



SA.No.226 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.226 of 2007

and

M.P.No.2 of 2007, 1 of 2008 and 1 of 2009

1. Kulandai Marie

2. Remo(died)

3. Joseph

4. Louis Pasther Amotorpavma

5. Celine

6. Marie Christine

7. Anthonydos

... Appellants

(Second Appellant died, Appellants 4 to 7 are brought on record as legal heirs of the deceased second appellant vide order of Court dated 779 to 781 of 2023 in S.A.No.226 f 2007)

- Vs -

Marie Rock Emile Vangamudiar, son of
Marie Susainathan Vanagamudiar (died)
represented by Lrs.



SA.No.226 of 2007

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1. Valanthine (died)
2. Marie Irudayanantham
3. Christian Marie Josphine
4. Zheno

(R1 died, R2 to R4 (already on record) are legal heirs of the deceased R1 vide Court order dated 12.08.2022 made in S.A.No. 226 of 2007)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and decree dated 24.02.2004 in A.S.No.22 of 2002 on the file of the Court of the Principal District Judge at Pondicherry thereby confirming the Judgment and Decree dated 30.07.1999 in O.S.No.431 of 1997 on the Court of the Principal Sub Judge at Pondicherry.

For Appellant	: Mr.R. Saravanan for Sai krishnan
For Respondents 2 to 4	: Mr.R. Subbiah for G. Sumitra Senior Counsel
For Respondent -1	: Died (Steps taken)

JUDGMENT

The instant second appeal has been filed at the instance of the defendant. The first respondent was the original plaintiff and the respondents 2 to 4 are the legal heirs of the plaintiff.



SA.No.226 of 2007

WEB COPY

2. For the sake of convenience, parties will be referred according to their litigative status before the Trial Court.

3. The brief facts which give rise to the instance second appeal is as follows:

The suit property originally belongs to one Lourdusamy who is non other than the brother-in-law of the plaintiff. The first defendant is the wife of the said Lourdusamy, and the second and third defendants are the children of Lourdusamy. According to the plaintiff the said Lourdusamy by notaire sale deed transcribed on 05.09.1964 sold an extent of 3 ares and 20 centenaries. The plaintiff further submits that at the time of purchase of the said extent, on request of the said Lourdusamy he was permitted to put up a small hut measuring an extent of 15 x 25 feet and was permitted to be reside there. After the demise of Lourdusamy, his widow the first defendant continued to live in the small portion, and the plaintiff have leased out the remaining portions to 3rd parties. It is the submission of the plaintiff that the second and third defendants were not at all residing in the suit property. It is the submission of the plaintiff that after the demise of the Lourdusamy the



SA.No.226 of 2007

WEB COPY

children's attitude were hostile to the plaintiff's interest. Hence, the plaintiff revoked the licence granted to deceased Mr.Lourdusamy who is the husband of the first defendant, by notice to all the defendants dated 11.06.1997. However, the defendant sent a false and frivolous reply containing, untenable allegations. It was contended by the defendant that the sale deed executed by Lourdusamy on 05.09.1964 was a sham and nominal document and not supported by any consideration. It is the submission of the plaintiff that after the execution of the sale deed dated 05.09.1964 the mutation in respect of suit property has been effected in favour of the plaintiff, and that he has been enjoying the property as its rightful owner. Hence, the plaintiff come forward with the suit for declaration and for recovery of possession.

4. The said suit was resisted by the defendant by contending that his father Lourdusamy has no right, title to execute the sale deed, and the claim of the plaintiff is barred by limitation. It was also contended by the defendant that the suit was not properly valued. Hence, prayed to dismiss the suit.



SA.No.226 of 2007

5. Evidences, Documents and findings of the both the Court below

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Before the Trial Court the plaintiff examined two witnesses as P.W.1 and P.W.2 and on behalf of the defendant, first defendant herself was examined as D.W.1. On behalf of the plaintiff 6 documents have been marked Ex.A1 to Ex.A6. On behalf of the defendant no documents was marked.

