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S.A.No.321 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05 .01.2023

CORAM

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

S.A.No.321 of 2014
& M.P No.4 of 2014

Susaiarul

....Appellant/R6/Plaintiff in O.S No. 345 of 1998
Vs.

1.Dasarathan (died)
2.N.Thilagavathy
3.Girija
4.R.Bharathi ...R1 to R3/Appellants/Plaintiffs in O.S No. 219 of
1998/Defendants in O.S No. 345 of 1998
5.Vasanth
6.Gajapathy Ram
7.Laila
8.Lalitha
9.Niranjani
10.Varalakshmi ... R5 to R9/R1 to R5/Defendants in O.S No. 219
of 1998/Plaintiffs in O.S No. 345 of 1998
(R10 brought records as LRS of the deceased R1 viz., Dasarath an vide
order of Court dated 12/11/2019 made in CMP. No.23971/2019 in S.A
No.321/2014(RSMJ)) (R5 to R9 given up)

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the
Judgement and decree made in A.S No.7 of 2011 dated 22.07.2013, on the
file of the sub Court, Ponneri reversing the common judgement and decree

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made in O.S No. 219 of 1998 and 345 of 1998 dated 03.09.2010 on the file
of the District Munsif Court, Ponneri.

For Appellant	: Mr.M.K.Kabir Senior Counsel.
	For Dr.S.S. Swaminathan
For R1	:Died
For R2 to R4 & R10	: Mr.P.V.Muralidhar
For R5 to R9	: Given up
For R9	: Died memo filed

JUDGMENT

The appellant herein is the defendant/ purchaser of the suit property in O.S No.219 of 1998 which was originally filed by the Tilakathi and her two sisters against one Rathakrishnan and others for the relief of permanent injunction in respect of suit properties for an extent of 1.16 acres situated at Ponneri Taluk No. 115, Sembulivaram Village, contending that the suit properties was absolutely belongs to Renganayaki Ammal as she has no legal heir and she was under the care and custody of her brother one DasarathaNaidu, and the plaintiffs were brought by her from their childhood. Her another brother Rathakrishnan Naidu necessitate Reganayaki Ammal to execute the sale deed in favour of him in respect of the property but she was not interested. Thereafter, for her medical expense



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and to discharge her sundry debts she offered to sell the suit property, for that the plaintiffs expressed their willingness to purchase the suit property accordingly on 28.07.1998 for a sale consideration of rupees 1,65,650/- the property was purchased by the plaintiffs from the said Renganayaki Ammal thereafter they are in possession and enjoyment of the said property and the revenue records also transferred in their name the first defendant Rathakrishnan is the senior paternal uncle and with the help of the second defendant admitted to cause interference hence the suit. The first defendant Rathakrishnan (died) admits the relationship of Renganayaki Ammal but denied the plaintiffs right over the suit property based upon the alleged sale deed dated 28.07.1998 and contended that he look after the Renganayaki Ammal for that she executed a power deed and Will, in which, some portions in favour of the Dhasaratha Naidu and some portion in favour of Mr.Ratha krishnan. Thereafter, she executed power of attorney in favour of the Rathakrishana in respect of property and he sold 1.66 cents in S.F No.101/3, in favour of the second defendant(Vasantha Krishanan) and Reganayaki ammal also acknowledged receipt of the sale amount thereby at present the second defendant is in possession and enjoyment of the suit property he denied the plaintiffs' title and possession of the property.



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2. After valid purchase, purchaser of the suit property/

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Vasanthakrishnan filed suit in O.S No. 345 of 1998 on the file of the District Munsif, Ponneri, against the plaintiffs in O.S No. 219 of 1998 and Dhasarathan for the relief of declaration in respect of the property in Survey No.101/3 an extent of 1.16 acres shown as second item of the suit properties in O.S No.219 of 1998, in that suit this plaintiffs filed written statement denied the title of the said Vasanthakrishnan both the suits were jointly tried by framing separate issues. On considering the evidence on both sides the Trial Court held that the Rathakrishnam proved the alleged power deed dated 21.05.1998 executed by the said Ranganayaki Ammal and based upon the power deed dated 06.07.1998 the sale deed was executed in favour of the Vasanthakrishnan as such is valid thereby suit filed by the vasanthakrishnan in O.S No. 345 of 1998 is decreed. In respect of O.S No.219 of 1998 the Trial Court held that the plaintiffs are said to be purchased the suit property from Renganayaki Ammal based upon alleged sale deed dated 28.07.1998 subsequent to the purchase made by the Rathakrishnan and the plaintiffs are not proved the sale deed with the help of P.W.2 attestor thereby sale deed stands in the name of the plaintiffs dated 28.07.1998 not been proved by the plaintiff accordingly said suit in



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O.S No. 219 of 1998 was dismissed.

