

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2021	Pronounced on : 17.02.2021
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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.876 of 2019
& C.M.P.No.26727 of 2019
& C.M.P.No.13994 of 2020

Mr.Somasundaram,
S/o.S.A.R.ArunachalamChettiar,
"Arulagam", No.500, Kutchery Road,
Thiruchengode. ... Appellant/7th Defendant

/versus/

Parameswariammal (Deceased)
No.1, Balasubramaniyam Colony,
Mylapore, Chennai - 600 004.
Represented by her Legal Representatives.

1. B.Chandra Kumar,
2. B.Lakshminarayanan,
3. B.UdayaSurian,
4. B.Mayura Priyan,
5. B.Prem Kumar,
6. B.Prameela,
7. M.A.Rukmani,
8. M.A.Srinivasan,
9. M.A.Venkatakkrishnan,
10. M.A.Narasimhan,
11. M.A.Parthasarathy,
12. D.C.Foundation (P) Ltd.,
Rep. by its Directors
(1) V.Ramamoorthy,
(2) L.N.Janakar,
Basement, Gokul Arcade,
No.33, Sardar Patel Road,
Adyar, Chennai - 600 020.

... Respondents

Prayer: First Appeal is filed under Section 96 & Order 41 Rule 1 C.P.C., against the judgment and decree dated 30.10.2019 made in O.S.No.8721 of 2010 passed by the Learned XVIII Additional City Civil Judge, Chennai.

For Appellant : Mr.T.Thilageswaran,
for M/s.Waraon and Sai Rams

For R1 to R6 : Mr.Perumbulavil Radhakrishnan
For R8 to R11 : No appearance
For R7 : died steps not taken
For R12 : Steps not taken

J U D G M E N T

The Appeal is filed by the 7th defendant/Somasundram against the judgment and decree passed in O.S.No.8721 of 2010 (formerly C.S.No.845 of 2009 on the file of High Court, Madras, later renumbered and transferred to City Civil Court, Chennai). Pleadings in nutshell:-

2. The suit laid by the plaintiffs on the premise that, the property morefully described under "A" schedule in the plaint is about 17 grounds and 400 sq.ft comprised in S.Nos.64 and 66, T.S.No.2, Block-22, Uroor Village, Chennai Corporation Division 137, Adyar. It is part of 23 acres and 70 cents of land held by M.A.Sreerangammal W/o.Srinivasa Iyengar. The said M.A.Sreerangammal got the property through a settlement deed from her husband on 09.12.1935. Some time before 1956, one Subbadrammal W/o.Krishna Naicker, was in possession of the property as a tenant putting up a construction in a portion of the land. She was permitted to sublet portion of the land. The landlady M.A.Sreerangammal ejectment suit in O.S.No.12 of 1954, for recovery of possession and other reliefs. Response to this ejectment suit, Subbadrammal filed O.S.No.252 of 1956 on the file of the City Civil Court, Chennai, against the landlady M.A.Sreerangammal and three others seeking protection under City Tenant Protection Act 1955, in respect of the lands comprising in Survey Nos.64,66,71,72 and 73 situated in Uroor Village.

3. Against the dismissal of her suit, the said Subbadrammal filed Appeal against the judgment in O.S.No.252 of 1956. The Appellate Court remanded the matter to the Lower Court for fresh Trial. After de nova trial, the suit came to be allowed. On Appeal in A.S.No.216 of 1958, the Trial Court decree got reversed. Hence, Subbadrammal preferred Second Appeal before the High Court, Madras. In the said appeal S.A.No.61 of 1960, decree was passed as per the compromise memo entered between the parties.

4. As per the compromise decree, M.A.Sreerangammal agreed to convey by way of absolute sale deed either to Subbadrammal or her nominee, the 'BEFG' marked portion of land

measuring 2,61,511 sq.ft = 108.96 grounds for consideration of Rs.87,168/- and the 'GHJC' marked portion of land measuring 1,96,016sq.ft = 81.67 grounds for Rs.1,30,672/-. These two pieces of properties were shown as items (a) and (b) in the compromise decree and identified in the sketch annexed to the decree. Thereafter, Subbadrammal nominated one Balasubramaniam to purchase the (a) item property on payment of Rs.87,168/- and item (b) property for Rs.1,30,672/- from Sreerangammal either in lumpsum or in instalments with interest as provided in the compromise decree. On appointment of nominee by Subbadrammal, out of 108.96 grounds marked as 'BEFG' portion, 59 grounds marked EFVVUTSQ sold to Balasubramaniam by Srirangammal on 07.05.1963. The remaining land measuring 49 grounds sold to one M/s.Sakthivel Investments on the same day.

5. The said Balasubramaniam, in the 59 grounds purchased from Sreerangammal as nominee of Subbadrammal along with M/s.Sakthivel Investments promoted a layout in the name 'Parameswari Nagar.' Sold major portion of the land retaining 17 grounds and 400sq.ft. The said Balasubramaniam died intestate on 11.07.1977 leaving behind him is wife Parameswariammal (first plaintiff), 5 sons (plaintiffs 2 to 6) and a daughter (7th plaintiff).

6. The plaintiffs when came to know, 6 grounds and 1446 sq.ft of land in S.Nos.64 and 66, T.S.No.2 of Uroor Village, which is part of the 17 grounds 400 sq.ft retained by Balasubramaniam conveyed by M.A.Narasimhan illegally and got registered a document in favour of M/s.D.C Foundation Pvt Ltd., on 10.02.2005 and the said M/s.D.C.Foundation Pvt Ltd, had inturn sold it to one Somasundaram on 09.08.2006. The said M.A.Narasimhan had registered the sale deed in favour of M/s.D.C Foundation Pvt Ltd, falsely claiming that the property belongs to M.A.Sreerangammal and her legal heirs.

