



O.A.Nos.465 and 466 of 2022
in C.S.No.163 of 2022

C.V.KARTHIKEYAN,J.,

Both these applications have been filed by the plaintiff in the suit seeking an order of injunction restraining the 3rd defendant from either dealing with the property mentioned in the suit schedule or interfering with peaceful possession of the plaintiff with respect to the very same property.

2. The property mentioned is item No.1 of the suit schedule property measures about 11 grounds 715 sq.ft at Vyasarpadi in Door No.141, Gantz's Road, Perambalur Division. There is also another item in the same schedule, which is land measuring one ground and 1648 sq.ft., which is an adjoining property at Door No.142. But injunctions are primarily sought with respect to seeking protection of possession to the land measuring 11.715 grounds and to restrain the 3rd defendant from dealing with the said lands.

3. It must be mentioned that the plaintiff and the 1st defendant are sisters. The 2nd defendant is the husband of the 1st defendant. The 3rd defendant is a third party, who had purchased the aforementioned 11.715 grounds of land from the 2nd defendant. The 2nd defendant obtained a right to sell the property in view of a settlement executed over the said lands by the 1st defendant in his name/her own husband.



4. The background facts are that the plaintiff and the 1st defendant, sisters, benefited from a partition deed executed among C.Nagaiya Naidu, their father and his sons, dated 29.02.1972. In that partition deed, C.Nagaiya Naidu came to be allotted land measuring 26 grounds. C.Nagaiya Naidu then took a decision on 29.04.1972, to further execute a partition deed dividing this land of 26 grounds into two equal parts of 13 grounds each or 2682 sq.mts each. One part was allotted to the plaintiff and the other part was allotted to the 1st defendant.

5. The grievance of the plaintiff is that the 1st defendant, had dealt with the entire lands which had been allotted to her. It had been declared by the authorities that 682 sq.metres were excess lands and the 1st defendant had received compensation for the said excess 682 sq.metres of land. The reminder 2000 sq.meters of land, had been sold by the 1st defendant and by her father under five sale deeds. They were all in favour of single individual viz., Seetha Lakshmi, who was a third party to the family.

6. It is therefore the contention of the plaintiff that the 1st defendant had dealt with the entire 13 grounds which was allotted to her under the partition deed dated 29.04.1972. It is therefore claimed that she can no longer claim any land which had fallen to her (plaintiff's) share under the partition deed.



7. The plaintiff also had the benefit of being allotted 13 grounds under the very same partition deed, dated 29.04.1972. Out of the said 13 grounds, it is the case of the plaintiff that 11 grounds and 715 sq.metres of land, is described as item No.1 in the schedule to the plaint and the balance is described as item No.2 to the schedule of the plaint.

8. It is the case of the plaintiff that after having dealt with her 13 grounds, the 1st defendant in the teeth of the Land Acquisition proceedings of the lands measuring in item No.1 to the schedule of this plaint, had settled the said lands in favour of the 2nd defendant, who in turn had executed a sale deed in favour of the 3rd defendant.

9. Claiming, that thus, the 1st defendant had not only benefited from her 13 grounds of land but had also dealt with 11.715 grounds out of 13 grounds of land which was lawfully allotted to the plaintiff, the suit had been filed seeking declaration of title and to set aside the settlement deed executed by the 1st defendant to the 2nd defendant and to set aside the sale deed executed by the 2nd defendant to the 3rd defendant.

10. The 3rd defendant claimed ignorance of all the aforesaid transactions. In the counter, the 3rd defendant claimed that she is a bonafide



purchaser after having examined the records, more particularly, the encumbrance certificate and finding that the 11 grounds and 715 sq.ft of land had nil encumbrance, proceeded to purchase the same for quite substantial consideration from the 2nd defendant.

11. It is also incidentally pointed out by the 3rd defendant in her counter, that the suit could also be termed as collusive between the plaintiff and the 1st defendant, to defeat her rights.

12. Heard arguments at quite some length advanced by the learned counsels.

13. Mr.S.R.Ragunathan, learned counsel for the plaintiff was quite emphatic in his contentions that the 1st defendant had dealt with her 13 grounds of land and had then, later, settled 11 grounds and 715 sq.ft of land which had fallen to the share of the plaintiff in favour of the 2nd defendant in the year 2010 and later by a sale deed in the year 2022, the 2nd defendant had sold that very land to the 3rd defendant.

14. To explain as to why the settlement deed was not questioned for the past 12 years, it is stated that the cause did not arise since there were Land Acquisition proceedings and not only the plaintiff but also the



adjoining land owners had questioned such Land Acquisition proceedings. The Land Acquisition proceedings lapsed by efflux of time and an order to that effect was passed by this Court. That order challenged unsuccessfully before the Hon'ble Supreme Court. Thereafter the Collector had initiated proceedings in the years 2017 and 2019 to identify the legal heirs of G.Nagaiya Naidu. It is stated that therefore, only when the 2nd defendant had sold the land to the 3rd defendant that the actual cause to institute the suit had arisen.

15. But one question which begs an answer is that the settlement deed had been executed in the year 2010, by a registered document and had not been questioned for nearly a decade.

