



A.S.No.268 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 26.04.2022	Orders pronounced on 24.06.2022
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CORAM:

THE HONOURABLE MRS. **JUSTICE S. KANNAMMAL**

A.S.No.268 of 2016
and
CMP No.4384 of 2016 & 17683 of 2017

Chandra Kumar ... Appellant/Defendant

Vs.

S.Mallika
represented by her Power of Attorney
Mr.M.Sivakumar ... Respondent/Plaintiff

Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the Judgment and Decree of the III Additional Judge, City Civil Court, Chennai, dated 31.07.2015 made in O.S.No.186 of 2011.

For Appellant : M/s.B.Mohan
for
M/s.P.Gunaraj

For Respondent : Mr. M.Balasubramanian



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J U D G M E N T

The Appellant, who is the defendant in O.S.No.186 of 2011, has filed this appeal challenging the judgment and decree dated 31.07.2015, passed by the learned III Additional Judge, City Civil Court, Chennai.

2. The brief facts, as averred by the plaintiff (respondent herein) in the original suit, are as follows:

2(i) The plaintiff is the absolute owner of the suit property having purchased the same under valid sale deed vide Document No.2537 of 2010 registered on 22.07.2010 on the file of Sub Registrar, Kodambakkam from her vendors, who had absolute right over the property as on the date of execution of sale deed. She, after the purchase of the said property, paid property tax and water tax and also transferred the Electricity Consumption Account in her name.

2(ii) Since the defendant unlawfully trespassed into the premises without any valid right, plaintiff issued legal notice on 30.08.2010 by



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calling upon the defendant to vacate the premises which was under her unlawful occupation, within 15 days from the date of receipt of legal notice and also to pay damages for use and occupation of the suit property after the date stipulated in the legal notice. But the defendant refused to receive the said notice. In spite of repeated demands, the defendant failed and neglected to vacate the premises and to pay the damages. The defendant is liable to pay the damages from 01.09.2010 onwards at the rate of Rs.15,000/- per month till he vacates the premises.

2(iii) The plaintiff was put in possession and enjoyment of the property as absolute owners by her vendor, after paying entire sale consideration. An Assessment notice dated 08.04.2009 was issued by the Corporation of Madras to the vendors of the plaintiff. Therefore, the vendors of the plaintiff had been in absolute use and enjoyment of the property from the date of purchase from the Tamil Nadu Housing Board with reference to the application dated 28.02.1973 submitted by the vendors of the plaintiff to have the allotment in their name. As such from the date of allotment and execution of sale deed dated 28.03.1994, the



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vendors of the plaintiff had been in absolute use and enjoyment of the property.

2(iv) Vendors of the plaintiff entered into an agreement with Mrs.P.Sundari, so as to have the leasehold right for five years with effect from 30.05.1979 and the said Sundari was allowed to reside in the said premises for five years. Thereafter, the said Sundari left that premises without paying any rent payable to the vendors of the plaintiff but the defendant alleged to be the brother of said Sundari and he was allowed to make use and occupy the said premises without consent or concurrence of the vendors of the plaintiff. When the vendors of the plaintiff sent a notice to the defendant the defendant failed and neglected to pay the rent and refused to vacate, but made himself liable to pay the charges as damage for the premise being occupied by him and declined to be called as a tenant. In the RCOP filed by the vendors of the plaintiff, the defendant stated that he was no more a tenant. Therefore, the vendors of the plaintiff did not further proceed the RCOP and asked him to vacate the premises by paying the damages for use and occupation. The



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intention of the defendant is to misrepresent before the Rent Control Court and to squat in the property unlawfully.

2(v) Eventhough the defendant is aware that he has no right to make use of the suit property, even after the legal notice, he has been unlawfully continuing in the premises and causing undue hardship and sufferings to the plaintiff. Hence, the suit for recovery of possession and permanent injunction.

