



O.S.A.No.404 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2023

Pronounced on : 31.10.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

O.S.A.No.404 of 2013

Shri Rajasthani Jain Samaj Educational Trust

Represented by its Managing Trustee

Harish L.Mehta

S/o.Dr.C.L.Mehta,

No.62, Barkit Road, T.Nagar,

Chennai-17.

... Appellant / Plaintiff

Versus

1.Smt.K.Rohini

2.Smt.K.Kalyani

3.Sri.V.Narasimhan

4.Sri.K.Sundaram

5.Sri.K.Venkatachalapathy

6.Sri.R.Govindarajan

7.Dhandapani

8.V.Subramanyan (Deceased)

9.V.Rajappa

10.The Estate of M.V.Arunachalam, ... Respondents / Defendants

Represented by his Legal Heir A.Ravichandran

No.II, Rangappa Reddy Street, West Mambalam,

Chennai-600 033.

11.S.Neelakantan,

12.S.Srinivasan

13.S.Sankaranarayanan

14.Smt.Lakshmi Ramkumar

15.Smt.Uma Balasubramanian

1/35



O.S.A.No.404 of 2013

16.Smt.Anuradha Subramanyan

17.R.Jayasri

18.S.Krishnan

19.Miss.L.Charanya

20.L.Vignesh

... Respondents

[RR 11 to 20 brought on record as
Legal Representatives of the
deceased 8th respondent vide
order of Court dated 05.07.2017
made in M.P.No.1 of 2014
in O.S.A.No.404 of 2013.]

PRAYER: This Original Side Appeal is filed under Order XXXVI Rule 1
of Original Side Rules read with 15 of the Letters Patent against the
Judgment and Decree dated 17.04.2013 passed by this Court in
C.S.No.231 of 2006.

For Appellants	: Mr.T.S.Baskaran
For R1 & R2	: Door Locked
For R3	: Served No Appearance
For R4 & R5	: Left
For R6 & R10	: No Correct Address
For R7, R8 & R9	: Died
For R11 To R20	: Mr.K.V.Ananthakrishnan

JUDGMENT

(Judgment was delivered by **R.KALAIMATHI, J.,**)

Aggrieved by the judgment and decree passed in C.S.No.231 of
2006. the sole plaintiff namely Shri Rajasthani Jain Samaj Educational



O.S.A.No.404 of 2013

Trust, Represented by its Managing Trustee, Harish L.Mehta has preferred this Original Side Appeal.

2. The Civil Suit was laid by the above said plaintiff with following prayers:

(a) for division of the suit property between the plaintiff and defendants by metes and bounds in the light of their right, entitlement thereto in the ratio of 58.33% and 41.67% respectively.

(b) for a direction to appoint an Advocate Commissioner to effect division of the property in the manner of their right and entitlement and in the event if the division is not feasible direct the defendants to sell 41.67% in favour of the plaintiff for a value to be fixed by this Court on payment of the balance sale consideration payable by the plaintiff herein.

(c) for a declaration that the decree secured in O.S.No.3461 of 1972 forming the subject matter of E.P.No.2248 of 2001 is invalid and non-est in the eyes of law and consequently declare the same as unenforceable, void abinitio.

(d) for a permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through them from executing or implementing the decree obtained in

3/35



O.S.A.No.404 of 2013

O.S.No.3461 of 1972 in E.P.No.2248 of 2001 as against the plaintiffs

and their property morefully described in the schedule hereunder.

(e) for a permanent injunction restraining the defendants, their men, agents, servants or any other person or persons from interfering with peaceful possession and enjoyment of the suit property including running of a School under the name and style Dr.C.L.Metha Matriculation Higher Secondary School.

(f) for a permanent injunction restraining the defendants, their men, servants, agents or any other person or persons claiming through them from interfering or demolishing the construction erected in schedule mentioned property in execution of the fraudulent decree secured in O.S.No.3461 of 1972 in accordance with law.

3. This Court after hearing both sides and upon consideration of oral and documentary evidence concluded that there is no basis for the plaintiff to contend that the bequest made in favour of the 8th defendant was revoked and hence, the 8th defendant is the sole owner of the suit schedule property: The defendants 1 to 6 have no right or title whatsoever in the suit schedule property and therefore, they do not have any right to execute a sale deed in favour of the plaintiff and the issues

4/35



O.S.A.No.404 of 2013

pursuant to the rights of the parties were already tried and dealt with in

O.S.No.3461 of 1972 and as such, the present suit amounts to re-trial and thus, it is hit by the principles of *res-judicata* as per Section 11 of CPC and the plaintiff is not entitled to seek permanent injunction against the rightful owner and the plaintiff becomes trespasser and cannot claim joint possession with the true owner of the suit schedule property. If they cannot claim joint possession, the benefit under section 37(2) of the Court Fees Act is not available to them and the suit is abated against the defendants No.7 and 9, as the suit against the dead person is not maintainable. The suit filed against the dead person namely 10th defendant was held to be not maintainable. The plaintiff did not come with clean hands and was a trespasser and the property, particularly after possession was directed to be handed over to the 8th defendant and in fine, suit in C.S.No.231 of 2006 was dismissed with exemplary costs of Rs.1,00,000/- to be paid by the plaintiff to the 8th defendant herein.

