



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD) .Nos.347 of 2012 & 885 of 2010

and

M.P. (MD) .No.1 of 2010

Prayer in S.A(MD) .No.347 of 2012

Mani (Died)	...Appellant/1 st Respondent/1 st Defendant
2.Pavalakodi	
3.G.Prabavathi	
4.M.Selvapandi	...Appellants/ ... / LRs of the deceased 1 st Defendant

(Appellants 2 to 4 are brought on record
as Lrs of the deceased sole Appellant
vide order dated 09.03.2016 made in
M.P(MD) .No.1 of 2013 in S.A(MD) .No.347 of 2012.)

Vs.

1.E.Sabitha	...1 st Respondent/Appellant/Plaintiff
2.P.R.K.Pandian	... 2 nd Respondent/2 nd Respondent/ 2 nd Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Lower Appellate Court dated 29.02.2012 made in A.S.No.13 of 2011 on the file of the Sub-ordinate Court, Theni, reversing the judgment and decree of the trial Court dated 30.08.2010 made in O.S.No.120 of 2007 on the file of the District Munsif Court, Theni.

For Appellants	:	Mr.M.Saravanan For Mr.R.Subramanian
For Respondents	:	Mr.S.Anand Chandrasekar For M/s.Sarvabhauman Associates for R1 No-appearance for R2

Prayer in S.A(MD) .No.885 of 2010

Sabitha	... Appellant/Appellant/2 nd Defendant
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Vs.

1.A.Manu (Died)	...1 st Respondent/1 st Respondent/Plaintiff
2.P.R.K.Pandian	...2 nd Respondent/2 nd Respondent/3 rd Party



3.Pavalakodi
4.G.Prabavathi
5.M.Selvapandi

... Respondents 3 to 5/... /
LRs of the Deceased Plaintiff

(Respondents 3 to 5 are *suo motu* impleaded as the legal heirs of the deceased first respondent vide order dated 23.02.2022)

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.171 of 2008 dated 16.08.2010, by the Sub-Court, Theni, dismissing the suit in O.S.No.3 of 2006 before the District Munsif Court, Theni, Dt.12.06.2006.

For Appellant : Mr..S.Anand Chandrasekar
For M/s.Sarvabhavam Associates
For Respondents : R1-Died
Mr.M.Saravanan for RR3 to 5
No-appearance for R2

COMMON JUDGEMENT

The appeals pertain to the property bearing plot No.62, M.I.G-2, K.R.Ramasamy Nagar, Alinagaram, Theni, measuring about 1373 sq.ft. There is no dispute that the suit property was allotted by the Tamil Nadu Housing Board in favour of one P.R.K.Pandian. The said P.R.K.Pandian had paid the entire tentative cost to the Housing Board in the year 1989 itself. Thereafter, he executed a power of attorney in favour of one Rajagopal on 16.09.1989. The said Rajagopal in turn sold the suit property in favour of one Saraladevi under sale deed dated 08.04.1991. The said Saraladevi in turn sold the property in favour of one Elango on 22.01.1995. The said Elango settled the property in favour of his wife Sabitha on 04.01.1996.

2. After the determination of final cost by the Housing Board, the Housing Board issued a pucca sale deed in favour of the said P.R.K.Pandian on 22.12.2000. Thereafter, the said P.R.K.Pandian sold the suit property in favour of one Mani on 08.01.2001. Based on the same, the said Mani also obtained electricity connection in his name. Since in respect of the suit property, two persons made claims, there arose dispute between them. Mani filed O.S.No.3 of 2006 against the said Rajagopal and Sabitha, seeking permanent injunction before the District Munsif Court, Theni. Sabitha filed O.S.No.130 of 2001 [later re-numbered as O.S.No.120 of 2007] before the District Munsif Court, Theni, seeking declaration that the suit property belongs to her and for permanent injunction restraining Mani and P.R.K.Pandian from interfering with her possession and enjoyment. Unfortunately, the suits were not tried together and this was probably, because the suit filed by the said Sabitha was allowed to be dismissed for default and got restored only later.



3. In O.S.No.3 of 2006, written statement was filed controverting the plaint averments. Based on the rival pleadings, issues were framed. Mani examined himself as P.W.1 and one Ganesan was examined as P.W.2. Exs.A1 to A15 were marked. Sabitha examined herself as D.W.1 and Rajagopal was examined as D.W.2. One Srinivasan and Venkatasamy were examined as D.W.3 and D.W.4. Exs.B1 to B15 were marked.

4. After considering the evidence on record, the Trial Court, by judgment and decree dated 12.06.2006 decreed the suit as prayed for. Aggrieved by the same, Sabitha filed A.S.No.171 of 2008 before the Sub-Court, Theni. The First Appellate Court, by the impugned judgment and decree dated 16.08.2010, confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, Sabitha filed S.A(MD).No.885 of 2010.