3. The case of the defendant (appellant herein) as stated in the written statement is as follows:-

The defendant denied the plaint averments and stated that Mrs.Sundari Chandran, sister of this defendant, had entered into an agreement with the original owner of the suit properties while the property was in the stage of allotment from the Housing Board and had paid the entire consideration, which had been agreed in the agreement and also paid the dues and instalments to the Tamil Nadu Housing Board being the cost of the flat and vacant possession. On such payment, the



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suit flat in question had been given to her by way of part performance and as per the terms of the agreement, Sundari Chandran is entitled to get the sale deed in her favour. Immediately on the grant of the sale deed given by the Housing Board in favour of the original allottee the defendant had been put into possession only as a tenant from her sister Sundari Chandran, being the ostensible owner of the suit flat all along. From the date of the said original agreement entered with Sundari Chandran, the original allottee of the suit flat, the defendant is statutory tenant under Sundari Chandran and he is protected by the provisions of Tamil Nadu Buildings (Lease and Rent) Control Act and this defendant can be evicted only under Section 10 of Tamil Nadu Buildings (Lease and Rent) Control Act. Therefore, the suit is not at all maintainable besides the fact that the plaintiff has no legal right to make demand to get the rent and vacant possession. While so, the plaintiff fraudulently had taken a plea as if this defendant is an unauthorized occupant and trespassed into the suit property by illegal means. His sister taken a legal proceedings against the original owner and hence, there is no relationship the plaintiff had with the suit property. This Civil Court has no



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jurisdiction to try this suit, while the defendant was a statutory tenant protected under Tamil Nadu Buildings (Lease and Rent) Control Act and not a sub-tenant. There is no cause of action for the above suit against this defendant. There is no merit in the suit and the same is liable to be dismissed.

4. Based on the pleadings the trial court framed the following issues:

1. *Whether the suit is maintainable as it is filed before the civil court ?*
2. *Whether the plaintiff has legal right to file the suit against the defendant seeking vacant possession ?*
3. *Whether the plaintiff is entitled to vacant possession as prayed for ?*
4. *Whether the plaintiff is entitled to permanent injunction as prayed for ?*
5. *To what relief the plaintiff is entitled ?*



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5. Before the trial Court, on the side of plaintiff, Thiru.M.Sivakumar, power agent of the plaintiff was examined as P.W.1 and Exs.A.1 to A.21 were marked. On the side of defendant, the defendant Thiru.Chandrakumar examined himself as DW.1 and marked Exs.B1 to B3.

6. Learned trial Judge, on considering the oral and documentary evidence and also the arguments of both side counsels, came to a conclusion that the suit is maintainable before the civil court and the plaintiff is entitled to the reliefs as claimed in the suit and consequently, directed the defendant to handover vacant possession of the suit building within a period of three months from the date of receipt of a copy of the judgment and also not to alienate or encumber the suit property. Challenging the same, the defendant is before this Court by way of this appeal.

7. Learned counsel for the appellant/defendant submitted that the learned trial Judge erroneously came to the conclusion that the appellant



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is a trespasser without considering the fact that the defendant is a lawful owner of the suit property pursuant to the settlement deed dated 07.12.2011. There is no averment contained in the plaint that on which date, month and year the defendant trespassed into the suit property and how he had trespassed in the suit property. In fact, RCOP No.2121 of 1999 had been filed against him by the vendors of the plaintiff in the year 1999 and hence, there is no cause of action to maintain the suit.

8. Learned counsel for the appellant/defendant also submitted that the allegation that the vendors of the plaintiff are in possession from the date of allotment till the execution of sale deed dated 25.03.1994 is a deliberate lie as the RCOP No.2121 of 1999 filed against the defendant will prove that the plaintiff's vendor was not in possession of the suit property. While RCOP No.2121 of 1999 was filed by the plaintiff's vendors, as per the doctrine of abrobate and rebrobate, plaintiff is debarred from taking a plea that he is a trespasser and hence, the above suit is not maintainable before this Court and only the Rent Controller is having the jurisdiction.



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9. Learned counsel for the appellant/defendant further submitted that while his sister Sundari Chandran was an agreement holder to purchase the suit property from the vendors of the plaintiff, who was an allottee of the suit property from Tamil Nadu Housing Board, filed a suit for specific performance in O.S.No.3748 of 2007 against the original owners/vendors of the plaintiff, on the basis of the sale agreement dated 30.05.1979. The said suit was decreed as prayed for on 13.03.2008 and subsequently, she filed Execution Petition in EP. No.1248 of 2008 on the file of X Assistant City Civil Court and got the sale deed dated 29.10.2011 executed through the Hon'ble X Assistant City Civil Judge in her favour. Subsequently, Sundari Chandran executed a settlement deed dated 07.12.2011 in favour of this defendant pending the present suit and as such, ever since the settlement deed dated 07.12.2011, this defendant became the absolute owner of the suit property and in such circumstances, the plaintiff has no legal right to demand rent, damages and vacant possession etc., In the plaint, the plaintiff has not prayed for damages and for that, he had not paid the



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court fee also. On that score, the relief of damages cannot be granted to the plaintiff. The plaintiff had not even prayed for declaration of her title and in such circumstances, the suit for bare recovery of possession without declaration of her title is not maintainable.

