



S.A. Nos.491 & 492 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED :11.12.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Second Appeal Nos. 491 & 492 of 2017
and
C.M.P.Nos.11986 & 11987 of 2017

1.N.Ramasamy (Died)
2.Karupakal
3.Ponnusamy
4.Rangasamy
5.Selvan
6.Rasu
7.Ramasamy

... Appellants in both SAs

(AA2 to 7 brought on record as
LRs of the deceased Sole appellant
viz., N.Ramasamy vide order dated
19.01.2022 made in CMP. No.330
and 332 of 2022 in S.A. Nos.491
& 492 of 2017)

Versus

1.K.P.Venkatachalapathy
2.Deivaththal
3.K.V.Janagarathinam

.. Respondents in SA No. 491

1.Deivaththal
2.K.P.Venkatachalapathy
3.K.V.Janagarathinam

.. Respondents in S.A.No.492

(R3 impleaded as party
vide Court order dated 20.10.2021

<https://www.mhc.tn.gov.in/judis>



S.A. Nos.491 & 492 of 2017

made in CMP.No.16718 & 16722/2021
in S.A.Nos.491 & 492 of 2017).

WEB COPY

PRAYER in S.A.No.491 of 2017 : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 24.02.2017 in A.S.No.15 of 2016 on the file of III Additional District and Sessions Court, Gobichettipalayam, confirming the judgment and decree dated 24.02.2016 in O.S.No.61 of 2010 on the file of the Subordinate Court, Sathyamangalam.

PRAYER in S.A.No.492 of 2017 : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 24.02.2017 in A.S.No.16 of 2016 on the file of III Additional District and Sessions Court, Gobichettipalayam, confirming the judgment and decree dated 24.02.2016 in O.S.No.48 of 2010 on the file of the Subordinate Court, Sathyamangalam.

For Appellants : Mr. T. Marugamanikkam, Senior Counsel
for Mrs. P.T. Ramadevi
in both the appeals

For R1 in SA No.491/2017 & Mr.E.Sampath Kumar
R2 in S.A.No.492/2017 : for Mr.V.P.K.Gowtham

For R2 in SA No.491/2017 &
R1 in S.A.No.492/2017 : Mr.D.Selvaraju

For R3 in both SAs : Mr.Abrar Md.Abdullah

COMMON JUDGMENT

The appellants have preferred these Second Appeals against the Judgment and decree of learned III Additional District and Sessions Judge, Gobichettipalayam, made in A.S. Nos. 15 & 16 of 2017 respectively, dated 24.02.2017, confirming the Judgment and decree and judgment of the learned



S.A. Nos.491 & 492 of 2017

Subordinate Judge, Sathyamangalam made in O.S. Nos. 61 & 48 of 2010 dated 24.02.2016.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. The first appellant herein/deceased Ramasamy was the first defendant in O.S. 61 of 2010 and plaintiff in O.S. No. 48 of 2010, on the file of the Subordinate Court, Sathyamangalam. He has challenged the concurrent findings of the Courts below, rendered in A.S. No. 15 of 2016 (O.S. No. 61 of 2010) and A.S. No. 16 of 2016 (O.S. No. 48 of 2010) on the file of III Additional District Sessions Court, Gobichettipalayam.

4. The first respondent/Vengatachalapathy, as plaintiff, filed the suit in O.S. No. 61 of 2010 suit for declaration to declare that the sale deed executed by the second respondent herein namely Deivathal in favour of the appellant / first defendant dated 17.06.2005 is void and not binding him and for other consequential relief.



S.A. Nos.491 & 492 of 2017

WEB COPY

5. The appellant, as a plaintiff, filed the suit for declaration of title as per the sale deed dated 17.06.2005 and claimed that he is the absolute owner of the property and the sale deed stands in the name of Vengatachalapathy / 2nd defendant / 1st respondent herein dated 07.12.2006 is null and void and not binding.

