



S.A.(MD).No.194 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 04.07.2022

JUDGMENT PRONOUNDED ON : 11 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD).No.194 of 2013

Thangam

...Appellant/1st Respondent
/Plaintiff

Vs

1.Ariyanatchi

2.Rajkumar

3.Lalithambigai

4.Pandiarajan

5.Vedavalli

6.Jagadeeswari

...Respondents 1 to 6/Appellants 1 to 6
/Defendants 1 to 6

7.The Special Officer

M.D.A/HSG 45, Tamil Nadu Government Officials

Co-operative Housing Society Ltd.,

Muthoorani East, Karaikudi

Sivagangai District

....7th Respondent/2nd Respondent
/7th Defendant

1/12



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PRAYER : Second Appeal is filed under Section 100 of C.P.C, to set aside the judgement and decree dated 03.12.2012 made in A.S.No.29 of 2012 on the file of the Subordinate Court, Devakottai reversing the judgment and decree dated 16.03.2011 made in O.S.No.95 of 2009 on the file of the Additional District Munsif Court, Karaikudi and allow the second appeal.

For Appellant : Ms.V.Jeyarani
For R1 to R6 : Mr.Ramsundar Vijayaraj
For M/s.Veera Associates
For R7 : Mr.M.Ramesh
Government Advocate

JUDGMENT

The plaintiff is the appellant.

2.The purchaser from the second allottee is the plaintiff in the suit. The plaintiff has filed O.S.No.95 of 2009 before the Additional District Munsif, Karaikudi for the relief of declaration of title and permanent injunction as against the legal heirs of the original allottee and the Housing Society.

3.The main contention of the plaintiff is that the sale deed in favour of Muthu Karuppan had been cancelled on 28.11.1994 due to non



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construction of building within a period of 2 years. The said order was passed after following the due process of law. Thereafter, a fresh sale deed was issued in favour of one A.V.Thiyagarajan on 11.01.1995 who has executed a sale deed in favour of the plaintiff on 09.12.2004. Hence, the plaintiff claimed title to the suit schedule property and sought for permanent injunction.

4.The defendants disputed the title of the plaintiff contending that the sale deed in favour of Muthu Karuppan has been wrongly cancelled without properly issuing any notice to the said Muhtu Karuppan. The defendants had further contended that the plaintiff has not put up any construction in the suit schedule property, but she has created some property tax receipts for the said property.

5.The trial Court after considering the oral and documentary evidence arrived at a finding that only after observing all the legal formalities, the sale deed has been cancelled. Further the trial Court found that there is a title dispute between the plaintiff and the defendants and hence, the present suit is not barred under the Tamil Nadu Co-operative Societies Act. The trial Court further found that the order dated 19.07.2010



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under the Tamil Nadu Co-operative Societies Act remains intact and hence, the defendants cannot claim title to the suit schedule property. Based upon the said findings, the trial Court decreed the suit as prayed for.

6.The First Appellate Court relied upon Sections 90 and 156 of the Tamil Nadu Co-operatives Societies Act to arrive at a finding that a statutory remedy is available under Section 90 of the Co-operative Societies Act. The First Appellate Court further held that there is a bar for a Civil Court to entertain such kind of dispute. Based upon the said legal principles, the First Appellate Court held that the suit is not maintainable. The First Appellate Court further relied upon Section 10 of Transfer of Property Act according to which a condition restraining alienation is void. According to the First Appellate Court, once a sale deed has been executed in favour of Muthu Karuppan, thereafter, the same cannot be cancelled. Based upon the said findings, the First Appellate Court dismissed the suit. The First Appellate Court further relied upon a judgment of our High Court to the effect that after execution, a sale deed cannot be unilaterally cancelled by the vendor. As against the same, the plaintiff has filed the above second appeal.



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7.The learned counsel for the appellant had contended that Section 90 of the proceedings have got culminated by an order of the Registrar of Co-operative Society dated 19.07.2010. The said order has been challenged by way of WP(MD).No.11625 of 2010. When this Court has arrived at a finding that the order of the Registrar of Co-operative Society is sustainable in law and the cancellation of the sale deed in favour of Muthu Karuppan is valid, the title of the appellant may be declared. The learned counsel had further contended that when a dispute under Section 90 of the Tamil Nadu Co-operative Society Act was already raised by the legal heirs of the said Muthu Karuppan and the First Appellate Court was not right in holding that the plaintiff should also again raise another dispute under Section 90 of the Co-operative Societies Act. The learned counsel further contended that the bar under Section 156 of the Tamil Nadu Co-operative Societies Act will come into operation only when the plaintiff challenges any order or award passed by the Registrar of Co-operative Society. In the present case, the plaintiff had filed the suit, without challenging any order passed by the authorities under the Co-operative Societies Act. In fact, the defendants alone was expected to challenge the order passed by the



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authorities under Co-operative Societies Act. Hence, the First Appellate Court was not right in invoking the bar under Section 156 of the Co-operative Societies Act.

