



S.A No.205 of 2015

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A No.205 of 2015

Singaravelu (Deceased)

(Amended as per order in I.A No. 2815 of 2006 dated 14.02.2006 deceased legal heirs 2 to 4)

1.M.S.Indumathi(died)

2.M.S.Bhavani Prasad

3.M.S.Murali Prasad

4.M.Nithya.

(A4 brought on record as Legal heir of the deceased first appellant vide order of the Court dated 18.07.2022 made in CMP No.9676/2022 in S.A No.205/2015(TVTSJ))

... Appellants/plaintiff

Vs.

K.Mohanakrishnan (Deceased)

Yasoda Ammal (Deleted)

Devaki (Deceased)

Parthasarathi (Died)

(Original second defendant deleted and defendants 4 to 11 impleaded as per order dated 28.01.1994 Amended as per order made in O.S.A Nos. 163 & 164 of 1992 as per order dated 27.07.1994) (dated 26.02.1994)

1.Venkatanarayana

Kokilambal (Died)



S.A No.205 of 2015

Dwaraka (Died)

Sarala (Died)

2.Palani

3.Thaiyanayagi Ammal Trust

Having its office at

M-53/2 1st Main Road,

Besant Nagar, Chennai – 600 090.

4.Kalyanam

5.S.M.Palaniappa Chettiar

6.Shankars Subramanian

7.Shanmugha Sundaram

8.Padmini

9.Uma Devi

Aathi Lakshmi(died)

10.Jayalakshmi

11.Vijayalakshmi

12. Shanmugha Valli

13. Nalini

14.Maheswaran

15.Ravi

...Respondents/Defendants

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Decree and judgment in A.S No.228 of 2013 on the file of the XVII Additional City Civil Judge at Chennai dated 25.11.2014 confirming the judgment and decree dated 31.01.2013 made in O.S No. 2127 of 1997 on the file of the XVIIIth Assistant City Civil Court, Chennai.

For Appellants: Mr.T.Thiageswaran
for M/s.Waraon and Sai Rams

For R10, R12 and R13:Mr.N.S.Sivakumar



WEB COPY



S.A No.205 of 2015

For R1 R2,R8, R9,R15, R14, R3,
R4,R6 R7, R11:Not appeared

R5: Died

JUDGMENT

Originally the suit was filed by the deceased Singaravelu in O.S No.2127 of 1997 on the file of the City Civil Court, Chennai, After his death his legal heirs continued the suit against the respondent Mohanakrsishnan, Yeoda Ammal and Devaki for the relief of declaration based on the decree in C.S NO.325 of 1975, to declare the plaintiff is the absolute owner of the suit B schedule property and also not to cause any disturbance by the defendants and other consequential relief. In the meantime, the defendants were died their legal heirs were impleaded as party and they contested the suit by denying the plaintiff's claim over the suit property. After considering the oral and documentary evidence the Trial Court held that plaintiff is not absolute owner of the suit property based on the sale deed executed by one Venkatarama iyer as Trustee of Thaiyanakinayaki Ammal Trust as such and her purchase also effected by the doctrine of lispendence. Since she purchased during the pendency of the



S.A No.205 of 2015

suit proceedings in C.S No. 325 of 1975 and also held that alleged Trust also not in existence and it was fraudulently created by Venkatrama Iyer thereby suit was dismissed and also awarded counter claim with regard to damages for occupation, future damages was granted, also awarded delivery of possession of the suit properties to the defendants.

2. Aggrieved over the said findings the plaintiff preferred an appeal in A.S No. 228 of 2013 before the Principal Additional City Civil Court, which independently analysed the facts and evidence dismissed the appeal. Challenging the said findings the plaintiff preferred this Second appeal.

3. The learned counsel for the plaintiff/appellant submitted that Court below failed to take note of the fact that since the property was purchased by Santha singaravelu wife of the first appellant in pursuance of sale deed dated 27.05.1973 for valid consideration. Even prior to that they were in possession and enjoyment of the suit property by paying property tax without any hindrance from the the respondents/defendants. Hence prescribed title by adverse possession but without appreciating the facts court below erroneously dismissed the suit as such is unfair and liable to be set aside. Further he submitted that both the Court below failed to take note



S.A No.205 of 2015

of the fact that the wife of the first plaintiff Santha Singaravelu is not a party to the earlier suit proceedings as bonafide purchaser since absolute owner of the suit B schedule property instead of granting relief in her favour Court below erroneously dismissed the suit which is misconception of law and facts.