6. In both suits the plaintiffs claimed title over the suit property by relying the sale deed stands in their name, said to be executed by the second respondent herein/Deivaththal. The parties and the suit properties are same in both the suites in which common judgment was rendered by the trial Court holding that the sale deed stands in the name of Vengatachalapathy is valid one. Accordingly, the suit in O.S. No. 61 of 2010 was decreed. Resultantly, the sale deed stands in the name of the 2nd defendant / appellant herein was declared as null and void and accordingly, the suit filed by the plaintiff/appellant herein in O.S. No. 48 of 2010 was dismissed. Challenging the findings of the learned trial Judge, the appellant herein has preferred the first appeals in A.S. No. 15 and 16 of 2016 before the learned III Additional District Judge, Gobichettipalayam. On hearing both sides the first Appellate Judge also dismissed both appeals by confirming the findings of the trial



S.A. Nos.491 & 492 of 2017

Court. Aggrieved over the same the appellant has preferred these Second Appeals.

7. Brief facts of the case are as follows:

The suit property as described in the plaint schedule is comprised in New Survey No.62/4, bearing Patta No.2.62 to an extent of 1 acre 80 cents along with other LPP irrigation right with cart track with four boundaries originally belongs to one Marakkal, who, after solving the family dispute retained the property through process of law in O.S. No. 247 of 1996 along with E.P. No. 33 of 2003. During her life time the said Marakkal sold a portion of the property to third party and also executed a Will in favour of the said Deivathal on 15/09/2003. She died on 16.12.2003 and after her demise, Deivathal become absolute owner of the suit property. According to the plaintiff/Vengatachalapathy, he entered into sale agreement with said Deivathal/2nd defendant, but she evaded to perform the terms of the agreement, hence he filed a suit in O.S. No. 162 of 2004 on the file of Sub-Court, Gopichettipalayam, against her. Though she contested the case, later she admitted her obligations under the agreement, thereby the suit was decreed on 24.08.2006 and during the proceedings there was an order of interim injunction, not to make any encumbrance over the property. On such



S.A. Nos.491 & 492 of 2017

admission, the balance sale amount of Rs.1 lakh deposited, was paid out of Court and on receiving the same, Deivaththal/2nd defendant executed the sale deed in favour of the plaintiff/Vengatachalapathy on 07.12.2006 and possession was handed over to him. Besides, the interim order granted in I.A. No. 42 of 2004 against her not to make any encumbrance till the disposal of the suit was in force, till the date of decree on 24.08.2006. Thus, the plaintiff/Vengatachalapathy is the absolute owner of the property hence he filed a suit for declaration and other consequential relief.

8. The first defendant namely Ramasamy also filed a suit in O.S. No. 48 of 2010 stating that he entered into sale agreement with Deivaththal on 12.04.2004, based on that she executed sale deed in his favour on 17.06.2005 for valid consideration and the possession was also handed over to him on the same day. According to Ramasamy, he was not aware of the litigation between the plaintiff and the Deivaththal in O.S. No. 162 of 2004 thereby the judgment in decree would not bind on him. Besides Deivaththal has no right to execute the sale deed in favour of the plaintiff for the reason that already she conveyed the property to him on 17.06.2005 itself. Hence, Deivaththal has no right and title to convey the property, and the plaintiff is entitled to claim title over it, based on the sale deed said to be executed by Deivaththal.



S.A. Nos.491 & 492 of 2017

Therefore, he prayed to declare the sale deeds stands in his name as valid and also prayed to declare the sale deeds stands in the name of the plaintiff/Vengatachalapathy as null and void.

