009 which is entered between the defendants 1 to 4 does not bind the plaintiffs ; d) a decree for permanent injunction restraining the defendants 1 to 4 their servants, agents or men from encumbering the suit property bearing Old Door No.15, New Door No.8, Vaikunta Vathiyar Street, Pedda Naickenpettai, Sowcarpet, Chennai-79, more elaborately described in the schedule of property and to direct the defendants to pay the costs of the suit.

For Plaintiffs : Mr.G.Rajasekaran

For Defendants : No Appearance

JUDGMENT

In the plaint, it is averred that the house, ground and premises bearing Old Door No.15, New No.8, Vaikunta Vathiyar Street, Peddanaickenpettai, Sowcarpet, Chennai 600 079, was originally purchased by R.Kuppusamy Chetty, who is the great grandfather of the plaintiffs, by means of a registered Sale Deed in Doc.No. 406 of 1945. The said R.Kuppusamy Chetty, in turn, settled the property in favour of the plaintiffs absolutely and also granted life estate to the plaintiff's father viz., B.Narasimhulu Chetty and



their grandmother Chengamma vide Doc.No.834 of 1945 dated 09.10.1945.

2. The plaintiffs would state that the said property, which is the subject matter of this litigation, was enjoyed by the grandmother of the plaintiffs till her death on 25.02.1994. Thereafter, their father namely, B.Narasimhalu Chetty was enjoying the same and also registered some portion to the tenants and as against the tenant, eviction proceedings were initiated by filing RCOP No. 23 of 1996 and a decree was passed and had already initiated execution by filing E.P.No.157 of 2015 and on executing the decree, delivery of possession of the said portion was also obtained through the process of Court. It is further stated by the plaintiffs that the father had released his life estate in the suit property in favour of the plaintiffs, by registering a Sale Deed, bearing Doc.No.1034 of 2010 dated 13.08.2009 and thereby they have become the absolute owner, having right, title and possession in respect of the suit property.

3. The revenue records, stood in the name of the purchaser, had been transferred in the name of the plaintiffs. The plaintiffs subsequently got an encumbrance certificate in respect of the suit property and came to



know about the existence of the registered agreement of sale deed dated 28.10.2009, executed by the second defendant, who claims to be power agent of the first defendant, in favour of the third defendant. The first defendant claims title to the suit property through the Court auction sale in execution of the money decree in O.S.No.3352 of 1971 filed by Govindalal against grandmother of the plaintiff viz., B.Chengamma and her husband B.Varadharajalu Chetty.

4. It is the specific case of the plaintiffs that B.Varadharajalu Chetty is not having any right or title in respect of the said suit property and therefore, the exparte decree obtained by Govindalal against B.Varadharajalu Chetty and Chengamma in O.S.No.3352 of 1971 is not valid and binding and it is also not in accordance with law.

5. It is further averred by the plaintiffs that based on the alleged agreement of sale deed dated 28.10.2009, a suit for specific performance was also filed in C.S.No.758 of 2010 and the same is pending and since the plaintiffs want to establish their title in respect of the suit property, came forward to file this suit.



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6. All the defendants were served, but there was no representation on their behalf and hence, the matter was directed to be listed under the caption "'Undefended Board'" and called on 12.12.2014 and since there was no representation on their behalf and further no written statement has also been filed, this court set them exparte and directed the Registry to list the matter before the learned Additional Master No.I for recording exparte evidence.

7. On behalf of the plaintiffs were filed proof affidavits were filed and Exs.P.1 to P.21 were marked.

8. The learned counsel appearing for the plaintiffs has drawn the attention of this Court to the proof affidavit and typed set of documents filed and submitted that in the light of pleadings, oral and documentary evidence, the plaintiffs are entitled to decree as prayed for.

9. This Court on consideration of the pleadings, framed the following issues:-

'1. Whether the plaintiffs are entitled to declaration and they are the absolute owners and title holders of the suit property by virtue of registered settlement



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deed Doc.No.834 of 1945 dated 09.10.1945?