4. This Court admitted the second appeal with the following substantial questions of law:

i. Whether the Court's below were right in ignoring the pleas of the plaintiffs that the plaintiffs were not added as parties to C.S No.325 of 1975 and thus, the said decree is not binding on them?

ii. Whether the decree and judgment of the lower appellate Court is sustainable since the lower appellate Court has not framed the points for consideration properly as required under law?

iii. Whether the decree and judgment of the lower appellate Court is sustainable in view of the fact that the lower appellate Court has not discussed the issues involved, the evidence available and all other materials placed on record while deciding the appeal? And

iv. Whether the Courts below were right in not considering the fact that the plaintiffs have been in settled possession of the suit property which is not in dispute?



WEB COPY



S.A No.205 of 2015

5. The averments in the plaint are briefly as follows :-

The plaintiff states that the property in No.2 and the New No.4. Dr.Singaravelu Street, T.Nagar, Chennai 600 017 described in schedule A originally belonged to Kannammal the mother of defendants 1-3 and grant-mother of the 4th defendant. The plaintiff had been a tenant of the out-house of the said property from April 1960 and during the life time of Kannammal the said Kannammal mortgaged the suit property as described in the schedule A in favour of Sakra Chand Sowkar in mortgage deed dated 21.08.1952 and also mortgaged the very same property in Purasawalkam Hindu Janopakara Saswatha Nidhi by means of 3 successive mortgage deeds respectively for Rs.8000/-, Rs.400/- and Rs 6,500 dated 12.06.58, 12.06.58 and 05.10.59 She appears to have mortgaged the said property in pursuance of a registered mortgage deed securing prompt and due repayment of a sum of Rs.5,000/-in favour of one Swaminatha Iyer and borrowed Rs.3000/- and executed a promissory note of 21.01.96 in favour of Swaminatha Iyer to discharge the said debts. In order to come out of all the mortgages Kannammal executed another mortgage on 14.09.67 in favour of G.D.Raj for a sum of Rs.40,000 over the schedule A property. She defaulted in the payment of interest and principal towards G.D.Raj. Hence



S.A No.205 of 2015

WEB COPY

he brought the property for sale as per section 69 of the Transfer of Property Act. To stop the auction Kannamal filed a suit in [O.S.No. 4358/1968](#) for relief of injunction restraining the mortgagee from conducting the sale of property. While granting the temporary injunction in the above it the court has imposed certain condition which was not fulfilled by Kannammal in the result the sale was proceeded on 01.11.68 and S. Venkaturamu Iyer appears to have purchased the said property. Thereafter on 05.09.1968 Kannammal died. Till her death the 1st plaintiff who was in occupation of the out house which has been mentioned as B Schedule property was paying rent to her. After the death of kannammal the property was auctioned it is learnt that the 1st defendant herein had approached the said Venkatarama Tyer and explained the situation on Sympathetic consideration, an agreement entered into by which the parties had agreed not to proceed on the basis of the sale held on 01.11.1968 in favour of Venkatarama Iyer, that the mortgage in favour of Dr.G.B.Raj was assigned in favour of Seetha Nataraj, daughter of Venkatarama Iyer for a sum of Rs.44,000/-. The 1 defendant has executed a usufructuary mortgage in favour of the said Venkatama Iyer. The said property in which the plaintiff was the tenant in the out house and the main building has been hired as Kalyana Mandapam. There was an agreement



S.A No.205 of 2015

with the 13th defendant herein with Venkatarama Iyer the usufructuary mortgage relating to payment of interest, etc to the simple mortgage. The 1st defendant acted as a manager of the kalyanamandapam(Marriage Hall) with Venkatarams iyer who is holding the kalyanamandapan on the basis of the usufructuary mortgage. The simple mortgage executed in favour of Seetha Nataraj for which interest has to be paid through the income derived from the kalyanamandapam Venkatarama Iyer was not able to paid same. Hence Seetha Nataraj brought the property for sale advertising the same to be sold by auction on 20.06.1970. In the meantime, the 1st defendant has filed the suit in [O.S.No. 3018/1970](#) on the file of the City Civil Court, Chennai for an injunction restraining the mortgage to exercise the power of sale under section 69 of Transfer of Property Act. No temporary injunction was granted hence the sale was acted upon and Venkatarama Iyer on behalf of Thiyanayagi Trust purchased the property, After the sale the 1st defendant who is working as a manager was leased out of his position as a manager of the Marriage Hall. The Marriage hall which has been handed over to Venkatarama Iyer on the basis of the usufructuary mortgage has hired the Marriage Hall for improving the same. And for improving the same he wanted the vacant space which was in the 1st plaintiff's occupation. The 1st