4. According to the plaintiff, plaintiff's Trust purchased the property situate in No.6/13 Thambiah Reddy Road, West Mambalam, Chennai-33 comprised in Old paimash Nos.1171, 1172 and 1173 corresponding to T.S.No.171/1, Block No.50, Puliur Village, Egmore-Mambalam Taluk,

5/35



O.S.A.No.404 of 2013

Chennai District, Corporation Division 106, measuring to an extent of 5

1/4 grounds, by a deed of sale dated 29.04.2005 and registered as Doc.No.1944 of 2005 in the Office of Sub-Registrar, Kodambakkam, Central Chennai. After purchase of the property, a building consisting of ground, three floors was constructed and the plaintiff has been running a school under the name and style of Dr.C.L.Mehta Matriculation Higher Secondary School. The suit property originally belonged to late M.Venkatesa Sarma. He executed a registered Will on 11.05.1973 and a Codicil on 25.01.1974 which were registered in the Sub-Registrar's Office at Kanchipuram. It is the further case of the plaintiff that late Venkatesa Sarma had appointed his daughter Ms.V.Ramadevi as a sole executrix and she was directed to carry out the wishes of the testator mentioned in the Will as well as in the Codicil. The details of Codicil mentioned supra assumes importance, in and by which the testator has specifically stated that in the event of his eldest son V.Subramanyan failing to come to the terms with other children during the life time of the testator, the bequest made to V.Subramanyan will stand revoked. The properties so allotted to him will devolve upon his daughters namely, Ms.Ramadevi, Tmt.Kausalya, Tmt.V.Suseela and Tmt.V.Rajeswari. The plaintiff claims that the executrix Ms.V.Ramadevi filed O.P.No.531 of 6/35



O.S.A.No.404 of 2013

1980 for grant of Probate of the Last Will of late M.Venkatesa Sarma, it was converted into T.O.S.No.34 of 1982 and Probate was granted to the executrix on 06.03.1985.

5. The said Ramadevi died on 02.09.1986, at No.12, Rangappa Reddy Street, West Mambalam, Chennai-33. Mr.V.Subramanyan, brother of V.Ramadevi who is the 8th defendant herein did not prefer any appeal against the grant of Probate. As the said Ramadevi, who was the sole executrix died without completing the administration of estate in full, V.Subramanian, the 8th defendant herein filed O.P.No.533 of 1986 under Section 258 of Indian Succession Act to appoint him as an administrator in order to administer the remaining estate of late M.Venkatesa Sarma. Another Original Petition in O.P.No.399 of 1989 was filed by the other legal heirs of late M.Venkatesa Sarma namely, Tmt.V.Rajeswari, Tmt.V.Kausalya, Tmt.V.Suseela, Mr.M.V.Arunachalam and Mr.R.Govindarajan for grant of Letters of Administration. The above said two Original Petitions were disposed of by a Common Order dated 06.02.1991 and ultimately, the 8th defendant was granted Letters of Administration, insofar as the properties that were bequeathed to him and he was granted permission to administer his estate. With regard to

7/35



O.S.A.No.404 of 2013

remaining properties, Letters of Administration was granted in favour of Tmt.V.Rajeswari, Tmt.Kausalya and Mr.R.Govindarajan. The Common Order passed in O.P.No.533 of 1986 and O.P.No.399 of 1989 was challenged by preferring an appeal in O.S.A.No.19 of 1992.

6. The Hon'ble Division Bench of this Court concluded that the Letters of Administration granted does not mean that the rights of the respective parties are recognised. They were only permitted to administer the estate. It has been further held that the question of title was not gone into and the beneficiaries are left to workout their remedy before the Civil Court. It is further claimed by the plaintiff that originally a civil suit in O.S.No.3461 of 1972 was laid before the 5th Assistant City Civil Court, Chennai against A.N.Rajalakshmi, Radhabai, Sundaram and Mohan and the suit was dismissed on 12.03.1980, the same was challenged in A.S.No.198 of 1981 before the II Additional City Civil Court, Chennai and the order of trial Court was confirmed by judgment and decree dated 28.10.1981. Against which, a second appeal was filed in S.A.No.809 of 1984 by V.Ramadevi. Subsequently, on her demise, V.Kausalya, V.Subramanyan were brought on record as co-appellants and V.Rajappa and M.V.Arunachalam, V.Suseela, Rajeswari and R.Govindarajan were