9. In the suit, filed by the plaintiff/Vengatachalapathy, the vendor Deivaththal claimed that she had entered into sale agreement with Ramasamy on 12.04.2004, based on that, she executed a sale deed in his favour on 17.06.2005, along with possession and denied that Ramasamy was not aware of the suit proceeding in O.S.No.162 of 2004 which was filed by the plaintiff for the relief of specific performance. Thereby she claimed that the sale deed stands in the name of the plaintiff/Vengatachalapathy is void and unenforceable. She also filed a written statement in the suit filed by the said Ramasamy/1st defendant herein stating that, she entered into sale agreement with the plaintiff on 12.04.2004 and received advance of Rs.2 lakhs and based on that she executed a sale deed on 17.06.2005. She also contended that she has not executed any sale deed in favour of the plaintiff/Vengatachalapathy in the year 2006. Considering such submissions, the learned trial Judge framed issues as to whether the plaintiff in the respective suit is entitled for declaration of the title as prayed for.



S.A. Nos.491 & 492 of 2017

10. Before the trial Court the plaintiff / K.P.Venkatachalapathy was examined as P.W.1 and two witnesses were examined on his side and he marked Exs.A1 to A13. On the side of the first defendant/Ramasamy he examined himself as D.W.1 and Deivaththal was examined as D.W.4 and other individual witnesses were examined as D.W.2, 3 & 5. and Ex.B1 to B25 were marked.

11. The learned counsel for the appellant/D1/ Ramasamy submitted that suit property belongs to Deivaththal is admitted and she, as absolute owner, entered into sale agreement with him on 12.04.2004 by receiving the entire consideration. She also executed a sale deed in his favour on 17.06.2005, much earlier to the sale deed in the name of the plaintiff/ Vengatachalapathy, thereby, he contended that the sale deed stands in his name is valid. He also contended that on the date of sale deed executed in favour of plaintiff/Vengatachalapathy, the original vendor/Deivaththal has no right to convey the property, thereby the sale deed stands in the name of the plaintiff/Vengatachalapathy is null and void and not binding on him. But the learned trial Judge without appreciating the legal position, decreed the suit in favour of the plaintiff/Vengatachalapathy by holding, that the subsequent sale deed stands in the name of the plaintiff/Vengatachalapathy as valid, as such it



S.A. Nos.491 & 492 of 2017

is erroneous and liable to be set aside. Further he submits that, in the specific performance suit filed by the plaintiff in O.S. No. 162 of 2004, the second defendant/Ramasamy was not a party, thereby the decree obtained by the plaintiff/Vengatachalapathy would not bind him, so the sale deed executed based on the said decree also will not bind upon him. But without appreciating those facts, the learned trial Judge dismissed the suit filed by the appellant in O.S. No. 48 of 2010 as such it is unfair and liable to be set aside.

12. By way of reply, the learned counsel for the plaintiff/Vengatachalapathy submitted the plaintiff entered into sale agreement with Deivathal to purchase the property and she evaded to perform her right, therefore, he filed a suit and obtained a decree in which Deivaththal has not raised any objection and agreed to execute the sale deed. Hence, out of Court settlement, balance sale consideration was paid to her and she also voluntarily executed a sale deed in his favour. The said Deivaththal also not disclosed about the execution of sale deed in favour of the 2nd defendant / Ramasamy, therefore, he cannot claim himself as a bonafide purchaser. Considering all the facts, the learned trial Judge rightly decreed the suit filed by the plaintiff in O.S. No. 61 of 2004. Accordingly, he prays to dismiss the appeal as no merits.



S.A. Nos.491 & 492 of 2017

13. Considering both sides submission the following questions of law are framed in both the appeals.

“a. Have not the both courts below correct in not dismissing suit filed by the 1st respondent to declare the sale deed executed by the 2nd respondent in favour of the appellant on 17.06.2005 is null and void is not legally maintainable without proper relief mandatory injunction against the appellant by making proper amendment to the decree in O.S.No.162 of 2004 in consance with AIR 1954 SC 75.

b. Have not the both Courts below correct in decreeing suit filed by the 1st respondent for declaration of the sale deed executed by the 2nd respondent in favour of the appellant is null and void and consequential injunction without considering the admission of the plaintiff that, he filed a suit without cause of action after knowing the factum of possession of the appellant.

