



S.A.(MD) No.265 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.09.2022

Pronounced on : 23.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.265 of 2014

and

M.P.(MD) No.1 of 2014 and C.M.P(MD)No.7666 of 2022

1.B.Parameshwari

2.M.Umamaheshwari

3.B.Ananthapandi

4.B.Ashokpandi

... Appellants/Respondents/
Defendants 1 to 4

Vs

1.M.Karthikeyan

... 1st Respondent/ Appellant/
Plaintiff

2.The Sub Registrar,
Madurai South Division,
Madurai.

... 2nd Respondent/Respondent/
5th Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 09.12.2013 made in A.S.No.75 of 2013 on the file of the Principal Sub Court, Madurai reversing the judgment and decree dated 05.09.2013 made in O.S.No.397 of 2011 on the file of the Principal District Munsif Court, Madurai.

For Appellants	:	Mr.K.K.Samy
For Respondents	:	Mr.V.Ramakrishnan for R1
	:	Mr.K.Christy Theboral
		Additional Govt. Pleader for R2



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JUDGMENT

Defendants 1 to 4 in O.S.No.397 of 2011 on the file of the Principal District Munsif Court, Madurai, are the appellants herein.

2. The suit was laid for cancellation of Ext.A5 to Ext.A7-settlement deeds executed by the first defendant in favour of her children, defendants 2 to 4. The suit was dismissed, aggrieved by which decree the plaintiff preferred A.S.No.75 of 2013 before the Principal Subordinate Court, Madurai, where fortune shifted to the plaintiff and the suit came to be decreed. Hence, defendants 1 to 4 are before this Court. For narrative convenience, the parties are referred to by their rank before the trial Court.

3. The facts on which the plaintiff rests his cause of action may be briefly stated:

- There are four items of suit properties that lie contiguously with a combined total extent of 2.22 acres spread over S.Nos.32/4, 32/4B, 32/2, 31/6 and 31/7 of Melakuyilkudi Village, Madurai South Taluk. The properties are agricultural properties, and originally belonged to one Petchiammal. She had purchased them Vide Ext.A.2, Ext.A.3 plus another sale deeds.
- On 01.08.1995 Vide Ext.A.1-sale deed, Petchiammal sold these properties to the plaintiff. Ever since, the plaintiff had come to be in possession of the suit



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properties.

- The first defendant is the daughter of Petchiammal and defendants 2 to 4 are the children of the first defendant. While things stood thus, the first defendant had executed Ext.A.5 to Ext.A.7 all dated 02.06.2008 in favour of each of her children viz., defendants 2 to 4 settling the entire suit items of properties. When this came to light, the plaintiff promptly laid the suit for declaration that Ext.A.5 to Ext.A.7-settlement deeds would not bind the plaintiff.

4. The first defendant filed her written statement, adopted by other defendants. In her written statement, she denied the entire allegations in the plaint as fraudulent. It is pleaded:

- That Petchiammal was enjoying the properties till her demise on 01.12.2003 and patta too was in her name and she was paying the kist too.
- Be that as it may, couple of months prior to her death, on 27.10.2003 to be precise, Petchiammal executed a Will in favour of the first defendant. On the demise of Petchiammal, the Will took effect and the first defendant had her name mutated in the revenue records on the strength of this Will. Indeed, this patta was issued to the first defendant in 2008. The plaintiff has challenged the same before the Revenue Divisional Officer, Madurai and it was allowed by the appellate authority Vide his proceedings dated 21.01.2011. This was



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further taken in revision by the first defendant before the District Revenue Officer, Madurai. This defendant as absolute owner of the properties had validly and legitimately executed Ext.A.5 to Ext.A.7-settlement deeds in favour of her children.

5.1 The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1. He also examined a certain Sandhanam as P.W.2. He was stated to have helped in negotiating the deal between the plaintiff and his vendor Petchiammal which later culminated in Ext.A.1 sale. For the defendants, the first defendant examined herself as D.W.1. The plaintiff has produced Ext.A.1 to Ext.A.7 of which, substantial documents are already introduced in the narration above. Ext.A-1 however, is the certified copy of the sale deed and not the original sale deed. The defendants have produced Ext.B.1 to Ext.B.7. Critically enough, the defendants 1 to 4 did not produce the Will dated 27.10.2003 alleged to have been executed by Petchiammal.

5.2 After appreciation of evidence, the trial Court chose to dismiss the suit. For appreciating the line of reasoning of the trial Court, an additional fact needs to be stated. During the cross examination of P.W.2-Sandhanam, it was elicited from him that pendente lite the plaintiff had sold the property to M/s.Maxworth Private Limited from whom P.W.2 himself had purchased the property. Now, in this



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backdrop, it may be relevant to refer to the line of reasoning of the trial Court.