7. After conveying the entire 108.96 grounds under two sale deeds one to Balasubramaniam (59 grounds) and another to M/s.Sakthivel Investments (49 grounds) in the portion marked 'BEFG' (total extent of 108.96 grounds) M.A.Sreerangammal had not land in the portion marked as 'BEFG'. As such, the claim of M.A.Narasimhan that M.A.Sreerangammal is the owner of the land measuring 6 grounds 1446 sq.ft in S.No.66 and her legal heirs are entitled to dispose the same is incorrect besides misleading. Therefore, the sale deed executed by Narasimhan dated 10.02.2005 as power agent of the legal heirs of M.A.Sreerangammal in favour of M/s.D.C Foundation Pvt Ltd, is non est and not binding upon the plaintiffs. As a consequence, the subsequent sale by M/s.D.C Foundation Pvt Ltd to

Somasundaram on 09.08.2006 also non est in law and void. Hence, the suit filed by Parameswari, wife of Late Balasubramaniam for the following relief.

(a). Declaring that the sale deed dated 10.02.2005, registered as Document No.264 of 2005 in the Office of the Sub-Registrar, Adyar, executed by M.A.Narasimhan, conveying 6 grounds and 1446 sq.ft of land situated in Uroor Village, morefully and particularly described in the Schedule C hereunder, in favour of D.C.Foundations Pvt Ltd., the Sixth Defendant herein as null and void, non-est and not binding upon the plaintiffs;

(b). Declaring that the sale deed dated 09.08.2006, registered as document No.1717 of 2006 in the Office of the Sub-Registrar, Adayar, executed by D.C.Foundations Pvt Ltd., the Sixth Defendant herein, conveying 6 grounds and 1446 sq. ft of land situated in Uroor Village, morefully and particularly described in the Schedule B hereunder, in favour of Somasundaram, the Seventh Defendant herein, as null and void, non-est and not binding upon the plaintiffs;

(c). Permanent Injunction restraining the defendants from in any manner transferring or alienating or in any manner encumbering the land measuring 6 grounds and 1446 sq.ft situated in Uroor Village, morefully described in the Schedule B & C hereunder; and

(d). Permanent Injunction restraining the defendants from in any manner putting up any construction or carrying on any activity upon and in over land measuring 6 grounds and 1446 sq.ft situated in Uroor Village, morefully described in the Schedule B & C hereunder;

(e). Permanent Injunction restraining the Defendants, their men, servants and

agents working under the Defendants from in any manner interfering with the plaintiffs' possession and enjoyment of all that piece and parcel of land measuring 17 grounds and 400 sq.ft comprised in Survey No.64 & 66, T.S.No.2, Uroor Village, within the Mylapore Tricplicane Taluk, which is morefully and particularly described in Schedule A hereunder.

f. For costs of the suit."

8. Pending Suit, the plaintiff Parameswari died. Her legal heirs were brought on records as plaintiffs 2 to 7.

9. Before the Trial Court, except the 7th defendant/Somasundaram, none other defendants filed statement. The defendants 1 to 6 remained exparte. The 7th defendant, in his first written statement, traced his title over the property from the sale deed dated 12.01.1913 in the name of one Mr.M.A.Srinivasa Iyengar later, the property devolved upon his wife and son for their lifetime, as per the settlement deed and vested absolutely upon legal heirs of M.A.Krishnamoorthy S/o.Srinivasa Iyengar. The said M.A.Krishnamoorthy died on 21.09.1965 leaving behind his wife M.A.Rukmani, and four sons namely M.A.Srinivasan, M.A.Venkatakrisnan, M.A.Narasimhan and M.A.Parthasarathy. The legal heirs of M.A.Krishnamoorthy had an arrangement and a release deed dated 23.04.2002 in favour of M.A.Narasimhan. The Tahsildar of Mylapore had given patta for the property in the name of M.A.Narasimhan. Thus, his vendor M/s.D.C Foundation Pvt Ltd, who purchased the "B" schedule property on 09.02.2005 from M.A.Narasimhan had valid title as per the revenue records.

10. M/s.D.C.Foundation Pvt Ltd, after purchase of the property, availed project loan from Vijaya Bank and gave the 'B' schedule property as security. To settled the bank dues, with the concurrence of Vijaya Bank, M/s.D.C.Foundation Pvt Ltd, sold the property to 7th defendant/Somasundaram, for consideration of Rs.2,20,00,000/-. M/s.Vijaya Bank has also issued acceptance letter dated 08.08.2006 discharging his vendor Ms/.D.C.Foundation on receipt of Rs.2,20,00,000/- towards full and final settlement of all the four loans availed by M/s.D.C.Foundation. Earlier, similar suit was filed by one C.T.Saraswathi Achi claiming right over the 'B' schedule property. The said suit in C.S.No.634 of 2005 filed against the legal heirs of M.A.Krishnamoorthy and M/s.D.C.Foundation Pvt Ltd

(the vendor of 7th defendant/Somasundaram) was later withdrawn by C.T.Saraswathi Achi, after reading that she has no title over the suit property lying in T.S.No.2/9.