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3. Challenging the Trial Court findings the plaintiffs in O.S No. 219 of 1998/Thilakavathi preferred an appeal in A.S No.7 of 2011 against the common judgements of the Trial Court. The lower Appellate Judge independently analysed the facts and evidence held that power deed stands in the name of the Radhakrishnan and the Will said to be executed by the Renganayaki Ammal was on the same day on 21.05.1998 and the suspicious circumstance surrounding those documents not been accepted by the lower appellate Court and also not believed the cash receipt Ex.B7, as well as sale deed Ex.B1, and the sale agreement Ex.B.6 stands in the name of the Vasantha Krishnan not been accepted for the reason that with regard to sale consideration amount mentioned in the cash receipt, sale agreement and sale deed are differs each other which cause suspicious over the execution of those documents thereby it is believed that those documents are fabricated one, apart from that lower appellate Judge not accepted sale deed stands in the name of the Vasanthakrishnan dated 06.07.1998 as valid one for the reason that though the documensts were executed on 06.09.1998 registered near about two months later, in the month of September 1998 the plaintiffs Thilagavathi in O.S No.219/1998 purchased the property on 28.07.1998 is



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the earliest document but the Trial Court failed to appreciate all these facts thereby set aside the findings of the Trial Court by allowing suit filed in O.S NO. 219/1998 and dismissed the suit in O.S No.345 of 1998 filed by the Vasanthakrishnan and the purchaser.

4. Challenging the said findings the Susaiarul who is purchaser of the suit property/5th p in O.S NO. 345 of 1998 preferred this second appeal stating that the lower appellate Court failed to appreciate that with the help of D.W.2 evidence plaintiff was not able to prove the execution of sale deed by Renganayaki Ammal in their name but the Trial Court without appreciate this facts erroneously held that sale deed dated 28.07.1998 is valid and decreed the suit in favour of the plaintiff in O.S NO. 219/1998 as such is erroneous unjust and liable to be set aside. However, submitted that the sale deed stands in the name of the Vasantha krishnan is invalid for the reason that it was executed on 06.07.1998 but the same was registered on 07.09.1998 which is permissible under section 23 of registration Act, 1908 as it stipulates four months period for presentation of documents from the date of its execution of document but the lower appeallate court failed to appreciate these aspects. Hence, he prayed to set aside lower appellate Court findings as erroneous one. Furthermore, he also submitted that the plaintiff



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in OS No. 219 of 1998 filed single appeal against the judgement of two suits as such is improper procedure on that ground alone said appeal has to be dismissed lower appellate Judge not appreciated this legal aspects.

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

i. Whether the Appellat Court was right in entertaining one appeal against the judgements and decrees in two suitos when more particularly the suit in O.S No.219 of 1998 and O.S No.345 if 1998 is not the same and some of the parties in O.S No. 219 of 1998 are not parties in O.S No.345 of 1998 and by virtue of allowing one appeal the judgements and decrees passed in two suits can be reversed?

ii. When the sale deed was executed on 04.07.1998 in favour of Vasanthakrishnan and it was registered on 07.09.1998 within the time limit stipulated u/s 23 of Registration Act 1908 for presentation of documents from the date of its execution will not such registration date back to the date of execution?

Iii. When Ex.A1 sale deed has admittedly come into existence only after Ex.B1 sale deed in the absence of proof that it is a fraudulent document, will it not make Ex.A1 document nonest in so far as S.No. 101/3 is concerned?

6. The parties are denoted as per the suits. The facts reveals that the suit property in both the suit in O.S No.219 of 1998 and O.S 345 of 1998 was originally belongs to Renganayaki Ammal. Both the plaintiffs in O.S



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No.219 of 1998 and O.S No. 345 of 1998 admitted the fact that the suit property was originally belonged to one Ranganayaki Ammal who is wife of Raja Naidu and she had two brothers Dasartha Naidu and Rathakrishnam. The suit in O.S No.219 of 1998 was filed by Thilagavathi and others in which Radhakrishnan(deceased), Vasantha Krishnan and others shown as defendants. In the suit O.S No. 345 of 1998 Vasanthakrishnan(deceased) and anothers filed the suit against the plaintiffs in O.S No. 219 of 1998 and one Dasarathan. Both the plaintiffs in the above suits claiming title over the same property based upon their respective sale deeds which was said to be executed by the Renganayaki Ammal. The plaintiff/Thilagavathy in O.S No. 219 of 1998 claimed the suit property based upon the sale deed dated 28.07.1998/Ex.A1. On the other side the plaintiff/Vasanthakrishnan in suit O.S No. 345 of 1998 claimed title over the suit property based upon the Ex.B1/sale deed dated 06.07.1998. According to the Thilakavathi, Rathakrishnam was at Chennai and the said Renganayaki Ammal was look after by her father Dasaratha Naidu, the plaintiffs/Thilagavather were also brought up by the Renganayaki Ammal, and to settle her medical expenses she wanted to sell the properties for valid consideration hence they purchased the suit



