



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2022

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.31 of 2022

and

C.M.P(MD) Nos.338 & 339 of 2022

John Bosco ... Appellant/Appellant/2nd Defendant

Vs.

1.Arockiaraj ... 1st Respondent/ 1st Respondent/Plaintiff

2.The District Collector,
Sivagangai District,
Sivagangai.

3.The Tahsildar,
Ilayangudi Taluk,
Sivagangai District.

4.The Sub Registrar,
Sub Registrar Office,
Ilayangudi,
Sivagangai District. ... Respondent 2 to 4/ Respondents 2 to
4/Defendants 3 to 5

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 07.10.2021 passed in A.S.No.54 of 2019, on the file of the Subordinate Court, Manamadurai, confirming the judgment and decree dated 13.11.2017 passed in O.S.No.24 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Ilayangudi.

For Appellant : Mr.M.Karuppasamy
for Mr.F.Deepak

For Respondents 2 to 4 : Mr.G.Suriyananth,
Additional Government Pleader

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated 07.10.2021 passed in A.S.No.54 of 2019, by the learned Subordinate Judge, Manamadurai, in confirming the Judgment and Decree dated 13.11.2017 in O.S.No.24 of 2016, passed by the learned



District Munsif cum Judicial Magistrate, Ilayangudi.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking as before the Trial Court.

3. The case of the plaintiff, as per the averments made in the plaint, in short, is as follows :

The suit schedule property in survey No.282/4 to an extent of 0.56.5 ares punja land originally belonged to one Kulanthai Therace and the same was purchased by the father of the plaintiff and the first defendant, namely, Sebasthiyan on 06.02.1998, by way of a registered sale deed and the first defendant enjoyed the same and thereafter, the first defendant executed a Gift Settlement Deed, dated 15.09.2000 in favour of the plaintiff, by way of a registered Document No.1009/2000. As per the Gift Settlement Deed, the plaintiff was in possession and enjoyment of the same and he also obtained loan from the Canara Bank, showing the said document to prove his income and also he is in long possession and enjoyment of the property. The plaintiff applied for issuance of patta, but no patta was issued and hence, the plaintiff applied for Encumbrance Certificate, before the Sub Registrar Office, Ilayankudi and thereafter, he came to know that the said Gift Settlement Deed has been cancelled vide Document No.1149 of 2014 and also a document came to be registered, as if the first defendant executed a sale deed in favour of the second defendant and he prayed that the said documents are not valid as per law. The plaintiff is the owner of the property and the first defendant has no right over the suit property to cancel the Gift Settlement Deed, dated 15.09.2000 and therefore, he has no right to sell it to the second defendant as well. Thereafter, the plaintiff immediately gave a petition to the Sub Registrar, Ilayankudi, but he has not taken any steps and thereafter, he came to know that the said petition was dismissed on 28.09.2015, by way of a reply under the Right to Information Act. The second defendant gave a petition to the Tahsildar for issuance of patta. The Tahsildar has also assured him that there is no chance for issuance of patta in favour of the second defendant, but later, without enquiring the plaintiff, the Tahsildar proceeded further and issued a patta in favour of the second defendant and hence, the patta is not valid. They created forged documents. Thereafter, the plaintiff has filed a suit for declaration and injunction with regard to the suit schedule property and for declaration of registered Document No.1149 of 2014 dated 08.08.2014 on the file of the Ilayankudi Sub Registrar Office executed by the first defendant as null and void and for declaration of sale deed document No.1663 of 2014 dated 13.10.2014 of the Ilayangudi Sub Registrar Office executed by the first defendant in favour of the second defendant as null and void and for mandatory injunction against the fourth defendant to consider the plaintiff's application and to transfer the name of the plaintiff instead of the second defendant's name in his patta and for mandatory injunction against the first defendant to remove the entry of the registered Document



Nos.1149 and 1663 of 2014 executed by the defendants 1 and 2 in his Registration Registers.

4. In the written statement filed by the second defendant, which was adopted by the first defendant, it is *inter alia* contended that the averments made in the plaint are false. The suit schedule property originally belonged to one Kulanthai Therace. The first defendant purchased the same on 06.02.1998. The possession and enjoyment of the first defendant over the property was accepted. Further, the first defendant submitted that when the plaintiff being the son of the first defendant had clandestinely approached his father stating that he wanted to get loan from the Bank for his business purpose and he wanted to give a security for the said loan, the plaintiff's father also approached the Sub Registrar Office and only signed the document which has been made ready by the plaintiff and he was not aware of the settlement deed and he has cheated the first defendant and only in the year 2014, he came to know about the same and immediately after coming to know about that fact, he had cancelled the settlement deed and also informed the same to the plaintiff and only on 13.10.2014, he sold the property to the second defendant and patta mutation was also made in the revenue records and thereafter, the second defendant was in possession and enjoyment of the property by paying tax. The first defendant and his children have also signed as a witness in the sale deed. The second defendant is in possession and enjoyment of the property and hence, the plaintiff is not entitled for the relief of permanent injunction. The defendants 3 to 5 are misjoinder or unnecessary parties and hence, prayed for the dismissal of the suit. The property is worth about Rs.69,500/-, but the property was valued at Rs.1,000/- and proper Court fee was also not paid and hence the suit is liable to be dismissed with costs.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A21 were marked. On the side of the defendants, defendants 1 and 2 examined themselves as D.W.1 and D.W.2 and Exs.B.1 to B.8 were marked.