c. Have not the both the Courts below correct in holding that, the execution of the sale deed executed by the 1st respondent in favour of the appellant is void without properly constructing the Section 52 of the Transfer of Property Act against the law of the Supreme Court that transfer pendente lite is not illegal ip-so jure and void?

d. Have not the both the Courts below correct in not dismissing the suit filed by the 1st respondent in holding that, he has no right to seek the declaration of appellant title as void without getting any legal right over the suit schedule property through the sale deed dated 07.12.2016 for the reasons being



S.A. Nos.491 & 492 of 2017

WEB COPY

that, the 2nd respondent had no title to convey the same after execution of sale deed in favour of appellant on 17.06.2005 on the basis of sale agreement existed dated 12.04.2004 prior to filling of suit of specific performance in O.S.No.162 of 2004."

14. The entire facts reveal that the suit property belongs to Deivaththal through the Will of the year 2003, from that time onwards, she is the absolute owner of the suit property and it is admitted by both the parties. The evidence let in the suits also reveal that Deivaththal is daughter-in-law of the 2nd defendant/Ramasamy. The plaintiff / Vengatachalapathy claimed right over the suit property based on the sale deed dated 17.06.2005. On the other hand, 2nd defendant namely Ramasamy claims to be the absolute owner of the property based on the sale deed dated 17.12.2006 executed by D1 /Deivaththal. So the 2nd defendant claimed to be the absolute owner of the property, based on the sale deed, said to have been executed by Deivaththal on 17.06.2005. Both the parties are claiming relief of declaration in their respective suits in O.S.No.61 of 2004 and O.S. No. 48 of 2010 respectively. So burden of proving the title over the property is on both the parties namely, plaintiff / Vengatachalapathy and 2nd defendant / Ramasamy.



S.A. Nos.491 & 492 of 2017

15. According to the plaintiff/Vengatachalapathy, he entered into sale agreement with Deivaththal on 08.06.2004 for total sale consideration of Rs.3,28,000/-. The Lower Court judgement in O.S.No.162 of 2004 was marked as Ex.A4 and it reveals that Vengatachalapathy filed a suit for declaration and specific performance against Deivaththal and another. In that suit, Deivaththal appeared through his counsel and the plaintiff also produced the sale agreement dated 08.06.2004 as document. Though Deivaththal denied the said agreement and also denied that she has not received any sale consideration, issues were framed and trial was conducted, during which the plaintiff/Vengatachalapathy was examined as P.W.1 and Deivaththal was examined as D.W.4. During the trial proceedings Deivaththal submitted memo and stated that she has agreed to execute the sale deed in favour of the plaintiff/Vengatachalapathy and also agreed to receive the balance sale consideration. At that time, already sale amount was deposited in the Court by the plaintiff/Vengatachalapathy. Based on the deposit, the suit in favour of the plaintiff/Vengatachalapathy was decreed on the basis of consent given by Deivaththal to execute the sale deed in favour of the plaintiff/Vengatachalapathy. Accordingly, she executed a sale deed in favour of the plaintiff/Vengatachalapathy on 07.12.2006 and the said sale deed was marked as Ex.A7. The sale deed reveals that there is a mention of the sale agreement



S.A. Nos.491 & 492 of 2017

between them, dated 08.06.2004 and also the suit in O.S.No.162 of 2004.

Based on the decree the said sale deed was executed. Further the recitals also reveals that total consideration of Rs.3,28,000/- received by Deivaththal / Vendor and handed over the possession on the same day in favour of the plaintiff/Vengatachalapathy. With the help of all those documents, the plaintiff/Vengatachalapathy is able to establish that there was an agreement between him and the said Deivaththal. The suit was filed in the year 2004, based on the decree, Deivaththal subsequently executed a sale deed in favour of the plaintiff. Further, to prove the execution of the sale deed he examined one of the witnesses Palanisamy as D.W.2. His evidence reveals that Deivaththal came to the Registrar office and executed the sale deed in the presence of witnesses and also accepted that already she received a sale consideration, which was deposited in the Court and also handed over the possession of the property. Therefore the plaintiff/Vengatachalapathy complied the basic requirement to prove the sale deed.