11. In the additional written statement filed by the 7th defendant, referring the admission in the plaint that there are encroachment in the suit land and plaintiff is not in possession of property, it was pleaded that this defendant has taken steps to evict the encroachers by settling the hut dwellers and got the vacant possession of it. The suit filed after three years of the execution of sale deeds is barred by limitation. Further, the identity of the suit property also questioned stating that the plaintiff claim right in S.Nos. 64 and 66 of the Uroor Village, whereas, the property sold by M.A.Narasimhan to M/s.D.C.Foundation, which in turn purchased by the 7th defendant is comprised in T.S.No.2/9 of the said village. The larger extent of property was resurveyed, sub divided and patta for six grounds 1446 sq.ft in T.S.No.2/9 was given in favour of his predecessor-in-title. Therefore, the plaintiff is not entitled for recovery of possession of the suit property which they never been in possession for more than 50 years.

12. Based on the above pleadings, the Trial Court framed the following issues:-

1. Whether the plaintiffs are entitled to the relief of declaring the sale deed dated 09.02.2005 registered as doc.No.264 of 2005 and sale deed dated 09.08.2006 registered as doc.No.1717 of 2006 as null and void as prayed for?

2. Whether the plaintiffs are entitled to the relief of permanent injunction restraining defendants from transferring or alienating the suit 'B' & 'C' schedule property as prayed for?

3. Whether the plaintiffs are entitled to the relief of permanent injunction restraining the defendants from putting up any construction or carrying on any activity in 'B' & 'C' schedule property as prayed for?

4. Whether the plaintiffs are entitled to the relief of permanent injunction restraining defendants from interfering in plaintiffs peaceful possession of 'A' schedule property as prayed for?

5. Whether the 7th defendant is the absolute owner of the suit property having purchased the same by sale deed dated 09.08.2006?

6. Whether the schedule 'C' is in any way connected with the sale deed executed in the name of the deceased 1st plaintiff husband?

7. Whether the suit is barred by limitation?

8. Whether the suit is hit by the doctrine of adverse possession?

9. To what other relief is the plaintiff entitled to?"

13. One witness P.W.1 and 21 documents Ex.A.1 to Ex.A.21 were relied by the plaintiff. One witness D.W.1 and 21 documents Ex.B-1 to Ex.B-21 were relied by the 7th defendant

14. The Trial Court, on appreciating these evidence and the submissions made by the respective counsels, held the suit to declare the sale deed marked as Ex.A-17 and Ex.A-18 as null and void was laid within 3 years from the date of knowledge. Hence, in view of Article 59 of the Limitation Act, the suit is not barred by limitation.

15. Regarding declaration relief the Trial Court concluded that, the plaintiffs had established through Ex.A.2 to Ex.A.5 the ownership of larger extent of 'A' schedule property once held by M.A.Srinivasa Iyengar, subsequently had passed on to his wife Sreerangammal and his son based on the settlement deed. From out of it, 108.96 grounds sold by Sreerangammal to the nominee of Subadrammal as per the compromise decree passed in C.M.P.No.8281 of 1962 under Ex.A.5 and thereafter, agreement entered between Subadrammal and Balasubramaniam under Ex.A.6. Based on this agreement, out of 108.96 grounds set out in item

No.1 of schedule 'B' of the agreement dated 04.05.1963. Sreerangammal executed Ex.A.7 the sale deed in favour of Balasubramaniam in respect of 59 grounds and executed Ex.A.15 the sale deed in respect of remaining 49 grounds out of the 108.96 grounds in favour of one M/s.Sakthivel Investments represented by Umayal Achi. Through Ex.A.16 the agreement between M/s.Sakthivel Investments and Balasubramaniam a layout in the 108.96 grounds in the name "Parameswari Nagar" was formed. The right in schedule 'B' property vest with the plaintiffs, who are the legal heirs of Balasubramaniam. The said property form part of the layout promoted by Balasubramaniam as found in the layout plan Ex.A.19.

16. The Trial Court relying upon Ex.A.8 to Ex.A.10 simple mortgage deed held the plaintiffs have proved that the legal heirs of Sreerangammal including the father of 4th defendant/M.A.Narasimhan, had acknowledged the ownership of Balasubramaniam in respect of 'A' schedule property measuring about 17 grounds 400 sq.ft which includes the 'B' schedule property measuring 6 grounds 1446 sq.ft. Also relied on Ex.A.11 publication in News paper by the Income Tax Department in respect of 'A' schedule property acknowledging the ownership of Balasubramaniam held they are sufficient proof of the plaintiffs right in 'B' schedule property.

17. The grounds of appeal in nutshell:-

The appeal is filed by the 7th defendant/Somasundaram, who contested and lost the suit. According to the appellant, the Trial Court erred in not appreciating the fact that larger extent of the property admeasuring an extent of 23 acres 78 cents was originally owned by M.A.Srinivasa Iyengar, who had executed a settlement deed vesting life interest to and in favour of his wife M.A.Sreerangammal and his children, thereafter absolute right to the legal heirs of his son M.A.Krishnamurthy. As per the compromise arrived between the parties in S.A.No.61 of 1960, M.A.Sreerangammal agreed to sell an extent of 108.96 grounds out of the total extent of 23 acres and 78 cents, in favour of Subadrammal or her nominees. Accordingly, only 108.96 grounds sold in two parts and remaining land retained by M.A.Sreerangammal and Srinivasan. The plaintiffs' predecessor Balasubramaniam purchased only 59 grounds and not the entire extent of land owned by Late M.A.Sreerangammal, the grandmother of M.A.Narasimhan (4th defendant). The 'B' schedule property measuring 6 grounds and 1446 sq.ft remained with M.A.Sreerangammal and same was sold to the M/s.D.C.Foundation Pvt Ltd (6th defendant) by the descendants of Sreerangammal through M.A.Narasimhan.