6. On the basis of the rival pleadings, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the plaintiff.

7. Aggrieved by the judgment and decree passed by the trial Court, the second defendant, as appellant, had filed an Appeal Suit in A.S.No.54 of 2019, on the file of the learned Subordinate Court, Manamadurai. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had partly allowed the appeal and reversed the judgment and decree passed by the trial Court only with regard to the relief granted for mandatory injunction against the fourth defendant. Challenging the said judgment and decrees passed by the Courts below, the second



defendant preferred this Second Appeal.

8. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents 2 to 4 and perused the materials available on record.

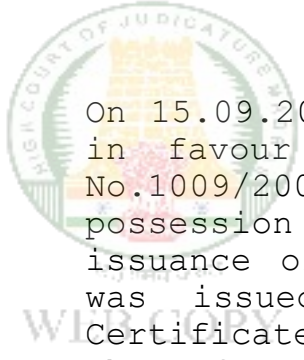
WEB COPY

9. The learned counsel appearing for the appellant / second defendant would submit that the judgments of the Courts below are substantially erroneous in law and unsustainable. Further, the documents which were marked as Ex.B.1 to Ex.B.8 were not at all considered by the Courts below and only based on the plaintiff's documents, the Courts below have granted the relief sought for by the plaintiff. Further, Ex.A.3 was not acted upon and the same has been cancelled, however, the trial Court miserably failed to consider the same in proper perspective. Though the plaintiff filed the documents to prove his possession and enjoyment over the suit schedule property, they have not established the case of the plaintiff, but the trial Court relied on the same and granted the relief in favour of the plaintiff, which is against law. The Courts below failed to consider that all the documents filed on the side of the defendants clearly proved the fact that previously, the first defendant was in peaceful possession and enjoyment and presently, the second defendant is in peaceful possession and enjoyment over the suit schedule property and that the documents Exs.A.4 to A.21 were created by the plaintiff only for the purpose of filing of the suit, after the cancellation of settlement deed by the first defendant in the year 2014. The Courts below failed to consider that the suit schedule property is the self-acquired property of the first defendant and after cancelling the alleged Settlement Deed stood in the name of the plaintiff and the same was brought to the knowledge of the plaintiff only, the first defendant properly sold the suit schedule property to the second defendant and presently the second defendant is in possession and enjoyment of the same and in spite of the same, the Courts below have come to the conclusion that the plaintiff is in possession and enjoyment of the property and hence, prayed to allow this Second Appeal.

10. Per contra, the learned counsel appearing for the respondents 2 to 4 would vehemently oppose this Second Appeal by contending that the well considered judgments of the Courts below need not be interfered with, as there is no question of law involved in this Second Appeal and prayed for the dismissal of this Second Appeal.

11. This Court paid it's anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

12. According to the plaintiff, the suit schedule property in survey No.282/4 to an extent of 0.56.5 ares punja land originally belonged to one Kulanthai Therace and the same was purchased by the plaintiff, who is the father of the plaintiff on 06.02.1998.



On 15.09.2000, the first defendant executed a Gift Settlement Deed, in favour of the plaintiff, by way of a registered Document No.1009/2000. As per the Gift Settlement Deed, the plaintiff was in possession and enjoyment of the same. The plaintiff applied for issuance of patta before the Tahsildar, Ilayankudi, but no patta was issued and hence, the plaintiff applied for Encumbrance Certificate, before the Sub Registrar Office, Ilayankudi and thereafter, the plaintiff came to know that the said Gift Settlement Deed has been cancelled vide Document No.1149 of 2014. Further, a document came to be registered, as if the first defendant executed a sale deed in favour of the second defendant.