16. Coming to the facts of the case, whether second defendant/Ramasamy proved his title over the property based on the sale deed marked as Ex.B8 dated 17.06.2005, it was also executed by Deivaththal. According to the defendant/Ramasamy, Deivaththal entered into sale agreement with him on



S.A. Nos.491 & 492 of 2017

12.04.2004 based on that, she executed a sale deed dated 17.06.2005 nearly after one year of execution of sale deed in favour of plaintiff/Vengatachalapathy, as rightly pointed out by the plaintiffs' counsel. On perusal of the sale deed Ex.B8 there is no mentioning about the said sale agreement between the parties. If really he entered into sale agreement with her, he ought to have mentioned the same in the sale deed but he failed nor assigned any reason for not mentioning the said sale agreement, while executing the sale deed. Admittedly on the date of execution of the said sale deed in the year 2005 the plaintiff/Venkatachalapathy obtained decree in his favour directing the Deivaththal to execute the sale deed. Furthermore, the learned counsel for the plaintiff also pointed out that in the suit in O.S. No. 162 of 2004 there was an interim order obtained by the plaintiff against Deivaththal and her family members not to cause any encumbrance over the property and the said order was in force till the decree on 24.08.2006. Therefore, on the date of alleged execution of the sale deed in favour of Ramasamy there is an injunction order against Deivaththal not to make any encumbrance and inspite of that she executed the sale deed as such it is clearly hit by the principles of lis pendence.

17. The learned counsel for the defendant/Ramasamy submits that on the date of execution of the sale deed in favour of the plaintiff in the year 2006



S.A. Nos.491 & 492 of 2017

Deivaththal has no right and title over the property, because in the year 2005 itself, she executed the sale deed in favour of Ramasamy/2nd defendant. Hence the said sale deed stands in the name of the plaintiff claimed as null and void.

The point to be decided is as follows:

"Whether the sale deed stands in the name of the plaintiff is valid one? (or) the sale deed stands in the name of the defendant / Ramasamy is valid one?"

18. Before the trial Court Deivaththal was examined as DW.4 and she gave evidence supporting the case of 2nd defendant stating that she has not received any consideration from the plaintiff/Vengatachalapathy, on the other hand she claimed that the sale deed stands in the name of 2nd defendant/Ramasamy is valid one. But during cross-examination made by the plaintiff she admits in O.S.No.162 of 2004 as follows:

"... mjpg; vd;idAk; vdJ khkdhiwAk; xUkhjfhky; rptpy; rpiwapy; itf:f
cj:jutplg;gl:L MI:Nrgid nra;J ehd; cah; ePjpkd;wj;jpy; rp.Mh;.gp.1593/14
vd;W jhf;fy; nra;Jk; me;j cj:jutpy; ehd; vdJ khkdhUf;F v*jp nfhLf;fg;gl;l
fpiuag; gj;jpuj;ij gw;wp rptpy; rpiwapy; milf;fg;gl;l cj:juT uj;J
nra;ag;gLfpwJ...."



S.A. Nos.491 & 492 of 2017

WEB COPY

19. Thus, in the evidence Deivaththal she admitted the sale agreement in favour of the plaintiff in O.S. No. 162 of 2004 and she also filed a memo. Subsequently, she did not appear before the said suit proceeding and also denied her signature in the written statement, proof affidavit, which shows that she deliberately suppressed the facts and supporting her fathers-in-law case. Even in the written statement filed by her she has not disclosed that the said Ramasamy is her father-in-law and in the evidence, as well as the conduct of the Deivaththal reveals that her father-in-law alone conducted all the proceedings and she acted according to his tunes. Therefore having admitted the suit between her and the plaintiff in O.S. No.162 of 2004 and also submitted to the decree based on that, the suit was also decreed in favour of the plaintiff/Vengatachalapathy, Deivaththal executed sale deed in favour of the plaintiff in the year 2006. Even at that time she has not disclosed that she executed sale deed in favour of her father-in-law in the year 2005 and that itself shows that her conduct is not trustworthy and at the instigation of her father-in-law she suppressed all the real facts.