18. The Trial Court erred in holding that Sreerangammal sold away her entire property to Balasubramaniam and M/s.Sakthi Investments, when 108.96 grounds alone sold under the two sale deeds executed in favour of them as nominee of Subadrammal. The larger extent of land measuring 23 acres 78 cents comprised in S.Nos.64, 66, 67, 71, 72 and 73 of Uroor Village. The 108.96 grounds sold as per the compromise decree in S.A.No.61 of 1960 and C.M.P.No.8281 of 1962 comprised in S.Nos.64(part) and S.No.66(part) with the following boundaries:-

North by S.Nos.63 and 64

East by the remaining plots in S.No. 64 & S.No.66

South by the remaining plots in S.No.66 and

West by Lattice Bridge Road.

(area marked as 'BEFG' in the plan annexed)

19. From out of the 108.78 grounds = 261590 sq.ft of land, Balasubramaniam the husband of the 1st plaintiff Parameswari Ammal (deceased) purchased only 59 grounds. The boundaries shown in the said sale deed (Ex.A-7) dated 07.05.1963 and the sketch annexed to it, will establish the land appurtenant are retained by Srirangammal. The Trial Court failed to note that, after alienation of 108 grounds of land to Balasubramaniam and M/s.Sakthi Investments, the land was surveyed and sub divided into T.S.No.2, Uroor Village. After demarcating the land acquired by the Government, the remaining land to an extent of 6 grounds 2176 sq.ft was demarcated under T.S.No. 2/9 and shown in the revenue records as the land of Late M.A.Sreerangammal. After sub division, patta Ex.B-16 was issued in favour of the descendants of the Late M.A.Sreerangammal namely defendants 1 to 5. The land purchased by M/s.Sakthi Investments demarcated and sub-divided as T.S.No.2/5 and patta was issued to M/s.Sakthi Investments.

20. The Trial Court failed to appreciate that the plaintiffs never challenged the sale deed (Ex.A-17) executed by the 4th defendant to the 6th defendant immediately upon its execution i.e., 10.02.2005. On the other hand, one C.T.Saraswathi Achi, partner of M/s.Sakthi Investments filed C.S.No.634 of 2004 against the defendants 1 to 6 for permanent injunction under the wrong impression that defendants are forcibly trying to encroach upon her land. Initially, interim injunction was also granted. Later, after the report of the Advocate Commissioner, she withdrew the suit with liberty to file fresh suit but not filed any fresh suit thereafter, realising that her property is in T.S.No.2/5 and not in T.S.No.2/9. The Advocate Commissioner in the said suit has clearly given a report that 16571 sq.ft of land comprised in

T.S.No.2/9 stands in the name of M.A.Narasimhan (4th defendant). The title supported with the revenue records ought to be construed as valid title. The Trial Court erred in allowing the suit ignoring the evidence to show that the defendants 1 to 5 owned the suit property which devolves on them as the ancestral property through Late M.A.Sreerangammal, which is also duly supported by revenue records namely patta (Ex.B-16).

21. The Trial Court also failed to appreciate that the suit property was subjected to mortgage by the 6th defendant with Vijaya Bank. The Bank initiated SARFAESI proceedings and in pursuance of the Memorandum of Understanding entered between the 6th defendant and the 7th defendant, the property was purchased by the 7th defendant (appellant) for valuable consideration of Rs.2,20,00,000/- and the loan of 6th defendant was discharged in full quit and satisfaction.

22. The learned counsel for the appellant submitted that, the title to the suit property well devolved upon the vendors of the 6th defendant/D.C.Foundation Pvt Ltd. The 7th defendant/appellant as a bonafide purchaser for valid consideration, derived the title to the suit property absolutely from the 6th defendant. The suit to declare the sale deed (Ex.A.17) dated 09.02.2005 and the sale deed (Ex.A.18) dated 09.08.2006 was presented on 11.08.2009 before the High Court of Madras later transferred to City Civil Court, Chennai, is hopelessly barred by limitation. The Trial Court failed to note the non-disclosure of any date of knowledge about these two documents in the plaint eventually to save the period of limitation. Hence, the judgment of the Trial Court is liable to be set aside.