8/35



O.S.A.No.404 of 2013

brought on record as respondents. The second appeal was disposed of

on 30.04.1998. It is the further case of the plaintiff that the plaintiff's

Trust purchased the suit property from the title holders of the property

namely K.Rohini, Kalyani, V.Narasimhan, K.Sundar and R.Govindarajan

and K.Venkatachalapathy and also they are interested to deposit the

balance sale price payable in respect of the share belonged to

Dhandapani. According to the plaintiff, the suit property was purchased

by the Trust from the heirs of M.Venkatesa Sarma as per the terms and

conditions set out in the Will and Codicil executed by late M.Venkatesa

Sarma. In the Codicil, it has been stated that his first son

V.Subramanyan has been consistently fighting with the members of the

family if he does not come to compromise during his life time, the

bequest under the Will shall cease to have any effect and the property so

allotted to V.Subramanyan shall go to female heirs of late M.Venkatesa

Sarma, namely Ramadevi, Kausalya and Suseela. Ramadevi died as a

spinster, her brother V.Subramanyan succeeded to her estate which

includes the property which he inherited as a legatee along with other

heirs. Smt.V.Kausalya is no more and her share got devolved upon

K.Rohini, V.Kalyani, V.Sundaram, Venkatachalapathy, defendants 1 to 5

so also V.Suseela died on 08.10.1987, her only son namely 6th defendant

9/35



O.S.A.No.404 of 2013

succeeded to her share. Rajeswari died intestate issueless leaving behind her husband Dhandapani. The plaintiff therefore acquired the suit property excepting the following shares:

V.Subramanyan	:	4.17%
Rajappa	:	4.17%
V.Arunachalam	:	4.17%
Dhandapani	:	29.16%

7. The plaintiff has acquired 58.33 % share in the schedule mentioned property and willing to pay remaining value of the property. The plaintiff has bonafidely purchased the property for consideration of Rs.50 lakhs from the above said share holders.

8. The 8th defendant V.Subramanyan without reference to the right, title and interest created in favour of the plaintiff is trying to execute the decree passed in O.S.No.3461 of 1972, through E.P.No.2248 of 2001, the plaintiff in equity seeks for enforcement of its claim as against the owners in respect of 41.67% undivided share of land as the Trust has been imparting education for the downtrodden students who are located in and around Mambalam. If the School is shifted, then the students

10/35



O.S.A.No.404 of 2013

would be subjected to inconvenience and it will be difficult for the students also to get accommodated in other institutions as the strength is full. The property was purchased for a consideration of Rs.50 lakhs and more than Rupees One Crore has been invested by borrowing funds from Indian Bank, T.Nagar Branch, Chennai-17 by pledging the suit property with the Bank as security. The plaintiff is not aware of the litigation over the suit property. Hence, the suit is laid for permanent injunction restraining the defendants from implementing the decree granted in O.S.No.3461 of 1972.

9. Whereas on behalf of the 8th defendant, it was contended that though the plaint refers to an application for leave to sue but no application number is given in the plaint. In O.S.No.3461 of 1972, it was held that Bharatha Matha Primary School is no more in existence and that they have started a new school by name Sri Vidya Matriculation Higher Secondary School in the suit site. The 8th defendant further claims that in E.P.No.2248 of 2001 in O.S.No.3461 of 1972, the trial Court by order dated 23.12.2004 having taken note of the existence of School granted time till 30.04.2005 for delivery of possession. On 29.04.2005, the plaintiff herein in order to stall the execution proceedings

11/35



O.S.A.No.404 of 2013

brought about an agreement with oblique motive. By a common order dated 06.02.1991 in O.P.No.533 of 1986 and O.P.No.399 of 1989 in O.S.A.No.19 of 1992, 8th defendant was granted Letters of Administration solely on the ground that he was the major sharer.

10. It was further claimed that if really the defeasance clause had come into operation, V.Rajappa and Kausalya and Govindarajan should have objected to the grant of Letters of Administration to the 8th defendant on the ground that the 8th defendant did not get any legacy. M.Venkatesa sarma died on 06.10.1978 and Ms.Ramadevi, the executrix to whom Probate was granted, died on 02.09.1986. The judgment debtors were anxious to sell the School and get money. The sale deed in favour of the plaintiff contains false recitals regarding Will and Codicil. Under the Will V.Subramanyan was given Door No.7 (New Door No.12), the suit property and 1/6 share of land in Pammal. According to the 8th defendant, it was further claimed that in the Codicil, the bequest was made as a conditional one and the same has to be fulfilled before vesting of the legacies. The contingent legatees namely four daughters accepted the position that the 8th defendant fulfilled the conditions and qualified himself to get the legacy. The plaintiff claims to be a Trust, running several

12/35



O.S.A.No.404 of 2013

Educational Institutions. Legal opinion must have been obtained. No

Advocate would have advised such purchase from the judgment debtor after delivery was ordered and persons whose predecessors in interest accepted the title of the defendants.