S.A No.205 of 2015

defendant having lost all avenues of approachment with Venkatarama Iyer came to know about the demand of the Venkatarama Tyer with the 1 plaintiff for leaving away a portion of land, stated to the 1st plaintiff that the said Venkatarama Iyer and his daughter had purchased the property at a low price he was not succeeded in his attempt getting injunction and the same was acted up he intends to file suit for claiming damages for inadequate price at which the property has been knocked and suggested the plaintiff to start negotiations with the said Venkatarama Iyer for purchase of the property in the occupation of the plaintiff after surrendering the portion of the said land required by him. If the 1st plaintiff succeed in his attempt to purchase the property the 1st defendant never question the same on the other hand utilize the sale deed for establishing the low price at which the property in schedule A has been knocked away by the Venkatarama Iyer. At that stage in fact neither the 1st plaintiff nor his wife had the necessary resources to purchase the property. But in view of the request by the 1st defendant the plaintiff tempted by chance of purchasing the said property and more particularly described in Schedule B and the plaintiff entered into negotiation with the Venkatarama Iyer and on 7th December 1979 the out house which was in dilapidated condition along with an extend of land of



S.A No.205 of 2015

about 1485 sq. ft. described in Schedule B was sold to the 1st plaintiff or his nominee for a sum of Rs.10,000/- for which an agreement has executed on 27.12.1971. The said agreement was not available with the plaintiff now, Sale agreement was entered between the 1 plaintiff's wife Santha Singaravelu and Venkatarama Iyer and Rs.3,000/- was paid as advance on that date and from the date of possession the plaintiff was in the part performance of the said agreement of sale. After Kannammal death and till date of sale agreement the 1st plaintiff was paying rent to Venkatarama Iyer.

6.It is further stated that the Thiyanagai Trust has executed a sale deed in favour of Santha Singaravelu on 27.05.1973 by which the legal title has been confirmed on Santha Singaravelu in the registered document no. 1485 / 1973 on the file of Sub Registrar of T.Nagar. Even then the plaintiff could not pay the entire sum and only a sum of Rs. 7,000/- was paid on the date of registration of the sale or the nesting sale consideration property in Doc. No. 1185/73 was mortgaged for securing prompt due payment of the balance purchase consideration of Rs.10,000 After execution of the sale deed in favour of the 1st plaintiff Venkatama Iyer came to know that he was friendly with the 1st defendant and also came to know the 1st plaintiff had acted in accordance with the advice given by the 1st defendant



S.A No.205 of 2015

in purchasing the property. Hence he began to give lot of trouble to the 1st plaintiff's wife and threaten to bring the property for sale under Section 69 of Transfer of Property Act. The 1st plaintiff has been carrying out business as a contractor in his capacity he has done several improvements in the main building, Kalyanamandapam at the request of Venkatarama Iyer who promised to adjust the charges towards the principal and Interest of mortgage of Rs.10,000/- In view of the fact that the 1st plaintiff who is friendly with the 1st defendant Venkatarama Iyer refused to give credit to the money lawfully due to the 1st plaintiff. The sale consideration obtained by the Thiyanayagi Ammal Trust by sale of B Schedule property has been utilized by the 10th defendant as well as one Venkatarama Iyer, father of the 11th defendant who was then the trustee for the improvement of Bhuvaneswari Kalyanamandapam(Marriage Hall). The said Bhuvaneswari Kalyanamandapam(Marriage Hall) that to with all the improvements effected with the money realized by the sale money from particularly described in Schedule B is now been taken in possession by the 1st defendant herein in pursuance of the decree in C.S.No.325/1975 as modified by the judgment and decree in [O.S.A.No. 130/1983](#). The sale consideration realized by the sale of B schedule property utilized for the improvement of



