



S.A(md)No.509 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A(MD).No.509 of 2013

and

M.P(MD)No.1 of 2013

1.S.Chidambaram
2.AR.Palaniyappan(Died)
3.AR.Valliyammai
4.PL.Premalatha
5.PL.Muthuvallappan
6.AL.Meenatchi

... Defendants/Appellants/
Appellants

(A4 to A6 are brought on record as LR's of
the deceased 2nd appellant
vide Court order dated 14.03.16)

-Vs-

1.AN.Ramanathan
2.M.Vadivel
3.M.Tha.Judeen

... Plaintiffs/Respondents/
Respondents



S.A(md)No.509 of 2013

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 04.02.2013 made in A.S.No.95 of 2011 on the file of the Sub-Court, Devakottai, confirming the judgment and decree, dated 29.07.2011 made in O.S.No.85 of 2008 on the file of the Additional District Munsif, Karaikudi.

For Appellants : Mrs.M.Parameswari
for M/s.S.M.S.Johnny Basha
For Respondents : No appearance

J U D G M E N T

Being aggrieved by the concurrent judgments of the trial Court and the first appellate Court, the defendants 1 to 3 viz., S.Chithambaram, AR.Palalniappan and AR.Valliyammai, have preferred this second appeal against the judgment and decree, dated 29.07.2022, passed in O.S.No.85 of 2008, on the file of the Additional District Munsif Court, Karaikudi and the judgment and decree, dated 04.02.2013, passed in A.S.No.95 of 2011, on the file of the Sub-Court, Devakottai.



S.A(md)No.509 of 2013

2. Parties are indicated as per their litigative status and ranking referred before the trial Court.

3. According to the plaintiffs (AN.Ramanathan, M.Vadivel and M.Thajudeen), the suit property viz., a plot with building situate at Pallathoor Village, Karaikudi Taluk, Sivagangai District, in GR.S.No.114/1, out of 71 cents, northern $\frac{1}{4}$ th share (17.25) cents inclusive of building and the electricity connection. Originally, belonged to N.K.Cho.M.Chockalingam Chettiyar, S/o.Nal Alagappa Chettiyar. He constructed a house thereon and let out for rent and the house tax assessment stood in the name of the above said Chockalingam Chettiyar. The plaintiffs' claim is that on 13.02.1998, the above said Chockalingam Chettiyar executed a sale agreement and a power deed in favour of AL.Palaniyappan, S/o.Alagappa Chettiyar. Since then Palaniyappan is in possession and enjoyment of the suit property. The said AL.Palaniyappan purchased the suit property from Chockalingam Chettiyar by way of a registered sale



S.A(md)No.509 of 2013

deed, dated 29.12.1999(Ex.A5/Ex.B5). It was further claimed that the plaintiffs 1 to 3 purchased the suit property on 30.04.2008 through a registered sale deed from the said AL.Palaniyappan(Ex.A7). Since then, the plaintiffs have been in possession and enjoyment of the suit property. It is the further claim of the plaintiffs that the defendants, who have no right or title over the suit property, are trying to disturb the possession of the suit property and hence, the suit.

4.Despite the receipt of summons, the respondents remained absent.

5.Whereas the defendants 1 to 3 stoutly denied the plaint contents, besides accepting the ownership of Chockalingam Chettiyar would claim that the said AL.Palaniyappan executed a release agreement, on 29.06.2005(Ex.B3) by receiving an amount of Rs.1,00,000/-(Rupees one Lakh only). After the execution of the said release agreement, in order to defeat the claim of the defendants,



S.A(md)No.509 of 2013

without consideration AL.Palaniyappan executed a sale deed in favour of the plaintiffs on 30.04.2008(Ex.A7). The defendants 1 to 3 would further claim that the suit property is in possession of the defendants and they have also let out the suit property to one Mahendran.

6.Based on the rival pleadings, the trial Court framed the following issues:

(1)Whether the plaintiffs are in possession upon the suit property as on the date of this suit.

(2)Whether the plaintiffs are entitled to perpetual injunction.

(3)To what other reliefs the plaintiffs are entitled to.

7.At trial, the first plaintiff AN.Ramanathan, has examined himself as P.W.1 and one Vairavan was examined as P.W.2. Exs.A1 to A11 were marked. Ex.A5, dated 29.12.1999 is the sale deed executed in favour of AL.Palaniyappan. Ex.A7, is Sale deed, dated



S.A(md)No.509 of 2013

30.04.2008 executed by AL.Palaniappan in favour of the plaintiffs 1 to 3 in respect of the suit property. Ex.A10 is the copy of proceedings of Karaikudi Tahsildar, dated 15.12.2005. On the defendants' side, the second defendant AR.Palaniappan has examined himself as D.W.1 and Meyappa Chettiyar and Pappa are examined D.W.2 and D.W.3. Exs.B1 to B11 were marked. Ex.B3, is the release agreement deed, dated 29.06.2005 executed by AL.Palaniappan in favour of the defendants 1 to 3. Plaint copy in O.S.No.46 of 2008, is Ex.B8.

8.After evaluating the evidence, the trial Court has held that the plaintiffs were in possession of the suit property, as on the date of the plaint and the suit was decreed in favour of the plaintiffs by granting perpetual injunction.

