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S.A.Nos.68 and 74 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.Nos.68 and 74 of 2023
and
C.M.P.Nos.2185 and 2428 of 2023

S.A.No.68 of 2023

Palanivelan

...Appellant

Vs.

1. Raja
2. Lalu @ Ravi
3. Kubendran

...Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to allow this Second Appeal and set aside the Decree and judgment passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District in A.S.No.39 of 2013 dated 30.09.2019 which confirming the Decree and Judgment passed in O.S.No.58 of 2012 by the Principal District Munsif Court, Cheyyar dated 15.07.2013.

For Appellant : Mr.NA.Malai Saravanan

For Respondents : Mr.P.Chandrasekar



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S.A.No.74 of 2023

1. Palanivelan

2. Kanniyammal

...Appellants

Vs.

1. Kubendran

2. Sakayamery

3. Lalu @ Ravi

4. Raja

5. The Sub Registrar-II,
The Sub Registrar Office,
Cheyyar.

6. The District Registrar,
The District Registrar Office,
Cheyyar.

...Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to allow this Second Appeal and set aside the Decree and judgment passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District in A.S.No.49 of 2013 dated 30.09.2019 which confirming the Decree and Judgment passed in O.S.No.157 of 2012 by the Principal District Munsif Court, Cheyyar dated 15.07.2013.

For Appellants : Mr.NA.Malai Saravanan

For Respondents : Mr.P.Chandrasekar (for R1 to R4)

Mr.C.Sathish,
Government Advocate (for R5 & R6)



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COMMON JUDGMENT

S.A.No.68 of 2023 has been filed against the judgment and decree passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District in A.S.No.39 of 2013 dated 30.09.2019, confirming the judgment and decree passed in O.S.No.58 of 2012 dated 15.07.2013 by the learned Principal District Munsif, Cheyyar, Thiruvannamalai District.

2. S.A.No.74 of 2023 has been filed against the judgment and decree passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District in A.S.No.49 of 2013 dated 30.09.2019, confirming the judgment and decree passed in O.S.No.157 of 2012 dated 15.07.2013 by the Principal District Munsif Court, Cheyyar, Thiruvannamalai District.

3. The appellant in S.A.No.68 of 2023 is the plaintiff and the respondents are the defendants in O.S.No.58 of 2012. The appellants in S.A.No.74 of 2023 are the defendants 1 and 2 and the respondents 1 to 4 are the plaintiffs in O.S.No.157 of 2012.



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4. The case of the appellant/plaintiff in S.A.No.68 of 2023 is that one Murugesan and his wife borrowed a sum of Rs.1,50,000/- from the appellant for which the said Murugesan was sold the suit properties belonging him to the appellant, by virtue of the sale deed dated 27.12.2010. On the basis of the sale deed, the appellant, was issued patta and all the Revenue Records were mutated in his favour. While that being so, the respondents/defendants in S.A.No.68 of 2023 are causing interference with the possession of the suit schedule properties of the appellant/plaintiff, in order to grab the same. Hence, he filed a suit for declaration and permanent injunction.

5. The case of the plaintiffs/respondents 1 to 4 in S.A.No.74 of 2023 is that the suit properties were purchased by one Chinnakulandai, viz., the mother of the first plaintiff and mother-in-law of the second plaintiff and the grand mother of the plaintiff 2 to 4, by virtue of sale deed dated 30.03.1959. Thereafter, the said Chinnakulandai enjoyed the suit properties, after changing the Revenue Records in her name. The defendants 1 & 2 /appellants have got no right in the suit properties. Further, one Murugesan filed a suit in O.S.No.541 of 2007 against the plaintiff with wrong address



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and obtained an ex-parte decree and the same was set aside. Subsequently, the suit was decided in favour of the plaintiff. While that being so, the defendants 1 and 2 are proclaiming that they have become entitled to the suit properties on the basis of the sale deed said to have been executed by the said Murugesan. On the strength of the sale deed executed, the said Murugesan borrowed loan from the defendants 1 & 2. However, the defendants 1 & 2 filed a suit in O.S.No.1 of 2009 and obtained a decree, on the basis of which the defendants 1 & 2 filed E.O.P.No.1 of 2010. Thereafter, patta was changed in the name of the defendants 1 and 2 on the basis of the decree in O.S.No.541 of 2007. On the basis of the false sale deed in the name of the first defendant, he has executed a settlement deed dated 10.02.2011 in the name of his wife, viz., the second defendant. The above sale deed and the settlement deed are not valid ones. Therefore, the plaintiffs have filed the suit to declare the title of the plaintiffs in the suit properties and to declare the sale deed dated 27.12.2010 in the name of the first and second defendants as null and void and also to declare the settlement deed dated 10.02.2011 bearing document No.680/2011 as null and void.