11. According to the 8th defendant, the plaintiff very well knew that the judgment debtors had to deliver possession after 30.04.2005 and the 8th defendant was permitted to execute the decree after 30.04.2005. He filed C.M.P.No.6847 of 1999 in S.A.No.809 of 1984 to injunct the judgment debtor from constructing a building and this Court passed an order to that effect restraining the judgment debtor from putting up any construction. The Managing Trustee in the Transfer O.P.No.130 of 2006 has admitted that there was only a dilapidated building in the suit property. Therefore, no school could have been there on 29.04.2005. Therefore, plaintiff could not have started any school on or after 29.04.2005 as the academic year commences in June.

12. It was further claimed that on 12.05.2005, i.e., before commencement of academic year, when the bailiff sought to execute the delivery of warrant accompanied by the 8th defendant's son, they were

13/35



O.S.A.No.404 of 2013

prevented from executing the warrant by the plaintiff's men. As per the terms of the agreement, the plaintiff had agreed to continue the execution proceedings (E.P.No.2248 of 2001). Therefore, the plaintiff very well had the knowledge about execution proceedings in E.P.No.2248 of 2001 and attempted delivery on 12.05.2005 as mentioned supra. The plaintiff laid foundation stone after 12.05.2005. No person would dare to purchase the suit property from the judgment debtor after delivery was ordered. Even if a person purchases a portion that sale itself is invalid, he should not construct building in the entire area including the portion which was not purchased. The judgment debtors were portrayed as trespassers in A.S.No.198 of 1981 / S.A.No.809 of 1984 and in Application Nos.1546 to 1548 of 2006 in C.S.No.231 of 2006. Therefore, the plaintiff claiming through a trespasser is not in a better position. Any law abiding citizen would have definitely contested in E.P.No.2248 of 2001, have his rights decided and then he would start to construct if he succeeds.

13. According to the 8th defendant, the sale deed was obtained from the persons who do not have any title. The possession was obtained by trespass and false claim is now made that the school is functioning in the suit property and that 1300 children who are studying

14/35



O.S.A.No.404 of 2013

would be thrown out. On a deliberate mis-representation, interim orders were obtained by the plaintiff. As his father got properties from his father under a Will, he claimed the properties as his separate properties. He along with his brothers claimed those joint family properties filed C.S.No.212 of 1962 for partition, that was dismissed on 21.04.1965. Against which, he along with his brother Arunachalam filed Original Side Appeal in O.S.A.No.23 of 1966 and the same was dismissed on 19.06.1972. Only after the said dismissal, his father executed his Will on 11.05.1973 bequeathing three items of properties, as he was anxious that his properties should go to persons whom he chose. If the properties are joint family properties, it will operate on his 1/4th share only. His properties are separate properties. The legatees chosen by him would get the properties through Will. His father wanted to dissuade him from disputing his rights and he added a condition precedent in the Codicil. It was never his intention to disinherit him (8th defendant). In the Codicil, it has been stated that even if the 8th defendant compromises after his father's life time, the 8th defendant can get the legacy. Ramadevi filed O.P.No.531 of 1980 before this Court for grant of Probate. The Will along with the Codicil were filed in the said Probate O.P. The 8th defendant filed a supporting affidavit along with others except

15/35



O.S.A.No.404 of 2013

Arunachalam in the said Probate O.P. The said Probate Original Petition

was converted into T.O.S.No.34 of 1982 and by an order dated 06.03.1985, Probate was granted in favour of Ramadevi, in which, one of the items bequeathed to the 8th defendant is situate at Door No.12 (Old Door No.7), Rangappa Reddy Street, West Mambalam, Chennai. Ramadevi paid stamp duty penalty at the time of filing the said Probate O.P. She requested the Collector to collect the additional Stamp Duty from the 8th defendant on the ground that the 8th defendant is a legatee and he was in possession. The 8th defendant paid the additional Stamp Duty as demanded by the Collector. Next to Door No.12 (Old No.7) Rangappa Reddy Street West Mambalam, Chennai, is property bearing Door No.13 (Old No.8) which was bequeathed to Ramadevi. After the death of Ramadevi, her three brothers and three sisters inherited the suit property. The 8th defendant got 1/6th share. V.Kausalya, D.Rajeswari, V.Rajappa, M.V.Arunachalam and R.Govindarajan son of Suseela got remaining 5/6th share in the property situate at Door No.13 [Old No.8]. On 24.02.1995, V.Kausalya, V.Rajappa, D.Rajeswari executed release deed in his favour and on 05.05.1995, Mr.M.V.Arunachalam and R.Govindarajan executed release deed in his favour releasing their rights. His possession of Door No.12 [Old No.7] is very well admitted by

16/35



O.S.A.No.404 of 2013

the above said persons in their respective release deeds. He treated the

Door Nos.12 and 13 as one unit and settled the same on his sons, daughters and son-in-law under 8 registered settlement deeds dated 19.06.1996. His father died on 06.10.1978.

