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S.A.No.325 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2022

Pronounced on : 08.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

S.A.No.325 of 2022
and
C.M.P.No.6802 of 2022

A.Narayanan

... Appellant

Vs.

1.Rajkumar Sethupathy

2.C.L.M.Uday Mehta Trust
Represented by its Managing Trustee,
L.Udaya Mehta, S/o.C.L.Mehta,
No.6, Burkit Road,
T.Nagar, Chennai – 600 017.

3.T.Rajagopal

4.K.Sundaram

5.K.Nandakumar

6.D.Mamtha

7.Sub-Registrar, Office of the Sub-Registrar,
Neelankarai, Chennai.

8.Tahsildar, Office of the Tahsilar,
Saidapet Taluk, Saidapet Chennai.

... Respondents



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Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree in A.S.No.4 of 2015 by the Principal District Judge, Kancheepuram District at Chengalpattu, dated 23.10.2021, reversing the judgment and decree passed in O.S.No.97 of 2009 by the Sub-Court, Tambaram, dated 13.06.2014.

For Appellant : Mr.M.Kannan

For R1 : Mr.S.Rajasekar

R2 to R8 : Set *ex parte* before lower Courts

J U D G M E N T

The 8th defendant in the suit in O.S.No.97 of 2009 on the file of Sub-Court, Tambaram, is the appellant in the above Second Appeal.

2.The 1st respondent in this Second Appeal, as plaintiff, filed the suit in O.S.No.97 of 2009 on the file of the Sub-Court, Tambaram, for a declaration that the plaintiff is the absolute owner of the suit property measuring an extent of 1 Acre and 8 Cents as per document and 1 Acre and 19 Cents as per enjoyment in No.148, Okkium Thoraipakkam Village, Saidapet Taluk; for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit



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property; for an injunction restraining the Sub-Registrar, Neelankarai, the 6th defendant in the suit, from completing the formalities of registering the fraudulent sale deed, dated 12.01.2000, executed by the 2nd defendant through his Power of Attorney Agents defendants 3 to 5 in favour of 1st defendant and handing over the same to the 1st defendant; for a mandatory injunction directing the 7th defendant in the suit, namely the Tahsildar, to transfer the patta originally in favour of Mrs.Kamala Devi in the name of plaintiff, and for costs.

3.Brief facts that are set out in the plaint filed by the 1st respondent/plaintiff are as follows :

3.1.The suit property measuring an extent of 1.08 Acres comprised in four different Survey Fields belonged to his aunt Late Mrs.Kamala Devi, who is the elder sister of his mother Mrs.Leela Devi. The suit property was purchased by Late Mrs.Kamala Devi by virtue of four different sale deeds in the year 1982 and Mrs.Kamala Devi obtained patta in her name and was in possession and enjoyment of the suit property during her lifetime.

3.2.The plaintiff's aunt Late Mrs.Kamala Devi died on 15.03.1991 at Vijaya Hospital and the death was registered with the Corporation of



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Madras on 18.03.1991. The husband of Late Mrs.Kamala Devi predeceased her and they were issueless. Mrs.Kamala Devi, prior to her death, had executed a Will dated 18.02.1991 and the said Will was registered as Document No.7 of 1991 before the District Registrar, Central Madras, on 18.02.1991, in the presence of witnesses. Under the said Will, plaintiff was appointed as Executor to carry out the directions in the said Will. In the registered Will, Mrs.Kamala Devi bequeathed all her properties to her niece and nephews. The plaintiff filed O.P.No.443 of 1991 before this Court for grant of probate of the Will. The younger sister of Late Mrs.Kamala Devi, by name Rukmani Devi, filed a caveat in the High Court and therefore, the petition filed by plaintiff in O.P.No.443 of 1991 for probate was converted as Testamentary Original Suit in T.O.S.No.2 of 1992. Later, all the parties, who were impleaded as legal heirs of the deceased Mrs.Kamala Devi in T.O.S.No.2 of 1992, entered into an arrangement giving effect to the Will with slight modifications and a memorandum of compromise was filed and recorded in T.O.S.No.2 of 1992. The plaintiff was allotted the suit property as found in Schedule-'H' of the order passed in T.O.S.No.2 of 1992, pursuant to the memorandum of compromise. The plaintiff took possession of the property allotted to him and the original title deeds relating to the suit property were handed over to the plaintiff in terms of the order in T.O.S.No.2