5. In the declaration suit filed by Sabitha in O.S.No.120 of 2007, Mani filed written statement controverting the plaint averments. Based on the divergent pleadings, issues were framed. Sabitha examined herself as P.W.1 and one Srinivasan was examined as P.W.2 and the power of Attorney/Rajagopal was examined as P.W.3. Exs.A1 to A19 were marked. Mani examined himself as D.W.1. Exs.B1 to B22 were marked.

6. After considering the evidence on record, the Trial Court, by judgment and decree dated 30.08.2010 dismissed the suit. Aggrieved by the same, Sabitha filed A.S.No.13 of 2011 before the Sub-Court, Theni. The First Appellate Court, by the impugned judgment and decree dated 29.02.2012, reversed the decision of the trial Court and allowed the appeal and decreed the suit as prayed for. Challenging the same, Mani filed S.A.(MD).No.347 of 2012. The said Second Appeal was admitted on 11.06.2012 on the following substantial questions of law:-

(i) Whether in law the Lower Appellate Court is right in allowing the appeal when the prayer for injunction is hit by Section 11 of C.P.C., I.e., the principles of res judicata?

(ii) Have not the Lower Appellate Court failed to see that in O.S.No.3 of 2006, where a decree for injunction is granted in favour of the appellant by the same Court, the present suit is not maintainable?

7. After hearing the learned counsel on either side, S.A.(MD). No885 of 2010 was admitted on the following substantial questions of law:-

(i) Whether the approach of the Courts below in non-considering Exhibits B1 to B4 in consonance with Section 43 of the Transfer of Property Act is correct in law?

(ii) Whether the conclusion arrived by the Courts



below that the first respondent was in possession and enjoyment of the suit property without any documentary evidence is correct in law?

(iii) Whether the approach of the Courts below in non-considering Ex.B5 to B8, which discloses the factum of possession of suit property on the date of filing of the suit by appellant, is correct in law?

(iv) When the appellant has projected a claim claiming title over the suit property, whether a suit filed by the first respondent seeking the relief of injunction alone without seeking the relief of declaration is maintainable?

8. It is an interesting case where the said Mani succeeded in the injunction suit filed by him, while he lost in the suit filed by Sabitha before the First Appellate Court and that is why both the parties were constrained to file second appeals before this Court.

9. The learned counsel appearing for the respective parties reiterated all the contentions set out in the respective memorandum of appeal and called upon this Court to answer the substantial questions of law in their favor. During the pendency of the appeal, Mani passed away and his wife and children were brought on record as legal heirs. While Sabitha would pray that the declaratory decree granted in favour of her should be confirmed, the learned counsel appearing for the legal heirs of Mani would submit that the declaratory decree granted in favour of Sabitha should be set aside and the injunction decree granted in favour of Mani should be confirmed.

10. I have carefully considered the rival contention and went through the evidence on record.

11. As already pointed out, the suit property was allotted in favour of P.R.K.Pandian by the Tamil Nadu Housing Board. The core argument of Mr.Vinoth Kumar, the learned counsel appearing for the legal heirs of Mani is that the sale deeds that were executed prior to the execution of sale deed by the Housing Board in favour of P.R.K.Pandian should be considered as null and void. In other words, he wants this Court not to recognise the sale deed executed in favour of Saraladevi by P.R.K.Pandian through his power of attorney Rajagopal. Once the said sale deed is held as void, subsequent alienations made on its strength cannot have any legal consequence. He anchored his submission on the decision reported in **(2019) 7MLJ 216 (P.M.THANGAVEL vs. M.RAMAMOORTHY AND OTHERS)**. In that case, the allottee of the Housing Board had entered into sale agreement for selling the allotted property. When the agreement holder filed a suit for specific performance, it was denied and it was held that the agreement was void and not enforceable, because on the date when the agreement was entered into, it was the Housing Board that was



the owner of the property. More than anything else, when the Housing Board made an allotment, it contained a clause banning the allottee from dealing with the property. Hence, an agreement entered into in violation of the ban cannot be enforced. The learned counsel appearing for the legal heirs of Mani would want me to apply the said ratio and hold that the sale deed executed in violation of the ban should be treated as void.

