



S.A.(MD) No.153 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.153 of 2011

1.Muthammal
2.Raman
3.Karmeghakannan
4.N.Leelavathi ... Appellants/Appellants/Defendants

[4th appellant is impleaded vide Court order dated 03.08.2022]

-VS-

Packiyam (died) ...Respondent/Respondent/Plaintiff

2.Dhanam
3.Chella Kamatchi ...Respondents

[Respondents 2 to 4 are brought on record as Legal Heirs of the Deceased Sole Respondent Vide Court order dated 18.11.2016]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.09.2010 passed in A.S.No.66 of 2009 on the file of the Subordinate Court, Sivagangai by confirming the judgment and decree dated 20.08.2009 passed in O.S.No.103 of 2006 on the file of the Additional District Munsif cum Judicial Magistrate Court, Manamadurai.

For Appellants 1, 2 & 4 : Mr.A.R.Sethupathy
Appellant 3 : Died
For R2 to R4 : Mr.G.Prabhu Rajadurai



J U D G M E N T

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The defendants 1 to 3, who have been unsuccessful in defending O.S.No. 103 of 2006 successively before the Courts below are the appellants herein. This appeal is not admitted yet.

2. The brief facts are:

(a) there existed a property measuring 1462.5 sq.ft comprising S.No. 233/16 and 233/17. This property was purchased by the first defendant herein Vide Ext.A2, sale deed dated 02.06.1975. On 11.08.1993, Vide Ext.A3, the first defendant has sold this property to the plaintiff. Earlier, the plaintiff had purchased another plot of land to the north of the suit property under Ext.A4, dated 02.05.1975 and had put up a residential building there. The land purchased by the plaintiff under Ext.A3 lies contiguous to the property purchased under Ext.A4. When the plaintiff faced some obstruction to his peaceful possession from the defendants, he laid the suit.



3. The defence was that on 23.12.2004 under Ext.A5, the first defendant had sold the property to the third defendant and to rectify it, document in Ext.A6 came to be executed on the same day.

4. The dispute went to trial. Both the courts below have held that after execution of Ext.A3, the first defendant did not have any possessory interest in the suit property to convey it to the third defendant under Ext.A5 and proceeded to decree the suit.

5. The learned counsel for the appellants made valiant efforts to convince this Court that inasmuch as the defendants have claimed title under independent sale deeds, the plaintiff ought to have filed a suit for declaration. Impressive though it may appear to the learned counsel, this Court finds less fascinated about it. It is not in dispute that the first defendant was the original owner of the property. When once she had passed her title under Ext.A3 to the plaintiff, nothing is left in her to convey subsequently to the third defendant under Ext.A5.



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6. This Court is satisfied with the correctness of the approach and findings of the Courts below and they did not warrant interference by this Court under Section 100 of the Civil Procedure Code. This Appeal is dismissed.

No costs.

06.09.2022

Internet: Yes
Index: Yes/No
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To

1. The Subordinate Court, Sivagangai.
2. The Additional District Munsif cum
Judicial Magistrate Court,
Manamadurai.



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N.SESHASAYEE, J.

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