6. The Trial Court after having considered the oral and documentary evidences has passed a common Judgment on 30.07.1999 thereby decreeing the suit in O.S.No.431 of 1997 filed by the plaintiff and dismissed the suit in O.S.No.107 of 1999 filed by the first and third defendants in O.S.No.431 of 1997 for the relief of injunction. Though there was a common order passed in two suits, the defendant opted to prefer an appeal only against the Judgment and decree in O.S.No.431 of 1997, and not challenged their suit in O.S.No.107 of 1997. The First Appellate Court after having gone into various aspects and on the basis of Ex.A1/Notaire Sale Deed found that the title of the property vest with the plaintiff, and has granted the relief of possession to the plaintiff. Aggrieved with the concurrent finding of the both the Court below the defendants are before this Court by way of Second Appeal.



SA.No.226 of 2007

WEB COPY

7. Substantial questions of law

While admitting this second appeal this Court has framed following substantial questions of law:

(i) Whether it is proper to shift the onus of proving the case on the defendants even when the plaintiff had failed to establish his case by producing any acceptable evidence?

(ii) Whether the production of a copy of an unregistered sale deed alleged to have been notarized would confer title on the plaintiff without proving of the contents of the document in an acceptable manner?

(iii) Is it not unjustifiable to expect the defendants to prove that the sale deed is not valid when the plaintiff had not done anything more than the mere production of the copy of the said sale deed?

(iv) Is it not contrary to law to accept a document in toto without even going into the question of whether the executor had the capacity to deal with the property dealt with by him through the said instrument when the specific case of the defendants was that the executant had no right to execute the same as he was not the absolute owner of the property?

(v) Whether a decree for title and possession can be granted on the basis of the failure of the defendants to prove



SA.No.226 of 2007

their case and especially when the plaintiff had miserably failed to establish his case.

8. Submissions of the either side counsel:

The learned counsel for the defendant/appellant would vehemently submits that, though the plaintiff has not submitted the original sale deed, the reliance of certified copy of the sale deed, by the Trial court is contrary to law. The learned counsel further submits that, when the burden is upon the plaintiff to prove his title, shifting the burden to the defendants to prove their title to the suit property is contrary to law. The learned counsel for the appellant would also further contend that the Trial Court as well as the First Appellate Court did not gone into the aspect of the nature of title of the deceased/Lourdusamy to execute the sale deed, as the suit property is his ancestral property. Therefore, the learned counsel for the appellant would contend that the finding recorded by both the Court below are perverse and contrary to the evidence. Hence, prayed to interfere with the same.

9. Per Contra, the learned Senior counsel appearing on behalf of the plaintiff would contend that by virtue of execution of Ex.A1/Notaire Sale Deed the title of the plaintiff in respect of the suit property has been proved,



SA.No.226 of 2007

WEB COPY

and that when there was a concurrent finding by both the Court below that through the Ex.A1 the plaintiff have established his right, title and ownership over the same, that too based upon material on record, there is no ground to interfere with the said finding. It is also the further submission of the learned Senior Counsel that the defendant has admitted the execution of the notaire sale deed Ex.A.1, but only contended that it is sham and nominal, whereas they did not prove as to how the Ex.A1/Notaire sale deed becomes sham and nominal. Hence, the learned Senior Counsel prayed to dismiss the second appeal.

10. I have given my anxious consideration to either side submissions.

11. Analysis of the submissions:

The learned counsel for the appellant would contend that the defendants father Lourdusamy has no right to execute the sale deed in respect of his ancestral property. But the learned counsel is not in a position as to how the suit property becomes the ancestral property of late Lourdusamy, and on what basis the Lourdusamy has no title over the suit property, has not been explained by the defendant.



SA.No.226 of 2007

WEB COPY

12. However, the learned Senior Counsel appearing on behalf of the plaintiff by relying upon the following Judgments of this Court reported in **2018(1) CTC 481** in the case of ***Sandana Rene Lucien Josph Vs Sandana Vincent Maria Anthony, 2023 (5) Law weekly 30*** in the case of ***Batmavady (died) and others Vs Sarala and others*** would contend that in Puducherry U.T, in respect of inheritance, the application of French Code is not applicable to the Indian Citizen and immovable property situated in India, after the Pondicherry extension of laws Act 1963, by and in which, the Hindu Succession Act was extended to Pondichery with effect from 01.10.1963, and by virtue of Section 5 of the Indian Succession Act, 1925 . Therefore, this Court has no hesitation to hold that French code is not applicable to the suit property which is situated in Pondicherry Region. Therefore finding rendered by the both the Court below holding that the Lourdsamy has got title to execute the sale deed over the suit property is perfectly in order.