23. To buttress the above submission, the followed judgments are relied by the learned counsel for the appellant: -

1. Md.Akhtar Hassain vs. Suresh Singh and others reported in AIR 2004 Cal 99.

2. Md. Noorul Honda -vs- Bibi Raifunnisa and others reported in 1996 (7) SCC 767.

3. Union of India(UO) and others -vs- Vasavi Co-operative Housing Society Limited reported in 2014 (2) SCC 269.

4. N.V.Srinivasa Murthy and others -vs- Mariyamma (Dead) by Proposed Lrs and others reported in AIR 2005 SC 2897.

24. Submission by the learned counsel for the respondents :-

The Learned Counsel appearing for the respondents/plaintiffs would submitted that the appellant herein is trying to exert her right over the suit property which never existed on him. Neither his vendor M/s.D.C.Foundation Pvt Ltd, nor the vendor of his vendor M.A.Narasihman had any right to the property. Balasubramanian, who is the father of the 1st respondent purchased 59 grounds of land which is an inclusive of the suit property. The portion of the land clearly demarcated and found in the sketch annexed to the sale deed. M.A.Srirangammal, who conveyed the property to Balasubramanian had not retained any piece of land abutting Lattis Bridge Road, Adyar. The land conveyed to Balasubramanian measuring 59 grounds clearly earmarked as EFWVUTSQ in the plan annexed to the deed. It form part of S.Nos.64 and 66 of Uroor Village. Later due to UDR scheme, the S.Nos.64 & 66 has been assigned, T.S.No.2 with several sub-divisions. The 49 grounds of land conveyed by M.A.Sreerangammal to M/s.Sakthivel Investment, currently fall within the T.S.No.2/5. Whereas, 59 grounds of land purchased by Balasubramanian falls within the T.S.No.2/9 of Uroor Village. The sale deed has been fraudulently created stake claim of the land around 6 grounds and 1446 sq.ft, as if, the descendants of M.A.Sreerangammal have property in T.S.No.2/9, where the superstructure of Door Nos.28, 30, 32 & 34 of Lattics Bridge Road is located. The comparison of the boundaries provided in the said sale deed (Ex.A.17) of M.A.Narasimhan dated 09.02.2005 and the boundaries provided in the subsequent sale deed (Ex.A.18) of the appellant herein would clearly show that these documents are concocted documents as if the legal heirs of M.A.Sreerangammal had alienable right in the property described in 'B' schedule of the plaint and they sold it to M/s.D.C.Foundation Private Limited and to the appellant herein namely Somasundaram purchased it from M/s.D.C.Foundation.

25. The Learned Counsel for the respondents would submit that the schedule found in the compromise decree (Ex.A.5) and the sketch annexed thereto, the schedule to (Ex.A.7) the sale deed in favour of Balasubramanian if compared to the schedule in sale deed (Ex.A.17) executed by M.A.Narasimhan in favour of M/s.D.C.Foundation Pvt Ltd and the schedule of the sale deed (Ex.A.18) executed by M/s.D.C Foundation Private Limited in favour of 7th defendant/Somasundaram, who is the appellant herein would clearly show the tinkering of description of the property. While Ex.A.5 & Ex.A.7 clearly proves the devolution of title in respect of suit property to the respondents, contrary to Ex.A.5 M.A.Narasimhan has propounded a document (Ex.A.17) sale deed based on fabricated revenue document. It is well settled principle of law that revenue document will not confer title. There is no other document in their favour conferring right over the property, except the alleged patta from which M.A.Narasimhan and others claim right in the suit property.

26. The larger extent of the property came under scrutiny of judiciary and subject matter of litigation since 1958. The appellant or his predecessor-in-title cannot claim right over the property which was originally held by Sreerangammal but later alienated by her pursuant to the compromise decree. The Advocate Commissioner's report, in the earlier proceedings initiated by C.T.Saraswathi Achi can have no bearing to the present suit, since the said suit never went for trial to test the Commissioner's report and the respondents herein were not parties in that suit. The suit laid immediately after knowledge about the fraudulent sale deeds hence within limitation. The title over the 'A' schedule property which comprises the 'B' schedule property stay with Balasubramaniam is accepted and recognised by the sons and daughters of Sreerangammal in the recital of Ex.A.8 to Ex.A.10 mortgage deeds. In Ex.A.8 M.A.Krishnamoorthy is one of the party. Hence, the appellants vendor's vendor M.A.Narasimhan claim of title over the suit property through M.A.Krishnamoorthy is sham and fake.

27. In support of his argument, the Learned Counsel for the respondent would rely upon the following judgments:-

(i). Jugal Kishore Singh vs. Mst.Lakshmi Kumari and others reported in AIR 1981 Patna 121.

(ii). Rankanidhi Sahu vs. Nandakishore Sahu reported in AIR 1990 Ori 64.

(iii). Arulmigu Mariamman Koil, Pattudaiyaviruppu, Aikudi, Tiruvarur represented by its Trustee M.Marimuthu Konar, vs. David Mariadoss, St.Adaikala Mary Church, Pattudaiyan Irappu reported in 2000 (IV) CTC 725.

(iv). Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and others reported in (2009) 16 SCC 517.

(v). Prem Singh and others vs- Birbal and others reported in (2006) 5 SCC 353.

(vi). Illoth Valappil Ambunhi (D) by Lrs. vs. Kunhambu Karanavan reported in 2019 SCC Online SC 1336

Point for determination:-

Whether the Trial Court right in holding the suit is not barred by limitation and documents placed by the plaintiffs to determine the title is clear without any cloud?

28. There are four crucial documents in this case which holds the key for the point for determination. Those documents

are:-

- (i). Ex.A.5 the judgment in S.A.No.61 of 1960 and order passed in C.M.P.No.8281 of 1962 pursuant to the compromise.
- (ii). Ex.A.7 sale deed executed by M.A.Sreerangammal in favour of Balasubramaniam.
- (iii). Ex.A.17 sale deed executed by M.A.Narasimhan to M/s.D.C.Foundation Pvt Ltd.
- (iv). Ex.A.18 sale deed executed by M/s.D.C.Foundation to Somasundaram.

29. The ancillary documents Ex.A.8 to Ex.A.10 which are mortgage deeds of the year 1964 and 1965 provides additional inputs to the above mentioned four documents.

30. Even before advertng to the main point under consideration, this Court considered the application to receive additional evidence taken out by the appellant herein during the pendency of the appeal. Certain communication between the Vijaya Bank and his vendor M/s.D.C.Foundation Private Limited sought to be adduced as additional evidence. Unless it is proved that the vendor of the appellant herein had clear marketable title, the creation of encumbrance by his vendor with the Vijaya Bank may have no relevance. Therefore, the title of the plaintiffs has to be first scrutinized. Hence, this Court proceeds to determine the point under consideration.