S.A No.205 of 2015

the property which has been taken possession by the 1st defendant along with improvements the sale in favour of the plaintiffs of defendants cannot be questioned by the defendants 1 and 3 to 9. and defendant would be bound by the sale in favour of the predecessor in title of the plaintiff. Further, assuming for the purpose of the agreement without admitting that for any reason ins Hon'ble court were to hold that the defendant 1, 3 to 9 could challenge the sale in favour of the plaintiff it is the 10th defendant sold the property as on date the worth of the property is not less than 10,00,000/- as stated by the plaintiff in the plaint The 10th defendant who sold property to the plaintiff should ultimately compensate the plaintiff if the title is prove to be defective and that he had no right to alienate the property, the amount of compensation is the value of the property at the time the title held to be defective.

7. It is learned that the 10th defendant had filed C.S. No.74/79 the tenant has deposited a large sum of money. It is further learned that the 10 and 11th defendant has filed an application under section 47 of CPC complaining about excessive execution, the plaintiff further learned the 1 and 10 defendant attempting to collude together and withdraw the money in court as compromise in the section 47 application.



S.A No.205 of 2015

8. The plaintiffs in the alternative is entitled to recover at least

Rs.5 lakhs from the 10th defendant herein if the title to the property proves to be defective and the 10th defendant has no other assets except the moneys in court deposited by the tenant in the C.S.No.74/1979. The plaintiff's wife Santha Singaravelu originally filed O.S.No.7380/1974 for an injunction restraining the mortgagee, the said Thuiyanayagi Trust from bringing the property for sale under Section 69 of the Transfer of Property Act. Thereafter the said Santha Singaravelu the wife of 1 plaintiff and mother of the plaintiffs 2 to 4 had also filed CS No:7619/1975 before this Court for redemption and ultimately after all these proceedings the amount due to said mortgages was settled and the money was paid to the property was redeemed from the mortgages. The plaintiffs were never informed about the nature of the proceedings taken by the 1st defendant or any one and the 1st defendant was merely assuring the plaintiffs that he has not taken action in respect of the property that had been conveyed to him by the Trust. On such assurances of the 1st defendant only the B schedule property which is a portion of the A schedule property was purchased in the name of Santha Singaravelu, i.e, the wife of 1 plaintiff and mother of the plaintiffs 2 to 4. With that assurances the 1st plaintiff, being a contractor himself had



S.A No.205 of 2015

improved the property by putting up the building with ground and two floors. The plaintiffs further reliably learned that originally not even Thalyanayagi Ammal Trust had been a party and after execution of the sale deed in favour of the plaintiff the trust has been made as a party. Hence the plaintiffs are advised to submit that even in judgment and decree against the Thalyanayagi Ammal Trust will not affect the title of the plaintiffs and their predecessors in title. The 1st defendant who has assured the plaintiffs that he will not disturb the property purchased by the plaintiffs included his name in the plaint in C.S.No.325/1975 the entire property and in appeal in O.S.A No.130/1983 and with some bailiff of the court the defendants came to the premises for taking possession on 28.12.1991. However they did not have any warrant to take possession from any of the plaintiffs and they did not come near the property which was in the occupation of the plaintiffs and other portions have been taken delivery of. The 1st defendant who had been so friendly all these days now even evades mainly the 1st plaintiff. The intentions of the defendant are not clear and therefore the plaintiffs are obliged to file this suit for declaration of their title and an injunction, for restraining the defendant from disturbing the possession of the plaintiffs. The plaintiffs alone are entitled to all the right to which the Seni



S.A No.205 of 2015

Singaravelu has entitled. The plaintiffs charge that the defendants are stopped from contenting that the property to which they are entitled to being the property more particularly described in the B Schedule which was occupied by Santha Singavelu all her death and subsequently in the occupation of the plaintiffs from 1971 had been in open, exclusive continuous and uninterrupted possession of the B Schedule property and had thus at any rate and in view of the matter perfected their life by adverse possession, any action violation or derogation of the earlier assurances of the 1 defendant would be a fraud practice on the plaintiffs and this Hon'ble Court. The sale deed executed by the trust in favour of the plaintiffs was the sheet anchor of the case of the 1 defendant to show that the property had been sold at a low price. The purchaser Santhu Singaravelu, she was never made party to the suit.

