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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

C.S.No.867 of 2002

1. R. Sundararajan
2. Sundar Ganesh
3. Meenakshi Sundaram .. Plaintiffs

Vs

Rev. Dr. Kurien Thomas
President and Director
Asha Nivas Social Welfare Centre
Registration No.146 of 1976
Door No.9, Rutland Gate IV Street
Chennai - 600 006 .. Defendant

Plaint filed under Order IV Rule I O.S. Rules and Order VII,
Rule 1 of the CPC and Section 26 of the Code of Civil
Procedure praying for a judgment and decree in their favour
(a) declaring the sale deeds registered in document No.4173
of 2000 dated 12-12-2000 and document No.3117 of 2001 dated
19-09-2001 in favour of the defendant on the file of Sub-
Registrar Office of Purasawalkam, within the Registration
District of Central Madras as null and void and would not
bind the plaintiffs (b) consequently, direct the defendant
to handover the possession of the "B" Schedule mentioned
property to the plaintiffs (c) direct the defendant to pay
damages for the use of the "B" Schedule property till its
recovery to the plaintiffs and (d) grant permanent
injunction restraining the defendant, his men, servants,



agent or any body acting through him from interfering with the plaintiffs' peaceful possession and enjoyment of the "B" Schedule mentioned property.

For plaintiffs : Mr. V. Raghavachari
For defendant : No appearance

JUDGMENT

The plaintiff would aver as follows:

The plaintiffs are the true and absolute owners of the suit properties along with Thiru. Venkataraman S/o.Ramasamy and K.S.Karthik S/o.Krishnamurthy and it was originally purchased by plaintiffs' grandfather's mother Tmt. Muthulakshmi Ammal W/o. R. Meenakshi Sundaram Iyer and she has purchased the Schedule mentioned property with a registered sale deed 20-01-1923, Ex-P1 registered with the Office of the Sub-Registrar, West Madras. Tmt. Muthulakshmi Ammal in turn had settled the said properties in favour of Tmt. Thirumalai Ammal W/o. M. Sundaram Iyer through a registered settlement deed dated 15-12-1937, Ex-P2. In pursuance of the said settlement deed, the settlee was also put in possession of the property and she is none other than the daughter-in-law of the settlor. The plaintiffs would further aver that Thiru.M. Sundaram Iyer H/o. Tmt. Thirumalai Ammal died on 21-06-1951 and Tmt. Thirumalai Ammal also died on 16-06-1951 and death certificates were also issued to that effect on 20-06-1952(Ex-P7). The sons of Tmt. Thirumalai Ammal and Thiru. Sundaram Iyer are Thiru. S.



Ramasamy, S. Shankaran and S.Krishnamurthy, the fathers of the respective plaintiffs. According to the plaintiffs, the daughters of Thiru S. Ramasamy, S. Shankaran and S. Krishnamurthy do not have any right in the property. Thiru. Ramasamy died on 05-11-1992 leaving behind his wife Tmt. R. Jayam, 1st plaintiff and Thiru. R. Venkataraman. Thiru. Shankaran died on 12-05-1992 leaving behind his only son, the 2nd plaintiff and his wife Tmt. S. Padma. Tmt. Padma died on 07-06-1998. Thiru. Krishnamurthy expired on 21-10-1991 leaving behind his wife Tmt. Sita, K.S. Karthick, K.S. Preethi and K.S. Meenakshi Sundaram. The plaintiffs would state that they are members of joint family and with the consent of the other members, they have instituted the suit for declaration, recovery of possession of 'B' Schedule property, for damages for use of the 'B' Schedule property from the defendant, who is a rank trespasser into a portion of the 'A' Schedule property, which is more fully described in 'B' Schedule property and for other consequential reliefs.

2. It is the specific case of the plaintiff that the defendant claims to have purchased the suit property from one Margaret Ranjitham Darothi Moses under a registered sale deed dated 12-12-2000, Ex-P20 and the recitals in the said sale deed would reveal the fact that the title of the property was in the name of plaintiffs' predecessor Tmt.