31. The litigation in respect of the suit property which is part of larger extent about 23 acres and 70 cents started when Sreerangammal filed ejectment suit O.S.No.12 of 1954 against Subadrammal and succeeded. To restrain Sreerangammal from executing the ejectment decree, Subadrammal filed O.S.No.252 of 1956 before the City Civil Court, Chennai, to declare her as the tenant under the M.A.Sreerangammal and protect under City Tenants Protection Act. Ex.A.2 is the plaint in O.S.No.252 of 1956. The schedule of the plaint describes the property in dispute as below:-
Schedule:-

"The land bearing Municipal No.3 in Thiruvanmiyur Road, Adyar, Madras situate in Survey Nos.64, 66, 67, 71, 72 and 73 in Uroor Village now included in the Madras City Limits and bounded on the east by Uroor Village Road, South by Thiruvanmiyur Road, West by Ganga Soap Works and north by Travancore State Bungalow and grounds and situate within Registration District of Madras-Chengaleput and Sub-Reg.Dt. Of

Mylapore, Madras."

32. The said suit finally culminated in S.A.No.61 of 1960 on the file of High Court Madras, after passing the judgment on 19.10.1962 in terms of the compromise memo, the parties in that suit has acted upon. It is pertinent to note M.A.Krishnamoorthy the father of M.A.Narasimhan was one of the defendant in O.S.No.25 of 1956. The sketch annexed to the compromise memo demarks the portion of land agreed to be sold by M.A.Sreerangammal to Subadrammal or her nominee. The sketch annexed to the compromise decree indicates that "BEFG" portion of the land measuring 108.96 grounds fall within S.Nos.64 part and 66 part, abutting Lattics Bridge Road on the west. The remaining 81.61 ground falls in the land bearing S.Nos.64 part, 66 part, 67 part and 71 part. The said portion is marked as "GHJC". This portion is on the eastern side of the land earmarked as "BEFHF". From out of 108.96 grounds of land shown under schedule "B", item No.1 of compromise deed, Balasubramaniam has purchased 59 grounds under Ex.A.7 sale deed dated 07.05.1963. The remaining 49 grounds has been purchased by M/s.Sakthivel Investment under Ex.A.15 dated 07.05.1963. The portion of the land to M/s.Sakthi Investment is also demarked and shown in the sketch annexed along with the sale deed. Both the Ex.A.7 & Ex.A.15 (Sale deeds) were executed on the same day. Both the buyers under this document are nominee of Subadrammal. Examining the sketch and description of the property in these two documents would clearly show that the western boundary of these properties is Lattics Bridge road. After alienating this portion of land, there is no land abutting Lattics Bridge left with Sreerangammal or her son M.A.Krishnamoorthy. Since the rest of the land falling on the southern extreme of S.No.66 measuring 4.26 acres marked as 'ABCD' had been taken over by the Government. It is an admitted fact and also reflected in all the documents including the layout plan approved for Parameswari Nagar promoted by Balasubraminam. We find to that effect a note in the sketch annexed to Sale deed Ex.A.7 and an endorsement in the plan approval at the bottom identifying the Southern portion of the land as S.No.66/2 to be acquired by the Government for Madras Housing Board.

33. On examining the sale deed executed by M.A.Narasimhan in favour of M/s.D.C.Foundation Pvt Ltd which is marked as Ex.P.17, the recital and narration of devolution of title expose the contradiction and embellishment in the document. The deed starts with description of the property as piece and parcel of the immovable property together with super structure thereon, measuring an extent of 6 grounds and 2176 sq.ft or thereabouts, comprised in T.S.No.2/9, Block No.22, Uroor Village, Mylapore Tricpllicane Taluk, within the Sub-Registration District of Adyar and in the registration district of Chennai-South, morefully described in the schedule hereunder

was originally owned and possessed by one M.A.Srinivasa Iyengar, who had acquired the same vide sale deed dated 12.01.1913 registered as Document No.100 of 1913, before the Office of the SRO Triplicane.

34. This very narration of the property itself is not correct. In the year 1913, M.A.Srinivasa Iyengar purchased land covering 23 acres and 78 cents in Uroor Village comprising S.Nos.64, 66, 67, 71, 72 and 73. In the year 1913, there was no T.S.No.2/9, Block 22, Uroor Village. Now examining the schedule to the property, it is stated that, total extent of land conveyed is 6 grounds 1446 sq.ft and thereabouts. It is also specifically stated that there is a superstructure bearing Door No.32-A New Door No.83-A, Parameswari Nagar, 2nd Street, Adayar. On examining the annexure to the sale deed, we find the vendor M.A.Narasimhan has stated that the superstructure in the said land is 200 sq.ft ACC sheet roof. The said property, as per sale deed Ex.A.17 situated at Door No.32-A new Door No.83-A, Parameswari Nagar, 2nd Street, Adyar. The boundaries mentioned as East by Parameswari Nagar, 2nd street, Adyar and west by remaining portion of the vendor i.e., M.A.Narasimhan.