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of 1992. The plaintiff, thereafter, leveled the land, fixed concrete pillars to demarcate the suit property, after the allotment of property in the year 1993, as per the order in T.O.S.No.2 of 1992, and all the original title deeds relating to the suit property are with the plaintiff.

3.3.Later, plaintiff came to know that the 2nd defendant, represented by his Power of Attorney Agents, namely defendants 3 to 5, executed a fraudulent sale deed in favour of 1st defendant on 12.01.2000 on the basis of an unregistered Will dated 10.03.1988 stated to have been executed by Late Mrs.Kamala Devi. In the said sale deed, the date of death of Late Mrs.Kamala Devi is wrongly mentioned as 29.12.1988, whereas, the plaintiff's aunt Late Mrs.Kamala Devi died on 15.03.1991 at Vijaya Hospital and she had left a registered Will dated 18.02.1991 and the entire properties of plaintiff's aunt Late Mrs.Kamala Devi had been divided as per the compromise recorded in T.O.S.No.2 of 1992.

3.4.The 2nd defendant has nothing to do with the affairs of the plaintiff's aunt Late Mrs.Kamala Devi. Though the plaintiff's aunt Late Mrs.Kamala Devi was residing at No.4, Poes Road, Teynampet, she donated the said premises to Sathya Sai Central Trust in the year 1985 and that she



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was living with the plaintiff and his sister Latha Sabapathy at No.7, Venus Colony, Alwarpet, Chennai. False recitals are found in the alleged Will and based on the fraudulent Will, the 2nd defendant, through his Power of Attorney Agents namely defendants 3 to 5, has fraudulently conveyed the suit property to the 1st defendant. The Will executed by Late Mrs.Kamala Devi on 18.02.1991 is the last registered Will and the parties to T.O.S.No.2 of 1992 accepted the Will and compromised the matter and the entire assets of Late Mrs.Kamala Devi including the suit property were partitioned among the heirs of deceased Mrs. Kamala Devi as per Hindu Succession Act. The 2nd defendant, who is a stranger to the family, had forged the alleged Will dated 10.03.1988, said to have been executed by Late Mrs.Kamala Devi, and claims that he was serving Late Mrs.Kamala Devi in her old age and Late Mrs.Kamala Devi had bequeathed her only property to the 2nd defendant in view of his services. The statement of the 2nd defendant that Late Mrs.Kamala Devi bequeathed her only property to the 2nd defendant is a deliberate falsehood and the recitals would show that the Will dated 10.03.1988 is a concocted one. On the basis of the fraudulent and fabricated Will, the 2nd defendant executed a sale deed, dated 12.01.2000, through his Power of Attorney Agents defendants 3 to 5, by stating that Mrs.Kamala Devi died on 29.12.1988, whereas, Mrs.Kamala Devi died on 15.03.1991



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when she was in Vijaya Hospital and her death on 15.03.1991 was properly intimated by the Hospital authorities to the Corporation. Based on the forged Will and fabricated Death Certificate, defendants 2 to 5 had managed to transfer the Chitta and Adangal. However, the plaintiff is the absolute owner of the suit property and entitled to Patta.

3.5. After the suit was filed, the appellant/8th defendant purchased the suit property under an invalid sale deed and the sale deed is neither valid nor binding on the plaintiff. The 8th defendant was aware of the pendency of the suit even before the date of sale and the 8th defendant, who is not a *bona fide* purchase for value, is not entitled to resist the suit claim. Since the 2nd defendant had no title to the suit property and the Will dated 10.03.1988 is a forged document with false recitals, a cloud has been created by the defendants and the plaintiff is therefore constrained to file the suit for declaration of title and other consequential reliefs.