9.Aggrieved, the present defendants 1 to 3 preferred an appeal before the Sub-Court, Devakottai, in A.S.No.95 of 2011. After hearing both sides arguments, the first appellate Court concluded



S.A(md)No.509 of 2013

that though the defendants have filed the suit in O.S.No.46 of 2008 before the Sub-Court, Devakottai, based on Ex.A3 release agreement and it is also pending, based on Ex.A3-Sale Agreement, Power deed-Ex.A4, Sale deed-Ex.A5 and Ex.A7-sale deed, AL.Palaniyappan had got valid title over the suit property and he in turn, sold it to the plaintiffs and the appeal was dismissed confirming the judgment and decree of the trial Court. Against the concurrent findings of the above said Court, the defendants 1 to 3 are on appeal before this Court.

10.Mrs.Parameswari, learned counsel appearing for the appellants/defendants 1 to 3 would vehemently contend that of-course, AL.Palaniappan purchased the suit property through Ex.A5/Ex.B5 from N.K.Cho.M.Chockalingam Chettiyar. By executing a release agreement in favour of the defendants 1 to 3 and by receiving a sum of Rs.1,00,000/- agreeing to execute the release deed with malafides in order to cheat the legal rights of the



S.A(md)No.509 of 2013

appellants executed Ex.A7 sale deed, which is not valid in the eye of law. She would further contend that Ex.A7-sale deed was executed without any consideration.

11.An application under Order 41 Rule 27 C.P.C., has been filed by the learned counsel for the appellants/defendants 1 to 3 enclosing three documents. Among the three documents, the order copy passed in R.C.O.P.No.10 of 2008, which is already marked as Ex.B.4. The other two documents are very much related to this suit property namely, (i)A copy of judgment passed in RCA No.1 of 2011 on the file of the Rent Control Appellate Authority, Devakottai. (ii) A copy of the release deed, dated 28.03.2017 executed by the Sub-Judge, Devakottai and they are received and marked as Ex.B12 and Ex.B13.

12. It is pertinent to note that it is not in dispute that the suit property originally belonged to N.K.Cho.M.Chockalingam Chettiyar.



S.A(md)No.509 of 2013

WEB COPY

The purchase of the suit property by AL.Palaniappan from the said Chockalingam Chettiyar, is also not in dispute(Ex.A5). The candid case of the defendants 1 to 3 is that before execution of Ex.A7-sale deed, the said AL.Palaniyappan has executed a release agreement in favour of the defendants 1 to 3, on 29.06.2005(Ex.B3). In order to defeat the legal rights of the defendants 1 to 3 executed a sale deed on 30.04.2008 in the name of the plaintiffs without any consideration. Ex.B8-Plaint in O.S.No.46 of 2008 indicates the fact that the appellants 1 to 3/defendants 1 to 3 laid a suit before the Sub-Court, Devakottai, for execution of release deed by AL.Palaniyappan and the learned counsel appearing for the appellants drew the attention of this Court that in the said suit, the present appellants deposited the remaining amount of Rs.3 Lakhs(Rupees Three Lakhs only) and the judgment came to be passed in their favour on 02.09.2013, in O.S.No.46 of 2018.



S.A(md)No.509 of 2013

WEB COPY

13. On a careful perusal of Ex.B13, on initiation of execution proceedings by the present appellants in E.P.No.43 of 2015, despite the receipt of notice, the said AR.Palaniappan remained absent and ultimately release deed was executed by the Sub-Court of Devakottai, on 28.03.2017. (Ex.B13) Judgment passed in R.C.A.No.1 of 2011 reflects the fact that the order passed in RCOP No.10 of 2008 was confirmed in favour of the present appellants. The learned counsel for the appellants took this Court as to the details of the suit property in O.S.No.85 of 2008 and the property details found in Ex.B12-release deed executed by the Sub-Court, Devakottai.

14. A deep perusal of the details of the schedule of property given in the plaint as well as the release deed, the properties are one and the same. It should not lie in the mouth of the plaintiffs that by virtue of sale deed Ex.A7, dated 30.04.2008, they own the suit property. In view of the release deed executed by the Sub-Court, Devakottai, on 28.03.2017 on behalf of AR.Palaniyappan, son of



S.A(md)No.509 of 2013

Arunachalam. The learned counsel appearing for the appellants would submit that the judgment rendered in O.S.No.46 of 2008 has reached its finality.

15.In this appeal also, the respondents/plaintiffs despite the receipt of notice neither appeared nor through their counsel. Therefore, based on the aforesaid discussions, relying upon Ex.A5(sale deed), Ex.B3(release agreement), Ex.B12(release deed), the plaintiffs cannot sought for an order of perpetual injunction. Solely based on Ex.A12, the release deed, as per law the plaintiffs 1 to 3 have to be non suited.

16.In fine, the second appeal stands allowed and the suit in O.S.No.85 of 2008 on the file of the Additional District Munsif, Karaikudi, stands dismissed and also the judgment and decree granted in A.S.No.95 of 2011 stands set aside. There is no order as to costs. Consequently, connected miscellaneous petition is closed.



S.A(md)No.509 of 2013

WEB COPY

The trial Court is directed to forward the copy of this judgment to the Joint Sub Registrar, Karaikudi, enclosing the copy of Ex.A7 and submit a report to this Court.

08.11.2023

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

To

- 1.The Sub-Court,
Devakottai,
- 2.The Additional District Munsif,
Karaikudi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(md)No.509 of 2013

R. KALAIMATHI,J.

Ns

S.A(MD)No.509 of 2013

08.11.2023