14. It was contended that the plaintiff has given distorted facts in the plaint. The plaintiff was originally running Bharatha Matha Primary School and admittedly it was closed and started a new School without any right, even though the executing Court gave time. In Transfer O.P.No.130 of 2006, the plaintiff stated that there was only dilapidated building in the suit property, no school could have functioned in the suit property. The only person competent to deal with the suit property is 8th defendant. Admittedly, the 8th defendant did not sell any portion of the suit property. A deliberate mis-representation has been made to show that the plaintiff purchased portion of the suit property from the grantee of Letters of Administration. The plaintiff has not even understood as to how the suit property vested in the sisters of this 8th defendant. Kausalya and V.Suseela who did not own any share. Defendants 1 to 6 did not inherit any share. Dhandapani cannot inherit any portion of the suit property even if Rajeswari had any share.

17/35



O.S.A.No.404 of 2013

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15. As per the averments made in the plaint, that the plaintiff acquired 58.33% of the suit property is not correct because, the vendors had no title to any portion of the suit property. Therefore, the shares given is totally incorrect. Dhandapani cannot claim any share in the suit property. The 8th defendant alone is the owner of the entire suit property. The plaintiff is not a *bona-fide* purchaser but a trespasser. The plaintiff's act is a challenge to Court and no property would be safe. If the plaintiff decides to purchase any property there will be a trespass making a false claim of philanthropic activity in the trespassed property and it would unabashedly come to Court and prayed for direction to the real owner to sell the property. The purchase from the defendants 1 to 6 and the judgment debtors is an attempt to interfere with the judicial process as it was done while execution proceedings was pending. The plaintiff admits that it purchased a part and yet claims that it put up building in the entire property. The Managing Trustee is confident that his money power and political influence will secure any property he desires. The suit of the type referred to in paragraph No.20 of the plaint is unheard of.



O.S.A.No.404 of 2013

16. The 8th defendant further claims that the plaintiff chooses the

property, fixes the price, decides who are the owners and come to the Court with a prayer for direction to the persons who according to the plaintiff is the owner of certain shares to sell the property to the plaintiff. If the defendants 7 and 9 received money, it is wind fall for them. Even after the written statement of 8th defendant, if the plaintiff pays money to the defendants 7, 9 and 10, it only shows that plaintiff has unlimited resource and can throw money against bad bargain. The plaintiff alleges that it purchased the suit property on 29.04.2005. But, 8th defendant filed E.P., in 2001 itself. No school was running in the suit property either on the date of suit or before. The plaintiff has made a deliberate misrepresentation that 1300 children are studying in a school functioning in the suit property and obtained interim order. The learned Advocate Commissioner who was appointed in C.S.No.231 of 2006, has reported that no school was functioning in the suit property. No responsible person would purchase the property from the judgment debtor after delivery was ordered. The suit was filed by executrix and the 8th defendant stepped into her shoes. The documents filed by the plaintiff would show that the amount was granted for infrastructure. The Indian Bank deserves condemnation for granting loan of One Crore Rupees on

19/35



O.S.A.No.404 of 2013

the security of a property to which the borrower has no title. The plaintiff

knows all the details of litigation. The plaintiff who is a trespasser has to suffer and no Court can ask the owner to pay compensation to a trespasser for the superstructure. Though the defendant obtained decree on 30.04.1998 and yet he is unable to obtain possession. In the reply statement, the plaintiff claims that it is not in possession of 5 ¼ grounds and the third party is in possession of one ground and 500 feet which is not true. The reason being that the said person was not impleaded. The learned Advocate who appears for the plaintiff in the suit, appeared for vendees and issued reply notice and filed written statement. The plaintiff is a transferee from the judgment debtor during the pendency of E.P.No.2248 of 2001, after the delivery was ordered. The plaintiff brought about a fraudulent sale deed to stall the execution proceedings.

17. The following issues were framed by the this Court:

1. Whether the plaintiff is entitled for division of suit properties between the plaintiff and the defendants at the ratio of 58.33% and 41.67% respectively by metes and bounds?