4. It is pertinent to mention that the suit was not contested by defendants 1 to 7 for obvious reasons. They were called absent before the trial Court and they remained *ex parte* throughout the proceedings.



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5.The 8th defendant filed a written statement. From the records, this Court finds that the 8th defendant has not even controverted several statements found in the plaint. However, there is a general denial that the allegations or averments contained in the plaint except those that are admitted in the written statement are false. After a general denial in the written statement and a formal reference to the reliefs prayed for in the plaint to question the maintainability of suit, the 8th defendant only pleaded as follows :

“5.The 8th defendant submits that the properties are cultivable lands.

6.The 8th defendant denies that the plaintiff has title to the suit property. On the other hand, the 8th defendant has title to the suit property by virtue of his purchase on 20.03.2000. The 8th defendant vendors had valid title to the suit property.

7.The 8th defendant submits that though the plaintiff claims to be in possession on the date of suit, neither he nor the person from whom he is claiming title had been in possession for considerable period prior to the date of the suit. The fact remains that 8th defendant and vendors had been in possession for a considerable period of time prior to the date of suit.



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8.The 8th defendant submits that the question of physical possession of the property is relevant for the decision for granting the relief of injunction.

9.The 8th defendant submits that in the context of the possession of 8th defendant and his vendors have erected fence around the suit property, dug a well, installed an electric pump set and operating the pump set and have raised valuable garden on the suit land. There are a number of fruit bearing plants and also there are crops on the portion of the suit property and also there are structures on the suit property.

10.The 8th defendant submits that the plaintiff has no prima facie possession of the suit property.

11.The 8th defendant submits that he reserve his right to file additional written statement in future.

12.The defendant submits that the above suit is devoid of merits and liable to be dismissed against the plaintiff.”

6.In the written statement filed by the 8th defendant, there is no specific denial about the relationship between the parties in T.O.S.No.2 of 1992 and Late Mrs.Kamala Devi. Except stating that the 8th defendant has title to the suit property by virtue of his purchase on 20.03.2000, the 8th



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defendant has not disclosed the source of his title in the written statement nor has he produced the document of sale dated 20.03.2000. However, a certified copy of the sale deed, dated 27.03.2000, by the 1st defendant through its Managing Trustee in favour of 8th defendant/appellant, is produced before the trial Court as Ex.B13. From Ex.B13, it is seen that the appellant has purchased the property during pendency of the suit under Ex.B13. In the document Ex.B13, except referring to the sale deed dated 12.01.2000 executed by 2nd defendant through his Power of Attorney Agents, there is no reference to his source of title. The certified copy of the sale deed dated 12.01.2000 executed by the 2nd defendant through Power of Attorney Agents is marked as Ex.B11 before the trial Court. Going through Ex.B11, it is seen that the 2nd defendant refers to the title of Late Mrs.Kamala Devi under different sale deeds obtained by her in 1982. However, it is stated that the said Late Mrs.Kamala Devi and her husband Mr.C.B.Chinna Reddy died on 29.12.1988 and 09.11.1984, respectively. It is further stated that Late Mrs.Kamala Devi, during her lifetime, executed a Will dated 10.03.1988, bequeathing the entire extent of 1 Acre 19 Cents as per enjoyment in favour of 2nd defendant and that the 2nd defendant became the absolute owner as per the Will alleged to have been executed by Late Mrs.Kamala Devi. Though the 8th defendant has not established his title to the understanding of anyone



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except by referring to his sale deed, from the recitals of the document under which the 8th defendant claims right, it can be inferred that the 8th defendant has no quarrel or dispute with regard to the title of Late Mrs.Kamala Devi. Though the 8th defendant reserved his right to file additional written statement, no additional written statement is produced before this Court or referred to in the judgments of Courts below.