12. Per contra, the learned counsel appearing for the appellant in S.A(MD).No.885 of 2010 would invoke Section 43 of the Transfer of Property Act. The learned counsel in support of his contention relied on the decisions reported in AIR 1962 KER 313 (RAMASWAMY PATTAMALI vs. LAKSHMI OTHERS) and AIR 1985 SC 694 (RAM PYARE vs. RAM NARAIN AND OTHERS). Though the learned counsel appearing for the appellant in S.A(MD).No.347 of 2012 submitted that the allotment orders of the Tamil Nadu Housing Board are in standard templates and that in the case on hand also, there was a ban on dealing with the property, I am not in a position to accept the said contention. I went through contents of the written statement filed in O.S.No.120 of 2007. In the said written statement, the stand taken was that till the execution of sale deed in favour of P.R.K.Pandian in the year 2001, it was only the Housing Board which was the owner and that P.R.K.Pandian was not the owner. There is no reference to any ban imposed by the Tamil Nadu Housing Board. There is yet another aspect of the matter. In the decision reported in 2019 7 MLJ 216, the Court was concerned with enforcing a sale agreement. In the case on hand, the said P.R.K.Pandian, through his Power Agent/Rajagopal had already sold the property. Therefore, the said decision is distinguishable on facts.

13. Section 43 of the Transfer of Property Act, 1882 which incorporates the doctrine of feeding the grant by estoppel is as follows:-

Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person 1 [fraudulently or] erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option. Illustration A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

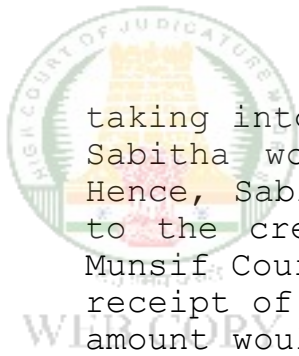


14. It is true that till the year 2001, the title of P.R.K.Pandian was not absolute. However, the fact remains that by the year 1989 itself, he paid the entire tentative cost to the Housing Board. That is apparent from the evidence on record. What remains to be paid was only the final cost. The determination of final cost depends on several factors. Such determination was made only in the year 2001. Therefore, it is the case where a person, who has paid the entire tentative costs to the Housing Board, had transferred the property by making an erroneous representation to a third party. Therefore, when P.R.K.Pandian got full title over the property, the benefit of acquisition would definitely enure in favour of the transferee. Therefore, this is a case in which Section 43 of the Transfer of Property Act can very well be invoked by the transferee.

15. As regards the suit filed by Mani, certainly, it was not maintainable. When Mani filed the said suit, Sabitha took the stand that she was having title over the property. Therefore, Mani was required to amend the suit prayer and ask for the relief of declaration. The Hon'ble Supreme Court in the case of **[2008 (6) CTC 237 (Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors)]**, had held that where a serious cloud is cast on the plaintiff's title, the plaintiff has to necessarily seek the relief of declaration also and cannot remain silent with mere prayer for injunction. In this case, when serious cloud has been cast on the plaintiff's title, he ought to have amended the suit prayer but he did not do so. Therefore, on the ground of non-maintainability and by applying **Anathula Sudhakar's** case, I hold that O.S.No.3 of 2006 filed by Mani is not maintainable. The fourth substantial question of law is answered in favour of the appellant. On that ground, I set aside the judgment and decree made in A.S.No.171 of 2008 and allow S.A(MD). No.885 of 2010.

16. Since I have held that Sabitha will be entitled to get the benefit under Section 43 of the Transfer of the Property Act and O.S.No.3 of 2006 on the file of the learned District Munsif Court, Theni, is not maintainable, substantial questions of law formulated in S.A.(MD).No.347 of 2012 are answered against the appellants and S.A.(MD).No.347 of 2012 is dismissed.

17. It has been convincingly brought out that the final cost was not paid by Sabitha. Of course, the learned counsel appearing for Sabitha would claim that the amount was paid by P.R.K.Pandian. The fact remains that the said Mani has marked the original receipts and only because the final cost was paid, pucca sale deed came to be executed in favour of P.R.K.Pandian by the Tamil Nadu Housing Board. Therefore, the said Sabitha is obliged to pay the same to the legal heirs of Mani with interest. A simple mathematical calculation reads that the said Sabitha has to pay a sum of Rs.1,42,000/-. However,



taking into account the overall circumstances, it is undertaken that Sabitha would pay a sum of Rs.2,00,000/- to the wife of Mani. Hence, Sabitha is directed to deposit the said sum of Rs.2,00,000/- to the credit of O.S.No.120 of 2007 on the file of the District Munsif Court, Theni, within a period of eight weeks from the date of receipt of a copy of this judgment. Any delay in depositing the said amount would carry at the rate of 12% per annum. It is open to the wife of Mani to withdraw the same without notice to the other parties. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ssb

To:

1.The Sub-ordinate Judge, Theni

2.The District Munsif, Theni.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+2 CC to M/s.R. SUBRAMANIAN, Advocate (SR-17432 & 17434[F] dated 08/04/2022)

+2 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-17048 & 17049[F] dated 07/04/2022)

S.A(MD) .Nos.347 of 2012 & 885 of 2010
06.04.2022

svs(CO)
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