O.S.A.No.404 of 2013

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2. Whether the plaintiff is entitled for declaration that the decree in O.S.No.3461 of 1972 containing the suit property as subject matter is invalid, unenforceable, void ab initio, and non est in the eye of law?
3. Whether the plaintiff is entitled for permanent injunction against the defendants from in any way executing the decree in O.S.No.3461 of 1972 in E.P.No.2248 of 2001 as against the plaintiff in respect of the suit property?
4. Whether the plaintiff is entitled for permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the suit property including the running of a school under the name and style of Dr.C.L.Mehta Matriculation Higher Secondary School?
5. Whether the plaintiff is entitled for permanent injunction restraining the defendants from interfering or demolishing the construction erected in the schedule mentioned property in execution of the decree in O.S.No.3461 of 1972?



O.S.A.No.404 of 2013

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6. Is not the 8th defendant on the facts set out in written statement the sole and exclusive owner of the suit property?

7. Is not the plaintiff a trespasser, claim joint possession with the true owner of the suit property and benefit under Section 37(2) of the Court Fees Act and suit property valued and Court fee paid proper?

8. Whether the plaintiff derives title to 58.33% suit property by the purchase made from defendants 1 to 6 without any title, possession and covered under the order of ejectment?

9. Is the declaration relief (c) to set aside the decree made in O.S.No.3461 of 1972 maintainable by separate suit and not barred by Section 47 CPC?

10. Has not suit abated in its entirety on account of abatement of the death of 7th defendant and 9th defendants?

11. Is the suit against dead person (i.e.) 10th defendant maintainable?

12. Is not the suit barred by the principles of *res-judicata*?



O.S.A.No.404 of 2013

13. Is not the 8th defendant entitled for exemplary cost?

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14. To what relief the plaintiff is entitled?

18. At trial, Mr.S.V.Krishnan, Manager of the Trust and L.Uday Metha, one of the Trustees have been examined as PW1 and PW2 and Exs.P1 to P50 have been marked. On the side of the defendants, 8th defendant was examined as DW1 and Exs.D1 to D24 were marked.

19. The suit was dismissed with exemplary costs of Rs.1,00,000/- payable by the plaintiff to the 8th defendant by observing that the defendants 1 to 6 have no right or title whatsoever to sell 58.33% share of the suit schedule property.

20. Heard the learned counsels Mr.T.S.Baskaran, appearing for the appellant and Mr.K.V.Ananthakrishnan, appearing for the respondents 11 to 20 and perused the materials on record.

21. The following questions arise for consideration in this appeal :-

1) *After grant of Letters of Administration in favour of V.Subramanyan in O.P.No.533 of 1986 and the same*



O.S.A.No.404 of 2013

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was confirmed in O.S.A.No.19 of 1992, dated 07.02.1992, the 8th defendant V.Subramanyan preferred the second appeal in S.A.No.809 of 1984 which was decreed amounts to res-judicata to the effect that V.Subramanyan is the owner of the suit property.

2) Whether the Codicil had the effect of disinheriting the 8th defendant.

3) Whether the defendants 1 to 6 had any title to convey to the plaintiff.

22. According to the plaintiff, plaintiff Trust purchased 58.33% share of the suit schedule property from the defendants 1 to 6 through a sale deed dated 29.04.2005. The said defendants are the grand children of one Venkatesa Sarma (through daughters). Venkatesa Sarma left behind four daughters and three sons namely, V.Subramanyan (D8), V.Rajappa (D9), M.V.Arunachalam (D10), Kausalya, Suseela, Ramadevi and Rajeswari. Defendants 1 to 5 are the daughters, sons and husband of Kausalya. 6th defendant is the son of late Tmt.Suseela. Ms.Ramadevi was a spinster. 7th defendant is the husband of late Tmt.Rajeswari.



O.S.A.No.404 of 2013

Plaintiff claims to have purchased the suit property from the legal heirs of Kausalya and Suseela.

23. Father of the above said seven persons namely Venkatesa Sarma executed a Will dated 11.05.1973 in favour of his children. He also executed a Codicil dated 25.01.1974. As per the Codicil, his daughter Ramadevi was appointed as executrix / administrator of the Will. The said Venkatesa Sarma died on 06.10.1978. After the death of Venkatesa Sarma, Ramadevi filed petition in O.P.No.531 of 1980 before this Court in order to Probate the Will and the same was converted into T.O.S.No.34 of 1982 and Probate was granted on 06.03.1985. Ms.Ramadevi died on 02.09.1986.

24. Likewise, V.Rajappa, M.V.Arunachalam, Kausalya, Rajeswari and Govindarajan, S/o.Suseela filed petition in O.P.No.399 of 1989 for grant of Letters of Administration to administer the estate of Ramadevi.

25. So also, the 8th defendant V.Subramanyan, one of the son of Venkatesa Sarma filed O.P.No.533 of 1986 before this Court for grant of Letters of Administration.

