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O.S.A.No.273 of 2017
and C.M.P. No.8352 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2021

PRONOUNCED ON : 18.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

O.S.A.No.273 of 2017 and
C.M.P. No.8352 of 2018

D.Gurumurthy

.. Appellant

Vs.

1.N.Sathish

2.L.Anand

R.Srinivasan (Deceased)

3.Mrs.R.Rajalakshmi (died)

4.Mrs.S.Vasantha

5.S.Meenakshi

6.R.Lakshmi Narayanan

7.N.Kamala

.. Respondents

* * *

Prayer : Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules r/w Clause 15 of Letters Patent against the Judgment and Decree dated 15.06.2017 in C.S. No.336 of 2011.

* * *



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For Appellant : Mr.R.Subramanian
for Ms.S.Sasikala

For R1, R2, R4 &
R5 : Mr.R.Saravanakumar

R3 : Died

R6 & R7 : Not ready in notice

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The plaintiff, whose suit for recovery of possession and mesne profits was dismissed, has preferred the above Original Side Appeal.

2. The case of the appellant/plaintiff, as culled out from the plaint is that, he had purchased two plots of land bearing Plot No.27 of an extent of 2380 Sq.Ft. and Plot No.28 of an extent of 4760 Sq. Ft. in Velacherry, Chennai on 22.01.1970 and 16.07.1970, which are marked as Exs.P1 and P3 respectively. The plaintiff claims to have sold Plot No.28 to one I.V.Lakshmi on 19.05.1980 by a registered sale deed bearing document No.1531 of 1980 on the file of Sub Registrar, Saidapet, Chennai, marked as Ex.P3 and he retained Plot No.27 for his own use.



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3. Now the dispute is with respect to Plot No.27 which was retained by the plaintiff. When he visited his plot in 2003, he found that some houses were constructed on it and that he was unable to locate his property. According to the plaintiff, he was busy with his heavy schedule of work as Inspector of Salt and also attending to his wife, who was sick, and hence he could not visit the place after the date of purchase till 2003. The plaintiff claims to have taken the assistance of Government Surveyor to locate his property, wherein there was a house with ground and two floors constructed. The house was occupied by one R.Lakshminarayanan, who informed the plaintiff, that the occupants had purchased the property from the legal heirs of I.V. Lakshmi on 28.06.1999 under Ex.P6.

4. The case of the plaintiff is that he did not sell Plot No.27 and upon verification from the Sub Registrar's office, he found that the said plot was sold to the said Lakshmi by the plaintiff on 18.07.1980 as per Ex.P5. Thereafter, the daughters of said I.V. Lakshmi, namely Revathi and Rajeswari had sold the properties to the defendants 1 to 3, by three sale deeds dated 28.06.1999, which are marked as Exs.P6 to P8. The plaintiff claimed that he never executed a sale deed with respect to Plot No.27 and that the alleged sale deed Ex.P5, has been brought out by impersonating him and forging his signatures, with the help of one



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Lakshminarayanan, who is the father of the second defendant and brother of the third defendant. The first defendant is his sister's son. The said Lakshminarayanan was a Sub Registrar in the Registration Department, with whose help Ex.P6 to P8 - Sale deeds were executed based on Ex.P5.

5. The original purchaser from the plaintiff, namely I.V. Lakshmi, died on 02.12.1988. The plaintiff further alleged that the said Laskhminarayanan served as a Sub Registrar, had obtained all the fraudulent sale deeds in favour of the defendants by impersonation and forgery. The plaintiff also seemed to have filed a police complaint on 28.11.2003, which was closed, even without registering any FIR. Thereafter, the plaintiff has given a private complaint before the learned XI Metropolitan Magistrate, Saidapet on 09.02.2004 against Revathi, Rajeswari, Kitcha Natesan, Subba Rao and also Lakshminarayanan. The complaint was taken up on file and a case was registered in Crime No.90 of 2004. After enquiry, the case was referred as civil dispute. The plaintiff also filed a protest petition and the same was taken on file in C.C. No.9723 of 2008 and summons were issued to all the persons of accused therein.



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6. The defendants, who were shown as accused in C.C. No.9723 of 2008, filed Criminal Original Petition No.27458/2008 on the file of this court, to quash the said proceedings. This court, allowed the criminal original petition on 08.11.2010. Against which a Special Leave Petition in S.L.P. No.1961/2011 was filed and the same was dismissed on 25.10.2013. The plaintiff also got the patta cancelled in the name of the defendants and got it restored in his name. After which, he had filed a writ petition in W.P. No.18509/2010 for a mandamus directing the Commissioner, Corporation of Chennai, to consider his representation to demolish the super structure put up on the suit property. The said writ petition was dismissed as the dispute was of civil nature, and directed the plaintiff to move the appropriate forum. Thereafter, on 16.02.2011, the plaintiff issued a legal notice calling upon the defendants to surrender possession of the suit property by demolishing the unauthorised construction put up thereon. A reply was sent by the defendants on 10.03.2011 under Ex.P31. Thereafter, the above suit was filed for recovery of possession.

