



S.A.(MD) No.510 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	13.12.2023
PRONOUNCED ON	22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.510 of 2023
and
C.M.P.(MD) No.12166 of 2023

Nakoda Homes Pvt.Ltd.,
rep.through its partners,
S.Bhawarlal

R.Shanmuganathan (died)

..Appellant

Vs.

Thirupparankundram Arumuga
Nainar Trust
rep. Through its trustees

1.S.Venugopal

2.T.A.S.Ramasubramanian (died)

3.S.Durga Balakumar
(R2 died and exonerated vide Court
order dated 15.09.2023)

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Court of the II Additional Subordinate Judge, Madurai Town dated 11.07.2023 in A.S.No.35 of 2021 confirming the judgment and decree



S.A.(MD) No.510 of 2023

on the file of the Additional District Munsif, Madurai Town dated 29.04.2021 in O.S.No.976 of 2013.

WEB COPY

For Appellants

: Mr.M.Vallinayagam Senior Counsel for
M/s.A.Amala

For Respondents

: Mr.T.R.Subramanian

JUDGMENT

This second appeal is filed challenging the concurrent judgments in A.S.No.35 of 2021 on the file of the II Additional Sub Court, Madurai and O.S.No.976 of 2013 on the file of the Additional District Munsif Court, Madurai.

2.The respondents/plaintiffs filed a suit in O.S.No.976 of 2013 for the following reliefs a) for declaring the registered lease deed dated 30.03.2007 entered into between the plaintiffs and the defendants is null and void, inexecutable and inoperative under law; a (i) for directing the defendants to vacate the suit property and hand over the keys thereof with vacant possession; b) for permanent injunction restraining the defendants from in any way altering or changing the character of the suit property and c) for costs.

3.The case of the plaintiffs, in brief, is that the plaintiffs are the trustees of Thirupparankundram Arumuga Nainar Trust. They had leased out the suit property to the defendants under a registered lease agreement dated 30.03.2007.

The recital of the lease deed shows that the plaintiffs have leased out the suit



S.A.(MD) No.510 of 2023

property to the defendants in their individual capacity and not as trustees of the plaintiffs' Trust. The plaintiffs filed Trust O.P.No.2 of 2009 on the file of the Principal District Court, Madurai, as trustees of Thirupparankundram Arumuga Nainar Trust seeking permission to sell the suit property in favour of the first defendant, S.Bhawarlal, his wife, B.Kamaladevi and his son, S.B.Rajkuar. The petition was allowed on 04.08.2010 directing sale price to be deposited within a period of two months. The two months period expired on 04.10.2010. The sale price was not deposited within the time fixed by the Court. Therefore, the plaintiffs filed I.A.No.1038 of 2012 for cancelling the order passed in Trust O.P.No.2 of 2009.

4.After contest, the learned Principal District Judge, Madurai, allowed the petition and cancelled the order passed in Trust O.P.No.2 of 2009 on 04.08.2010. One third party, R.Gopalakrishnan, filed CRP.(MD) No.398 of 2011 before this Court challenging the order passed in Trust O.P.No.2 of 2009. This Court, while disposing of CRP(MD) No.398 of 2011, held that without making any public notice and without giving any opportunity to third parties, who are willing to purchase the properties, without mentioning the private negotiation entered into between the trustees with the first defendant, his wife and his son the proposed sale is not legal and thus, set aside the order passed by the learned Principal District Judge, Madurai, in Trust O.P.No.2 of 2009. It was finally



S.A.(MD) No.510 of 2023

decided by this Court that whatever transactions the plaintiffs had with the first defendant, his wife and his son are all invalid under law.

5.The lease deed dated 30.03.2007 entered into between the plaintiffs in their individual capacity and the defendants, is not only invalid under law but also totally void lease deed under law. In paragraph No.15 of the order made in CRP. (MD) No.398 of 2011, this Court commented that “those, who are willing to purchase by private negotiations can also bid at the public auction and why would they feel shy or be deterred from bidding at public auction. Further, the sale by private negotiations will not be visible to the public eye and may even give rise to public suspicion unless there are special reasons to justify doing so”. For the same reasons, the registered lease deed dated 30.03.2007 entered into between the plaintiffs and the defendants is not valid under law. Therefore, on the basis of the lease deed dated 30.03.2007, the defendants cannot claim any relief for the reason that it becomes non-est under law and in-executable. The defendants have no option except to vacate the leased property and hand over the same to the plaintiffs by receiving the remaining advance amount of Rs.7,92,500/-, after deducting the rent amount payable by the defendants with the end of 31.10.2013.

6.Defendants filed a suit in O.S.No.642 of 2013 on the file of the learned I Additional District Munsif, Madurai and obtained an order of ad-interim injunction in I.A.No.412 of 2013. The second defendant died on 05.11.2014. The



S.A.(MD) No.510 of 2023

plaintiffs sent a notice dated 17.10.2012 terminating the tenancy of the defendants with the end of 30.11.2012. The defendants sent a reply dated 27.10.2012. The plaintiffs sent a reminder notice dated 21.06.2013 for vacating the suit property and handing over the possession. The defendants sent a reply dated 06.07.2013. In the said circumstances, the suit was filed for the aforesaid reliefs.