10. Learned counsel for the appellant/defendant further submitted that as regards the sale deed dated 22.07.2010 alleged to have been executed in favour of the plaintiff, the suit in O.S.No.3784 of 2007 was pending on the basis of the sale agreement dated 30.05.1979 for specific performance. Therefore, the *lis pendens* law will operate and the sale deed dated 22.07.2010 is subject to the result of the judgment and decree in O.S.No.3784 of 2007 and hence, the sale deed dated 22.07.2010 is hit by the doctrine of *lis pendence* as per Section 52 of Transfer of Property Act and void, non-est in law and not valid.

12. Learned counsel for the appellant/defendant also submitted that RCOP No.2121 of 1999 alleged to have been filed by the plaintiff's vendors had been dismissed as not pressed and in fact, the said RCOP is



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not filed against Sundari Chandran and the same had been filed against this defendant Chandra Kumar and hence, the plea of fraud taken by the plaintiff that the plaintiff's vendors had given Tanjore address and knowing fully well the plaintiff's vendor are residing at Tanjore and not in T.Nagar. There was no occasion for Sundari Chandran to know the Tanjore address and the last known address to Sundari Chandran is T.Nagar address only and the same had been given in the Agreement to Sell executed between the plaintiff's vendors and Sundari Chandran.

13. Learned counsel for the appellant/defendant further submitted that the plea taken by the plaintiff that the decree passed against the dead person is null and void and will not bind is not sustainable. In fact, the decree granted in the above suit is against father Murugesan and his only son Mahendran and in fact, the decree has been jointly granted against Murugesan and Mahendran as the suit had been filed against both, wherein Murugesan is alleged to have died. In fact, admittedly, Mahendran is the son of Murugesan being the only son and only legal heir of Murugesan and hence the decree jointly passed against



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Murugesan and Mahendran is valid and hence, the decree was passed as if it was passed against Mahendran being the only legal heir of Murugesan substituting him as a living person. Thus, the suit has been decreed only against the living person and not against the dead person and hence the decree is valid. That apart, the sale deed dated 29.10.2011 is only on the basis of the Agreement to Sell executed by the plaintiff's vendors as early as on 30.05.1979 and hence, as per law, the sale deed merged along with the sale agreement dated 30.05.1979 and hence, admittedly the sale deed of the defendant's vendor Sundari Chandran is the earlier sale deed presumed to have been obtained as early as on 30.05.1979. But the sale deed dated 22.07.2010 alleged to have been executed in favour of the plaintiff is only by Mahendran, judgment debtor in O.S.No.3784 of 2007, pending the said suit, hence the sale deed dated 22.07.2010 is null and void and will not bind this defendant and it is hit by doctrine of *lis pendens*.

14. Learned counsel for the appellant/defendant also submitted that the plaintiff had also gone to the extent of playing fraud upon this



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Court by producing a copy of legal notice alleged to have been sent by the defendant's sister through one Mr.Narashimhan to the vendors of the plaintiff. It was disputed in the cross and the same itself was objected and taken a specific plea that she never sent a legal notice through the said Narasimhan. In the peculiar circumstances, without examining the said counsel, who alleged to have sent the legal notice on behalf of Sundari Chandran, it cannot be taken as evidence, since there is no pronote issues between the plaintiff's vendors with Sundari Chandran and the said legal notice is fraudulently cooked up by the plaintiff.

15. Learned counsel for the appellant/defendant further submitted that the plaintiff is not having any cause of action to file the suit for possession in O.S.No.186 of 2011 on the file of the III Additional City Civil Court, Chennai. From the date of the above settlement deed ie., 07.12.2011, the defendant is the lawful owner of the suit property. Though he is a permissive occupant inducted by his sister Sundari Chandran, the recovery of possession against the lawful owner as if he is a trespasser in the suit property is not maintainable. Hence, he prayed for



allowing this appeal.