35. Strangely, when M/s.D.C.Foundation Private Limited has sold the property to the appellant/S.A.R.Somasundram, the schedule of the property in their sale deed (Ex.A.18) describes the property as a vacant land with Door No.28, 30, 32 & 34, Lattics Bridge Road. The western boundaries is shown as R.S.No.2/11, Lattics Bridge Road. Strangely the boundaries and door numbers, street numbers of the property got changed more particularly, the superstructure found in Sale deed (Ex.A.17) dated 10.02.2005 simply got vanished in Ex.A.18 the sale deed dated 09.08.2006. This first causes doubt whether the appellant herein actually purchased the same property which was sold to M/s.D.C.Foundation Private Limited by M.A.Narasimhan. Assuming for the present, it is one and the same property, on deep examination of sale deed (Ex.A.17) one can find that it is a property situated at Parameswari Nagar, 2nd Street Adyar, as per the schedule of property. The west of the said property is the remaining land of vendor. It is an undisputed fact and candidly admitted by M.A.Krishnamoorthy father of 4th defendant in Ex.A.8 mortgage deed dated 21.12.1964 that land in Parameswari Nagar owned by Balasubramaniam. Parameswari Nagar is a layout promoted by Balasubramaniam in the name of his wife Parameswari, who is none other than the mother of the respondents 1 to 6 and 1st plaintiff (deceased) in the suit under appeal. How and when the land sold by Srirangammal to Balasubramaniam in the year 1963, later promoted as a layout by Balasubramaniam in the year 1964 named after his wife as Parameswari Nagar? after 40 years, in the year 2005 became the land retained by M.A.Sreerangammal as narrated in the sale deed (Ex.A.17) executed by M.A.Narasimhan(4th defendant) in favour of M/s.D.C.Foundation

Private Limited (6th defendant) not explained by the 4th defendant or 6th defendant or the 7th defendant. It is very obvious that the land in Parameswari Nagar is the land purchased to Balasubramaniam and promoted by him. The said land was subjected to mortgage deed executed by Balasubramaniam in favour of M.A.Evugiri and others under Ex.A.8 to Ex.A.10. M.A.Krishnamoorthy the father of the 4th defendant is one of the mortgagee in Ex.A.8. There is evidence to show that the Income Tax Department had initiated proceedings to auction the 'A' schedule land, when Balasubramaniam failed to pay his Income Tax. While so, no evidence thereafter, a piece of land in Parameswari Nagar which was alienated by M.A.Sreerangammal as earlier as 1963 to Balasubramaniam subsequently went back to M.A.Sreerangammal or her other legal heirs. Hence, no hesitation to say, the sale deed (Ex.A.17) executed by M.A.Narasimhan in favour of M/s.D.C.Foundation is a fraudulent document created by M.A.Narasimhan without any title to alienate.

36. The Trial Court has clearly pointed out the lack of title with M.A.Narasimhan to execute the sale deed (Ex.A.17). Being a void document, there can be no hesitation to declare it and the subsequent sale deed Ex.A.18 based on Ex.A.17 as a void instruments.

37. Limitation:-

The suit is filed for declaration of the two sale deeds marked as Ex.A.17 & Ex.A.18 as null and void, non est and not binding upon the plaintiff. Since, it was contended in the written statement that the suit is barred by limitation. The trial Court has framed one of the issue regarding limitation and held that, the suit is not barred by limitation since the documents set to be declared as null and void immediately after gaining knowledge about it and admittedly, there is no evidence to prove that suit property is in possession of the defendants.

38. The Learned Counsel appearing for the appellant while arguing regarding the possession submitted that, the plaintiffs themselves have admitted in their plaint paragraph No.9, the larger extent of land 17 grounds and 400 sq.ft of land comprised in S.Nos.64 & 66 of Uroor Village morefully described under Schedule 'A' of the plaint schedule is encroached and plaintiffs are negotiating with those encroachers and also litigations are pending. While so, when the plaintiffs themselves have admitted that the possession is not with them and to contra the defendants have filed documents were some of the occupants have given affidavit to vacate and handover vacant possession to the defendants, the Trial Court ought to have considered those documents and ought to have held that the defendants have "animus possidendi" over the suit property. For the said purpose, the Learned Counsel rely upon Ex.B.9, Ex.B.10, Ex.B.13, Ex.B.18, Ex.B.19 & Ex.B.20. These Exhibits are

photocopies marked through D.W.1. The plaintiff (P.W.1) had objected marking of this document. These are all secondary evidence marked through third party subject to objection.

39. The Learned Counsel appearing for the appellant further submitted that, the suit is not filed for cancellation or set aside an instrument, or decree or for the rescission of a contract, where three years limitation is prescribed under Article 59 of the Limitation Act. It is a suit specifically against the parties to the document namely M.A.Narasimhan/4th defendant, M/s.D.C.Foundation (P) Ltd., & rep./6th defendant and Somasundaram/7th defendant and the relief sought to declare them as null and void ought to have filed within three years period. In the plaint, the date of knowledge not specifically mentioned. P.W.1 in the cross examination had admitted that his mother Parameswari (deceased plaintiff) know about the sale deed Ex.A.17. Therefore, the knowledge of Ex.A.17(10.02.2005) known to the plaintiff long before filing the suit. Hence, suit is barred by limitation.

40. Per contra, the learned Counsel for the respondent rely upon the judgment of the Hon'ble Supreme Court in Md.Noorul Honda vs. Bibi Raifunnisa & Others reported in (1996) 7 SCC 767 contended that, the document sought to be nullified is a third party document to which the plaintiff is not a party. The Learned Counsel pointing out the difference in declaring the document as null and void on the ground of fraud and cancellation of a document submitted that the suit is not barred by limitation.

41. In Prem Singh and others vs. Birbal and others reported in 2006 (5) SCC 353, the Hon'ble Supreme Court has discussed regarding the challenge to a void document under Section 31 & 34 of Specific Relief Act and Limitation Act. In the said judgment, the Hon'ble Supreme Court has held as below:-

"13. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.

14. A suit for cancellation of instrument is based on the provisions of Section 31 of the Specific Relief Act, which reads as under:

"31. When cancellation may be ordered.-(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument,

if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

15. Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable documents. It provides for a discretionary relief.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be.