(a) The plaintiff has not produced the original sale deed executed by Petchiammal, and it is not known where the original sale deed is – whether it is with the plaintiff or his purchaser M/s.Maxworth Private Limited or with P.W.2-Sandhanam;

(b) Even though Ext. A-1 is dated 01-08-1995, patta for the property was not transferred by the plaintiff till 2011. And, Ext.A.4-patta dated 29.08.2012 was issued to the plaintiff *pendente lite*, and it was issued based on the order of the appellate authority, Revenue Divisional Officer, Madurai and it is being challenged in revision before the District Revenue Officer, Madurai.

6. When the matter reached the first appellate Court in A.S.No.75 of 2013, the first appellate Court upheld Ext.A.1 and consequently, has held that none of the settlement deeds in Ext.A.5 to Ext.A.7 would bind the title of the plaintiff. This is now under challenge.

7. This appeal was admitted for considering the following substantial questions of law:

i) The plaintiff admitted ownership of the suit property and also there is no dispute that defendants 1 to 4 is in the possession of the suit property from their childhood itself as legal heir of the said Petchiammal. In this



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circumstances filing a suit to declare the family arrangement is null and void is whether legally valid?

ii) The trial Court alone is competent to find the facts, but the first Appellate Court delivered the decree and judgment on the basis of the imaginary facts is valid in law?

iii) Whether any bonafide buyer will allow the owner of the property to be in the possession for a very long period?"

8. Opening the arguments for the appellants/defendants, their learned counsel submitted:

- Plaintiff/P.W.1 is only the face of P.W.2 and it was P.W.2, who was operating behind P.W.1. The cross examination of P.W.1 discloses that the plaintiff was barely 19 years when Ext.A.1 was executed, that he did not know anything material about the property transacted under Ext.A.1, including the consideration passed under Ext.A.1, nor about the witnesses who had attested the documents. He had confessed that he had not been to the concerned Sub Registrar's Office where Ext.A.1 was registered. And consistent with his ignorance about Ext.A.1, he was also unduly indifferent in not effecting mutation in the revenue record for about 26 years. And he had obtained patta only during the pendency of the suit.



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- P.W.1 also admitted that he was never been to the Revenue Court for the enquiry concerning the transfer of patta. Indeed the property was under a mortgage prior to Ext.A.1, and this mortgage was redeemed Vide Ext.B.2-receipt dated 01.08.1995, on which date Ext.A.1 also came to be executed. And it is P.W.2, who had attested Ext.B.2-receipt.
- The plaintiff has not produced the original sale deed, though he had admitted in his cross examination that he is in possession of it. The plaintiff has deliberately withheld the best evidence available to him and he has produced a certified copy without complying the requirement of Section 65 of the Indian Evidence Act, and the first appellate Court was in error in acting on the same.
- Today, the plaintiff has no subsisting interest in the property, as he had alienated the property to M/s.Maxworth Private Limited from whom P.W.2, in turn, had purchased the property. It is not that the property was transferred to an utter stranger which might require the plaintiff to protect the warranty of title under Section 55 of the Transfer of Property Act, but to very P.W.2, who according to the plaintiff was operating behind his facade *vis-a-vis* Ext.A.1. Reliance was made to *S.P.Chengalvaraya Naidu Vs Jagannath by*

Lrs. [(1994)1 SCC 1]

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9. Per contra, Mr.V.Ramakrishnan, learned counsel appearing for the first respondent submitted:

- There is no case for the defendants that Petchiammal never executed Ext.A-1 and that it is fabricated. Therefore, the burden is on the defendants to establish how Ext.A-1 sale deed had not taken effect when the owner thereof had validly conveyed it.
- Secondly, it might be true that patta to the property might not have been mutated in the name of the plaintiff for couple of decades, but a revenue patta as contra-distinguished from assignment-patta is not a document of title, and hence non mutation of patta will not affect the title that had vested in the plaintiff Vide Ext.A-1.
- Thirdly, the suit is not a fraud on the Court in terms of the ratio in *Chengavaraya Naidu's case*, as the plaintiff, notwithstanding the fact that he had conveyed his title, is under obligation to protect the warranty of title to the property that he had conveyed in terms of Sec.55 of the Transfer of Property Act.
- And, fourthly, the first defendant as D.W.1 had admitted that Petchiammal had seven children, and that she claims right to the suit property vide a Will said to have been executed by Petchiammal on 27.10.2003. This Will was not



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produced before the Court. This would imply that the first defendant could not assert any exclusive title over the suit property.

10. What instantly strikes this Court is the need to ascertain if the plaintiff has any *locus standi* to maintain the suit. If he had conveyed his title over the suit property at any time prior to the suit, it will have a certain legal consequence and if the transfer had taken place *pendente lite*, it will produce certain other consequence. This court therefore, required the appellants/defendants to produce the copy of the sale deed/deeds which the plaintiff had executed in favour of M/s Maxworth Ltd., and also required the respondent/plaintiff to file an affidavit on the subject.