7.The defendants filed written statement and additional written statement stating that believing the words of the plaintiffs, the defendants entered into the registered lease deed dated 30.03.2007. With the *mala fide* intention of cheating the defendants, the plaintiffs had executed a registered lease deed in their individual capacity. It is settled principle of law that the trust property has to be leased out by the trustees only, but wantonly the plaintiffs had executed the lease deed in their individual capacity. It is a clear case of cheating on the part of the plaintiffs. Against the order passed in CRP.(MD) No.398 of 2011, the defendants filed Special Leave Petition (Civil) in No.2766-2767 of 2014 before the Hon'ble Supreme Court. The plaintiffs have received a sum of Rs.9,90,000/- being the rent for 33 years at the rate of Rs.30,000/- per year. The lease period is for 33 years. The plaintiffs cannot seek possession before the expiry of the lease period. The lease deed executed between the plaintiffs and the defendants had not been declared as null and void by any Court of law. The Trust O.P. relates to sale of the suit property. The lease deed relates to possession of the suit property. Thus, both



S.A.(MD) No.510 of 2023

the transactions were different. It is specifically stated in the lease deed that the defendants have right to demolish the old building and construct a new building by getting plan approval from Madurai Corporation; to get water tap connection, drainage connection, EB connection in the name of the defendants. The defendants put up a construction at the cost of Rs.10,00,000/-. Right of sub-lease is also given to the defendants. The plaintiffs were given right to purchase the super structure constructed by the defendants after the expiry of the lease period. For the notices sent, suitable replies were sent. Plaintiffs also threatened the defendants to vacate from the suit property. Therefore, the suit in O.S.No.642 of 2013 was filed. Before the expiry of 33 years lease period, plaintiffs cannot seek the relief claimed in the plaint. The prayer for cancelling or setting aside the lease deed should have been filed within three years from 30.03.2007. Therefore, the suit filed in 2013 is barred by limitation.

8.In the reply statement, the plaintiffs stated that Article 59 of the Limitation Act is not applicable to the present case and therefore, the suit was filed in time from the date of disposal of CRP.(MD) No.398 of 2011 on 26.04.2013. On the basis of these pleadings, the trial Court framed the following issues:-

“1.Whether the plaintiffs are entitled for the relief of declaration as prayed for?

2.Whether the plaintiffs are entitled to the relief of permanent



S.A.(MD) No.510 of 2023

injunction as prayed for?

3. Whether the plaintiffs are entitled for the relief of recovery of possession as prayed for?

4. Whether the suit is barred by law of limitation or not?

5. To what other relief the plaintiffs are entitled to?"

9. During trial, P.W1 was examined and Ex.A1 to Ex.A13 were marked.

D.W1 was examined and Ex.B1 to Ex.B10 were marked.

10. On the basis of the oral and documentary evidence, the learned trial Judge decreed the suit as prayed for. The plaintiffs filed an appeal in A.S.No.27 of 2021 against the judgment in O.S.No.642 of 2013. The defendants filed an appeal in A.S.No.35 of 2021 against the judgment in O.S.No.976 of 2013. Both the appeals were heard jointly and a common judgment was pronounced. The learned appellate Judge dismissed the appeal in A.S.No.35 of 2021 and allowed the appeal in A.S.No.27 of 2021. Challenging the judgment in A.S.No.35 of 2021, this second appeal is filed.

11. The learned counsel appearing for the appellants submitted that originally the suit was filed only for declaration that the registered lease deed dated 30.03.2007 is null and void and for the consequential relief of permanent injunction. The suit is clearly barred under Article 59 of the Limitation Act. The



S.A.(MD) No.510 of 2023

relief for recovery of possession was introduced by way of an amendment application in I.A.No.93 of 2016 on 21.03.2016. Assuming that the suit for recovery of possession was filed from the date of order of amendment on 21.03.2016, the declaratory relief mentioned under Article 65 of the Limitation Act is only with reference to declaration of title and not in respect of any other declaration as prayed in the present suit, ie., for declaration that the lease deed dated 30.03.2007 is null and void. The Courts below ought not have taken the date of order passed in CRP.(MD) No.398 of 2011 ie., 30.06.2014 to calculate the starting point of limitation. The order in CRP.(MD) No.398 of 2011 relates to sale of trust properties, whereas suit is filed for different relief. Unless the lease deed dated 30.03.2007 is declared as null and void by a competent Court, it is legally enforceable in law. The lease deed, which is for 33 years, dated 30.03.2007 is only a voidable document and not void document. The plaintiffs received the total lease amount of Rs.9,90,000/- for 33 years on 30.03.2007. They are estopped from challenging the lease deed dated 30.03.2007.