7.The trial Court found that the suit property was originally owned by Late Mrs.Kamala Devi, the plaintiff's aunt. However, the trial Court, after referring to the facts that the certified copy of the Will dated 18.02.1991 marked as Ex.A6, has been given a go-by and that the parties to T.O.S.No.2 of 1992 have agreed that the said Will is not a voluntary one, and relying upon the Death Certificate of Late Mrs.Kamala Devi under Ex.B6, held that the plaintiff, who has not proved the Will under Ex.A6, has no right to claim ownership over the suit property. Further, the trial Court held that, from the documents produced on the side of appellant/8th defendant under Exs.B12, B14 to B19, it can be assumed that the 8th defendant and his vendors had been in possession for a considerable period of time even before the date of suit.



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8.It is pertinent to note that the original of the Will under Ex.B21 relied upon by the vendors of the 8th defendant, was not even produced. No one related to the Will was examined to prove the due execution of the Will under Ex.B21 or the fact that the Will had been acted upon. Very strangely, when going into the question of title pleaded by plaintiff as the legal heir of deceased Late Mrs.Kamala Devi, the trial Court dismissed the suit vaguely by assuming that the Will under Ex.B21 dated 10.03.1988, is valid and established ignoring the statutory requirement of Section 68 of Indian Evidence Act.

9.Aggrieved by the judgment and decree of the trial Court, the plaintiff/1st respondent preferred an appeal in A.S.No.4 of 2015 before the Principal District Court, Kancheepuram District at Chengalpattu.

10.The Appellate Court reversed the findings of the trial Court and held that the plaintiff has proved his title, by relying upon the order of this Court in T.O.S.No.2 of 1992. The Appellate Court held that the Will under Ex.B21 is a fraudulent document concocted by the 2nd defendant. Admittedly, the 2nd defendant remained *ex parte* and the original Will was not produced before the trial Court under the pretext that the Will was given



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to a private finance company for creating a mortgage. The Appellate Court, on the basis that the plaintiff was allotted the suit property pursuant to the compromise in T.O.S.No.2 of 1992 and the said compromise is among the legal heirs of Late Mrs.Kamala Devi, held that plaintiff is entitled for a declaration and other reliefs as prayed for. The Appellate Court also found that, absolutely, there is no oral or documentary evidence to support the case of 8th defendant. Only a person who is stated to be the Manager of appellant/8th defendant was examined. However, he pleaded ignorance about every transaction relating to the suit property and about the family of Late Mrs.Kamala Devi. The defendants in the suit filed another suit in O.S.No.317 of 2004 before the District Munsif Court, Alandur, for permanent injunction against the plaintiff and it is admitted that the said suit was dismissed for default. The certified copy of the decree in O.S.No.317 of 2004 is marked as Ex.A11. Therefore, the Appellate Court, while allowing the Appeal Suit, observed that the defendants appear to be land grabbers, having no legal right to inherit the property. By a judgment and decree dated 23.10.2021, the Appellate Court allowed the Appeal Suit in A.S.No.4 of 2015 and decreed the suit in entirety.

11.From a reading of the judgment of the Appellate Court, it is seen



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that the Appellate Court also committed some factual errors while considering some of the documents. However, on the admitted facts, the plaintiff cannot be denied the relief.

12. Aggrieved by the judgment and decree of the Appellate Court, the above Second Appeal is filed by the 8th defendant in the suit.

13. In the memorandum of compromise, the appellant/8th defendant has raised the following substantial questions of law :

“A. Judgment and decree in A.S.No.4 of 2015 passed by the Learned Principal District Judge, Kancheepuram District at Chengalpattu, the Learned Appellate Court is contrary to law, the oral and documentary evidence let in and the probabilities of the case and has a material bearing on the decision of the case and /or the rights of the parties before it.

B. The Learned Appellate Court committed very serious error of law and procedure in allowing the appeal without considering the considered findings of the lower court in each and every aspect, having been carried away by presuming that the trial court has set over the judgment of the Hon'ble High court in T.O.S No.2 of 1992 vide EX. A-8 & Ex.A-9, when the fact remains that the issue here is absolutely different than



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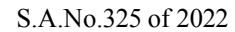
that has been considered by the Hon'ble High court.