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16. Per contra the learned counsel for the respondent / plaintiff submitted that there is a promissory note issue between the vendors of the plaintiff and the sister of the defendant. The sister of the defendant lent money to the vendors of the plaintiff and obtained signatures of the vendors of the plaintiff in blank non-judicial stamp papers. On 30.05.1980, appellant's sister Sundari Chandran issued a lawyer's notice and demanded money from the vendors of the plaintiff. After 27 years thereafter, by misusing the same, Mrs.Sundari Chandran filed the suit against the vendors of the plaintiff for specific performance by giving false address of vendors of the plaintiff and obtained a fraudulent exparte decree on 13.03.2008 and got the sale deed executed in her favour. Subsequently, she settled the property in favour of her brother, defendant herein, which itself is not valid. The Hon'ble Apex Court in a judgment reported in AIR 1996 SC 2326 : 1996 (7) SCC 397 held that filing a false affidavit into court is an offence under Sections 191 and 193 of IPC and the deponent is liable to be prosecuted for perjury. The



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respondent/defendant taken the court for granted and made the Court to execute a sale deed in the name of a dead person with false address and suppressed the material information in the written statement on 13.08.2011 in the above suit in O.S.No.3784 of 2007. The plaintiff produced all the documents to prove her claim, but the defendant had not produced any document to prove his case. Learned counsel for the respondent/plaintiff also relied on the judgment of this Court reported in ***(2005) 2 CTC 81 (K.Rangasamy and another ..vs.. Tamil Nadu Housing Board)*** for the proposition that Lease cum Sale Agreement will not amount to sale of property. The trial court, on appreciation of the above facts has rightly decreed the suit and therefore, he prayed for dismissal of this appeal.

17. Heard the learned counsel for the appellant/defendant and learned counsel for the respondent/plaintiff and perused the records.

18. The points for consideration are,

(i) *Whether the sale deed dated*



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22.07.2010 executed by the vendors of the plaintiff in favour of plaintiff is valid and binding on the defendant?

(ii) Whether the sale deed dated 29.10.2011 executed by X Assistant Judge, City Civil Court, Chennai, in favour of defendant's sister Sundari Chandran and the subsequent, settlement deed dated 07.12.2011 in favour of defendant by his sister Sundari Chandran are valid, acted upon and binding on the plaintiff?

(iii) Whether the plaintiff is entitled to vacant possession and permanent injunction as prayed for ?

19. From the perusal of the records, it is seen that the case of the respondent/plaintiff is that with reference to the application dated 28.02.1973, her vendors paid entire sale consideration to the Tamil Nadu Housing Board for purchase of the suit property and under the registered sale deed document No.1395 of 1994 dated 25.03.1994, her vendors have been put in possession and enjoyment of the suit flat/property as absolute owners. The plaintiff purchased the subject property through a registered



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sale deed dated 22.07.2010 from her vendors and after the purchase of the said property, she paid property tax, water tax and also transferred the Electricity service connection in her name. But the defendant claims that he was a tenant under his sister Sundari Chandran, who had entered into an agreement with the original owner of the suit properties even before the allotment from the Housing Board and paid the entire consideration, which had been agreed in the agreement and also paid the dues and instalments to the Tamil Nadu Housing Board being the cost of the flat. On such payment, it is claimed that vacant possession of the suit flat in question had been given to her by way of part performance and as per the terms of the agreement, Sundari Chandran is entitled to get the sale deed in her favour. Immediately on the grant of the sale deed given by the Housing Board in favour of the original allottee the defendant had been put into possession only as a tenant by her sister Sundari Chandran, being the ostensible owner of the suit flat. But, perusal of the sale deed dated 25.03.1994 executed by the Tamil Nadu Housing Board shows that the entire sale consideration of Rs.52,940/- for the flat and proportionate land, has been paid only by the vendors of the plaintiff, viz., Murugesan



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and not by Sundari Chandran. Apart from that, the sale consideration is Rs.52,940/- as evident from the sale deed dated 25.03.1994 and payment receipt dated 25.03.1994. Hence, the amount of Rs.26,365/- mentioned in the sale deed dated 29.10.2011 executed in favour of appellant's sister Sundari Chandran by the X Assistant Judge is not correct besides it is very meagre, when the sale consideration is Rs.52,940/- on 25.03.1994 itself.