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properties with an extent of 1.16 acres on 28.07.1998, thereby they became absolute owner of the properties and contend that they are also in possession and enjoyment of the same as absolute owner. The plaintiff/Vasanth Krishnan in O.S No. 345 of 1998 claimed that before executing the sale deed to the plaintiffs in O.S No. 219 of 1998 the said Renganayaki Ammal executed a Will and also appointed one Radha Krishnan as power agent with respect to the suit property through power deed dated 21.05.1998, based upon that power deed, the sale agreement/Ex.B6 dated 02.07.1998 was entered with one Vasanth Krishnan and the amount was received on 04.07.1998 and its receipts was marked as Ex.B7. Thereafter the sale deed executed on 06.07.1998 based upon that power deed dated 21.05.1998 but sale deed was not registered on same day which was registered on 07.09.1998 thereby Vasanthkrishnan contended that her sale deed was earliest one thereby she is the absolute owner of the suit property in S.F No.101/3 for an extent of 1.16 acre and she contended that in the suit property Thilagavathi and her sisters have no rights, she prayed for declaration in O.S No. 345 of 1998. But Thilagavathi(plaintiff in OS No.219 of 1998) contended that alleged power deed was cancelled by Renganyaki Ammal and also alleged Will and other documents are



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fabricated one, out of love and affection Renganayaki Ammal allotted the suit property in their favour on 28.07.1998 and the alleged sale deed dated 06.07.1998 would not confer any title in favour of Vasantha krishnan for the reason that it was not registered on the same date but it registered only after two months on 07.09.1998. So, from the date of registration itself the alleged sale came into force hence their document is not earliest one thereby Vasantha Krishnan is not entitled to title over the property.

7. The Plaintiffs in both the suits are bound to prove their respective title over the suit property since because both of them claiming title over the properties based on two different sale deeds said to be executed by the same vendor Renganayaki Ammal. It is pertinent to note that on the side of the both the plaintiffs in both the suit they have not produced any documents to prove the title of the Reganayaki Ammal. So they are very much failed to establish that Renganayaki Ammal was in possession and enjoyment of the suit properties during her life time. Admittedly, patta is not a document for the title, thus both the parties failed to produce the title deed of the Reganayaki ammal with respect to suit property, which has not been proved by the plaintiff in both the suits but the court below failed to appreciate this



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legal aspects. To prove the execution of the sale deed, the Plaintiff

Thilagavathi examined attester as P.W.2 his evidence was criticized by the defendants by stating that during the cross examination he has stated that Renganayaki Ammal was signed in the sale deed but on the contra in the sale deed Renganayaki Ammal had affixed her left thumb impression, thus his evidence not supported the case of the plaintiff/Thilagavathi. It is true that on perusal of his evidence, it reveals that he was not aware of the entire gift documents and in chief examination he stated Renganayaki signed in every page but on seeing the sale deed Ex.A1 Renganayaki Ammal affixed her thumb impression hence his evidence is not supported the case of the plaintiff with regard to execution of the sale deed. Apart from that, P.W.2 the plaintiff/Thilagavathi not examined any other independent witness to prove the execution of the sale deed. Admittedly, the said document was registered on 28.07.1998 though plaintiffs contend that their document is earliest one so they preferred title over the properties. But the defendant Vasanthakrishanan(plaintiff in O.S No.345/98) contended that the plaintiff's father Dhasaratha Naidu not taken care of the Renganayaki Ammal during her life time so she want to bequeath her properties hence she executed Will in favour of the Dasarathan and



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Radhakrishnan which is marked as Ex.B5 dated 21.05.1998. Further on the same date she had executed power deed in favour of Radhakrishnan to sold her properties which was marked as Ex.B2. Further he contended that based upon that power deed he entered into a sale agreement with one Vasantha Krishnan which was marked as Ex.B1 and he paid entire sale consideration which was marked as Ex.B7 and same was acknowledged by Rathakrishnan. Thereafter, the suit property was sold, on 06.07.1998, in favour of the Vansantha Krishnan which was marked as Ex.B1 which was prior to the alleged purchase made by the Thilakavaathi hence the defendant claimed her sale deed as earliest documents thereby Vasantha Krishnan claimed she is a absolute owner of the property and denied the Thilagavathy's title over the suit property.

8. On seeing the power deed as well as Will executed on the same dated 21.05.1998, the Rathakrishnan has not offered any explanation as why those two documents executed on same date by alleged Renganayaki Ammal. So called Will was also not proved as required under Section 68 of Evidence Act, before any of the court of law. The Trial Court held that subsequently power deed was executed and therefore the Will is not last document of Renganayaki Ammal but the power deed and sale deed also



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disputed by the Thilagavathi, moreover Will ought to have proved as per the manner known to law irrespective of power deed, therefore findings to that effect is erroneous one.