25/35



O.S.A.No.404 of 2013

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26. The above said two O.Ps., namely O.P.No.533 of 1986 and 399 of 1989 were disposed of by a common order dated 06.02.1991 and the 8th defendant was granted Letters of Administration to administer the estate of his father. Kausalya, Rajeswari, Govindarajan S/o.late Suseela who are the female heirs of late Venkatesa Sarma were granted letters of administration to administer the estate of Ramadevi.

27. Against the said order dated 06.02.1991, the 8th defendant namely V.Subramanyan, preferred the appeal in O.S.A.No.19 of 1992, was dismissed by judgment dated 07.02.1992 and the common order dated 06.02.1991 was thereby confirmed.

28. Meanwhile, Venkatesa Sarma had filed O.S.No.3461 of 1972 in the City Civil Court, Chennai and the same was pending before V Assistant City Civil Court, Chennai with a prayer to evict the defendants therein from the suit schedule property. After the demise of Venkatesa Sarma (date of death - 06.10.1978) Ramadevi proceeded with the suit as the administrator of the Will. The said suit came to be dismissed on 12.03.1980. The judgment debtor in O.S.No.3461 of 1972 were running

26/35



O.S.A.No.404 of 2013

a school in the suit schedule property. Against which, Ramadevi preferred an appeal in A.S.No.198 of 1981 was also dismissed by the II Additional City Civil Court, Chennai on 28.10.1981. The said judgment was challenged by way of second appeal in S.A.No.809 of 1984. The Second Appeal was allowed by this Court by judgment dated 30.04.1998 whereby the suit in O.S.No.3461 of 1972 was decreed.

29. The bequest to the 8th defendant namely V.Subramanyan should be revoked due to the condition in the Codicil that the 8th defendant failed to come to the terms with the other children of Venkatesa Sarma during his life time is the plaintiff's say. The suit schedule property devolved upon the four daughters of late Venkatesa Sarma as the bequest to the 8th defendant was revoked is also the plaintiff's say. The plaintiff further claims that the defendants 8 to 10 being brothers of Ramadevi would get 4.17% share each in the suit schedule property upon the death of Ramadevi. So also the 7th defendant who is the husband of Rajeswari is entitled to 29.16% share in the suit schedule property. In all it is claimed by the plaintiff that it acquired the remaining share of 58.33% of suit schedule from the legal heirs of Kausalya and Suseela. Therefore, it is further claimed that on account of

27/35



O.S.A.No.404 of 2013

the above said purchase, the plaintiff became co-owner and a joint decree holder in O.S.No.3461 of 1972. The objection of the plaintiff is that the 8th defendant V.Subramanyan cannot seek for delivery of possession against the co-owner by filing E.P.No.2248 of 2001 in O.S.No.3461 of 1972 and the said E.P., is un-executable.

30. The plaintiff by claiming that all four daughters have each 25% share in the suit schedule property, as Ramadevi who was the spinster, upon the death of Ramadevi who happened to be a spinster, her share got devolved equally on her siblings namely three brothers and three sisters, the plaintiff claims that as per Codicil, the bequeath to 8th defendant was revoked. Based on the above said claim of the plaintiff that they have acquired the remaining share of 58.33% in the suit schedule property from the legal heirs of Kausalya and Suseela, the suit was filed.

31. The first prayer in the suit is to effect division of property and the second prayer is to direct the defendants to sell 41.67% of share to the plaintiff. The third prayer is for declaration that the decree passed in O.S.No.3461 of 1972 is illegal, invalid and non-est in the eye of law and

28/35



O.S.A.No.404 of 2013

for permanent injunction from executing E.P.No.2248 of 2001 as against the plaintiff and for permanent injunction not to interfere with the peaceful possession and enjoyment of the suit property.

32. The prayers sought for in the suit itself are already extracted. The effect of the Will and the Codicil were clarified and finalised by way of common judgment passed on 06.02.1991 (O.P.No.533 of 1986 and O.P.No.399 of 1989).

33. Originally Venkatesa Sarma filed the suit in O.S.No.3461 of 1972 before the V Assistant Judge, City Civil Court, Chennai to evict the defendants therein from the suit schedule property and the said suit was dismissed on 12.03.1980. Venkatesa Sarma died on 06.10.1978. Appeal was preferred by Ms.Ramadevi in A.S.No.198 of 1981 before the II Additional Judge, City Civil Court, Chennai and it was dismissed on 28.10.1981. The First Appellate Court has observed that the defendants are trespassers. Against the said judgment and decree, the second appeal in S.A.No.809 of 1984 was filed by V.Subramanyan and it was allowed by this Court on 30.04.1998 by decreeing the original suit filed by Venkatesa Sarma.

29/35



O.S.A.No.404 of 2013

WEB COPY

34. Thereafter, the defendant School preferred Special Leave Petition against the judgment passed in S.A.No.809 of 1984 in SLP No.14014 of 1998 which was dismissed.