7. The Written statement filed by the defendants 1 to 3, was adopted by defendants 4 to 6, who are the legal heirs of the third defendant. The defendants had contested the suit on the ground that the suit itself is hopelessly barred by limitation, as recovery of possession



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has been sought for, 31 years after the sale was effected. Admittedly, the property was sold by the plaintiff to one I.V.Lakshmi, whose legal heirs had sold the property to the defendants under Ex.P6 to P8 - sale deeds and the defendants have been in possession and enjoyment of the same. The original purchaser I.V.Lakshmi died on 02.12.1988. After the purchase, the defendants had obtained planning permission from the Corporation on 01.09.1999 and put up construction and residential flats, which was completed during the year 2000. Electricity connection was also obtained and the property was assessed to property tax from the year 2001. Thus the defendants have been enjoying the property in their capacity as owners without any interruption.

8. The defendants also denied the fact that the plaintiff retained Plot No.27 for his use, as he had already sold the property on 18.07.1980 to I.V. Lakshmi. Having parted with the entire extent of the suit property, the plaintiff has come up with the above suit making a false claim. The other averments made in the plaint are also denied by the defendants, as the defendants are total strangers to the said I.V.Lakshmi and therefore, the role of defendants in forgery, etc. is only the fertile imagination of the plaintiff, without any legal basis. The criminal complaint preferred by the plaintiff, was also quashed by this court and the defendants did not have any knowledge about the



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pendency of the Special Leave Petition before the Hon'ble Supreme Court. The defendants have also preferred an appeal before the Revisional authorities, when the patta was restored in the name of the plaintiff. Having not challenged the sale deeds or the possession of the suit property in favour of I.V.Lakshmi and also the defendants and the suit filed after three decades by the plaintiff, is bad and the defendants have sought for the dismissal of the same.

9. Based on the pleadings, the learned single Judge had framed, as many as six issues, which are as follows:

- 1. Whether the sale deed dated 18.07.1980 registered as Doc. No.2379 of 1980 of the S.R.O. Saidapet is a true and valid document?*
- 2. Whether the plaintiff is entitled to the relief of recovery of possession of the suit property?*
- 3. Whether the plaintiff is entitled to past and future mesne profits as prayed for?*
- 4. Whether the plaintiff is entitled to permanent injunction as prayed for?*
- 5. Whether the suit is barred by limitation?*
- 6. To what other reliefs the plaintiff is entitled?*

10. In support of his case, the appellant has examined himself as PW1 and marked as many as 37 documents as Exs.P1 to P37. On the



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side of the defendants, one Lakshminaryanan was examined as DW1 and seven documents were marked as Exs.D1 to D7.

11. Based on the pleadings, documentary evidence, deposition of the witnesses and the submissions made by the learned counsel for the parties, the learned trial Judge, by answering all the issues against the plaintiff, dismissed the civil suit, by judgment and decree dated 15.06.2017. Aggrieved by the same, instant original side appeal has been filed.

12. As the suit revolves around only on Plot No.27, the question that arises for determination in this original side appeal is, *whether plot No.27 was sold by the plaintiff on 18.07.1980 under Ex.P5-sale deed? If Ex.P5 - Sale Deed is a valid document, Exs.P6 to P8, which are sale deeds based on Ex.P6, also become true and valid documents?*

13. Heard both parties and perused the impugned judgment and the decree and the materials available on record in the form of typed set of papers.

14. Admittedly, two plots were purchased by the plaintiff, as per Exs.P1 and P3. The property in dispute is Plot No.27. Plot No.28 was sold



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by the plaintiff to I.V. Lakshmi on 19.05.1980 under Ex.P3-Sale Deed.

However, the plaintiff does not admit that plot No.27 was sold to the said I.V.Lakshmi, as per Ex.P5-sale deed dated 18.07.1980, as he had retained the ownership of the same. The plaintiff had admittedly visited the property only after 20 years and shocked to find that house constructions were put up on the property and people were living there. Upon enquiry, he came to know that the defendants had purchased the property by virtue of three sale deed under Ex.P6 to P8 from the legal heirs of I.V. Lakshmi.