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C.The Learned Appellate Court has failed to note that the T.O.S. No.2 of 1992 referred to by the respondent/ plaintiff herein has not been decided on merits by the Hon'ble High Court. But it's a compromise decree, wherein an even cursory glance of acts of parties in entering into a compromise would clearly go to prove that there is a clear case collusion.

D.The Learned Appellate Court totally lost track of the issues and was carried away by relying on the death certificate and compromise decree in T.O.S. No.2 of 1992 filed by the respondent / Plaintiff herein, which has been considered by the Trial court in detail and negative with logical and judicial reasoning.

E.The Learned Appellate Court failed to note the finding of the trial court about the exhibit A-5 which is death certificate of Mrs. Kamala Devi, wherein the Trial court has categorically found that the certificate is manual and cannot be relied upon and on the contrary the appellant herein has filed the computer generated certificate death certificate of Mrs. Kamala Devi vide Exhibit B-6.



H. The Learned Appellate Court Judgement with respects is in violation of law as failed to note that the Will Ex.A6 cannot be admitted in evidence unless it complies with the condition laid down in Section 68 of the Evidence Act, even if the execution of the document is expressly admitted or not specifically denied by the opposite party.



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I.The Learned Appellate Court has failed to note that the Hon'ble High court in T.O.S.No.2 of 1992 has not gone into the issue of title dispute between the appellant / defendant herein and the respondent/plaintiff in the said Compromise decree in T.O.S.No.2 of 1992, and the Hon'ble High Court has not decided the genuineness of the Will relied upon by both the parties in the said compromise decree.

J.Whether the Plaintiff could assert any right of title on the basis under alleged Will Ex.A6 when there is no Survey Number and Identification of the Property?

K.Whether the Lower Appellate Court is right in upholding the claim of the Plaintiff in placing reliance upon the document under Ex.A6 when it has no relevance to the suit property?

L.Whether the Lower Appellate court committed error in decreed the suit when the plaintiff has not produced to discharge his burden of proof?

M.The Learned Appellate Court has totally erred in coming to conclusion that the last Will only should be accepted, which principle would not be applicable in the present case, as the Trial court has rightly come to a conclusion that the date of death of the said Kamala Devi being shrouded with doubt and disputed and further the Will is also not relied by the



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respondent / plaintiff themselves the said Will and death certificate or unreliable and hence rejected by the Trial court.

N.The Trial court had rightly come to a conclusion that will submitted by the respondent / plaintiff cannot be considered though the Will submitted by the appellant herein is earlier one and the respondent / plaintiff has relied upon the latest Will for simple reasons that the respondent/plaintiff and his relatives have themselves admitted that the Will is not genuine in the compromise relied by the respondent/plaintiff.

O.Is the Lower Appellate Court is justified in granting the decree for permanent injunction, when the 8th defendant is in the possession of the property?

P.Is the Lower Appellate Court is justified in granting the decree for Mandatory Injunction against the Tahsildar for change of Patta in the name of Plaintiff is barred by law, since as per Patta Pass Book Act, the Tahsildar and the Revenue Divisional Officer alone are having powers to entertain the Patta matters and the prayer of the Plaintiff is barred by Civil Court?

Q.When it is the settled principle that in a suit for Declaration of Title, burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the



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weakness any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff under such circumstances, is the Lower Appellate Court is justified in granting the relief as prayed for in wholly?

R.Whether the findings of the Lower Appellate Court without any evidence on the part of the plaintiff in support of his title and possession to the suit property as put forward by him as against the 8th defendant's title and possession based on the Sale Deed Ex.B13 and documents Exs.B14 to B19 are sustainable under law?

S.The Learned Appellate Court has failed to exercise its jurisdiction or power and mechanically allowed the appeal without proper appreciation of facts and giving a go by to the well-established principles of law, equity and natural justice, and well considered order passed by the Trial court.