Muthulakshmi Ammal and she executed the settlement deed in favour of Tmt. Thirumalai Ammal. By practising deception and



fraud, a transaction has been referred to have come into being, stating that Tmt. Thirumalai Ammal has sold the property to one P. George on 06-01-1965. According to the plaintiffs, the said transaction is not at all possible, as the said Tmt. Thirumalai Ammal died in 1952 itself and a death certificate dated 20-06-1952 was also produced to that effect. It is the specific case of the plaintiffs that the defendant had concocted records for indulging in land grabbing and managed to create sale deeds dated 12-12-2000 and 19-09-2001 in their favour with a faulty consideration, though the lands were to an extent of 9.75 grounds located in a prime place at Chennai.

3. In this regard, the plaintiffs have issued a legal notice dated 20-07-2002 (Ex-P24) and also lodged a police complaint on 16-11-2002 (Ex-P26). Though the defendant has received the said notice, he did not choose to respond to the same and hence the plaintiffs have come forward to file this civil suit.

4. Originally, the defendant was called absent and set ex parte. Thereafter, they have filed an application for setting aside ex parte along with an application for condonation of delay in filing the written statement. The written statement has been taken on file. The defendant in the written statement would state among other things that neither the plaintiffs nor the other persons referred to by the plaintiffs have any right whatsoever in the claim Schedule property and the plaintiffs have nothing to do with



the original owner of the property. The defendants would agree that the plaint schedule property would originally belong to one S. Kannialal Sowcar, who sold the same to one Muthulakshmi Ammal under a Sale deed, dated 20-01-1923 and she in turn settled the property in favour of one Thirumalai Ammal, under a settlement deed dated 15-12-1937. The said Thirumalai Ammal in turn, sold the property in favour of one P. George, who thereafter, had been in possession and enjoyment of the property for over 25 years and died intestate on 22-12-1981 leaving behind his widow Margaret Ranjitham, his daughters viz., Mrs. Dorothy, Ms. Kalpana, G. Vanaja and his sons G. Moses and Nixon, as his legal heirs. The defendant had purchased the Schedule mentioned property from the legal heirs of Margaret Ranjitham and others, under registered sale deeds dated 12-12-2000 and 19-09-2001, Exs-P20 and P21. The defendants would further aver that nowhere it is averred that the plaintiffs are the only legal heirs of Tmt. Thirumalai Ammal. Though it is claimed that the daughters would have no claim in the said property, they have not been arrayed as parties to the suit claim. The consent of the other family members is also not filed along with the claim and the plaintiffs have come forward with a false case and that they cannot claim to be the true owners of the suit property. The defendant also questioned the predecessors-in-title from whom the plaintiffs purchased the properties could have been arrayed at as parties and having failed to implead them as parties, the plaintiffs cannot



seek any relief against the defendant. The defendant would further submit that in the light of the fact that since he is having the title over a long period and is in continuous possession and enjoyment of the same, no challenge can be made to his bona fide title over the property by the plaintiffs and hence, prays for dismissal of the suit.

5. This Court framed the issues and placed the papers before the learned Master for recording evidence. The first plaintiff has filed the proof affidavit in lieu of Chief Examination, wherein, Exs-P1 to P27 were marked.

6. Since the learned counsel appearing for the defendant did not choose to cross-examine P.W.1, learned Additional Master directed the Registry to list the matter before this Court and accordingly, this was listed on 14-03-2016 and on that date, the suit was called twice, both in the morning and in the afternoon and inspite of it there was no representation for the sole defendant and therefore, the defendant was set ex parte and directed the Registry to list the matter for arguments on 18-03-2016.

7. The learned counsel appearing for the plaintiff had drawn the attention of this Court to the proof affidavit as well as Exs-P1 to P27 and would submit that though the defendant/claimant averred that he had acquired right, title and possession under Exs-P20 and P21, the fact remains that on an earlier occasion, indulgence was shown to the defendant by setting aside the ex parte and permitting them to file a written statement and after filing of the written



statement, the suit was posted before the learned Additional Master for examination and evidence. Though P.W.1 has filed his proof affidavit to chief-examination and marked Exs-P20 to P27, the learned counsel appearing for the defendant did not choose to cross-examine and since the plaintiffs have proved their case through oral and documentary evidence, prays for decreeing of the suit with exemplary costs.