2. Whether the plaintiffs are entitled to declaration that the sale certificate dated 04.01.1945 in E.P.No.157 of 2010 in O.S.No.3352 of 1971 on the file of Xth Assistant City Civil Court, Chennai, is bind that the effect of the right or title and possession ?

3. Whether the plaintiffs are entitled to declaration that the agreement of sale deed dated 28.10.2009, entered into between the defendants 1 to 4 is not bind ?

4. Whether the plaintiffs are entitled to decree for permanent injunction restraining the defendants 1 to 4 their servants, agents or men or anybody claiming any encumbrance in the suit property?

5. To what other reliefs, the plaintiffs are entitled to ?''

Issue No.I

10. A perusal of the pleadings, oral and



documentary evidence would disclose that Ex.P1 is the Sale Deed in favour of R.Kuppusamy Chetty, dated 12.05.1945 under Ex.P2 Settlement Deed dated 09.10.1945, R.Kuppusamy Chetty has bequeathed the suit property to the plaintiffs grandmother and enjoyed by her till her life time. The grandfather of the plaintiffs have also got patta Ex.P3, dated 17.09.1945, the father of the plaintiffs who is having capacity of life estate, has released his life estate in the suit property in favour of the plaintiffs and also filed eviction proceeds in RCOP.No.23 of 1996 as against tenants and obtained order of eviction vide order and decree dated 22.09.2003. The tenant made challenge to the order of eviction by filing appeal in RCA.No.464 of 2003 and under Ex.P5-Judgment the said appeal was dismissed on 09.12.2009. Thereafter, execution was levied and the property was recovered from the possession of the tenant under Ex.P.6. The father of the plaintiffs has also executed the Release Deed under Ex.P.7 dated 13.08.2010. Exs.P8 and P9 would disclose that the Corporation Tax and Water Tax stood in the name of plaintiffs' grand mother. A perusal of Exs.P.10 to P.13 would disclose that the revenue records have been transferred from the name of B.Chengamma in the name of the plaintiffs.



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11. In the light of the uncontroverted facts, this court is of the view that issue No.1 is to be answered in favour of the plaintiffs. Accordingly, issue No.1 is answered in affirmative in favour of the plaintiffs.

Issue No.2 :

12. It is the specific case of the plaintiffs that five encumbrance certificates Ex.P.14 series and Ex.P.15 Sale Certificate dated 14.01.1975 issued in favour of one Govindlal, partner of Ganesh Narayan Govindlal, son of auction purchaser, had entered into an agreement of Sale dated 28.10.2009 under Ex.P16, through his power agent Madhu Devi, in favour of K.Vijayalakshmi/ 3rd defendant. The plaintiffs had issued legal notice under Ex.P.17. The defendants 1 to 3 have sent Reply Notice under Ex.P.18 dated 13.11.2010. The third defendant has also filed a suit for specific performance in O.S.No.14723 of 2010 on the file of City Civil Court, Chennai against the defendants 1 & 2 as well as against the plaintiffs and their father under Ex.P.19. The third plaintiff has also moved the District Registrar for cancellation of agreement of sale, Ex.P.14 under Ex.P20 vide order dated 25.06.2012. The said agreement is ordered to be cancelled. Pendency of the suit, the third defendant herein has also filed a suit



in C.S.No.758 of 2010 for specific performance against the defendants 1 & 2 and also pendency of the suit filed an application in A.No.1343 of 2011 to implead the defendants 1 and 2 as parties to the said suit and the said application was dismissed under Ex.P.21.

13. A perusal of the above cited exhibits especially Ex.P.20 would disclose that the plaintiffs are entitled to declaration and that the sale certificate dated 04.01.1975 in E.P.No.797 of 1973 in O.S.No.3352 of 1971 would not bind the plaintiffs right, title over the item-1 of the suit property. Therefore, issue No.2 is answered in affirmative in favour of the plaintiffs.

Issue No.3:

14. As a consequence of answering issue No.1 & 2 in favour of the plaintiffs' this Court is of the view that the agreement of sale dated 28.10.2009 entered between the defendants 1 to 4 would not bind the plaintiffs and therefore, issue No.3 is answered in favour of the plaintiffs.