6. Resisting the suit, the respondents in S.A.No.68 of 2023 filed



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written statement and stated that the suit properties were purchased from one Chinnakulandai, viz., the mother of the third defendant and one Vijayan, viz., the father of the first and second defendants by registered sale deed dated 30.03.1959. The said Chinnakulandai went to Bangalore for his survival, after demise of the her husband. The said Chinnakulandai used to come to the suit properties often and maintained the suit properties and she was paying the tax to the suit properties. The Revenue Records also stand in the name of the said Chinnakulandai. However, the Patta also has been changed in the name of the respondents, after demise of the said Chinnakulandai. Therefore, the appellant never enjoyed the suit properties. The said Murugesan is not the owner of the suit properties and he has no title over the same. Merely, on the strength of the fabricated Patta, he had sold away the suit properties in favour of the appellant. The respondents also filed a suit in O.S.No.157 of 2012 for declaration declaring that the suit properties are in their favour and had also challenged the sale deed dated 27.12.2010 and subsequent settlement deed dated 10.02.2011 and the said suit was decreed in their favour.

7. Resisting the same, the defendants 1 and 2/appellants in S.A.No.74 of 2023 filed written statement and stated that one Murugesan and his wife



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borrowed a sum of Rs.1,50,000/- from the first appellant, for which the said Murugesan sold the suit properties belonging to him to the first appellant, by virtue of the sale deed dated 27.12.2010. On the basis of the sale deed, the first appellant was issued Patta and Revenue Records were mutated in his favour. Since the first defendant is not able to maintain the properties, the first defendant has executed a settlement deed in the name of the second defendant on 10.02.2011, as the first defendant cannot sell away the suit properties to the second defendant. The suit properties were attached in O.S.No.1 of 2009 on the basis of the Patta in the name of the said Murugesan and one Chinnapaiyan @ Kanniyappan. The objection made by the plaintiffs was shown to the first defendant in the office of the third defendant on 27.12.2010, when the said Murugesan executed a sale deed in the name of the first defendant, since there was only an objection and as there was no stay restraining the third defendant from registering any document. Subsequently, the plaintiff and one Kumar have put up another name board with the names of the plaintiffs and one Kumar, as if they are the lessee. The plaintiffs could have filed the documents in O.S.No.58 of 2012.

8. On the basis of the said pleadings, the Trial Court in O.S.No.58 of



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2012, had framed the following issues:-

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- 1. Whether the plaintiff is entitled to the relief of permanent injunction?*
- 2. What relief the plaintiff is entitled to?*

9. Further, on the basis of the said pleadings, the trial Court in O.S.No.58 of 2012, had framed the following additional issues:-

- 1. Whether the executant of the same deed dated 27.12.2010 namely one Murugesan has got title to sell away the suit property to the plaintiff?*

10. On the basis of the said pleadings, the Trial Court in O.S.No.157 of 2012, had framed the following issues:-

- 1. Whether the plaintiffs are entitled to the relief of declaration?*
- 2. What relief the plaintiffs are entitled to?*

11. Further, on the basis of the said pleadings, the trial Court in O.S.No.157 of 2012, had framed the following additional issues:-



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1. Whether the executed of the sale deed dated 27.12.2010

namely one Murugesan has got title to sell away the suit property to the first defendant?

12. On the side of the appellant/plaintiff, he had examined PW1 and documents were marked Ex.A1 to Ex.14. On the side of the respondents/defendants, 3rd defendant had been examined as DW.1 and documents were marked as Ex.B1 to Ex.B9. On considering the oral and documentary evidence, the trial Court dismissed the suit in O.S.No.58 of 2012 filed by the appellant/plaintiff in S.A.No.68 of 2023 and decreed the suit in O.S.No.157 of 2012 filed by the plaintiffs/respondents 1 to 4 in S.A.No.74 of 2023. Aggrieved by the same, the appellants/plaintiffs filed Appeal Suits and the Appellate Court has also dismissed and confirmed the decree and judgment passed by the trial Court. Hence, these present Second Appeals are filed.