15. The specific case of the plaintiff is that, he had sold only one plot i.e. Plot No.28 and Plot No.27 which is said to have been sold by him only on 18.07.1980, to the very same I.V.Lakshmi, is a fraudulent document and the same is questioned. The said I.V.Lakshmi died on 1988, after her death, her legal heirs have sold the property to the defendants herein. Therefore, according to the plaintiff, the defendants who are now in occupation of Plot No.27, seems to have purchased the property from a person, who did not have any saleable right as on the date of alleged sale deed executed as Ex.P5. Though the plaintiff had claimed that the documents were forged and obtained fraudulently and preferred a criminal complaint, the same was quashed by this court. As the only allegation of the plaintiff is that the document dated 18.07.1980



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under Ex.P5 is a fraudulent document, the burden of proving the same is cast on him. Therefore, it has to be seen whether the plaintiff has discharged his burden of proof by proving that the document dated 18.07.1980 is a fraudulent creation. The plaintiff had based his claim only on the private complaint given before the learned Magistrate in C.C. No.9723/2008, which was quashed by this court in Crl. O.P. No.27458 of 2008. The S.L.P. No.1961/2011 preferred by the plaintiff against the order of this court in the criminal original petition, is also said to have been dismissed by the Hon'ble Supreme Court on 25.10.2013, which is marked as Ex.D1.

16. In view of the above, the criminal action initiated by the plaintiff against the defendants, has attained finality and as on date, there is no criminal proceedings pending as regards the plea of the plaintiff with regard to impersonation and forgery. As already the allegations of forgery and impersonation and the criminal case proceeded by the plaintiff, had attained finality, independent of the said allegations, the plaintiff has to prove whether the document dated 18.07.1980 is fraudulently created by the defendants.

17. The learned counsel for the appellant relied on a decision of the Hon'ble Apex Court in **Seth Ramdayal Jat vs. Laxmi Prasad** reported



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in **(2009) 11 SCC 545**, wherein, the Hon'ble Apex Court in paragraph

Nos.10, 15 and 16 held as under:

"10. Indisputably, the law relating to the admissibility of a judgment in a criminal proceedings vis-à-vis the civil proceedings and vice versa is governed by the provisions of the Evidence Act. Section 43 of the Evidence Act reads thus:

"43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant.—Judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."

15. A civil proceeding as also a criminal proceeding may go on simultaneously. No statute puts an embargo in relation thereto. A decision in a criminal case is not binding on a civil court. In M.S. Sheriff v. State of Madras [AIR 1954 SC 397] , a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or



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even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment.

16. If a primacy is given to a criminal proceeding, indisputably, the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in K.G. Premshanker [(2002) 8 SCC 87 : 2003 SCC (Cri) 223] wherein this Court inter alia held: (SCC p. 97, paras 30-31)

"30. What emerges from the aforesaid discussion is —(1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.



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31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is—whether judgment, order or decree is relevant, if relevant—its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.”

From the above, it is clear that a judgment in a criminal case thus is admissible for a limited purpose. Albeit a civil proceeding cannot be determined only based on the criminal case, however, it cannot be said a



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judgment in criminal case is not at all admissible for any purpose. Civil cases are decided on preponderance of probabilities. In this case, the plaintiff failed to prove that Ex.P5 is created by forgery.

17. It is not the case of the plaintiff that the document was obtained by fraud or coercion, but only forgery and impersonation. When the allegation of forgery and impersonation was not accepted by this court and quashed the criminal complaint, the said two grounds are not available to the plaintiff. The plaintiff also has not pleaded that the document is void or voidable. Ironically, the suit has been laid only in the year 2011, after the orders passed in the criminal original petition. As it is the plaintiff who had alleged that from the date of purchase he had not visited the property and he had visited the same only in 2000 to find that somebody else was in possession, instead of taking action within the period of limitation from that date, he waited for the criminal case to be over and then filed the civil suit thereafter. While so, the plaintiff ought to have also sought for a relief of declaration regarding the sale deed, but the suit was filed only for recovery of possession, treating the same as void document.

18. When the defendants have specifically pleaded that the plaintiff had, by virtue of the registered sale deeds, had conveyed the property,



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whether the plaintiff can claim right or title over the same, the trial court also has found that when the plaintiff specifically claim that he retained ownership of the plot for himself and sold only the other plot, the original document or the original sale deed ought to have been produced by him. Admittedly, Plot No.27 and Plot No.28 were purchased by the plaintiff by two separate sale deeds. Therefore, when the plaintiff had produced only the certified copy of sale deed, marked as Ex.P1, the suspicion regarding the non-production of the original title deed by the plaintiff is confirmed. The plaintiff has not explained either in the plaint or in his evidence about the loss of original title deed or any reason for non-production of the same. The non-production of the original title deeds also favours only the case of the defendants, as it is the definite case of the defendants that the plaintiff had sold the property to I.V. Lakshmi during which time the originals would have been parted to her.