8.The learned counsel for the appellant/plaintiff had further contended that when the sale deed in favour of the defendants ancestor has already been cancelled by the authorities by following due process of law, the defendants cannot claim title to the suit schedule property. She further contended that the sale deed in favour of A.V.Thiyagarajan has not been disturbed at any point of time from whom she has purchased the suit schedule property on 09.12.2004. She further contended that even assuming that there was some lacuna in the title of the plaintiff on the date of filing of the suit, the same has been rectified by the order of the Registrar of Co-operative Society dated 19.07.2010. The said order has been marked as Exhibit A5 in the suit. Hence, when the defendants have no title and the plaintiff has established his title to the suit schedule property, the First Appellate Court was not right in dismissing the suit on a technical ground. Hence, she prayed for allowing the second appeal.



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9.Per contra, the learned counsel for the respondents/defendants had contended that the very cancellation of the sale deed in favour of the defendants' ancestor is illegal and any sale deed executed in favour of A.V.Thiyagarajan would consequentially be not valid. He had further contended that the sale deed executed by the said A.V.Thiyagarajan in favour of the plaintiff on 09.12.2004 marked as Exhibit A4 will clearly indicate that the sale deed has been executed for a vacant site without doing any construction work. Hence, the said sale deed under Exhibit A4 in favour of the plaintiff is also against the bylaws of the Society and the same is invalid. Hence, he prayed for dismissal of the second appeal.

10.I have considered the submissions made on either side.

11.This Court had already arrived at a finding that the cancellation of the sale deed standing in the name of Muthu Karuppan on 28.11.1994 is legally sustainable. The said finding has been arrived at W.P(MD).No.11625 of 2010 arising out of proceedings under Section 90 of the Tamil Nadu Co-operative Societies Act. Hence, the defendants in the suit do not have any title to the suit schedule property.



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12.The learned counsel for the respondents had contended that Exhibit A4 sale deed in favour of the plaintiff is also not valid, in view of the violation of bylaws of the Co-operative Society. Whether the sale deed in favour of the plaintiff under Exhibit A4 is in violation of the bylaws of the Co-operative Society or not is completely within the realm of the authorities under the Co-operative Societies Act. As long as they have not chosen to issue a notice to the plaintiff and cancel the said sale deed, the title vests only with the plaintiff. This Court cannot go into the issue whether the sale deed dated 11.01.1995 in favour of A.V.Thiyagarajan is valid or not or the subsequent sale deed under Exhibit A4 in favour of the plaintiff is valid or not because the said dispute has not been raised by the seventh defendant Housing Society which executed the said sale deed.

13.The Hon'ble Supreme Court in a judgment reported *in (2016) 10 SCC 767 (Satya Pal Anand Vs. State of Madhya Pradesh and others)* in Paragraph No.47 has held as follows:

“47.In the present case, the document in question no doubt is termed as an extinguishment deed. However, in effect, it is



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manifestation of the decision of the Society to cancel the allotment of the subject plot given to its member due to non-fulfilment of the obligation by the member concerned. The subject document is linked to the decision of the Society to cancel the membership of the allottee of the plot given to him/her by the Housing Society. In other words, it is the decision of the Society, which the Society is entitled to exercise within the framework of the governing cooperative laws and the byelaws which are binding on the members of the Society.....”.

13.The Hon'ble Division Bench of our High Court following the Hon'ble Supreme Court as stated supra ***in W.A(MD).No.1342 of 2018 (S.Maruthan Vs. The Registrar of Co-operative Societies (Housing) and others)*** in Paragraph No.10 has held as follows:

“10.In view of the above decisions of the Apex Court, in our considered opinion, the contention of the appellant that the sale was absolute and the authorities have no power to cancel the sale deed has no merit and the judgment of Full Bench is also not in support the case of the appellant”.

14.If the condition of the allotment order has not been complied with, the Society has got every right to cancel the allotment as per bylaws of



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the Society. In view of the above said judgment, it is clear that a Co-operative Housing Society is entitled to cancel the sale deed after following due process of law, in case of any breach in the condition imposed in the bylaws of the Society. That apart, the proceedings initiated by the defendants under Section 90 of the Tamil Nadu Co-operative Societies Act have culminated adversely to the defendants. The bar under Section 156 of the Tamil Nadu Co-operative Societies Act will not get attracted in the present case, in view of the fact that none of the orders of the authorities under the Co-operative Societies Act have been put to challenge by the plaintiff in the suit.

15. In view of the above said findings, the substantial questions of law raised by the appellant are answered in favour of the appellant. The judgment and decree of the First Appellate court is set aside. The judgment and decree of the trial Court is restored. The second appeal is allowed. No costs.

11 .07.2022

Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Devakottai
- 2.The Additional District Munsif,
Karaikudi
- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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