35. This Court in S.A.No.809 of 1984, while allowing the appeal, a direction was given to the judgment debtor to approach the decree holder for lease or outright purchase of the suit schedule property. As per the said direction, the defendants filed a suit in C.S.No.719 of 2000 for specific performance seeking direction to the 8th defendant V.Subramanyan to execute a sale deed of the suit schedule property in their favour and prayed for injunction against executing the decree in O.S.No.3461 of 1972 and the said reliefs were not granted. Appeal was preferred in O.S.A.No.76 of 2002 challenging the vacation of interim injunction was also dismissed. The said judgment was challenged by the judgment debtor in SLP No.9194 of 2002 was also dismissed by the Apex Court, on 27.01.2003. As per the Will and Codicil, suit schedule property was allotted to V.Subramanyan and the testator has mentioned the above said O.S.No.3461 of 1972 also in the Will. Upon the death of



O.S.A.No.404 of 2013

the testator V.Subramanyan filed O.P.No.533 of 1986 and obtained Letters of Administration in his favour.

36. Pursuant to the judgment of the Hon'ble Supreme Court in SLP No.14014 of 1998, dated 19.11.1998, V.Subramanyan initiated execution proceedings in E.P.No.2248 of 2001 for delivery of possession. Order of delivery was passed by the Executing Court, on 23.12.2004. It is also pertinent to note that the Executing Court gave direction to the judgment debtor to deliver the possession after the end of academic year on 30.04.2005. But, the plaintiff claims to have purchased 58.33 % of suit property from the defendants 1 to 6 who are the siblings and siblings' children of V.Subramanyan on 29.04.2005. Therefore, after obtaining the orders of Probate, V.Subramanyan preferred second appeal in S.A.No.809 of 1984 and got a decree in his favour and that was also confirmed by the Hon'ble Supreme Court in SLP No.14014 of 1998 dated 19.11.1998. More so, suit property was allotted to the share of V.Subramanyan. After so many legal battles as mentioned supra, it was vividly made clear that V.Subramanyan is the owner of the suit schedule property. When that be the case, the plaintiff's allegation that he purchased 58.33% of share in suit property from the siblings and

31/35



O.S.A.No.404 of 2013

siblings' children of V.Subramanyan that too after order of delivery

passed in E.P., is a sheer abuse of process of law. The issue of ownership for the suit property, reached finality by the judgment of the Hon'ble Supreme Court in SLP.No.14014 of 1998 dated 19.11.1998. Therefore, it would not lie in the mouth of the plaintiff that V.Subramanyan is not the owner of the suit property and they purchased 58.33% of share in the suit property from the siblings and siblings' children of V.Subramanyan who do not have any right or title in the suit property.

37. While disposing C.R.P.(NPD).No.831 of 2006, dated 07.11.2006, this Court has observed as follows:

"In fact, the petitioner abused the process of law and got into possession of the property from the persons who are declared as trespassers and deserves no indulgence. The petitioner as a transferee pendente lite as per Order 21 Rule 102 is not entitled to claim any relief under Order 21 Rule 99 to 101 CPC..."

38. After the Executing Court passed an order of delivery conscious of the fact that the 8th defendant has become full owner of the



O.S.A.No.404 of 2013

suit property, the plaintiff has ventured into purchase of the portion of suit property from the defendants 1 to 6 and started one more round of litigation namely by filing of C.S.No.231 of 2006 is a sheer abuse of process of law. In fact, in order to litigate unnecessarily and to protract and to buy time, these sale deeds from the persons who do not have any title, plaintiff has purchased which is highly condemnable.

39. Based on the aforesaid discussions, we are of the considered view that after the order of delivery was passed in E.P.No.2248 of 2001 in O.S.No.3461 of 1972, the plaintiff has chosen to purchase from the defendants 1 to 6, the share of the suit property from the persons who do not have any semblance of any right or title.

40. In view of the foregoing discussion, the questions for determination are answered in favour of 8th defendant V.Subramanyan.

41. In the result, this Original Side Appeal stands dismissed with exemplary cost of Rs.4,00,000/- (Rupees Four Lakhs Only) payable by the appellant/plaintiff to the Legal Heirs of 8th defendant, namely respondents 11 to 20 in addition to the costs [Rs.1 Lakh] imposed by the

33/35



O.S.A.No.404 of 2013

learned Single Judge and the Judgment and Decree dated 17.04.2013

passed in C.S.No.231 of 2006 on the file of this Court is hereby confirmed. C.S.231 / 2006 stands dismissed.

[R.S.M., J.,] [R.K.M., J.,]
31.10.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order
ssn

R.SUBRAMANIAN, J.,
and
R.KALAIMATHI, J.,

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Pre-delivery judgment in
O.S.A.No.404 of 2013



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O.S.A.No.404 of 2013

31.10.2023