13. These Second Appeals are filed raising the following substantial questions of law:-

“(1) Whether the suit in O.S.No.157 of 2012 filed by the respondents herein for the relief of declaration is within time,



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considering the earlier suits between the parties in O.S.No.324

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(2) Is it not res-judicata for the pleadings of the respondents made in O.S.No.58 of 2012 and O.S.No.157 of 2012, as all the pleadings have been already taken in O.S.No.324 of 2008 and O.S.No.547 of 2007?"

14. The learned counsel for the appellants in both the Second Appeals have submitted that the said Murugesan borrowed a sum of Rs.1,50,000/-. Thereafter, he failed to repay the same and as such, the appellants filed a suit for recovery of money in O.S.No.1 of 2009 and the same was decreed in their favour. In order to comply the decree, the said Murugesan had executed the sale deed in favour of the first appellant herein in respect of the suit schedule property, which was marked as Ex.A1. Further, the respondents herein filed a suit in O.S.No.324 of 2008 as against the said Murugesan, Sub Registrar, Cheyyar and Tahsildar, Cheyyar for injunction restraining the said Murugesan for executing any sale deed in favour of the third parties. However, the said suit was dismissed. Therefore, the suit filed by the respondents in O.S.No.157 of 2012 is hit by the principles of *res-judicata*. The said Murugesan had title over the properties



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and as such, he was rightly sold out the property in favour of the first appellant herein by the registered sale deed dated 27.12.2010, Therefore, the Courts below, without considering these aspects, dismissed the suit filed by the appellant and decreed the suit filed by the respondents herein.

15. Heard both sides and perused the materials placed on record.

16. This Court considered the rival submissions made by the learned counsel for the appellants as well as the respondents.

17. On a perusal of the records, it reveals that the respondents claimed title over the properties by virtue of the sale deed dated 30.03.1959 executed by one Chinnakulandai Ammal, who is none other than the mother of the third respondent herein and by one Vijayan, viz., the father of the respondents 1 and 2 herein, for valid sale consideration, which was marked as Ex.B1. The Patta was originally issued in favour of the said Chinnakulandai Ammal, which was marked as Ex.B2 and after her demise, the Patta was issued in favour of the respondents herein, which was marked as Ex.B3. The other Revenue Records also stand in the name of the respondents herein. The respondents filed a suit as against the said



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Murugesan for permanent injunction restraining him from executing any sale deed in respect of the suit properties in favour of any third party.

However, the said suit was dismissed and no appeal was filed. After the dismissal of the said suit, the said Murugesan executed the sale deed in favour of the first appellant herein. Therefore, it was rightly challenged by the respondents in O.S.No.157 of 2012 and also challenged the subsequent settlement deed dated 10.02.2011 executed by the first appellant herein in favour of his wife, viz., the second appellant. Therefore, the respondents rightly filed the suit and it is not hit by the principles of *res-judicata*.

18. In fact, on the complaint lodged by the respondents, an enquiry was conducted, in which the first appellant as well as the said Murugesan were enquired. In the enquiry, the said Murugesan had categorically admitted that he has no title over the properties and he executed the sale deed, as if he is the owner of the properties on the strength of the Patta. Therefore, the said Murugesan had no title over the properties and the trial Court has rightly dismissed the suit filed by the first appellant and rightly decreed the suit filed by the respondents herein. Therefore, this Court finds no infirmity or illegality in the judgement and decree passed by the Courts below.



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19. Hence, this Court finds that there is no question of law, much less the substantial question of law in these present Second Appeals. Accordingly, these Second Appeals are dismissed in limine, without being admitted. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

09.02.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Subordinate Judge,
Cheyyar,
Thiruvannamalai District.
2. The Principal District Munsif Court,
Cheyyar.
3. The Section Officer,
V.R. Section,
Madras High Court,



Chennai.

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G.K.ILANTHIRAIYAN, J.

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