11. On 12-08-2022, the plaintiff/the first respondent has filed his affidavit and in paragraph 4 thereof he had candidly averred that on 31-08-2000, he had executed a power of attorney in favour of the representative of M/s Maxworth Country (India) Ltd., and that on 02-09-2010, the power holder had executed multiple sale deeds to seven persons. The appellants/ defendants on their part had filed CMP(MD) 7666 of 2022 seeking the leave of the court for production of the encumbrance certificate for the suit property from 01-01-2008 to 26-01-2011 and also the sale agreements that the purchasers of the sale deeds of the plaintiff had executed in favour of P.W.2 and others on 29-07-2011.



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12. The plaintiff/first respondent filed a counter to this miscellaneous application alleging that inasmuch as the appellants/defendants had grilled P.W.2 on the alienations made by the plaintiff etc., they ought to have produced these documents before the Court then. The defensive statement to the allegation on the alienations made by the plaintiff plainly amazes this court. The plaintiff had sold the suit property through his power of attorney vide multiple sale deeds to seven individuals, who might be the customers of M/s Maxworth Country (India) Ltd., on 02-09-2010, and few months thereafter he had instituted the suit, on 20-04-2011 to be precise, he lost the title to the suit property by his voluntary alienation. He however, has not sought declaration of his title over the suit property but for declaration that the settlement deeds which the first defendant had executed in favour of defendants 2 to 4 are void. This court does not intend to waste time to appreciate the fairness behind the strategy of the plaintiff in not seeking declaration of his title to the suit property after its alienation. But what a sense of fairness!!

13. Has the plaintiff ever worried over his *locus standi* to institute the suit? Or, has the one who strategised it for him ever concerned himself/herself with the jurisprudential concept by which title is vested in a person, or what provides *locus standi* in instituting legal proceedings for protection of private rights? Do they expect this Court to deliver lecture on them? This Court records its deepest



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disapproval over the methods which the plaintiff has adopted for approaching the court. He, with no right in himself, has hidden his alienations, asserted title over the suit property, and pretended innocence to allege that his non-existing rights over the suit property has been violated. And, today he shows the temerity to justify it too.

14. (*)()The learned counsel for the Plaintiff** had made his best efforts to sustain the suit when he hurried to take umbrage under Sec.55 of the Transfer of Property of Act which cast a duty on the seller of an immovable property to support the warranty of the title conveyed. This argument is far too desperate to save the day for the plaintiff. In jurisprudence, title is defined as the fact that vests a right in a person, and in a sale, the very fact of due execution of sale deed by which the right over the immovable property is conveyed and vested in the purchaser constitutes the title. Vesting of title is complete once the sale deed is executed. Warranty of title comes when the purchaser faces some obstruction to the title so vested. And, it is then the seller of the property would be statutorily obligated to protect the title that he conveyed from any injury from third parties. It has little to do with the vesting of right over the immovable property per se.



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15. The foundation of any civil action lies in the maxim '*ubi jus ibi remedium*'.

With no right in him, where in him lies the right to remedy? The suit is not maintainable, not only because the plaintiff did not have any right over the suit-property on the date of the suit but also because the plaintiff had played fraud on the Court when he hid all the alienations he had made. Here, this Court also has to record its disappointment over the the courts below. They had the first opportunity to find it especially after the examination of P.W.2. He appears to be the *suthradhari* behind the whole game plan, and going by the plaintiff's testimony P.W.2 appears to be the puppeteer pulling the strings from behind the plaintiff. The trial Court should be more participative during trial and should be vigilant when it senses a fraud on its process and should exercise its inherent power to direct parties to produce such evidence as may be required by it to ensure that none plays fraud on the court or on the judicial process.

16. To conclude this appeal is allowed, and the suit is dismissed with costs, and the judgement and decree in A.S.No.75 of 2013 dated 09.12.2013 is set aside. (*)

Turning to the CMP(MD)No.7666 of 2022, the same is closed since the plaintiff

himself has admitted to the sales he has made in his affidavit. M.P(MD)No.1 of

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2014 is also closed.

Sd/-

Assistant Registrar(CS III)

(*)Deleted

(**)Corrected as per the order of this court dated
20.06.2024 made in Rev.aplc(MD)No.159 of 2022.

Sd/-

Assistant Registrar(CS III)

// True Copy //

/08/2024

Sub Assistant Registrar()

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To

To be substituted to the order which is already despatched on 31.10.2022

1.The Principal Subordinate Judge, Madurai.

2.The Principal District Munsif, Madurai.

Copy to:-

1.The Registrar General,
High Court, Madras.

2.The Additional Registrar General,
Madurai Bench of Madras High Court, Madurai.



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3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

4. The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.RAMAKRISHNAN, Advocate(SR-46779[F] dated 23/09/2022)

+1 CC to M/s.K.K.SAMY, Advocate (SR-46975[F] dated 26/09/2022)

+1 CC to M/s.SPL.GP (SR-47188[F] dated 27/09/2022)

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23.09.2022

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MK/01.08.2024 14P 11C

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