T.The Learned Appellate Court has passed a cryptic order without going into details and merits of the case, rather than going into the question of law or if there was any violation or reasoning made by the Trial court in its well-considered order.

U.The Learned Appellate Court failed to note that principles of Lis Pendens may not be applicable in the present case, in



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view of the fact that sale by 2nd defendant to Defendant No.1 was before the filing of suit and sale by Defendant No.1 to Defendant No.8 was on 27.03.2000 well before the service of Suit summons to any of the defendants and no knowledge of pending civil suit could be imputed on Defendants. Thus the Appellate court was not right in invoking the principles of "Lis Pendens" though it may appear that sale in favour of D-8 was after filing of Civil Suit, however no defendants had been served with summons.

V.The Learned Appellate Court failed to note that the suit was numbered only on 27.04.2000 and summons served to Defendants 1 to 7 thereafter only. But the sale to 8th defendant was on 27.03.2000. Thus on that context the question of Lis Pendence would not arise and first Appellate Court lost sight of the same, thereby coming to a conclusion that the sale would fall under Lis Pendence, which lacks legal support and ought to be rejected outright.”

14.From the questions of law framed, most of them are on factual premise. However, the above Second Appeal was elaborately argued by Mr.K.Kumar, learned Senior Counsel who appeared for the appellant/8th defendant, on 18.04.2022. After exhausting all his submissions, since the learned Senior Counsel sought for time to provide additional materials, this



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Court, with great reluctance, adjourned this matter to 28.04.2022 to be listed immediately after admission for disposal. However, on the last working day, i.e., on 29.04.2022, when the matter was listed, learned counsel on record requested an adjournment for no reason. Since this Court had already heard the matter in full, this Court reserved for orders on 29.04.2022.

15.Learned Senior Counsel for the appellant/8th defendant strenuously argued that the lower Appellate Court wrongly understood the facts as if the Will under Ex.A6 is a genuine Will accepted by all parties. Referring to the order dated 18.11.1993 in T.O.S.No.2 of 1992 in terms of compromise memo, learned Senior Counsel submitted that the parties to T.O.S.No.2 of 1992 have unanimously recorded in the Joint Memorandum of Compromise to the effect that the Will dated 18.02.1991 executed by Late Mrs.Kamala Devi is not a voluntary act and that the Will is suspicious for the reasons stated in the written statement filed by the younger sister of Late Mrs.Kamala Devi. Learned Senior Counsel then submitted that the findings of the lower Appellate Court are, therefore, perverse. Learned Senior Counsel then pointed out that the appellant or any of the defendants in the



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suit are not parties to T.O.S.No.2 of 1992 and that therefore, the compromise memo as such would not bind any of the defendants in the suit.

16.Learned Senior Counsel then submitted that the trial Court has given its findings on the basis of oral and documentary evidence and that the lower Appellate Court has not taken care to consider the findings of the trial Court, while reversing the judgment of the trial Court. Learned Senior Counsel then submitted that the plaintiff cannot rely upon the Will under Ex.A6, as the plaintiff himself has accepted the Will relied upon by him as vicious and cannot be relied upon. He further submitted that the plaintiff cannot assert any right or title on the basis of Will marked as Ex.A6 and that the lower Appellate Court committed a serious error in decreeing the suit without proof of the Will under Ex.A6 by satisfying the requirements of Section 68 of Indian Evidence Act.

17.Learned Senior Counsel also submitted that a mandatory injunction against the Tahsildar cannot be granted and such a direction is barred by law, especially having regard to the provisions of Tamil Nadu Patta Passbook Act, 1983 (hereinafter “Patta Passbook Act” for brevity). He reiterated that the lower Appellate Court ought to have upheld the 8th



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defendant's title and possession based on the sale deed under Ex.B13 and other documents Exs.B14 to B19. Learned Senior Counsel submitted that the suit summons were issued only after the sale in favour of appellant and therefore, the lower Appellate Court erred in holding that the transfer in favour of appellant is hit by *lis pendens*.