12.Plaintiffs filed Trust O.P.No.2 of 2009 in their capacity as trustees for selling the property. It is clear that they treated the suit properties as trust properties and therefore, they sought permission from the Court for selling the suit property. Very cleverly and ingeniously, plaintiffs had executed the lease deed in their individual capacity without referring that they are representing the trustees.



S.A.(MD) No.510 of 2023

In CRP.(MD) No.398 of 2011, the order of the learned Principal District Judge, Madurai, in Trust O.P.No.2 of 2009 was set aside for the reason that there are procedural violations in the process of selling the property. There was no discussion about the trustees' right to lease out the property.

13. Section 36 of the Indian Trust Act, 1882, permits the trustees to lease the trust property for a term of 21 years. Only if the lease term exceeds 21 years, the permission of the principal Civil Court of original jurisdiction is necessary. In that case, the lease executed in favour of the appellants for 33 years can only be considered as voidable lease deed and not a void lease deed. There is no consequence provided in the Act, if the lease deed is executed beyond the period of 21 years, whereas consequences are provided under Section 34 of Hindu Religious & Charitable Endowment Act. The trustees cannot challenge the lease deed, when they are the parties to the lease deed. They are estopped from challenging the lease deed. The relief of declaration is the substantial relief. When the cancellation of instrument is sought for, the period for filing the suit is 3 years, as per Article 59 of the Limitation Act. Plaintiffs are the parties to the lease deed dated 30.03.2007 and they ought to have filed the suit within 3 years from the date of execution of the lease deed on 30.03.2007. When the principal relief of declaration/cancellation of the lease deed as null and void, is barred by limitation, the consequential prayer for recovery of possession cannot be maintained.



WEB COPY

14.The reliance placed by the appellate Court under Article 65 to hold that the suit was filed in time is not correct. Thus, the learned counsel for the appellants submitted that both the Courts below have not properly appreciated the facts and evidence in a proper manner and wrongly decreed the suit. He prays for setting aside the judgment of the Court below and for dismissal of the suit. In support of his submissions, he placed reliance on the following judgments:

“i) In Guddappa Chikkappa Kurbar Vs. Balaji Ramji Dange reported in (1941) 43 Bomlr 681.

ii) In Rajpal Singh Vs. Saroj (deceased) through Lrs and another reported in AIR Online 2022 SC 732.

iii) In Kadir Ibrahim Rowther and others Vs. Arunachellam Chettiar and others reported in 4 Ind Cas 1082.

iv) In Vellayya Konar died and another Vs. Ramaswami Konar and another reported in 1939 0 AIR (Mad) 894.”

15.In response, the learned counsel for the respondents submitted that the Court is the custodian of the trust and trust properties. The trust is different from its trustees. If the trustee commits any mistake, the trust cannot be held responsible. The lease deed dated 30.03.2007 is contrary to the terms of Section 23 of the Indian Contract Act and Section 36 of the Indian Trust Act, 1882. When



S.A.(MD) No.510 of 2023

the trust is not a party to the lease deed dated 30.03.2007, it cannot be held liable.

The trustee cannot act against the interest of the trust and trust properties. It is specifically mentioned in the lease deed dated 30.03.2007 that the property covered in the lease deed is the individual property of the trustees and the name of the trust is not mentioned in any part of the lease deed dated 30.03.2007. The trustees cannot execute the lease deed claiming property as their own property. The lease deed was executed without reserving the best yearly rent and for this reason also, the lease deed is not valid. The suit was filed within the time. The Courts below have rightly decreed the suit and thus, he prayed for dismissal of this appeal. In support of his submissions, he relied on the following judgments:-

“i) In Nangappan Vs. Ramasamy and another reported in 2015 SAR (Civil) 403.

ii) In Kaka Hajee MD.Ishaque Sahib Vs. Kaka.MD.Saddiq Sahib and others reported in (1969) 82 LW 622.

iii) In A.R.Rengaraj @ A.R.R.Raju and another Vs. Aranamanai Raman Chettiar Chathiram through trustees and others reported in 2018 (2) CTC 721.

iv) In Civil Appeal Nos.6989-6992 of 2021 (Kewal Krishnan Vs. Rajesh Kumar and others dated 22.11.2021.

v) In Appanna Vs. Jami Venkatappadu and others reported in



(1953) 1 MLJ 476.”

WEB COPY

16.In reply, the learned counsel for the appellant submitted that the Trust is an artificial person and it can function only through its trustees. Act of trustees bind the trust. Having been part of the lease deed, the trustees cannot challenge it now. Mis-description of parties in the lease deed by omitting the name of the trust is not a ground for doubting the legality of the lease deed. Unless there is a penal provision or consequence, the violation of Section 36 of the Act only makes the deed voidable in nature. The trustees had received the lease amount on behalf of the trust. The proceeding in Trust O.P.No.2 of 2009 shows that the respondents had acted in their capacity as trustees. Therefore, he reiterated his prayer for setting aside the judgments of the Courts below and dismissal of the suit.