9. As far as execution of the sale deed by the Radhakrishnan in favour of the Vasantha Krishnan is concerned, based upon the power deed executed by Renganayaki Ammal the said Radhakrishnan executed the sale deed in favour of the Vasantha Krishnan for a sale consideration to that effect he relied sale receipt/Ex.B7, on combined reading of the sale agreement, sale receipt sale consideration was mentioned in the sale deed was 69,000/- but in Ex.B6/Sale Agreement was mentioned as 9,16,000/- and also in Ex.B7/Sale receipt which was mentioned as Rs.2,00,00/- it is seen the sale consideration differs each other. It clearly established that those documents were manipulated one and the suit property has not purchased by the Vasantha Krishnan for the valid sale consideration and also alleged receipt Ex.B7 also not acceptable for the reason that sale consideration in all these documents are differs each other. So also, sale made by the Radhakrihanan in favour of the Vasantha Krishnan is not been proved as a valid one. Therefore, the plaintiffs in O.S No. 345 of 1998 is not proved their title over the suit property based upon alleged sale deed dated



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06.07.1998. In respect of possession and enjoyment of the property plaintiff

in O.S No. 219 of 1998 (Thilagavathi and others) contend that before sale

during the life time of Renganayaki Ammal she possessed the properties till

purchase made by her on 28.07.1998 admittedly except cost receipt Ex. A3

no document was adduced on the side of the plaintiffs to show that

Renganayaki Ammal was in possession and enjoyment of the extent of 2.69

Acres at Sembilibvaram village. Furthermore, after alleged purchase the

plaintiffs also not produced any documents that they are possession and

enjoyment of the suit property. So also, the plaintiff in O.S No. 345 of

1998 also has not produced any document to show that Renganayagi Ammal

was in possession and enjoyment of the property and nor their possession

and enjoyment of the property. Both the Court below analysed the date of

execution of the sale deed and the Trial Court held that sale deed stands in

the name of the plaintiff O.S NO. 345 of 1998 is valid one and the lower

appellate Judge held that sale deed stands in the name of the plaintiff on

21.09.1998 is valid. As discussed above, both the plaintiffs failed to prove

the title of Reganayaki Ammal in respect of the suit properties because both

of them bound to prove the title of Reganayaki Ammal. They relied patta in

S.No. 75 admittedly it is not a document for title plaintiffs' in both the suit

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failed to establish that suit property originally belongs to Renganayaki

Ammal and both the Court below not appreciate these legal aspects as it amount to misconception of law and facts.

10. Further, the Radhakrishnan contended that his title is based on her power deed, in turn, he executed sale deed in favour of the Vasantha Krishnan on 06.07.1998 hence it is the earliest document, though it was registered two months later and the Trial Court accepted this facts. But the lower appellate Court rejected his claim stated that document was not registered on the same date and plaintiff in O.S NO. 219 of 1998 purchased the property on 28.07.1998 was the earliest purchase and decreed suit in their favour. As discussed above, the document relied by Radha krishnan in respect of power of attorney, sale agreement, sale deed not been proved as valid one and the execution of those documents are surrounded with suspicious circumstances. So also, the execution of sale deed dated 28.07.1998 by the plaintiff is not been proved with the material evidence. Furthermore, possession of the properties are also not been proved by the plaintiffs in both the suits and also not proved their sale deed and the execution of the sale deed through material evidence thereby they are not proved their title over the suit property. Besides title of the Renganayaki



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Ammal also not been proved. So also, the sale deed stands in the name of the plaintiff in O.S 219 of 1998 and sale deed stands in the name of the Vasantha Krishnan/plaintiff in O.S No.345 of 1998 would not confer any better title to them. Title of the properties not been established, this Court need not go into other issues with regard to date of registration of sale deed as well as filing single appeal filed against the judgement. Accordingly question of laws are answered so findings of the Court execution of the payment is totally erroneous one.

11. Further, in O.S 219 of 1998 filed injunction without proving title over the property moreover they have also not proved their possession hence they are not even entitled for the relief of permanent injunction the Court below failed to appreciate this aspects. Hence, the plaintiff in O.S No. 219 of 1998 bound to prove not only their title also title of their vendor Renganayaki Ammal hence both the suits are dismissed as no merits and also the findings of the Trial Court and the lower appellate Court is set aside.



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12. In result, the second appeal is dismissed. No merits. There shall be no order as to costs. Consequentially connected miscellaneous petitions are closed

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To

- 1.The District Munsif Ponneri.
- 2.The Subordinate Court, Ponneri.
- 3.The Section Officer,
VR Section.



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