19. The appellant herein/plaintiff had mentioned that he had been exercising his right and possession over the property from the date of his purchase till 2000. But there is nothing to show that he had been exercising his right over the property. The reliance placed on by the plaintiff on Ex.P9, which is land tax receipt, would go to show that he has paid the same for Faslis 1381 to 1413 at one stretch on 25.08.2003, just before the issuance of the legal notice. This act of the appellant



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herein/plaintiff once again proved that the plaintiff had not got any right over the property nor did he exercise any of his right regarding ownership of the same for more than three decades. The argument of the appellant herein/plaintiff is that the defendants had not entered the witness box, but allowed one Lakshminarayanan to depose as DW1 implies that the plaintiff's case has been accepted. It is unfortunate to state that merely because the said Lakshminarayanan, who was accused by the plaintiff himself in the criminal proceedings and who is well aware of the entire facts, was examined on the side of the defendants, is questioned by the appellant herein/plaintiff. The trial court had also found that the defendants had obtained appropriate orders in Application No.4038/2014 to examine DW1 on their side. Yet another application No.2926 of 2015 filed by the plaintiffs to summon the defendants for adducing evidence, was rejected by the trial court and the appellant had not preferred any appeal against the same. Besides, the plaintiff has to fall or succeed of his own case and cannot pick holes in the case of the defendants. The trial court also has found that the plaintiff had not established his possession from the date of his purchase in the year 1970, till he issued a legal notice in 2003.

20. On the contrary, the defendants and their predecessors in title had been in possession and enjoyment of the property, having obtained



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building plan, constructed house and got electricity and water supply connections from the authorities. In the light of the above discussion the plea taken by the plaintiff that the document dated 18.07.1980 is brought out by forgery and impersonation, is not proved as had been held by this court and confirmed by the Hon'ble Supreme Court. Excepting the above two grounds, the appellant has not pleaded that Ex.P5 is a fraudulent document or obtained by coercion or undue influence. Therefore, the findings of the trial court that Ex.P5-sale deed is true and correct, does not deserve any interference and the same is confirmed.

21. The next question that arises for consideration is, *whether the suit for recovery of possession, as filed by the plaintiff is within the period of limitation?*

22. The plaintiff claims to have purchased the property in the year 1970. The document under attack is dated 18.07.1980. Admittedly, the plaintiff had knowledge about the registration of the sale deed dated 18.07.1980 in the year 2003. Therefore, the suit ought to have been filed within three years from the date of knowledge of the document. Even presuming that the plaintiff was prosecuting the criminal proceedings, the time taken therein, cannot save the limitation in filing



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the suit. That apart, when the defendant had denied the title of the plaintiff, without seeking a relief of declaration maintaining the suit only for recovery of possession, that too having filed the suit only in the year 2011, is barred by limitation.

23. The appellant has filed a civil miscellaneous petition in this original side appeal in C.M.P. No.8352 of 2018 under Order XIV Rule 8 of Original Side Rules r/w Order VI Rule 17 of CPC to amend the plaint seeking for including the prayer for declaration that the sale deed dated 18.07.1980 alleged to have been executed by the plaintiff in favour of deceased I.V. Lakshmi and the consequential sale deed dated 28.06.1980 executed by the deceased I.V. Lakshmi in favour of defendants are null and void.

24. After the trial court had found that Ex.P5 is not a fraudulent document and the same is valid and legal, the appellant has come up with the above application for amendment for a declaration that Ex.P5 is null and void. This itself shows that the appellant/plaintiff has accepted the fact that the document is true and valid and therefore, seeking to set aside the same. When already finding has been rendered by the trial court that Ex.P5 was not brought out by fraud or forgery or impersonation, against the defendants, the appellant is precluded from



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seeking an amendment to set aside the sale deed. Even presuming that such a declaratory relief is permissible, the purchasers under the documents, namely I.V. Lakshmi's legal heirs should be before this court and in their absence, the suit cannot be proceeded with. The amendment sought for by the appellant was available even before the trial court on the date of filing of the suit. When the document is valid, cancellation of the same does not arise. Whereas, if the document is void ab initio, a decree for setting aside the same would not be necessary, as it will be non-est in the eye of Law and would not be a nullity. The amendment sought for is not based on any subsequent event or any development after the suit was disposed of. Therefore, the said amendment cannot be permitted when already this court had held that the suit itself is barred by limitation. Hence, the civil miscellaneous petition is dismissed, as devoid of merits.

25. As per the findings, when Ex.P5-sale deed is true and valid document and without asking for cancellation of the same or seeking a declaration of title, the suit filed as such by the plaintiff, is rightly dismissed by the trial court, which does not call for any interference by this court and the same is confirmed.



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26. Accordingly, the original side appeal is dismissed. However, there is no order as to costs. Consequently, C.M.P. No.8352 of 2018 is also dismissed.

(P.S.N., J.) (K.R., J.)
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