Issue No.4:

15. Overwhelming documents marked on behalf of the plaintiffs would disclose that the plaintiffs have right, title and possession of the suit property and revenue



records under Exs.P.8 to P.13, had probabilsed and substantiated the case of the plaintiffs of their possession and enjoyment of the suit property and therefore, the issue no.4 is also answered in favour of the plaintiffs.

16. In fine there shall be a Judgment and Decree declaring that

a) Plaintiffs are the absolute owners and title holders of the suit property which is more elaborately described in the schedule of property mentioned, basing on the covenants of the settlement deed executed by late R.Kuppusamy Chetty on 09.10.1945 bearing Document No.834 of 1945 ; b) the sale certificate issued on 04.01.1975 in E.P.No.797 of 193 in O.S.No.3352 of 1971 will not bind the plaintiffs ' right title and ownership in the suit property ; c) the agreement of sale dated 28.10.2009 which is entered between the defendants 1 to 4 does not bind the plaintiffs. d) a decree for permanent injunction restraining the defendants 1 to 4 their servants, agents or men or anybody claiming any encumbrance in the suit property in favour of the third party.

In the result, the suit is decreed as prayed for, with costs.

**Plaintiffs side Exhibits:**

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- Ex.P1 - 16.05.1945 - Certified copy of the Sale Deed in favour of R.Kuppusamy Chetty.
- Ex.P2 - 09.10.1945 - Certified copy of Settlement Deed executed by R.Kuppusamy Chetty in favour of the plaintiff.
- Ex.P3 - 17.09.1945 - Certified Copy of Patta in the name of Chengamma to B.Narasimhulu Chetty
- Ex.P4 - 22.09.2003 - Certified Copy of Judgment in RCOP No.23 / 1996.
- Ex.P5 - 09.12.2009 - Certified Copy of Judgment in RCA No.464 / 2003
- Ex.P6 - 16/07/2010 - Certified Copy of Order in E.P.No.157/2010
- Ex.P7 - 13.08.2010 - Certified Copy of Release Deed executed by B.Narasimhulu Chetty.
- Ex.P8 - 1980-81 - Certified Copy of Corporation Tax in the name of B.Chengamma
- Ex.P9 - 1979-1995 - Certified Copy of Water Tax Demand in the name of B.Chengamma
- Ex.P10 - 27.01.2011 - Certified Copy of Name Transfer in the name of plaintiff issued by Corporation of Chennai.
- Ex.P11 - 10.02.2011 - Certified Copy of Water Tax Receipt in the plaintiffs name.
- Ex.P12 - 22.11.2008 to 04.10.2011 - Original internet copy of Statement of Electricity Board for residential portion.
- Ex.P13 - 08.07.2010 to 07.01.2012 - Original internet copy of Statement of Electricity Board for non-residential shop portion.



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Ex.P14 - 01.01.1940 - Original (Five) Encumbrance
Certificates
to
08.07.2012

Ex.P15 - 14.01.1975 -Certified Copy of Sale Certificate
issued by City Civil Court.

Ex.P16 - 28.10.2009 -Certified Copy of Agreement of Sale
executed by Madhu Devi in favour of
K.Vijayalakshmi.

Ex.P17 - 03.11.2010 -Certified Copy of Advocate Notice
issued by plaintiffs to the
defendants 1 to 3.

Ex.P18 - 13.11.2010 - Certified Copy of Reply Notice
issued by the defendants 1 and 2
to the plaintiffs and their
father.

Ex.P19 - 22.12.2010 - Certified Copy of Plaint in
O.S.No.14723 of 2010.

Ex.P20 - 25.06.2012 -Certified Copy of Order passed by
District Registrar (Admn.) Chennai
North.

Ex.P21 - 13.08.2012 Certified Copy of Judgment in
Application No.1343 of 2011 in
C.S.No.758 of 2010.

Plaintiffs side Witness:

P.W.1 : Mr.B.Santhosh Kumar

Defendants side Exhibits: Nil

Defendants side Witness: Nil

Sd/ M.S.N.J

26.11.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/18.01.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.