17.On the basis of the submissions of the learned counsel appearing for the parties, the following questions of law are framed for consideration:-

“1) Whether the present suit filed for the relief of declaration declaring that the registered lease deed dated 30.03.2007 as null and void is barred by the law of limitation or not?

2) Whether the Courts below right in entertaining the present suit for declaration of the registered lease deed dated 30.03.2007 as null and void, when the suit is filed only on 28.09.2013 which is clearly bared



by time in view of Article 58 of the Limitation Act?

3) When the Article 65 of the Limitation Act permits to file the suit within 12 years, when the possession of the defendant becomes adverse to the plaintiffs, for recovery of possession based on title and in the present suit there is no title dispute, whether the lower appellate Court right in applying the said provision to grant the decree for declaration of lease deed dated 30.03.2007 as null and void and granted the consequential relief of order of eviction?

4) When the cause of action to file the present suit is the date on which the plaintiffs entered into the lease agreement dated 30.03.2007 with the defendant to declare the said lease agreement as null and void and the order of the eviction is only the ancillary relief introduced only during later point of time in the suit, whether the lower appellate Court right in applying Article 65 of the Limitation Act instead of Article 58 of the Limitation Act?”

18.From the pleadings, oral and documentary evidence, the judgments of the Courts below and the submissions of the learned counsel appearing for the parties, it is not in dispute that the suit property belongs to Thirupparankundram Arumuga Nainar Trust. The trustees of the trust are the respondents herein, by name, S.Venugopal, T.A.S.Ramasubramanian and S.Durga Balakumar. T.A.S.Ramasubramanian died subsequent to the disposal of the suit. It is also not in dispute that the plaintiffs and the defendants have entered into the registered lease deed on 30.03.2007 for leasing out the suit property in favour of the



S.A.(MD) No.510 of 2023

defendants. The copies of the lease deed are marked as Ex.A1 and Ex.B1.

WEB COPY

19.Perusal of the lease deed shows that the appellants/defendants as first party and the respondents/plaintiffs as second party had executed the lease deed. It is claimed that the property covered under the lease deed ie., the suit property belonged to the second party, namely the plaintiffs and they leased out this property to the first party, namely the defendants for a period of 33 years. There are other recitals as well and we will consider it later. The plaintiffs have not denied the execution of the lease deed. As per the lease deed, the lease is for 33 years. The plaintiffs have instituted the suit after the order passed in CRP.(MD) No.398 of 2011 by this Court. In fact, this order is the cause for initiating the suit. This order was passed in consequence of the order passed in Trust O.P.No.2 of 2009 by the Principal District Court, Madurai. The plaintiffs as trustees of Thirupparankundram Arumuga Nainar Trust filed a petition under Sections 34, 37 and 38 of the Indian Trust Act, seeking permission to dispose of the suit properties ie., to sell the suit properties in favour of S.Bhawarlal, his wife, B.Kamaladevi and his son, S.B.Rajkuar. This petition was allowed subject to deposit of the sale price within a period of two months from the date of passing of the order on 04.08.2010. Since the sale price was not deposited within a period of two months, the plaintiffs as trustees filed I.A.No.1038 of 2012 for cancelling the permission granted in Trust O.P.No.2 of 2009. One K.R.Gopala Krishnan, a third party, had



S.A.(MD) No.510 of 2023

also challenged the order passed in Trust O.P.No.2 of 2009 by filing CRP.(MD) No.398 of 2011. The learned Principal District Judge, Madurai, allowed I.A.No. 1038 of 2012 and revoked the permission granted in Trust O.P.No.2 of 2009. This order was passed on 18.04.2013.

20.In CRP.(MD) No.398 of 2011, after considering as to whether the Thirupparankundram Arumuga Nainar Trust is a public trust or a private trust and holding that this trust is a private trust, this Court held that the private sale proposed is bad in law for violating the basic norms and set aside the order passed in Trust O.P.No.2 of 2009. It is pertinent to refer to the relevant portion of the order.

“9.Further, having regard to the objects of the Trust, it cannot be stated that the Trust is a Public Trust on the ground that the Trustees are directed to perform ‘Maheswara Pooja’ which means ‘Food distribution’ and considering the overall recitals in the Trust Deed, namely taking of Palgudam and Abishegam on Vaigasi Vishagam and also do Maheswara Pooja and considering the finding given in O.S.No.129 of 1965, dated 31.8.1967 marked as Ex.B2, I hold that it is a Private Trust and Trust Act will apply. Though, the properties are Private Trust properties, the trustees cannot sell the properties by entering into a Private negotiations and the Court below should not also encourage private negotiations and the Court below ought not to have directed the sale of all the properties through private negotiation.

10.It is admitted that the trustees entered into a Private agreement of sale for the sale of the Trust properties and the Private negotiations were



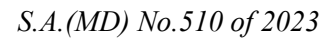
approved by the Court below and the Trustees were permitted to sell all those properties to the Respondents 4 to 9. The Agreements of Sale entered into between the Trustees and the prospective purchasers were filed in the typed set of papers, the Petitioners herein.