8. This Court has gone through the pleadings, documentary evidence and also the submissions made by the learned counsel appearing for the plaintiff.

9. The following issues arise for adjudication:

1. Whether the alleged sale deed dated 06.01.1965 alleged to have been executed between Thirumalai Ammal in favour of one P. George is true and valid, when the alleged vendor had died in 1951 itself?
2. Whether the plaintiffs are entitled to the relief of declaration having succeeded to the property as the descendants of their grandmother Thirumalai Ammal?
3. Whether the alleged sale deeds dated 12.12.2000 and 19.12.2001 are true and valid?
4. Whether the defendant has prescribed title over the suit property through adverse possession?
5. Whether the plaintiff is entitled to recovery of possession of the suit "B" Schedule property and consequential injunction against the defendant?
6. Whether the defendant is liable to pay damages for illegal use and occupation of the suit "B" Schedule property?
7. Whether the suit is barred by limitation?
8. To what other relief the plaintiffs are



entitled to?"

(i) Issue No.1:

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It is not in serious dispute even as per the averments made in the written statement as to the title of Muthulakshmi Ammal under Ex-P1, the registered sale deed 20-01-1923 and the settlement deed executed in favour of Thirumalai Ammal dated 15-12-1937. It is the specific case of the defendant that Thirumalai Ammal had sold the suit property under a registered sale deed dated 06-01-1965 in favour of the one P. George. The specific case of the plaintiffs is that Thirumalai Ammal died as early as on 16-06-1951 and it also got its evidence in Ex-P7 dated 20-06-1952 and therefore, it would not have been possible for Thirumalai Ammal to execute a sale deed in favour of the said George on 06-01-1965, which is nearly 13 years from the date of death of Thirumalai Ammal and therefore, the documents are concocted. This Court finds considerable force in the contentions made by the learned counsel for the plaintiffs alleging that the sale deed executed by Thirumalai Ammal in favour of the said George has not been marked and for the said reason the defendant did not choose to participate in the hearing. Therefore, the alleged sale deed dated 06-01-1965 in favour of George cannot be termed as true and valid. *Therefore, issue No.1 is answered in favour of the plaintiff.*

<https://hcservices.ecourts.gov.in/hcservices/> (ii) Issue No.2

It is the specific case of the plaintiffs that their



fathers were born to Tmt. Thirumalai Ammal and Thiru. M. Sundaram Iyer and they died inte state without leaving any testamentary instrument. The daughters of Tmt. Thirumalai Ammal do not have any right in the property because the settlement was in the year 1950. It is the further case of the plaintiff that the sons of Tmt. Thirumalail Ammal died leaving behind their legal representatives including the plaintiffs. With the consent of all the family members, the plaintiffs have instituted the present suit. In the light of the above facts, the plaintiffs are entitled to the relief of declaration, having succeeded to the property as the descendants of their grandmother Thirumalai Ammal and *this issue is also answered in favour of the plaintiffs.*

(iii) Issue No.3

The defendants claim to have purchased the property under Exs-P20 and P21, registered sale deeds dated 12-12-2000 and 19-09-2001, respectively from Margaret Ranjitham Darothi Moses and others. It is the case of the defendant that Thirumalai Ammal on 06-01-1965 has sold the property in favour of one George and he was possession and enjoyment of the property and he died inte state on 22-12-1981 leaving behind his widow Margaret Ranjitham, his daughters viz., Mrs. Dorothy, Ms. Kalpana, G. Vanaja and his sons G. Moses and Nixon, as his legal heirs and from them, he purchased the said property under registered sale deeds dated 12-12-2000 and 19-09-2001, Exs-P20 and P21.