16. Section 3 of the Transfer of Property Act also, incidentally, among other aspects deals with reasonable notice of any individual of a registered document. The provision states that due diligence should be made when a document is registered and ignorance or innocence of a registered document cannot be pleaded and if so pleaded, bonafide should be shown about the total lack of knowledge of such registration.

17. In the instant case, with respect to the lands of the plaintiff which had been settled by the 1st defendant to the 2nd defendant, the plaintiff will



have to traverse a long way during the course of trial to establish complete ignorance of the settlement deed executed by the 1st defendant in favour of the 2nd defendant.

18. That is a matter to be examined during the course of trial.

19. The issue relating to the Land Acquisition and the documents filed relating to the same cannot be either denied or disputed. They are records available. Even if either the plaintiff or the 1st defendant are handicapped in any manner from producing them during the course of trial, summons can always be issued to the Revenue Authorities to produce the records relating to the Land Acquisition proceedings.

20. These are records which stare in the face of the plaintiff and the 1st defendant. It is a mute question whether the plaintiff had acquiesced, to the settlement deed executed by the 1st defendant in favour of the 2nd defendant and had taken a conscious decision not to question the same at the earliest point of time or whether the plaintiff, as stated by the 3rd defendant raised this issue now in collusion with the 1st defendant or whether the plaintiff in all innocence and bonafide is asserting her right and title to the 13 grounds which was allotted to her in the partition deed, dated 29.04.1972.



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21. These are issues again which have to go through the process of trial.

22. As on date, the land in question namely 11 grounds and 715 sq.ft of land is a vacant land. It had been sold by the 2nd defendant to the 3rd defendant. Since it is complained by the plaintiff that her lands have been usurped by the 1st defendant and sold unlawfully by the 2nd defendant, it is only appropriate that the lands are retained till the litigation comes to an end.

23. To that extent, it would only be appropriate that reasonable restrictions are placed on the 3rd defendant from dealing with the said property. An order to that effect had already been passed when the application had come up for consideration in the first instance on 19.09.2022. Restrictions were placed on the 3rd defendant and primarily the 3rd defendant was placed under an obligation to inform the Court of any attempt to sell the land and to obtain leave of the Court.

24. Those restrictions in the order 19.09.2022, shall continue to remain in force till the disposal of the suit. I am confident that the parties would abide by the same.

25. The issue which now seeks an answer from this Court is with



respect to possession.

26. The learned counsel for the plaintiff, after taking the Court elaborately to the documents and particularly the letter of the Collector wherein, it is stated that the legal heirs of G.Nagaiya Naidu are entitled for the lands to be returned, stated that the term 'legal heirs' can only indicate the plaintiff alone and the 1st defendant stands excluded owing to the transactions of the year 1982 wherein, under five sale deeds, the 1st defendant along with her father had sold the properties to one Seetha Lakshmi, who is a third party to these proceedings.

27. With respect to possession, therefore the Court must now wander into a zone of presumptions to presume that since the 1st defendant had already dealt with her 13 grounds of land, the sale deed in favour of the 3rd defendant is only with respect to the lands allotted to the plaintiff under the partition deed.

28. It is claimed that there is no document as on date to establish possession, but reliance is placed on the Revenue records. These are issues for trial. In the absence of documents particularly any revenue documents signifying possession of the plaintiff, it would be extremely imprudent on the part of the Court to hold that the plaintiff is in possession.



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29. The sale deed in favour of the 3rd defendant speaks for itself.

30. Section 92 of the Indian Evidence Act, places an obligation on the Court to place reliance on written documents and if at all oral evidence is to be adduced to shake the foundation of a written document then much burden has to be discharged by the witness who so asserts that fact.

31. The plaintiff rests on the fact that the 1st defendant had already dealt with her lands and therefore urges that the Court should draw a conclusion that the lands described as item No.1 in the schedule are the lands allotted to the plaintiff under the partition deed, dated 29.04.1972.

32. In so far as possession is concerned, since the issue is inconclusive, there cannot be any order of injunction against the 3rd defendant. If the plaintiff is to establish possession by documentary evidence during the course of trial then, permanent injunction would necessarily follow. If the plaintiff establishes title, then these lands being vacant lands, as pointed out by Mr.S.R.Ragunadhan, possession will follow by title. But, there again the sale deed in favour of the 3rd defendant will have to be explained. These issues can be gone into only during the course of trial.



33. Holding that the 3rd defendant should be injected from dealing with the properties and reiterating the conditions mentioned in the order dated 19.09.2022 once again, I would grant an order of interim injunction with the aforesaid conditions in O.A.No.465 of 2022, but dismiss O.A.No.466 of 2022 relating to possession.

34. The learned counsel for the plaintiff placed an apprehension that the plaintiff would be dispossessed. The lands cannot be sold. Possession is only a compendium of ownership and if at all the plaintiff is able to establish title during the course of trial, possession automatically follows and even if dispossessed, recovery of possession is a judicial relief which can be again canvassed.

35. In the result,

1. O.A.No.465 of 2022 stands allowed.
2. O.A.No.466 of 2022 stands dismissed.
3. No costs.

17.10.2022

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