18.This Court is unable to countenance any of the submissions of the learned Senior Counsel appearing for the appellant in view of the admitted facts. The plaintiff has filed the suit for declaration of his title and for consequential reliefs on the basis of the order passed by this Court in T.O.S.No.2 of 1992, dated 18.11.1993, based on the compromise memo. He also projected his case as a legal heir of original owner. In this case, from the written statement filed by the appellant, this Courts finds nowhere a defence as regards relationship between the plaintiff and other parties in T.O.S.No.2 of 1992 with Late Mrs.Kamala Devi.

19.It is established that the suit property was the absolute property of Late Mrs.Kamala Devi. She had vast extent of lands including the suit



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property. The plaintiff is the sister's son of Late Mrs.Kamala Devi. The mother of plaintiff, namely Mrs.Leela Devi, is no more. Another sister of Late Mrs.Kamala Devi is the 1st defendant in T.O.S.No.2 of 1992. Brother of Late Mrs.Kamala Devi is the 2nd defendant in T.O.S.No.2 of 1992. It is admitted that Late Mrs.Kamala Devi's husband predeceased her and she had no other issues. Therefore, she was survived by her younger sister Mrs.Rukmani Devi, her brother V.Suresh Kumar, and niece and nephew, as pleaded by the plaintiff. The relationship is not specifically disputed.

20.When the plaintiff filed O.P.No.443 of 1991 for probate, the proceedings was converted as T.O.S.No.2 of 1992, as one of the sisters of Late Mrs.Kamala Devi, namely Mrs.Rukmani Devi, filed caveat. As per the compromise memo, the legal heirs of Late Mrs.Kamala Devi have agreed to give a go-by to the Will dated 18.02.1991 and agreed to divide the properties among themselves in terms of the compromise memo. The 2nd defendant, who is an utter stranger to the family, appears to have taken advantage of the pendency of T.O.S.No.2 of 1992 to create a Will by committing fraud and the document Ex.B21-Will came into existence. Admittedly, the original of Ex.B21-Will is not produced. As pointed out earlier, all the parties who are expected to defend the suit as predecessors in interest of appellant, remained



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ex parte. No one was examined to prove the genuineness of the Will marked as Ex.B21 under which the 2nd defendant claims title to the suit property.

21.As pointed out earlier, the 2nd defendant is an utter stranger to the family. It may be true that the 2nd defendant may claim under a Will if it is genuine. However, the 2nd defendant, who is a party to the suit, has never come forward to mark the original of the Will or contest the suit. It is mandatory that the Will under Ex.B21 to be acted upon can be admitted in evidence only when the statutory requirement under Section 68 of the Indian Evidence Act is satisfied. However, no one related to the execution of Will is examined and therefore, the Will under Ex.B21 set up by the 2nd defendant and the subsequent sale deed on the basis of the said Will, cannot be accepted as documents of title to consider the claim of a stranger, as seen from the documents relied upon by the appellant.

22.When the 2nd defendant has no right as legal heir of Late Mrs.Kamala Devi, the order passed by this Court in T.O.S.No.2 of 1992 cannot be challenged by him, as he has no *locus standi* to question the order passed in T.O.S.No.2 of 1992. Admittedly, the plaintiff was allotted the suit property as per Schedule-'H', as seen in the order passed in T.O.S.No.2 of



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1992. When it is the case of the plaintiff that he has taken possession, this

Court finds no other contradicting statement by anyone competent to speak about the enjoyment of plaintiff. The appellant, who is a subsequent purchaser, has filed a written statement denying the averments regarding possession stated in the plaint. Even the appellant has not examined himself as witness and he has requested his Manager, who has no personal acquaintance with the case and not competent to deny the facts pleaded in the plaint, to give evidence. The few documents filed by the appellants are the Revenue records. The plaintiff's version about the date of death of Mrs.Kamala Devi has to be accepted in the absence of any contradicting evidence from the defendant's side who has personal acquaintance.