20. It is the contention of the plaintiff/respondent that after 27 years from the date of alleged 'Agreement to Sell' dated 30.05.1979, defendant's sister Sundari Chandran filed the suit in O.S.No.3784 of 2007 against the plaintiff's vendors by giving false address for plaintiff's vendors as if they are residing in T.Nagar and fraudulently obtained exparte decree against a dead person-Murugesan, who died in the year 2003 and fraudulently got the sale deed dated 29.10.2011 executed in her favour by learned X Assistant City Civil Judge on behalf of the dead person. Thereafter, within 1½ months, Sundari Chandran executed settlement deed dated 07.12.2011 in favour of her brother, defendant



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herein, which itself shows the fraudulent act of the defendant and his sister Sundari Chandran. Hence the sale deed dated 29.10.2011 and settlement deed dated 07.12.2011 could not be acted upon and not binding on the plaintiff/respondent.

21. This contention of the plaintiff/respondent is denied by the appellant/defendant by stating that RCOP was filed only against this defendant and not against his sister Sundari Chandran and she did not know that the vendors of the plaintiff/agreement holder had shifted their residence to Tanjore. Further, one of the agreement holders Murugesan died in the year 2003 and one of the agreement holder is alive and hence, the sale deed dated 29.10.2011 is merged along with the sale agreement dated 30.05.1979 and consequently, the sale deed dated 29.10.2011 is presumed to be the earlier sale deed. The above said contention of the appellant/ defendant cannot be accepted by this Court for the reason that the said Sundari Chandran had given authorisation letter dated 09.01.2008 authorising the defendant to conduct the case in O.S.No.3784 of 2007 on her behalf. The defendant, who conducted the case in



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O.S.No.3784 of 2007 and had filed proof affidavit as PW.1 in O.S.No.3784 of 2007 on 09.01.2008 on behalf of his sister, is well aware of Tanjore Address of plaintiff's vendor. Even during 1999, he could have filed a petition to change the wrong address to correct address and then get the summons issued to the correct address of vendors of the plaintiff providing opportunity to the defendant in the suit to contest it. But the defendant did not do so. Hence, this Court is of the view that it is the false statement that Sundari Chandran had not known the Tanjore address of vendors of the plaintiff. This itself shows the fraudulent act of the defendant and his sister Sundari Chandran.

22. Even though it is stated in the sale deed and settlement deed executed in the year 2011 that Sundari Chandran residing in the suit property as “Mrs.Sundari Chandran, Wife of Mr.V.R.Chandran, Hindu, aged 60 years residing at Flat No.9B, New No.22B, Film Directors Colony, Kodambakkam, Chennai-600 024”, it is evident from the voter's identity card produced by Sundari Chandran at the time of registration of the said sale deed and settlement deed in the year 2011 that on the date of



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execution of those documents in the year 2011 and also even during 1999, the said Sundari Chandran was residing at Vadapalani (West) and not in the suit property. It is also confirmed by the statement in RCOP No.2121 of 1999 filed by the vendors of the plaintiff in paragraph no. 3 and 5. The relevant paragraphs are extracted hereunder:

“3 the respondent is in tenant in respect of the petition schedule mentioned premises on a monthly rent of Rs.1,500/- from March 1988 ...

5 and the respondent is in arrears of rent from April 1994 to June 1999 to a sum of Rs.94,500/- ”

Hence, it is evident that Sundari Chandran was not residing in the suit property during 1988 to 2011 and the vendors of the plaintiff are in actual possession of the suit property till 22.07.2010 and not in physical possession of the suit property.

23. In the sale deed dated 29.10.2011 executed by the learned Judge in favour of Sundari Chandran, it is specifically stated that *“the Tamil Nadu Housing Board had allotted the schedule mentioned Flat for*



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a total sum of Rs.26,395/- with an initial advance payment of Rs.2,200/-". But in the sale deed executed by Tamil Nadu Housing Board in favour of vendors of the plaintiff the sale consideration was mentioned as Rs.52,940/- which itself shows that by giving false information, the defendant authorised by said Sundari Chandran, colluded with each other and got the sale deed executed through the Court. In that fashion, the defendant and his sister have played fraud on the Court and abused the process of law.

