



A.S. (MD) No.199 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S. (MD) No.199 of 2010

N.Kannan

....Appellant/Plaintiff

-Vs-

1.B.Ramamorthy (deceased)

2.M.R.T.Radhakrishnan

3.Jayalakshmi

4.Raja

5.Rahu

6.Ravichandran

7.Meera

(Respondents 3 to 7 are brought on record

as LR's of the deceased 1st respondent

vide Court Order, dated 25.11.2016)

... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against against the decree and judgment made in O.S.No.138 of 2008, dated 12.04.2010, on the file of the I Additional District Judge, Madurai.



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For Appellant : Mr.V.Meenakshi Sundaram
for Mr.G.Gomathisankar
For R1 : Mr.J.Lawrance
For R2 : Mr.P.Thirunavukarasu

J U D G M E N T

The appellant herein is the plaintiff. He filed a suit in O.S.No.138 of 2008, before the District Court, Madurai against the respondents 1 & 2 for recovery of possession of the suit property.

2. The trial Court after trial, dismissed the suit. Challenging the said dismissal of the suit, the plaintiff has filed this appeal.

3. Brief facts to the case of the plaintiff, as per the plaint, the plaintiff purchased the suit property under a registered sale deed, dated 2.7.2008, from the second defendant for valuable consideration. The second defendant purchased the property from R.Balakrishnan Iyer. R.Subramaniya Iyer and R.Rajamani Iyer sons of Ramamoorthy Iyer under a



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registered sale deed, dated 06.05.1989. From the date of his purchase, the second defendant was in possession and enjoyment of the property and after purchase, the plaintiff become the owner of the property. The property tax changed in the name of the plaintiff. The plaintiff is the absolute owner of the property. It is submitted that the first defendant, who is the son of late. Balakrishnan Iyer, took some time to redeem the property and filed a suit for injunction against the second defendant and 3 others in O.S.No.413/1995 on the file of the Principal District Munsif, Madurai Town and the suit was contested and decreed in favour of first defendant on 09.09.2003. The learned Principal District Munsif, Madurai Town found that the first defendant was in possession and not to be disturbed. It is stated as the first defendant is not entitled to be in possession of the property. The first defendant has no right, title or interest over the suit property. He is liable to pay damages for use and occupation. Under the said circumstances, the plaintiff has filed a suit for recovery of possession of the property.



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4. The first defendant resisted the suit by filing a written statement stating that as the plaintiff is not entitled to the property and he is not having any right over the property. it is stated as the property belonged to Palanganatham Iyerwal Trust. It is stated as the first defendant and 4 other persons as trustees have exchanged the properties belonged to the Trust and got the suit property for trust on 14.10.1967. In the said document, the first defendant along with Balakrishnan Iyer, Chandrammal, Subramanian and Rajamani totally 5 persons are shown as trustee and exchanged the property. It is stated as the plaintiff has purchased the Trust property from second defendant and 3 other trustees only and apart from that the Trust property cannot be purchased in both 1989 sale deed and 2.7.2008 sale deed. Both sale deeds are void and nonest. Hence the suit property is the Trust property and the plaintiff cannot purchase the trust property and the plaintiff cannot have any right, title or interest over the trust property.

5. The second defendant resisted the suit by filing a written statement stating that as the first defendant is in unauthorised possession



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and occupation of the property and he has no right and title over the suit property and he is liable to be removed from the suit property. The first defendant is not a trustee and the suit property is not a Trust property and therefore, the plaintiff is entitled to get the possession of the Trust property.

6. On the basis of the above pleadings, the learned trial Judge framed the following issues for consideration:

- (I) Whether the plaintiff is entitled to get the relief of recovery of possession of the suit property?*
- (ii) Whether the sale deed, dated 06.03.1989 executed by R.Balakrishnan Iyer, R.Subramania Iyer and Rajamani Iyer is valid?*
- (iii) Whether the property belongs to Palanganatham Iyerwal Trust?*
- (iv) To what other relief if any the plaintiff is entitled?*

7. In order to substantiate the case, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and 9 documents were marked as Exs.A1 and Ex.A9. On the side of the defendants, one witness



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was examined as D.W.1 and 12 documents were marked as Ex.B1 to Ex.B12.

8. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record, dismissed the suit.

9. The learned counsel appearing for the appellant would submit that the suit property purchased in the name of Iyerwal trust. The suit property originally belongs to a private person and in order to get the suit property to the Trust, they exchanged the Trust property. Ex.B1 the exchange deed, dated 14.10.1967 itself clearly shows that the property was purchased for the purpose of Iyerwal Trust and it is seen from the other documents Ex.B2 & Ex.B12 that the suit property belonged to private family Trust of one Balakrishnan Iyer, R.Subramaniya Iyer and R.Rajamani Iyer sons of Ramamoorthy Iyer and they purchased the suit property by way of exchanging the trust property from the third party, which clearly shows



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that the Trust property can be sold, the exchange deed itself very clearly reveals that the trust property is a alienable property. Therefore, the appellant purchased the property by way of sale deed Ex.A1 from the second respondent and the property was transferred in the name of the appellant and he is enjoying the property. The parent document of sale deed Ex.A1 is Ex.B1- exchange deed. Therefore, he is a bonafide purchaser for valuable consideration. Since the properties transferred in the name of the appellant and he is in constructive possession and he has also paid the property tax and house tax, water tax and electricity charges, all stands in the name of the appellant, the first respondent is a trespasser, without having any legal right, has occupied the possession. Therefore, he has filed the suit for recovery of possession.