18.....

19.....

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the

event the transaction is held to be void."

42. Taking cue from the above judgment, it could be safely held, the instrument emerges from fraudulent intention to deprive the original title holder, created without possession and title, such instrument is void ab initio. Going by the judgments and provision of law, it is clear that even for a suit filed to declare as null and void, limitation act applies and the limitation starts from the date of knowledge.

43. In the cross examination of P.W.1, it is elicited that suit was filed in the year 2009, whereas, the 4th defendant/M.A.Narasimhan sold the property to 6th defendant/D.C.Foundation (P) Ltd, in the year 2005. When it was suggested to the witness that Parameswari the deceased 1st plaintiff know about the transaction between the 4th defendant and 6th defendant, the witness had answered in affirmative and said that as soon as his mother came to know about the transaction, she has filed the suit. It is true that the exact date of knowledge not mentioned either in the plaint or in the deposition. If one look at sale deed (Ex.A.17) alleged to have been executed by M.A.Narasimhan in favour of M/s.D.C.Foundation Private Limited. The document was presented for registration on 10.02.2005. The release of document was withheld. Only on payment of the deficit stamp duty, it was released on 12.08.2005. The plaint is presented before this Hon'ble High Court on 11.08.2009 and numbered as C.S.No.845 of 2009 subsequently transferred to City Civil Court, Madras and numbered as O.S.No.8721 of 2010. At paragraph No.10 of the plaint signed by deceased Parameswari, she has stated that, she came to know about the surreptitious transaction of the property by M.A.Narasimhan very recently. In the light of the above evidence, when the defendants have not produced any document to attribute the knowledge of these documents to the plaintiff any time three years prior to the suit, in all preponderance of probability, the benefit should be given to the title holder.

44. Title and Patta:-

The Learned Counsel appearing for the appellant would strongly rely upon the patta issued in the name of M.A.Rukumani and others, who are the legal heirs of M.A.Srinivasan and M.A.Sreerangammal. This Patta issued in the year 1958. Subsequently, there is another patta issued in the name of M.A.Narasimhan marked as Ex.B.17 dated 21.01.2003, taking advantage of the town survey mentioned in this patta, it is contended that the property sold to the 6th respondent/D.C.Foundation (P) Ltd., by M.A.Narsihman is the property, for which, the patta issued to him. On examination of these two Exhibits Ex.B.16 & Ex.B.17 by all probabilities it gives an impression that, it is a concocted document. Ex.B.16

Patta purported to have issued on 27.01.1958. In the said document apart from survey numbers 67/1 part, 66/1 part, 72 part, 73 part, 71 part and 64 part, the new town survey T.S.No.2/9 also find place. The measurements are in hectares, ares and square meter. In the year 1958, mentioning the survey numbers of Uroor Village alone was in vogue and the Town Survey came much after 1965 and assigned much later. Similarly, the measurements were also all along been in acres and cents, which are found in all the title documents to follow. If, in the year 1958, the land was assigned with new town survey and measured in hectares and ares, that would have definitely reflected in the subsequent title deeds relating to that property.

45. The next reason to suspect patta (Ex.B.17) dated 21.01.2003 issued in the name of M.A.Narasimhan is that, in Ex.B.17 the street name is mentioned as Parameswari Nagar with T.S.No.2/9 to an extent of 0.15.39.5. The land is shown as vacant land. The sale deed executed by M.A.Narasimhan in favour of M/s.D.C.Foundation (P) Ltd, Ex.A.17 dated 10.02.2005 contain superstructure with door numbers. Whereas, in Ex.A.18 dated 09.08.2006 no door number mentioned. The western boundary in Ex.A.17 is shown as remaining land of the vendor whereas the western boundary in Ex.A.18 is shown as Lattics Bridge Road. There is no plausible explanation for these glaring discrepancies.

46. Regarding title, if really there is cloud over title, suit without declaration of title will not be sustainable. Whereas, in this case, the original owners of the property namely the son and daughters of M.A.Sreerangammal had recognised the title of Balasubramaniam when he mortgaged the property to them under Ex.A.8 to Ex.A.10, therefore, the 4th defendant, who is the descendant of Sreerangammal is estopped from doubting the title of Balasubramaniam and his legal heirs after 40 years. Any doubt about the title of the plaintiff raised by the defendants is only an illusory doubt. Since the vendor's of the appellant's vendor has no title or alienable right to deal with 'B' schedule property, suit without declaration of title is not fatal. It is needless to reiterate again that, revenue records are not documents for title, it will not confer any title, unless supported by valid documents. Likewise documents created fraudulently though registered is non est in eye of law.

47. This Court, after appreciating the evidence conclude that the sale deeds Ex.A.17 & Ex.A.18 are fraudulent documents and void. The patta Ex.B.16 & Ex.B.17 have no persuasive effect.

48. For the reasons stated above, this Court confirms the judgment and decree dated 30.10.2019 made in O.S.No.8721 of 2010 on the file of XVIII Additional City Civil Court, Chennai. Hence, the Appeal Suit is dismissed with costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The XVIII Additional City Civil Court, Chennai.

Copy to:

The Section Officer,

V.R.Section, High Court, Madras.

+2ccs to Mr.Waron and Sai Rams, Advocate SR.No. 9428

+5ccs to Mr..Perumbulavil Radhakrishnan, Advocate SR.No. 9529

A.S.No.876 of 2019

& C.M.P.No.26727 of 2019

& C.M.P.No.13994 of 2020

A.SK(30.04.2021)