11.It is seen from the Agreements of Sale that the purchasers, namely the Respondents 4 to 9 herein entered into an Agreement of Sale only with the Trustees in their individual capacity and not as trustees of the Trust and it is seen from the recitals in the Agreement of Sale that the property is described as property belonging to the trustees and the trustees agreed to get permission from the Court to sell the property and after getting permission, the sale can be executed. Therefore, the question that arises for consideration is whether the Trust properties can be sold in private sale.

12.According to me, whether it is Private Trust or Public trust, once the property has been described as Trust property and permission was sought for from the Court below to sell the said property, the Court must be very vigilant in safeguarding the Trust properties and ought not to have allowed the sale of the Trust properties by Private negotiation.

13.In this case, though the Public Notice was issued calling for objection from the public, the Public Notice was issued only for the purpose of calling for objection for sale of the property and in that notice, it was not mentioned that the properties are to be sold to particular prospective purchasers, namely the Respondents 4 to 9 herein for the agreed price and if objection is raised, they can approach the Court. The publication was only calling for objection for the sale of the Trust property and therefore, the publication made by the Trust cannot justify the sale of the property.

14.In the judgment reported in Chenchu Rami Reddy and another v. Government of Andhra Pradesh and others, 1986 (3) SCC 391, it was held that the property of Institutions or Endowments must be jealously protected and the Authorities exercising the powers under the Act must not only be most alert and vigilant in such matters, but also show awareness of the ways



17.As stated supra, no Public Notice was given seeking public to quote their price for the properties and Public Notice was given only for calling for objection for the sale of the properties, without mentioning the Private negotiations entered into between the Trustees, namely the Respondents 1 to 3 herein with the Respondents 4 to 9. Therefore, even assuming that the Respondents 4 to 9 agreed to pay the market price for the properties, having regard to the conduct of the trustees in entering into a private negotiation, the Court below ought not to have granted permission to the respondents 1 to 3 to sell the properties of the trust to the respondents 4 to 9 without conducting public auction.



S.A.(MD) No.510 of 2023

18. One another reason for setting aside the order is that even after two years, the respondents 4 to 9 have not paid the sale consideration and it is a common knowledge that the properties of land are increasing by leaps and bounds by every day and therefore, the respondents 4 to 9 cannot be permitted to purchase the properties, after three years by paying interest on the sale consideration agreed earlier. Therefore, according to me, the sale can be done only by public auction and therefore, the order of sale by the Court below through private negotiations is bad in law and it is liable to set aside and it is hereby set aside.

19. In the result, the revision petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs."

21. Only after the order passed in CRP.(MD) No.398 of 2011, the plaintiffs have filed the suit in O.S.No.976 of 2013 originally for the relief of declaration and injunction and subsequently, for declaration, recovery of possession and injunction by way of amendment. The basis for filing the suit as seen from the plaint is the order passed in CRP.(MD) No.398 of 2011, wherein it was held that the private sale is bad in law. On the same footing, the plaintiffs claim that the lease deed dated 30.03.2007 is also bad in law and is liable to be declared as void and in-executable.

22. On going through the order passed in CRP.(MD) No.398 of 2011, this Court finds that there is no discussion about the trustees' right to lease the property. Even in the order passed in CRP.(MD) No.398 of 2011, the private sale



S.A.(MD) No.510 of 2023

is not held altogether void, but it must be conducted by giving wide publicity to the public, inviting offers from the public and through public auction. “Only the secret seated negotiation between the trustees and the private individuals was deprecated. It was found that though public notice was issued, it was issued only for the purpose of calling for objections for the sale of property. It was not mentioned that the properties are to be sold to particular prospective purchasers. There is also no mention that if any objection is raised, they can approach the Court. The publication was issued only for calling for objections for the sale of the trust properties and therefore, the publication cannot justify the sale of the property. The other reason for setting aside the order passed in Trust O.P.No.2 of 2009 is that the prospective purchasers had not paid the sale consideration even after 2 years of passing the order. Finally, it was held that the sale can be done by public auction and private negotiation was bad in law in the facts and circumstances of the case and was set aside”. It is evident from Section 37 of the Indian Trust Act, 1882, that the trustee is empowered to sell any trust property by public auction or private contract. For the better understanding, Section 37 of the Indian Trust Act, 1882, is extracted hereunder:-

“37.Power to sell in lots and either by public auction or private contract.—Where the trustee is empowered to sell any trust property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several



times, unless the instrument of trust otherwise directs.”

WEB COPY

23.Coming to lease of the trust property, Section 36 of the Indian Trust Act, 1882, deals with general authority of trustee. It reads as follows:

“36. General authority of trustee.—In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realisation, protection or benefit of the trust property, and for the protection or support of a beneficiary who is not competent to contract. Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.”