23.The photocopy of the Patta, Chitta and Adangal Extract issued in the name of 2nd defendant are produced as Exs.B7 to B9. This Court is unable to accept the Revenue documents as *bona fide* ones, in view of the specific provisions of the Patta Passbook Act. It is not in dispute that the property originally belonged to Late Mrs.Kamala Devi and she is the lawful owner of the property. Section 10 of the Patta Passbook Act reads as follows:

“10. Modification of entries in the patta pass book.-



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(1) Where any person claims that any modification is required in respect of any entry in the patta pass book already issued under section 3 either by reason of the death of any person or by the reason of the transfer of the land or by reason of any other subsequent change in circumstances, he shall make an application to the Tahsildar for the modification of the relevant entries in the patta pass book.

(2) An application under sub-section (1) shall contain such particulars, as may be prescribed, and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

(3) (a) Before passing an order on an application under sub-section (1), the Tahsildar shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the Tahsildar decides that any modification should be made in respect of entries in the patta passbook, he shall pass an order accordingly and shall make such consequential changes in the patta pass book, as appear to him to be necessary, for giving effect to his order.

(b) If the Tahsildar decides that there is no case for effecting any modification of the entries in the patta pass book, he shall reject the application.

(c) An order under clause (a) or clause (b) shall contain the reasons for such order and shall be communicated



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to the parties concerned in such manner as may be prescribed.”

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Therefore, a modification of the Revenue record or mutation of Revenue record can only be by succession or by reason of transfer inter vivos or by reason of any subsequent change in circumstances. Section 14 of the Patta Passbook Act also compels the Revenue officials to amend the Revenue records only in terms of Civil Court's decree declaring one's title. It is now evident that Patta in favour of 2nd defendant is possible only if he establishes his title under the alleged Will forged by him. Revenue authorities, having regard to the specific provisions, are not supposed to effect mutation in Revenue records on the basis of unregistered Wills, unless the legal heirs of the testator are also given notice before effecting any mutation of Revenue records. Therefore, this Court is of the view that, by no legitimate process, Patta could have been changed in favour of 2nd defendant on the basis of the unregistered Will under Ex.B21. Even assuming that the Revenue officials have effected mutation of Revenue records in the name of 2nd defendant on the basis of a Will that requires no declaration by the Court that it is bad, as the transfer of patta in the name of strangers without notice to the legal heirs is invalid and a Civil Court need not act upon such Revenue records. This Court has time and again held that Patta or a Revenue record is not a document of title, especially when title is in issue. The findings of the trial



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Court are perverse. Even on the facts admitted and not specifically denied, the plaintiff is entitled to the relief as prayed for.

24. On examining the pleadings, this Court finds no specific denial in the written statement about the relationship of plaintiff with the original owner and the compromise memo. The trial Court has committed a serious error in relying upon the Will under Ex.B21 set up by the 2nd defendant. Further, the plaintiff's right recognised by all the legal heirs of original owner as per compromise memo recorded in the proceedings in T.O.S.No.2 of 1992, cannot be ignored, when all the legal heirs of deceased Late Mrs.Kamala Devi are parties to it. Assuming that the compromise memo is not binding on appellant, the plaintiff who has been recognised as owner by all the legal heirs of original owner, is entitled to a declaration as prayed for against a stranger who has no semblance of right. As observed by the Appellate Court, the appellant appears to be either a victim of fraud or a willing party who has involved himself in this litigation to assist the land grabbers.

25. Therefore, this Court does not find any questions of law much less substantial questions of law arise for consideration in this appeal. On examining the Appeal with reference to admitted facts and the materials on



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record, this Court is unable to appreciate any of the questions of law. Hence,

this Court finds no merit in this Second Appeal. Accordingly, **this Second Appeal is dismissed with costs.** Consequently, connected miscellaneous petition is closed.

08.06.2023

mkn

Internet : Yes

Index : Yes / No

To

- 1.The Principal District Judge,
Kancheepuram District @ Chengalpattu.
- 2.The Subordinate Judge,
Tambaram.



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S.S. SUNDAR, J.

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Judgment in
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