9. In these circumstances the plaintiff are entitled for declaration that they are the absolute owners of the property more particularly described in B schedule and the defendants cannot have any way any right whatsoever in the said property and that the judgment and decree in C.S.No.325/1975 as ordered by OSA No.130/1983 would not in any manner affect the title of the plaintiffs to the suit property and for a



S.A No.205 of 2015

consequential permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the suit property. Hence the suit.

10. The brief contents of the written statement filed by the defendants are follows:

The suit property forms part of a bigger property bearing New Door No.5, Dr. Sibar Street, Nagur, Madras 600 017: The suit property is the out house of the said bigger property. The entire property including the bigger property was always known as Bhuvaneswari Kalyana Mandapam(Marriage Halla). The said property along with the bigger property formed the subject matter of C.S.No.325/1975 filed by the defendant as an indigent person in the year 1972. The said suit came to be filed in the following circumstances. The defendant's mother mortgaged the entire property including the suit property to one Dr.B.C.Raj by way of a simple mortgage. When the mortgagor defaulted in payment of money due, Dr.B.C Raj threatened to bring the entire property to sale under Section 69 of the Transfer of Property Act. At that juncture one Venkataram Iyer intervened and paid off the dues of Dr.B.C.Raj and got the said mortgage assigned in favour of his daughter by name Seetha Natarajan by a registered



S.A No.205 of 2015

deed of assignment dated 11.12.1968. On the same day, the said Venkatarama Iyer obtained a usufructuary mortgage of the entire property including the suit property from the 1st and 4th defendant and the 1st defendant's deceased brother by name K.Narayanaswamy. The terms of usufructuary mortgage is that Venkatarata Iyer is to collect the rents from the entire property and discharge the loun due to Seetha Natarajan. Venkatarama Iyer is defaulted in the payment of the loan executed a simple mortgage to his daughter against the entire property on fraudulent and spurious grounds. Again the entire property was put up for sale by the said Seetha Natarajan with the active aid of her father. Venkataran Iyer conducted the sale on 30.06.1970 through one Viswanathan who was declared the successful highest bidder having bid the entire property for a sere sum of Rs.60,000/- it was registered on 16.08 1971 even though the sale was completed on 30.06.1970 Them is no legal entity for Thaiyumaya Ammal Trust existed either on 30.06.1970 or 16.08.1971/The usufructuary mortgagee Venkatarama Iyer was the founder trustee and the same was formed by a deed of Trust dated 14. 07.1973 and registered on 31.07.1973.This defendant filed CS No.325/1975 in September 1972 for the relief of declaration and delivery of possession and other consequential



S.A No.205 of 2015

relief, the said Venkatarama Iyer has contested the suit and filed a written statement and the same was adopted by the trust. The suit was decreed directing Venkatarama Iyer to pay a sum of Rs.60,000/- to this defendant and this defendant appealed the said judgment and the said appeal was taken on file as [O.S.A.No](#) 130/1983. Venkata Tyer and Viswanathin jointly another appeal in [O.S.A.No.](#) 324/1989 which was heard together and this defendant's appeal O.S.A.No.130/1983 was decreed in full on 25.09.1991 and the O.S.A.No.324/1989 filed by Venkatarama Iyer and Viswanathan was dismissed. In possession of the decree this defendant applied for EP.131/1991 to execute the decree for possession and consequently through the process of court, this defendant was put in possession of the property except the suit property. The plaintiffs' predecessor in title purchased the suit property on 07.05.1973 and registered as document No. 1485/1973 in the office of the Sub Registrar, T.Nagar. The alleged sale deed had been executed by Venkatarama Iyer, the 2nd defendant in C.S.No.325/1975. The said Venkatarama Iyer filed his vakalat on 31.10.1973 and contested the pauper application as well as the suit. The facts set out above clearly shows that the plaintiff do not get any title with the suit property. The alleged sale in favour of the plaintiffs' predecessor in title is hit by lis pen dens.