24.As per this Section, a trustee may do all acts, which are reasonable and proper for the realisation, protection or benefit of the trust-property and for the protection or support of a beneficiary, who is not competent to contract. However, the trustee cannot lease out the trust property for a term exceeding 21 years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained, except with the permission of the principal Civil Court of original jurisdiction. It means that the trustees can lease the trust properties for a term not exceeding 21 years without the permission of Principal Civil Court of original jurisdiction with reserving the best yearly rent.



WEB COPY

25.It is relevant to extract the commentaries presented before this Court by the learned counsel for the appellants. It is stated in the commentary to Section 36 that a lease by the trustee of a private trust for term exceeding twenty one years is not void but voidable at the instance of the *cestui que trust*. The provision contained in the second paragraph of this section is intended for the benefit of the *cestui que trust* and this is secured better by treating such leases as voidable than by holding that they are necessarily illegal and void.

26.Neither parties have filed the trust deed. In the absence of production of trust deed, this Court is not in a position to understand who are the beneficiaries, but the fact remains that the beneficiaries of the trust ie., *Cestui que trust* have not filed the suit. Only the beneficiaries under the trust can say whether Ex.A1 lease deed is against the interest of beneficiaries or not. In effect, when the beneficiaries have not challenged Ex.A1 lease deed, it can be considered only as a voidable lease deed and not void. Definitely the lease is valid for 21 years, if not for 33 years.

27.It is now required to consider the judgments cited by the learned counsel appearing on either side. The learned counsel for the appellants relied on the following judgments:



“i) *The Hon’ble Madras High Court in the case of **Vellaya Konar v. Ramaswami Konar, 1939 SCC OnLine Mad 149** held that when a person seeks to establish title, which cannot be established without removing a decree or an instrument to which he himself is a party, then whatever be the garb in which he dresses his suit, its substantial character must be suit for the cancellation of the decree or instrument; but if the establishment of his title is being impeded by the effect of a transaction between other parties, he cannot legitimately ask for the cancellation of that transaction but can only ask for a declaration that so far as he is concerned it is not binding.*

ii) *The Hon’ble Bombay High Court in the case of **Guddappa Chikkappa Kurbar v. Balaji Ramji Dange, 1941 SCC OnLine Bom 9** held that the Court must never allow itself to be used to assist in the perpetration of fraud. Where a fraudulent purpose has been effected by a colourable grant, the maxim in pari delicto potior est conditio possidentis applies and the Court will help neither party. If, as a result of such refusal the defendant is left in possession of some advantage derived from his own fraud, that is not due to any action on the part of the Court. The law on the subject was summarized as follows:—*

I. In all cases of unilateral or bilateral fraud which has not been successfully effected, either party can repudiate the fraudulent transaction and can recover or maintain his possession by proving his real title.

II. In cases where fraud is accomplished—

(1) where only one party acts fraudulently, he cannot be allowed, either as plaintiff or as defendant, to plead his fraud, on the principle that no man shall be heard to plead his own fraud;



(2) where both parties are equally fraudulent, the Courts will refuse to enforce the fraudulent transaction on the principles that where each party is equal in fault, the law favours him who is actually in possession, and will give relief to neither, and that a right of action cannot arise out of fraud, with the result that—

(a) where the plaintiff seeks relief on the allegation and on the basis of joint fraud, his suit will be dismissed; and

(b) where he seeks relief by suppressing the fraud, the defendant can plead and prove the common fraud to defeat the plaintiff's claim.

Where a plaintiff can make out his title to the property in dispute on independent evidence, the defendant should not be allowed to defeat such plaintiff by pleading his own fraud. Fraud has been allowed to be pleaded by the defendant only in three class of cases:—

(1) where the fraud has not been carried out,

(2) where the consideration for the agreement is executory and in a suit by the plaintiff to enforce the performance of the promise, the defendant resists the enforcement by pleading common fraud,

(3) where the plaintiff seeks to repudiate any illegal transaction after it is carried out and seeks to recover back the money paid under it.

iii) The Hon'ble Madras High Court in **Kadir Ibrahim Rowther And Ors. vs Arunachellam Chettiar And Ors, 4 Ind Cas 1082** held that Section 36 of the Indian Trusts Act was intended for the benefit



of the cestui que trust (beneficiary of the trust). Thus leases should not be treated as void for being malum prohibitum (prohibited by statute) and illegal per se, but voidable at the instance of the cestui que trust.