13. It is the further case of the plaintiff that the first defendant has no right over the suit property to cancel the Gift Settlement Deed, dated 15.09.2000 and therefore, he has no right to sell it to the second defendant as well. Therefore, plaintiff immediately gave a petition to the Sub Registrar, Ilayankudi, and the said petition was dismissed on 28.09.2015, which he came to know under the Right to Information Act. The second defendant gave a petition to the Tahsildar for issuance of patta. The Tahsildar, without enquiring the plaintiff, proceeded further and issued patta in favour of the second defendant and hence, the patta is not valid. Thereafter, the plaintiff has filed a suit for declaration and injunction with regard to the suit schedule property and for declaration of registered Document No.1149 of 2014 dated 08.08.2014 on the file of the Ilayankudi Sub Registrar Office executed by the first defendant as null and void and for declaration of sale deed document No.1663 of 2014 dated 13.10.2014 of the Ilayankudi Sub Registrar Office executed by the first defendant in favour of the second defendant as null and void and for mandatory injunction against the fourth defendant to consider the plaintiff's application and to transfer the name of the plaintiff instead of the second defendant's name in his patta and for mandatory injunction against the fifth respondent to remove the entry of the registered Document Nos.1149 and 1663 of 2014 executed by the defendants 1 and 2 in his Registration Registers.

14. According to the 2nd defendant, the suit schedule property originally belonged to one Kulanthai Therace. The first defendant purchased the same on 06.02.1998. The plaintiff, being the son of the first defendant, had clandestinely approached his father stating that he wanted to get loan from the Bank for his business purpose and he wanted to give a security for the said loan, the plaintiff's father also approached the Sub Registrar Office and only signed the document, which has been made ready by the plaintiff and he was not aware of the settlement deed and he had cheated the first defendant. In the year 2014, immediately after coming to know about that fact, the 1st defendant had cancelled the settlement deed. Further, on 13.10.2014, the 1st defendant sold the property to the second defendant and patta mutation was also made in the revenue

<https://hse.serveindia.gov.in/hse-portal/> The plaintiff is not entitled for the relief of permanent



injunction. The defendants 3 to 5 are misjoinder or unnecessary parties.

15. The undisputed facts are that the property has been purchased by the first defendant on 06.02.1998 and he was in possession and enjoyment of the same. On 15.09.2000, the property has been settled in favour of the plaintiff by a registered Gift Settlement Deed and on 08.08.2014, the first defendant has cancelled the said document unilaterally. Such an unilateral cancellation is not acceptable in law and as per the settlement deed, the plaintiff is in possession and enjoyment of the property.

16. E.A3 is the Gift (Dhana) Settlement Deed, dated 15.09.2000. On perusal of Ex.A3 would show that it was executed by the 1st defendant in favour of the plaintiff, and from that date onwards, the plaintiff is the absolute owner of the property. Ex.A7 is the Deed of Cancellation of Dhana Settlement, dated 08.08.2014. On perusal of Ex.A7 would show that in the Dhana Settlement Deed no condition or clause contained in respect of power to cancel the Dhana Settlement Deed. Therefore, the 1st defendant did not have any title on the said date either to cancel Ex.A3 or to execute sale deed, dated Ex.A8. When that being the case, this Court comes to a categorical finding that Ex.A7 is null and void. Further, the Registration Authorities does not have any statutory power to cancel the documents unilaterally, without a decree obtained from the competent court of law.

17. At this juncture, it is worthwhile to refer the decision of this Court in the case of **D.V.Loganathan Vs. the Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai and another reported in 2014(3) CTC 113** wherein it is observed that the Unilateral cancellation of settlement deed is without jurisdiction and liable to be set aside. Further, in the case of **Samiappan and Others Vs. Rajamani reported in CDJ 2014 MHC 5730**, the Hon'ble Division Bench of this Court held that the 'settlement deed cannot be set at naught unilaterally by one party'.

18. Moreover, the Hon'ble Full Bench of this Court [**Latif Estate Line India Ltd., Vs. Hadeeja Ammal**] reported in 2011 (2) CTC 1 has held that unilateral cancellation of a registered sale deed through a deed of cancellation is of no effect in law. The conclusion drawn by the Full Bench as recorded in paragraph Nos.58 and 59 are extracted hereunder:

"58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory



requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:-

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

19. Moreover, the contention of the learned counsel for the second respondent that the suit is undervalued and the Court fee paid is insufficient and hence, the suit is fit to be dismissed and the plaintiff is not entitled to any relief, is concerned, the defendant has not adduced any evidence how the suit is undervalued, or the Court fee paid on the plaint is insufficient. A mere statement, without adducing any evidence, the contention of the defendants cannot be accepted.

20. For the reasons aforesaid, this Court is of the considered view that no questions of law much less substantial



questions of law has been made out by the appellant/2nd defendant to interfere with the well considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rm

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Subordinate Judge, Manamadurai.
2. The District Munsif cum Judicial Magistrate Judge, Ilayangudi.
- 3.The District Collector, Sivagangai District, Sivagangai.
- 4.The Tahsildar, Ilayangudi Taluk, Sivagangai District.
- 5.The Sub Registrar, Sub Registrar Office, Ilayangudi, Sivagangai District

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai - 2 Copies.

+1 CC to M/s.F.DEEPAK, Advocate (SR-2434[F] dated 25/01/2022)

S.A(MD)No.31 of 2022
24.01.2022

ARK(CO)

KB(28.02.2022) 8P 9C