S.A No.205 of 2015

11. This defendant denies the allegation that the plaintiffs are and have always been well aware of the pending legal proceedings between this defendant and the Trust affairs. This defendant denies the allegation that he promised not to initiate action against the plaintiffs in respect of the suit property and that he requested the plaintiff to inform him of their dealings with Venkatarama Iyer and he insisted the plaintiff purchase the suit property and gave assurance that he would not proceed against the said property are denied by this defendant and submits that he never gave such assurance. The said allegation substantiates this defendant's plea that the plaintiff predecessor-in-title and Shumha Singaravel, the plaintiff herein and Indumath, the 2nd plaintiff knew the pendency of the legal proceedings and that the purchase by Santha Singaravelu was hit by lis pendens. The relationship between the defendant and the 1st plaintiff was always strained. There were legal proceedings between this defendant and the 1st plaintiff before the City Civil Court and Court of Small Causes, Madras regarding the arrears of rent. The 1st plaintiff was a tenant of building out house of the main kalyanamandapam(marriage Hall). The 1st plaintiff was aware of the mortgages created over the bigger property of which the suit property forms part. In fact the 1st plaintiff filed HRC 835/1969 before the court of Small



S.A No.205 of 2015

Causes impleading Venkatarama Iyer also a party. The HRC has filed under section 9 of Tamil Nadu Buildings (Lease & Rent Control) Act. The 1st plaintiff had paid rents to Venkatarama Iyer under order of court in HRC 835/1969. From the facts set out it is clear that the 1st plaintiff was aware of the events pertaining to the suit property and it is also clear that this defendant and the 1st plaintiff was far from being cordial. There is no merits in this suit this defendant is presently living in the portion of the Kalyanamandapam with his family, his son is married and his son's family is also living with this defendant's and he is struggling without a proper residential accommodation. This defendant- suited to claim damages the plaintiffs as the occupation of the property is actually illegal after the dismissal SLPs filed by Viswanathen in Supreme Court of India on 25.10.1991. Immediately after the dismissal of the SLP the plain this defendant filed EP.131/1991 regarding the possession of the entire bigger property including the suit property, at that time only the plaintiffs filed CS.No.1350/1991 before the High Court of Madras and obtained an order of injunction restraining the execution of decree in EP.131/1991. Thereafter this defendant has filed application no: 703/1992 in the High Court to vacate the order of interim Injunction. The High Court by order dated 26.06.1992



S.A No.205 of 2015

vacated the order of interim injunction. The plaintiffs preferred an appeal before a Division Bench of the High Court which ultimately allowed the appeal on plaintiffs depositing Rs.2 lakhs as security. Thus this defendant is entitled to claim damages from user and occupation of the suit property. The present building has been let out to tenants. If the suit property is let out, it will easily fetch monthly rent of not less than Rs.5,000/- however this defendant is restricting the damages at Rs.3,500 per month of occupation commencing from 25.10.1991 till the date of filing of the written statement. This defendant paid the court fee this defendant claims Rs.2,43,000/- being damages from 25.10.1991 till 23.07.1997 and he is also entitled to future damages at Rs.3.500/- per month. Hence prays to dismiss the suit.

12. Heard the learned counsel for the appellants and the learned counsel for the respondents.

13. The fact reveals that the suit property is forming part of a bigger property bearing new Door No.5, Dr.Singaravelu Stree, T.Nagar, Madras 600 017, and the entire property including suit property is known as Bhuvaneshwari Kalyana Mandapam(Marriage Hall). The said property along with the bigger property formed the subject matter of C.S No.325 of 1975 filed by the defendant as an indigent person in the year 1975. In the said suit



S.A No.205 of 2015

Venkataram iyer and Viswanathan representing Thayanayaki Ammal Trust contested as defendants. According to the plaintiff herein, he purchased the property from the said Trust represented by Venkatarama iyer on 27.05.1973. Furthermore, as per the contention of the plaintiff the entire property was brought for sale for the reason that Kannamal/defendant's mother original owner of the suit property failed to repay mortgaged amount. Hence the auction was conducted, in which One Viswanathan was successful bidder and sale was registered in his name finally on 16.08.1971. The present defendant alleged that the vendor of the plaintiff set up the said Viswanathan to purchase the property through Court auction as the property was sold for lesser value and also collusion between the Venkatarama iyer and Viswanathan and filed suit in the year 1970 as indigent person. Subsequently, suit filed by the defendant re-numbered as C.S 325 of 1975 in which Court declared that Court auction sale in respect of suit property was declared as null and void. Against which both the parties filed appeals before division bench this Court also confirmed single bench judgement in appeal in O.S.A No. 130 of 1983 and dismissed the appeal O.S.A No. 135 of 1983 filed by the defendant. Subsequently, defendants preferred S.L.P



S.A No.205 of 2015

before Honourable Apex Court and the same was dismissed on admission stage itself. Therefore the suit property purchased by the Venkatama Iyear and Viswanathan through Court auction was set aside through decree in C.S No. 325 of 1975. But the contention of the plaintiff herein is that she was not aware about the said suit proceedings nor she was informed by her vendor about the pendency of the said suit at the time of purchasing of the property.