(b) This Court while answering issue No.1 has given a



finding that since Thirumalai Ammal died on 16-06-1951, as evinced under Ex-P7, she would not have sold the property on 06-01-1965 and in the light of the fact, since the sale deed has been declared as null and void, the legal representatives cannot have any better title and as a consequence, the sale deeds obtained by the defendants under the sale deeds, dated 12-12-2000 and 19-09-2001 (Exs-P20 and P21) cannot be true and valid. *Therefore, issue No.3 is also answered in favour of the plaintiffs.*

(iv) Issue No.4:

Though the defendant claim that ever since they purchased under Exs-P20 and P21, he is in an uninterrupted possession and has not given any plea of adverse possession. *Therefore, it is settled that no plea regarding adverse possession is made and in the absence of any pleadings regarding adverse possession, there is no necessity on the part of the Court to give any answer to issue No.4.*

(v) Issue No.5:

In the light of the findings given by this Court in respect of issue Nos.1 to 4, the plaintiffs are entitled to recovery of possession and also damages with regard to illegal use and occupation of the "B"Schedule property. *Therefore, this issue is also answered in the affirmative in favour of the plaintiff.*

(vi) Issue No.6:

AS far as this issue is concerned, since the plaintiffs have failed to furnish any necessary particulars as to the



income earned out of the Schedule mentioned properties by the defendant on account of its use and occupation, this Court is unable to grant any relief. *Therefore, issue No.6 is answered in negative against the plaintiff.*

(vii) Issue No.7:

In the absence of any specific pleadings as to the bar of limitations, there is no necessity on the part of this Court to give any finding in respect of issue No.7.

10. In the result, (a) the plaintiffs are entitled to succeed partially.

(b) There shall be a judgment and decree that,

(c) The sale deeds, dated 12-12-2000 and 19-09-2001 (Exs-P20 and P21) are declared as null and void.

(d) The defendant is directed to handover vacant and peaceful possession of the "B" Schedule properties to the plaintiff within a period of one month from today.

(e) The plaintiffs are also entitled to the relief of restraining the defendant from his men, servants, agent or any body acting through him from interfering with their peaceful possession and enjoyment, after obtaining possession of the "B" Schedule mentioned property.

(f) The plaintiffs are also entitled to the costs of the suit.

List of Witnesses :

List of Exhibits

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1	Ex-P1	Xerox copy of the Sale deed executed by Mr.Kannialal in favour of Tmt. Muthulakshmi Ammal	20-01-1923
2	Ex-P2	Xerox copy of the Release deed to Mr. Muthusami Iyer	15-02-1924
3	Ex-P3	Xerox copy of the Sale deed to Mr. Muthusami Iyer	01-03-1924
4	Ex-P4	Xerox copy of the Sale deed to Mr. Subramaniya Iyer	08-08-1924
5	Ex-P5	Xerox copy of the Settlement deed by Tmt. Muthulakshmi Ammal in favour of Tmt. Thirumalai Ammal	15-12-1937
6	Ex-P6	Xerox copy of the Death Certificate of Mr. Sundaram Iyer	20-06-1952
7	Ex-P7	Xerox copy of the Death Certificate of Tmt. Thirumalai Ammal	20-06-1952
8	Ex-P8	Xerox copy of the Legal Heir Certificate of M. Sundaram Iyer	28-06-1954
9	Ex-P9	Xerox copy of the Death Certificate of Tmt. Meenakshi Sundaram	26-10-1962
10	Ex-P10	Xerox copy of the Death Certificate of S.Krishnamurthy	09-12-1991
11	Ex-P11	Xerox copy of the Legal Heir Certificate of S. Krishnamurthy	24-01-1992
12	Ex-P12	Xerox copy of the Death Certificate of S. Ramasamy	26-11-1992
13	Ex-P13	Xerox copy of the Death Certificate of S. Sankaran	22-10-1993
14	Ex-P14	Xerox copy of the Legal Heir Certificate of S. Ramasamy	09-08-1994
15	Ex-P15	Xerox copy of the Legal Heir Certificate of S. Sankaran	09-08-1994
16	Ex-P16	Xerox copy of the Municipal Tax Assessments for 1993-94	---
17	Ex-P17	Xerox copy of the Municipal Tax Assessments	---
18	Ex-P18	Xerox copy of the Death Certificate of Padma	03-09-1998

