



S.A.(MD) No.779 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2022

CORAM : JUSTICE N.SESHASAYEE

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1.Subbaiah (Died)	... 1 st Appellant/Appellant/ 1 st Defendant
2.Sellammal	
3.M.Raja	
4.P.Santha	
5.Amutha	
6.Moorthy	
7.S.Bhavani	
8.S.Dhanalakshmi	
9.S.Parameshwari	
10.Velmurugan	... Appellants 2 to 10/ LRs of the 1 st Appellant

[Appellants 2 to 10 are brought on record as the LR's of the deceased sole appellant vide Court order dated 29.06.2022 made in C.M.P.(MD) No.1280 of 2022 in S.A.(MD) No.779 of 2013]

Vs.

1.Mookaiah	... 1 st Respondent/1 st Respondent/ Plaintiff
2.Selvam	
3.Chellammal @ Selvi	... Respondents 2 & 3/ Respondents 2 & 3/ Defendants 2 & 3



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the concurrent judgment and decree passed in A.S.No.198 of 2010, dated 20.12.2012 on the file of the First Additional Subordinate Court, Madurai filed against the judgment and decree passed in O.S.No.895 of 2004, dated 28.07.2010 on the file of the District Munsif Court, Madurai Taluk at Madurai.

For Appellants	:	Mr.V.Chandrasekar
For R1	:	Mr.K.Govindarajan for Mr.S.Alagusundar
For R2 & R3	:	No appearance

J U D G M E N T

The first defendant, who was successively unsuccessful both before the trial Court as well as before the first appellate Court in defending the suit for declaration of title and for recovery of possession, has come forward with this second appeal. For narrative convenience, the parties are referred to by their rank before the trial Court.

2.1 The broad facts that provide the frame work for the dispute are either admitted, or at least remained undisputed, and they may be collated and stated:



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- A certain Mookkan was stated to have been married to the third defendant. (However, the first defendant disputes this marital relationship between Mookkan and the third defendant. The later course of the judgment would reveal this objection by the first defendant pales into insignificance in the context of the title to the suit property.)
- On 03.03.1988, vide Ext.A1-sale deed, Mookkan and the third defendant jointly purchased 10 cents of property. In 5 cents, they have put up three houses, a cattle shed and yet another tiled roofed shed and the balance 5 cents is left vacant. The 5 cents-constructed-portion is described as the suit property.
- On 29.11.1988, under Ext.A2, Mookkan and the third defendant partitioned the 10 cents property they had purchased. In this partition, the suit property with all its construction was allotted to the share of Mookkan, and the vacant site was allotted to the share of the third defendant.



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- On 28.05.1992, Mookkan and the present plaintiff entered into a sale agreement by which, Mookkan promised to sell the 5 cents obtained by him under Ext.A2 partition to the plaintiff. This culminated in Mookkan executing Ext.A4-sale deed, dated 28.07.1992. Thus, the plaintiff became the title holder of the suit property.
- Defendants 1 and 2 are the sons of Mookkan. Of them, the first defendant instituted O.S.No.279 of 1992 for partition, in which the present plaintiff was arrayed as the fourth defendant in that suit.. That suit came to be dismissed. The judgment is Ext.A10 and the decree is Ext.A6. One of the issues that came up for consideration before the trial Court in O.S.No.279 of 1992 was regarding the validity of the sale deed executed by Mookkan in favour of the plaintiff, (now marked in this suit as Ext.A4) and the Court had categorically held that the said sale deed is valid. This judgment has since become final (It is informed that the first appellant preferred an appeal against the same, but it was subsequently not prosecuted and the details thereof not available on record).



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➤ The plaintiff, on his part, instituted O.S.No.1093 of 1993 for bare injunction. The suit is originally stated to have been laid as O.S.No.44 of 1992 and was later transferred to another Court where it assumed number as O.S.No.1093 of 1993. Now, during the pendency of that suit, the plaintiff had laid the present suit for declaration of his title and for recovery of possession of the property that he had purchased under Ext.A4. Inasmuch as he had filed a comprehensive suit on title, the plaintiff is stated to have opted not to prosecute his suit in O.S.No.1093 of 1993

➤ Shortly prior to the execution of Ext.A4-sale deed, the first defendant had instituted another suit in O.S.No.332 of 1992 for bare injunction to the effect that the first defendant's possession of the suit property should not be disturbed. That suit came to be decreed, but by the time, Ext.A4-sale deed had come into existence. This is the setting.

3. The first defendant alone contested the suit and he in his written statement had pleaded that Ext.A4-sale deed is sham and nominal, an



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identical plea that he had already taken and lost in O.S.No.279 of 1992.

There was also a plea of adverse possession.

4.1. The matter went to trial and before the trial Court, and during trial the plaintiff examined himself as P.W.1 and also examined two other witnesses as P.W.2 and P.W.3. Besides, he had produced Ext.A1 to Ext.A10 of them, the relevant documents have already been introduced. For the defendants, the first defendant examined himself as D.W.1 and he had also examined a certain Muthu as D.W.2. He has produced Ext.B1 to Ext.B38.

4.2. On appreciating the evidence, the trial Court rested its reasoning on Ext.A10-judgment in O.S.No.279 of 1992 wherein, the trial Court has held that Ext.A4-sale deed in favour of the plaintiff was valid. This decree of the trial Court was unsuccessfully challenged by the first defendant in A.S.No. 198 of 2010, which concurred with the findings of the trial Court. Challenging the same, the first defendant has preferred this second appeal.

5. The appeal was admitted for considering the following substantial



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questions of law:

“i. Whether the courts below are right in passing a decree in favour of the first respondent, when the sale deed executed by the father of the appellant was only a sham and a nominal document in view of the partition entered into between the father of the appellant and the appellant, the second respondent which clearly establishes the fact that the appreciation of evidence is not only perverse but also depicts the non-application of mind? and

ii. Whether the courts below are right in passing a decree in favour of the first respondent that too for a relief of declaration and the recovery of possession, when the sale deed relied upon by the first respondent is not a valid one in the eyes of law?”

6. Heard both sides. The learned counsel for the appellants made a valiant endeavour to convince this Court with his plea that Ext.A4-sale deed is sham and nominal is still available to him, notwithstanding the judgment in O.S.No.279 of 1992. That suit was laid for partition and as already



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outlined, the validity of Ext.A4-sale deed was pointedly in question in that suit. Indeed, the present Ext.A4-sale deed was marked as Ext.A10 = Ext.B5 in O.S.No.279 of 1992 and the trial Court had raised a pointed additional issue for discussion on this. After evaluating the evidence, the trial Court had held that Ext.A4 is valid. This judgment having become final, it literally forecloses every option for the first defendant to re-agitate a settled issue.

7. What is to be decided now? Nothing. In the final analysis, this Court finds that both the substantial questions of law as raised fail and consequently, the appeal is liable to be dismissed. In conclusion, the second appeal is dismissed. No costs.

05.07.2022

Internet:Yes
Index:Yes/No
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To

- 1.The District Munsif Court,
Madurai Taluk at Madurai.
- 2.The I-Additional Subordinate Court,
Madurai.



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N.SESHASAYEE, J.

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