14.Admittedly, the facts reveals that she was already in possession and enjoyment of the property much prior to her purchase after came to know about the said decree he preferred suit in O.S No. 1350 of 1991 praying to not to cause any interference in her enjoyment of the B schedule property and also obtained interim order but to execute the decree these defendants filed a execution application in E.P No. 31 of 1991 as the plaintiff obtained interim order except the suit property all the remaining extent was took possession by the defendants herein through execution proceedings. So far, from the date of auction sale the defendant entitled to claim damage counter claim was rightly appreciated by the Court below based on the decree in C.S No. 1350 of 1991 in which entire property was decreed belongs to the defendants. Foremost contention of the plaintiff is



S.A No.205 of 2015

that they were not aware of the earlier suit proceedings hence decree would not bind them more particularly decree obtained in C.S No. 325 of 1971 is not bind them. As discussed above, her vendor namely Thayanayaki Ammal Trust was one of the party to the suit proceedings represented by Venkataram iyer and Viswanathan. Admittedly, during the pendency of the said suit she purchased property in the year 1973. Hence her purchase is lispendence. Since her vendor was already party to the proceedings subsequently purchaser namely plaintiff predecessor in title Santha Singaravelu also bound by the decree passed against her vendor. Since the plaintiff herein purchased the property during pendency of the proceedings hence the plaintiff also bound by the decree this legal aspect was rightly appreciated by the Court below which needs no interference.

15. Further, there is no such Trust in the name of Thayaganayaki Ammal Trust in existence until 1973 and alleged Viswanathan lender on behalf of Trust which was not existence in the year 1970 thereby the alleged Court auction sale could not be called as bonafide one. The said auction sale held in the year 1970 has declared as null an void. Hence vendor of the plaintiff namely Thiyaganayaki Ammal Trust nor Viswanathan had no locus standi to sold the property to the plaintiff



S.A No.205 of 2015

WEB COUNCIL

accordingly auction sale as such is invalid and would not bind the defendant. Even though, the plaintiff was not a party to the proceedings she is bound by the earlier decree.

16. Furthermore, the plaintiff also claiming the suit property based on the adverse possession stating that the plaintiff is in enjoyment of the suit property with in which they are in possession and enjoyment of the property they prescribed title adverse possession. As discussed above, the plaintiff claims based on his sale deed executed by the said Trust in the year 1973 and the said sale deed was declared as null and void. Hence, she is not entitled to claim owner of the property based on that sale deed and also by way of adverse possession and also the possession of the plaintiff also objected by initiating suit proceedings before Civil forum and he cause interference therefore the plaintiff is not entitled to took possession plea that she was in uninterrupted possession of the property ever since from 1968. Therefore the plaintiff contention based on sale deed Ex.A1 is not parted with any title. Furthermore, the decree passed in civil suit also bound the plaintiff. The Courts below rightly appreciated these facts which needs no interference. Thus suit is dismissed as no merits.



S.A No.205 of 2015

17. With respect of damages for suit house occupation of the plaintiff, the defendant is entitled to future damages to the tune of Rs.3,500 from 25.10.1991 to 23.07.1997 and also the defendant is entitled to future damages rupees 3,500/- from date of suit till delivery of possession of the property to the defendant. Now, the defendant Mohana Krishnan is died his legal heirs are entitled for the said relief. Thus award of counter claim is confirmed. Hence the findings of the Trial Court with regard to damages is confirmed. However, suit is dismissed.

18. In result, the second appeal is dismissed. No costs. Consequentially connected miscellaneous petition is closed.

05.06.2023

pbl



WEB COPY



S.A No.205 of 2015

T.V.THAMILSELVI,J.

Pbl

To

1. The XVII Additional City Civil Judge, Chennai
2. The Section Officer,
V.R Section,

SA.No.205 of 2015

05.06.2023



WEB COPY



S.A No.205 of 2015