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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.397 of 2010

M.Padmini .. Plaintiff

Versus

1. M.K.Awrangasep
2. K. Sadiq Batcha
3. Malik .. Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the Original
Side Rules read with Order VII Rule 1 CPC, praying

(a) to declare the sale deed dated 12.10.2009 executed by
third defendant in favour of the defendants 1 and 2 registered
as document No.1087 of 2009 is not valid and binding with
regard to the suit schedule property;

(b) to declare the plaintiff is the absolute owner of the
suit schedule property having valid title and absolute
enjoyment;

(c) to grant permanent injunction restraining the



defendants or their men or the persons claiming through them from any way interfering in the peaceful possession and enjoyment of the plaintiff in the suit property with the right of ingress and egress from and out of the Myan Sahib, 1st street, Triplicane, Chennai to plaintiff's suit schedule property;

(d) To award the cost of the suit;

For Plaintiff : Mr.V.Manohar

For Defendants 1 to 3 : set ex-parte
(dt.27.08.2013)

J U D G M E N T

The suit is filed for declaration that the sale deed dated 12.10.2009 executed by third defendant, in favour of the defendants 1 and 2, registered as document No.1087 of 2009, is not valid and binding, with regard to the suit schedule property; for declaring the plaintiff is the absolute owner of the suit schedule property having valid title and absolute enjoyment; and for restraining the defendants or their men or persons claiming through them from any way interfering in the peaceful possession and enjoyment of the plaintiff in the suit property with the right of ingress and egress from and out of the Myan Sahib, 1st



street, Triplicane, Chennai to plaintiff's suit schedule property.

2. The case of the plaintiff is that the suit property belonged to one Ellammal, by virtue of the purchase made by her, vide sale deed dated 21.03.1974. After the lifetime of the said Ellammal, it devolved on her son one Bhakthavatchalam. He was in possession and enjoyment of the property till his death (i.e) 10.05.1998. After his death, it devolved on his wife-B.Saroja Ammal and daughter-Geetha. The said Geetha died on 02.10.1988 without issues and Saroja Ammal died on 30.01.2002, leaving behind the plaintiff to succeed to the said property. Accordingly, the plaintiff had become entitled to the suit property, as absolute owner. As the plaintiff was living away from the suit property with her husband, she had permitted one Selvakumari to reside in his house as a permissive occupant.

3. The suit property is situate adjacent to the property belonging to one Madurai Pillai. After the death of the said Madurai Pillai, his legal heirs had sold the property to the third defendant, by sale deed dated 10.09.2008. As per the said deed, an extent 839 sq.ft of land with building in old Survey No.1059, was purchased by the third defendant with specific boundaries. The third defendant, after the purchase made by him, sold the same to the defendants 1 and 2,



by virtue of sale deed dated 12.10.2009. In the said document, the third defendant had executed the property belonging to the plaintiff and mentioned wrong boundaries. The third defendant had conveyed 1154 sq.ft by the said sale deed. As the third defendant had sold in excess of what he was entitled to, under the sale deed dated 10.09.2008, the suit has been filed to declare that the sale deed dated 12.10.2009 conveying 1154 sq.ft including the suit property measuring about 315 sq.ft, is not binding on the plaintiff and to declare that the plaintiff is owner of the suit property and for permanent injunction restraining the defendants from interfering with the possession of the plaintiff.

4. In spite of the service of summons on the first and second defendants, as early as on 18.06.2010, and on the third defendant on 04.12.2012, the defendants have not entered appearance through counsel or in person. Hence, they were set ex-parte on 27.08.2013.

5. The plaintiff had filed his proof affidavit marking Exhibits P.1 to P.9.

Sl.N o.	Exhibi ts	Description of documents	Date
1	P-1	Original Sale Deed	20.03.1974
2	P-2	Original death certificate of Bhakthavatchalam	15.05.1998



Sl.N o.	Exhibi ts	Description of documents	Date
3	P-3	Original legal heirship of Bhakthavatchalam	21.05.1998
4	P-4	Original Death Certificate of B.Geetha	10.10.1998
5	P-5	Original Death Certificate of Sarojammal	24.05.2002
6	P-6	Original legal heirship of Sarojammal	07.06.2002
7	P-7	Xerox copy of ration card for 1998 to 2003	-
8	P-8	Certified copy of sale deed	10.09.2008
9	P-9	Certified copy of sale deed	12.10.2009

6. The only question arising for consideration is as to whether the plaintiff is entitled to the suit relief.

7. Only three documents are relevant to be considered for the purpose of the suit. Ex.P.1 is copy of the sale deed executed by Madurai Pillai in favour of Ellammal, W/o. Kanna Pillai. As per the said sale deed, an extent 315 sq.ft with a right of common passage adjoining the western side of the site was sold to the said Ellammal. The plaintiff is the grand son of Elammal. The second sale deed that is to be considered is Ex.P.8, which is executed by Chockammal and others in favour



of the third defendant. As per the said sale deed, the third defendant had purchased an extent 839 sq.ft in old survey No.1059 and R.S.No.3022 /15A with specific boundaries. The western boundary is shown as the property belonging to one Bhakthavatsalam, who is the plaintiff's father. Therefore, the third defendant has become the owner of 839 sq.ft by virtue of the sale deed-Ex.P.8. The dispute arose when the third defendant had sold the property to the defendants 1 and 2 under Ex.P.9 dated 12.10.2009.

8. As per Ex.P.9, the third defendant had sold the property described as follows:-

SCHEDULE

"All that piece and parcel of the vacant house site bearing (Old Door No.17), New Door No.4, Miyan Sahib First Lane, now called as Miyan Sahib First Street, Chennai 600 002, comprised in O.S.No.1059, R.S.No.3022/15A (Part), the present R.S.No.3022/40, Triplicane Division, Block No.57, Mylapre-Triplicane Taluk, Chennai District, together with passage leading to the property from the said street, as per the document admeasuring 839 sq.ft or thereabouts and as per the actual measurement 1154 sq.ft or thereabouts bounded on the

North by : The house belonging to Basha Soukar



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South by : *Narasam Lane and the said Street*
East by : *The property belonging to*
Ponnusamy Vagairah
West by : *Common Passage ''*

9. Admittedly, the third defendant had purchased only 839 sq.ft having a description on the western boundary belonging to the said Bhakthavatsalam who is the plaintiff's father, had clandestinely sold under Ex.P.9 an extent of 1154 sq.ft. including the suit property of 315 sq.ft. This is evident from the description of the western boundary, which is shown as common passage. It is the contention of the learned counsel for the plaintiff that the absence of the plaintiff in the suit property has been taken advantage of by the third defendant, to include the suit extent in the sale deed given in favour of defendants 1 and 2. The common passage referred to in Ex.P.9 is situate after the property of the plaintiff. By shifting the boundaries, the third defendant has sold 315 sq.ft of land, for which he has got no right or title or interest. The plaintiff being the owner of the property, is not bound by the same. As the plaintiff has established that he is the owner of the suit property and that the third defendant had sold in excess of what he is entitled to by including the plaintiff's property, the suit deserves to be



decreed. Hence, the plaintiff is entitled to a decree as prayed for.

10. In the result, the suit is decreed. No costs.

sd/.P.S.N.J
26.07.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/18.01.2017

COURT OFFICER

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