10. The trial Court failed to consider the fact that the exchange deed itself clearly shows that the suit property is private trust property and the same is alienable property and the first respondent has no right, whatsoever, in the property to continue the possession.



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11. The trial Court failed to consider the sale deed stands in the name of the appellant and all the revenue records and mutation taken place in the name of the appellant, without any valid reason, the trial Court has dismissed the suit on the ground that the Ex.A1-sale deed, dated 06.03.1989 and Ex.A2-House Tax Receipt, dated 01.07.2008 are not valid and same will on confer title on the appellant on the ground that it is a trust property and it is not alienable property. Without considering the recital in the exchange deed, which clearly shows that the suit property is private trust property and which can be alienated without permission of the Court, therefore, the judgment of the trial Court warrants interference.

12. The learned counsel appearing for the first respondent would submit that the suit properties belongs to Palanganatham Iyerwal Trust. The first respondent and four other persons are Trustess, they have exchanged the properties belonged to the Trust and got the suit property as the Trust property on 14.10.1967 the said exchange deed is marked as Ex.B1. In the



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exchange deed, the first respondent along with Balakrishnan Iyer, Chandrammal, Subramanian and Rajamani totally 5 persons are shown as trustee and exchanged the property. The appellant had purchased the Trust property only from the second respondent and other three trustees and not from first respondent and therefore, the sale deed in favour of the appellant is not valid.

13. The learned counsel appearing for the second respondent would submit that the first respondent is not a trustee and suit property is not a trust property and therefore, the suit property purchased by the appellant under the sale deed from the family members of the second respondent is valid and to that effect the patta and tax receipts transferred in the name of the appellant.

14. The appellant case is that though it is a Trust property, it is alienable property and it is a private Trust, if the trustees, who are managing the trust or in-charge of the trust, can always sell the property. Ex.B1-the



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exchange deed would clearly shows that it is a private trust property and it is a alienable property and it can be sold by trustees, however, on the other hand the learned counsel for the first respondent would submit that the first respondent is one of the trustess. Totally 5 trustees constituted a trust and even in the exchange deed, they only given the trust property to the third party and taken the suit property as trust property from the third party, which clearly shows that the first respondent also has interest in the property and he is also one among the trustees. The appellant purchased the property and stating that the exchange deed is a title deed to Ex.A1 & Ex.A3 sale deed of the appellant. Once he has admitted that the recital in the exchange deed, trust properties given to third party and the suit property originally belonged to the third party by way of exchange, the trust got the suit property as trust property. If the appellant is a bonafide purchaser, he should have verified about the trust, trust deed, the object and purpose of the trust whether the trust property was sold for the purpose of fulfilment of the object of the trust and who are all trustees. Totally 5 trustees are parties to the exchange deed Ex.B1 and one of the trustees, namely, the first



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respondent is not party to the sale deed Ex.A1. As to whether the appellant made enquiry about the trust and details of the trust and object of trust and why the first respondent was not party in the sale deed executed in favour of the appellant.

15. Therefore, the exchange deed clearly shows that it is a trust property and the appellant has not made any enquiry before purchasing the property and therefore, it cannot be stated that he is a bonafide purchaser. The exchange deed Ex.B1 would clearly shows that the first respondent is one of the trustees, he is not a party in the sale deed executed in favour of the appellant and once it is admitted that the suit property is a trust property, the same cannot be sold unless trust deed permits. In this case, trust deed has not been produced and appellant admitted that he has not seen the trust deed. Therefore, in the absence of filing of the trust deed, whether the suit property is liable to be sold or not cannot be stated. Further it is clear that the first respondent is in possession of the suit property. He has also filed the suit before the Munsif Court in O.S.No.413 of 1995 and got a decree



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and he is in possession of the property. When the appellant without seeking relief of declaration that he is the owner of the suit property as per the sale deed and only he has filed the suit for recovery of possession alone, which is not maintainable. When the first respondent specifically stated that the suit property belongs to the trust, some of the trustees alone cannot sell the trust properties, the appellant has not established that the said trust property sold for the purpose and fulfillment of the object of the trust. So without seeing the trust deed, what is the trust, what is the object of the trust, purpose for which trust was created, whether the purpose and object of the trust is being fulfilled, the relief sought for by the appellant cannot be granted, since the appellant has not established the fact that the property is alienable property.

16. Though the learned counsel for the appellant would submit that since it is private family trust, they need not obtain permission from the Court, they can get the opinion from the District Court, but, whereas in this case, documentary evidence shows otherwise. Even Ex.A1 reveals about the



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trust and trust property. Whether it can be sold or not and unless the original trust deed is produced, the appellant cannot state that the second respondent and other trustees are entitled to sell the property and it will bind the other trustees, namely, the second respondent. Therefore, once it is stated that it is a trust property and if any alienable right has been given in the trust deed, the appellant has to establish the same. Whereas, in this case, the appellant has failed to establish that the second respondent and other trustees are entitled to sell the property or empowered to sell the property in favour of the third party, namely, the appellant herein. Despite knowing fully well, the exchange deed was executed by five trustess, without assigning any reason only four trustees alone executed sale deed in favour of the appellant. The appellant also has not given any reason, therefore, he cannot be treated as bonafide purchaser for valuable consideration without notice.

17. Therefore, under these circumstances, the appellant has failed to prove that he is lawfully entitled to recover the suit property. Hence, the appeal fails and the same is dismissed. The judgment and decree passed by



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the trial Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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To

1. The I Additional District Judge,
Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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