*iv) The Hon'ble Supreme Court in **Rajpal Singh v. Saroj**, 2022 SCC OnLine SC 638 held that the suit seeking cancellation of the sale deed was required to be filed within a period of three years from the date of the knowledge of the sale deed. Further, when a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period required to be considered with respect to the substantive relief of cancellation of the sale deed, would also be three years from the date of the knowledge of the sale deed sought to be cancelled."*

28. The learned counsel for the respondents relied on the following judgments:

*"i) The Hon'ble Madras High Court in the case of **Jami Appanna v. Jami Venkatppadu**, 1952 SCC OnLine Mad 318 dealt in detail, Article 91 of the Indian Limitation Act. The Court held that, Art. 91 applies only to voidable instruments and has no application when the instrument sought to be cancelled is void ab initio and inoperative. When a person executes a deed of one character under a misrepresentation that it is of a different character, it is void. To such instruments, the period of limitation applicable is under Art. 144. If in such a suit there is a prayer for cancellation of the instrument, it can only be regarded as ancillary to the substantive prayer for possession and can be treated as mere surplusage.*



ii) The Hon'ble Supreme Court in **Kewal Krishan V. Rajesh Kumar & Ors. Etc, Livelaw 2021 SC 670** has held that a sale of an immovable property has to be for a price. The price may be payable in future or partly paid and the remaining payable in future. The payment of price is an essential part of a sale covered by section 54 of the Transfer of Property Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

iii) The Hon'ble Madras High Court in the case of **A.R. Rengaraj and Ors. vs. Aranamanai Raman Chettiar Chathiram and Ors. MANU/TN/1700/2018** held that the trust and its properties are to be protected in order to carry out the objectives, in its original spirit and by following the terms and conditions stipulated in the original trust deed. The paramount importance is to protect the noble ideas set out by great souls, who constituted the public trust. If those ideas are diluted, discarded or destroyed, then the Court cannot shut its eyes and it is for the Courts to oversee such deeds are properly implemented in its original sense. In respect of a public trust concerned, who all are having concern over the public trust are to be treated as necessary parties and public in general are the relevant parties for the purpose of protection of the trust properties.

Under these circumstances, the point of limitation, the point of consent and the point of filing of a fresh suit, all stand on the technical grounds. If all these grounds are accepted, then would amount destroying the soul and spirit of the public Trust. If such technical



grounds are raised, then this Court is of an apprehension that the persons may connive with each other and commit misappropriations and other illegalities. The intention of the Legislators are unambiguous that in all respects, the properties of the public trust are to be protected without any compromise.

iv) The Hon'ble Madras High Court in the case of **Kaka Hajee Md Ishaque Sahib v. Kaka Md. Saddiq Sahib, 1969 SCC OnLine Mad 81** dealt with law on cancellation of instruments. The court observed that, normally a transaction will bind a person if he or persons under whom he derives title are co nomine parties to the same and must be set aside before any relief is claimed thereunder. This, however, is subject to two important exceptions:

- (1) Where the transaction is only a sham and nominal one, not intended to be given effect to; and
- (2) Where the transaction is void in law.

It necessarily follows that,

- (1) transactions to which a person or persons under whom the said person derive title are not eo nomine parties;
- (2) transactions which are challenged as sham and nominal and
- (3) transactions which are void ab initio are not legally binding in character need not be cancelled and set aside, before any claim is made thereunder. The reason is fairly obvious.

In the first group of cases, there can be no difficulty, as it is an elementary principle of law that transactions to which a person or persons under whom the said person derives title are not parties cannot bind them. In the case of sham and nominal or void transactions comprised in the second and third group of cases, title has not passed to the transferees. Prayer for setting aside such transactions will be



superfluous and the plaintiff will be entitled to ignore them altogether.

The case is otherwise in respect of voidable transactions and benami transactions. In such cases the law will uphold the ostensible title conferred by those instruments; and the said title will prevail until the transactions are challenged with success by seeking appropriate reliefs declaratory or other wise in court of law.

*v) The Hon'ble Supreme Court in the case of **Nanjappan v. Ramasamy**, (2015) 14 SCC 341 held that as per Section 92 of the Evidence Act, when the terms of any such contract have been reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting from, its terms. The courts have recorded concurrent findings rejecting the stand of the appellant that the actual sale price was rupees three lakhs and for the purpose of stamp duty and registration charges, lesser amount was written and this is well in accordance with Section 92 of the Evidence Act and we do not find any reason warranting interference in the said concurrent findings of the courts below."*

29. In the case before hand, the plaintiffs have received the entire lease amount for 33 years. The lease deed reads that the defendants were given permission for demolishing the old building for the construction of new building after obtaining necessary permission from Madurai Corporation for getting water connection, telephone connection, etc in the name of the defendants. The



S.A.(MD) No.510 of 2023

defendants were also given permission for leasing out the property. The only right reserved in respect of the improvements made in the suit property is that the plaintiffs can purchase the building after the lease period. It is seen from the evidence that the defendants have constructed a new building in the suit property. This is specifically referred in Ex.A11, reply notice.