20. As discussed above the plaintiff approached the Court for the relief of specific performance in O.S. No. 162 of 2004 and obtained relief in his



S.A. Nos.491 & 492 of 2017

favour through Court of law based on that with the consent of the vendor, the sale deed was executed in the presence of the witnesses, in the year 2006.

Further, as per the interim order passed in the said suit Deivaththal was restrained not to cause any encumbrance of the property. In spite of that, she executed the sale deed in favour of the 2nd defendant as such it is not valid one. Therefore the sale deed stands in the name of the second defendant dated 17.06.2005 is hit by the Provision of Section 52 of Transfer of Property Act. Because on the date of alleged sale deed, the suit in O.S. No. 162 of 2004 was pending and the purchase made by Ramasamy is subject to the result of the suit in O.S.No.162 of 2004, which was decreed in favour of the plaintiff. Based on that, subsequently the vendor Deivaththal also executed a sale deed in his favour, thereby the said sale deed also binds the 2nd defendant namely Ramasamy. So the sale deed executed by Deivaththal in favour of Ramasamy, during the pendency of the said proceedings on 17.06.2005 is invalid one and not binding the plaintiff. By considering the evidence on record both the Courts below rightly appreciated all the facts and circumstances and granted the relief in favour of the plaintiff as such it is valid. Therefore, the decree obtained in O.S.No.162 of 2004 is not improper decree as claimed by the appellant / 2nd defenndant herein. Accordingly, question of law A and B is answered.



S.A. Nos.491 & 492 of 2017

WEB COPY

21. Furthermore, the sale deed stand in the name of the plaintiff/Vengatachalapathy is valid. By considering the oral and documentary evidence adduced before the Courts below the courts below declared that the plaintiff is the absolute owner of the property and through the witnesses the plaintiff established that the possession of the property is with him. Thus he is entitled for the relief of injunction as prayed for and the same was rightly appreciated by the Courts below which needs no interference by this Court.

22. Accordingly question of law C and D are answered. Hence, both the appeals are dismissed as having no merits and the findings of the learned trial Judge is confirmed thereby the suit in O.S. No. 61 of 2004 filed by the first respondent/Venkatachalapathy was rightly decreed declaring that "*the sale deed dated 17.06.2005 executed by the 2nd defendant in favour of the 1st defendant is null and void and unenforceable in law. This Court also directs the office to send the copy of the decree to the Sub-Registrar, Sathyamangalam to make necessary entries in the entry that the sale deed document no:1831/2005, dated 17.06.2005 is Void. The decree of permanent injunction is also granted against the defendants not to disturb the plaintiffs peaceful possession and enjoyment. 3. The defendants pay the costs to the*



S.A. Nos.491 & 492 of 2017

plaintiff."

WEB COPY

23. During the pendency of the appeal the appellant died, his legal heirs contested the case. The trial Court's finding that the suit in O.S.No.61 of 2010 is decreed as above and thus original suit in O.S.No.48 of 2010 is dismissed is valid. No costs.

24. Accordingly, these Second Appeals are dismissed as devoid of merits and the findings rendered by the Courts below are confirmed in both second appeals. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

11.12.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

rri

To

1.The III Additional District and Sessions Judge,
Gobichettipalayam.

2.The Subordinate Judge, Sathyamangalam.



S.A. Nos.491 & 492 of 2017

3.The Section Officer, VR Section, High Court of Madras.

WEB COPY

T.V.THAMILSELVI, J.

rri

S.A.Nos.491 & 492 of 2017
and
C.M.P.Nos.11986 & 11987 of 2017

11.12.2023