13. Now the next limb of the argument advanced by the learned counsel for the defendant is that, the original of Ex.A1/Notaire Sale Deed has not been submitted before the Court and that the Ex.A1/Notaire Sale Deed is



SA.No.226 of 2007

WEB COPY

an unregistered sale deed. Therefore, contended that the same is not binding upon them. However, the First Appellate Court in clear terms has held that under the erstwhile system prevailing in Pondicherry the execution of the Notaire Sale Deed is valid.

14. In this regard the learned senior counsel would invite the attention of this Court in-respect of Article 1582 of French Civil Code. The relevant portion is extracted hereunder:

A sale is an agreement by which the one person binds himself to deliver a thing, and the other party agrees to pay for it. A sale may be carried out by a document drawn up by a notary, or by one merely signed by the parties. (C.1102 and following; 1317,1322; com.109).

15. As per the above article of the French Civil Code, in Pondicherry region the Sale may be carried out by a document drawn up by a notary. Here Admittedly Ex.A1/Notaire Sale Deed has been drawn up by a notary.

16. At this juncture the learned senior counsel for the appellant has also invited the attention of this Court in respect of the Pondicherry



SA.No.226 of 2007

WEB COPY

Extension Act 1968, which came into force on 24.05.1968, and only through the above Act the Transfer of property Act, 1882 was extended to the Pondicherry region. Further the learned Senior Counsel would also submit that the Indian Registration Act was extended to Pondicherry Region on 26.01.1970 by way of The Registration (Puducherry) Amendment Act, 1970. Therefore, until the extension of these two Acts, The Transfer of Property Act, 1882 and the Indian Registration Act has no application to Pondicherry region. Here, the sale deed is of the year 1964 during which period, the law prevailed in respect of the execution of sale deed is on the basis of the Article 1582 of the French Civil Code.

17. Therefore, this Court is of the firm view that the submissions made by the learned counsel for the appellant in respect of the validity of Ex.A1/Notaire Sale Deed on the ground of non-registration cannot be countenanced.

18. It is pertinent to mention here that the First Appellate Court after gone into various aspects have ultimately held that by virtue of Ex.A1/Notaire Sale Deed, the title of the plaintiff could be established. It



SA.No.226 of 2007

was the further finding of the First Appellate Court, that the defendant has rightly accepted the execution of the sale deed by Lourdusamy, but it was contended by them, in Ex.A5/reply notice issued on 22.06.1997 that the said sale deed is a sham and nominal document and not supported by any consideration. But absolutely there is proof or any evidence available before the Court to support their contention.

19. The First Appellate Court has further held that through Ex.A3, the plaintiff has mortgaged the suit property, and it was also found that the patta and other revenue records are stands in the name of the plaintiff. Therefore, taking into all these aspects cumulatively, both the Court below have arrived at a right conclusion that the plaintiff is entitled to have a declaration in respect of the suit property. On a close reading of the defence, the defendant has not established as to how they have been in possession of the suit property. Therefore, this Court is of the firm view that, the defendants possession in the suit property should be only under permissive possession held by late Lourdusamy. Hence, when the plaintiff is the owner of the property, he is entitled to recover such possession from the permissive occupant. Thus, this Court is of the view that the finding of fact recorded by



SA.No.226 of 2007

WEB COPY

both the Court below is based on evidence and law. As a concomitant, the substantial questions of law are answered against the appellant.

20. In the result, this second appeal is dismissed by confirming the Judgment and decree passed by the the Principal District Judge at Pondicherry on 24.02.2004 in A.S.No.22 of 2002. No order as to costs. Consequently the connected miscellaneous petition are closed.

07.12.2023

smn

Index: yes / no
Neutral citation
Speaking / Non speaking order

To

1.The Principal District Court
Pondicherry

2.The Principal Sub Court
Pondicherry

C.KUMARAPPAN, J

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WEB COPY



SA.No.226 of 2007

S.A.No.226 of 2007
and M.P.Nos.2 of 2007
and M.P.No.1 of 2008
and M.P.No.1 of 2009

07.12.2023