30.Ex.B1 shows that the first defendant has given a complaint against the plaintiffs for making him to enter into the lease deed claiming that the trust property as their own property. On the basis of the complaint, FIR in Crime No. 423 of 2016 was registered against the plaintiffs for the offences under Sections 406 and 420 of I.P.C. Claiming that the trust property as their individual property and executing the lease deed, no doubt is an illegal act of cheating. It appears that the plaintiffs' motive is to earn money by using the trust properties. Initially they wanted to sell the trust property without following proper procedures. They filed Trust O.P.No.2 of 2009 in the capacity as trustees. They filed the suit as trustees of Thirupparankundram Arumuga Nainar Trust. Therefore, it is patently clear that the plaintiffs in order to cheat the defendants have deliberately omitted the inclusion of the trust in Ex.A1, lease deed. From the oral and documentary evidence available, it can only be concluded that the plaintiffs have executed Ex.A1, lease deed in favour of the defendants in their capacity as trustees of Thirupparankundram Arumuga Nainar Trust. As already stated, the lease deed



S.A.(MD) No.510 of 2023

cannot be considered as void, but can be considered only as voidable lease deed.

Definitely the lease deed is valid for 21 years, even without permission from the principal Civil Court of original jurisdiction. There is no pleading or evidence that the lease amount of Rs.30,000/- fixed per year is not the best yearly rent. Therefore, it can be concluded that Rs.30,000/- fixed as lease amount per year is the best yearly rent.

31.In the judgment relied upon by the learned counsel appearing for the appellant reported in **1941 SCC Online Bom 9** (*referred supra*) it was held that when one party acts fraudulently, he cannot be allowed, either as plaintiff or as defendant, to plead his fraud, on the principle that no man shall be heard to plead his own fraud. It is not in dispute that the respondents/plaintiffs have deliberately shown the trust properties as their individual properties and entered into the lease deed. Therefore, they cannot justify the fraud to claim the relief. The judgment reported in **4 Ind Cas 1082** (*referred supra*) shows that Section 36 of the Indian Trusts Act is intended for the benefit of the *Cestui que trust* and the leases should not be treated as void for being *malum prohibitum* and illegal *per se*, but voidable at the instance of the *cestui que trust*. In the judgment reported in **2022 SCC Online SC 638** (*referred supra*), it was held that when a composite suit is filed for cancellation of sale deed and recovery of possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of



the sale deed. In the case before hand, the substantive relief is cancellation of the lease deed and therefore, the suit should have been filed within a period of three years. It was held that the lease deed dated 30.03.2007 between the appellants and the respondents is not a void deed, but only a voidable document and therefore, the judgment relied upon by the learned counsel for the respondents reported in **1952 SCC Online Mad 318** (*referred supra*) is not applicable to the facts and circumstances of the case. In the light of the discussions held above, the other judgments relied upon by the learned counsel for the respondents are also not applicable to the facts and circumstances of the case.

32. In view of the discussions held above, this Court finds that Ex.A1, lease deed is valid only for 21 years and not for 33 years. With regard to limitation, this Court finds substance in the submissions of the learned counsel for the appellants. The principal prayer in this case is for declaring that the registered lease deed dated 30.03.2007 as null and void, in-executable and in-operative under law. The limitation for filing the suit is covered under Article 59. The period of limitation is 3 years from the date of accrual of right. When the plaintiffs claim that Ex.A1 lease deed is a void document, the suit should have been filed within three years from the date of execution of the lease deed on 30.03.2007. That is not the case here. The suit was filed only in the year 2013 and therefore, the main prayer seeking declaration that the lease deed 30.03.2007 as null and void is



S.A.(MD) No.510 of 2023

barred by limitation. When the main prayer is barred by limitation, the consequential prayer for recovery of possession cannot be maintained. The Courts below have not considered these aspects. They proceeded to decree the suit on the basis of the order passed in CRP.(MD) No.398 of 2011.

33.As already held, the order passed in CRP.(MD) No.398 of 2011 relates to attempted sale through private negotiation without following necessary procedures. That is not the case here. The lease for a period of 21 years is permissible under Section 36 of the Trust Act. Therefore, this Court is of the view that the Courts below have not considered the issues involved in proper perspective and wrongly decreed the suit and accordingly, the same are liable to be set aside.

34.In view of the foregoing discussions and observations, this Court answers the substantial questions of law as follows:

Insofar as the substantial questions of law Nos.1 and 2 are concerned, the suit filed for the relief of declaration for declaring the registered lease deed dated 30.03.2007 as null and void is barred by limitation.

Insofar as the substantial questions of law Nos.3 and 4 are concerned, the lower appellate Court was not right in applying Article 65 of the Limitation Act to hold that the suit was filed within the time.



S.A.(MD) No.510 of 2023

WEB COPY

35.In the result, this Second Appeal is allowed. The judgment of the Courts below in A.S.No.35 of 2021 on the file of the II Additional Subordinate Judge, Madurai Town, dated 11.07.2023 and in O.S.No.976 of 2013 on the file of the Additional District Munsif, Madurai Town, dated 29.04.2021, are set aside and the suit in O.S.No.976 of 2013 is dismissed. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

22.12.2023

mm

To

- 1.The II Additional Subordinate Judge,
Madurai.
- 2.The Additional District Munsif,
Madurai.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A.(MD) No.510 of 2023

G.CHANDRASEKHARAN, J.

mm

Judgment made in
S.A.(MD) No.510 of 2023

22.12.2023