24. The sale deed dated 29.10.2011 executed by the learned Judge in favour of Sundari Chandran is based on the alleged 'Agreement to sell dated 30.05.1979 executed between the vendors of the plaintiff and Sundari Chandran. But the plaintiff/respondent stated, in one place, that it is a lease agreement for five years and in another place referred it as 'pronote representing lending of money by Sundari Chandran to plaintiff's vendors". The said Sundari Chandran also issued a lawyer's notice dated 30.05.1980 demanding money from the vendors. In such circumstances, it is the duty of the appellant/defendant, who stand on the



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alleged 'Agreement to sell' dated 30.05.1979, to prove his case either by producing the 'Agreement to sell' dated 30.05.1979 before this Court for perusal or examining his sister Sundari Chandran and advocate Narasimhan. But he did not do so. Apart from that, appellant/defendant has not produced any documents like petition in O.S.No.3784 of 2007, the documents produced therein to prove his case. But the respondent/plaintiff produced property tax receipt, water tax receipt and also Electricity Consumption Card in her name. In the absence of said alleged 'Agreement to sell' dated 30.05.1979 before this Court, the claim of the appellant and her sister Sundari Chandran that Sundari Chandran entered into an 'Agreement to sell dated 30.05.1979 with the vendors of the plaintiff cannot be accepted by this Court.

25. That apart, even though O.S.No.3784 of 2007 has been decreed exparte on 13.03.2008 after 30 years of alleged 'Agreement to sell dated 30.05.1979 and the sale deed in favour of Sundari Chandran was executed on 29.10.2011 by the learned X Assistant Judge, one of the vendors Mahendran and legal heirs of Murugesan had filed a petition in



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I.A.No.4243 of 2014 to cancel the exparte order dated 13.03.2008 obtained in O.S.No.3784 of 2007 by providing false address for them and the said petition was allowed on 24.02.2016. Thereafter, the suit was restored to file again. Challenging the same, Sundari Chandran filed CRP (PD) No.2383 of 2016 before this Court and later, the said CRP was withdrawn by Sundari Chandran and the same was dismissed as withdrawn on 15.02.2021. In the mean while, the suit in O.S.No.3784 of 2007 was dismissed for default on 18.01.2017 for not taking steps to implead the LRs of the deceased vendor. Thereafter, the said Sundari Chandran filed a petition in I.A.No.14463 of 2017 to restore the suit, which was dismissed for default on 18.01.2017. Subsequently, the restoration petition in I.A.No.14463 of 2017 was also dismissed on merit by the trial Court on 18.11.2019, with a finding that the said restoration petition was filed with false cause title as if the said Sundari Chandran impleaded the LRs of the deceased vendor, and also finding that the suit ought to have been filed for specific performance within 25.03.1997, ie., within three years from the date of sale deed 25.03.1994 executed by the Tamil Nadu Housing Board. Hence, as on today, the suit in O.S.No.3784



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of 2007 is not alive and it ended against Sundari Chandran. The above conduct of the defendant and his sister Sundari Chandran shows their malafide intention to obtain a decree in their favour by playing fraud on the Court.

26. It is the contention of the respondent/plaintiff that the defendant unlawfully trespassed into the suit property/flat without any valid right and causing hardship and sufferings to the plaintiff. But it is the case of the appellant/defendant that he was a tenant under his sister Sundari Chandran till she executed settlement deed dated 07.12.2011 in his favour and from the date of settlement deed, he is the owner of the suit property, hence, the respondent/plaintiff cannot sought for vacant possession, permanent injunction and damages. If this contention of the defendant that he is not a trespasser and is a tenant under Sundari Chandran is true, he ought to have filed a suit for injunction seeking 'not to evict him without due process of law'. But the defendant did not do so, till now. Apart from that, even after the sale deed dated 22.07.2010 in favour of the plaintiff or after filing of this suit in the year 2011, the said



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Sundari Chandran who alleged to have an ostensible owner of the suit property, has not filed any suit against Mallika-plaintiff/respondent or against the vendors of the plaintiff for injunction not to disturb/interfere with her possession. That apart, since the sale deed in favour of Sundari Chandran and subsequent settlement deed in favour of appellant/defendant are mainly based on the alleged 'Agreement to Sell' dated 30.05.1979, they cannot be acted upon as the suit filed by Sundari Chandran for specific performance on the basis of alleged 'Agreement to Sell' dated 30.05.1979 was dismissed. Even if it is assumed to be an Agreement to Sell, the same cannot be considered as Sale of Property, as per the law laid down by this Court in **(2005) 2 CTC 81 (K.Rangasamy and another ..vs.. Tamil Nadu Housing Board)**, wherein it is held that *“Immovable property can be sold only by a registered sale deed and not by a mere allotment order; Lease cum Sale Agreement is only a lease agreement till final instalment is paid and lease cum sale agreement will not amount to sale of property; Sale takes place only after payment of final instalment and execution and registration of sale deed.”* Hence, the alleged 'Agreement to Sell' dated 30.05.1979 cannot be considered as a



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sale and the said Sundari Chandran cannot be considered as a owner.

Therefore, this Court holds that the defendant is not a tenant under the said Sundari Chandran at the time of filing the suit itself. Even now, the defendant is not a tenant in the suit property, as the suit filed by his sister for specific performance was dismissed for default as early as on 18.01.2017 and the restoration petition filed by her was also dismissed on merit. Further, on 18.11.2019 the Civil Revision Petition filed to set aside the exparte order was dismissed as withdrawn on 15.02.2021. Hence, this Court is of the view that the appellant/defendant, who has no right whatsoever in the suit property, is a trespasser into the suit property.

27. Since the documents. Viz., sale deed dated 29.10.2011 in the name of appellant's sister Sundari Chandran and settlement deed dated 07.12.2011 in favour appellant Chandrakumar and subsequent, encumbrance certificate are obtained after filing of the present suit, by playing fraud, to defeat the lawful rights of the plaintiff, this Court of the view that those documents could not be acted upon and not binding the plaintiff/respondent or anybody.



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28. As already discussed, this Court holds that the sale deed dated 22.07.2010 executed in favour of the respondent/plaintiff by the vendors of the plaintiff is a valid document and it can be acted upon and it cannot not be affected by lis pendense even if it is executed pending O.S.No.3784 of 2007, since the said suit itself was filed with false address of the vendors of the plaintiff and sale deed got executed with the said false address of the vendors of the plaintiff, by playing fraud on the Court. Apart from that, the suit in O.S.No.3784 of 2007 ended in dismissal.

29. Accordingly, the respondent/plaintiff is entitled for vacant possession from the trespasser – appellant/defendant and permanent injunction as prayed for. The appellant/defendant is directed to vacate and hand over vacant possession of the suit property/flat to the respondent/plaintiff within a period of two months from today. Since, the sale deed dated 29.10.2011 executed by the learned X Assistant City Civil Judge in the name of appellant's sister Sundari Chandran and



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subsequent, settlement deed dated 07.12.2011 executed by appellant's sister Sundari Chandran in favour appellant Chandrakumar are after the present suit, by playing fraud on the Court, they are declared as not valid and not acted upon and not binding on the plaintiff. The appellant/defendant is directed not to alienate or encumber the suit property/flat. The Sub-Registrar, Kodambakkam is directed to cancel the sale deed dated 29.10.2011 executed by the learned X Assistant City Civil Judge in the name of appellant's sister Sundari Chandran and subsequent, settlement deed dated 07.12.2011 executed by appellant's sister Sundari Chandran in favour appellant Chandrakumar. The Sub-Registrar, Kodambakkam is also directed not to entertain/register any document, if executed by Sundari Chandran or Chandrakumar, with regard to suit property/flat.

30. In the result, this appeal suit is dismissed with cost of Rs.10,000/- (Ten Thousand) payable by the appellant/defendant to the respondent/plaintiff within a period of fifteen days (15 days) from the date of receipt of a copy of this order. The impugned judgment and



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decree of the III Additional Judge, City Civil Court, Chennai, dated 31.07.2015 made in O.S.No.186 of 2011 is hereby confirmed.

Consequently, CMP No.4384 of 2016 filed for stay is also dismissed.

CMP No.17683 of 2017 filed to amend the plaint/to include the prayer for damages is disposed of with a liberty given to plaintiff to file a separate suit, if she desires so seeking such relief. No costs.

Mra

24.06.2022

Index : yes/no

Internet : yes

Speaking / Non-speaking Order

To:

- 1) The III Additional Judge,
City Civil Court,
Chennai.
- 2) The Section Officer,
VR Section,
High Court,
Madras.



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Judgment made in
A.S.No.268 of 2016
and
CMP No.4384 of 2016 & 17683 of 2017

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