



S.A.No1064 of 2002 and S.A.(MD).No.590 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE KALAIMATHI

S.A.No.1064 of 2002 and S.A.(MD).No.590 of 2013
and
M.P.(MD).No.2 of 2013 in S.A.(MD).No.590 of 2013

S.A.No.1064 of 2002

P.R.Mariappa Nadar (died)

2.M.Alamelu

2nd appellant was brought on record as LR. of deceased
sole appellant vide Court order dated 09.03.2016
made in M.P.(MD).Nos.3 of 2013 to 5 of 2013.

... Appellants

Vs.

1.L.Ganesan

2.Suresh

3.Somu

4.Nelliyan

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.09.2001 made in A.S.No.11 of 2001 on the file of the Subordinate Judge, Devakottai, confirming the judgment and decree dated 27.04.2001 made in O.S.No.74 of 1999 on the file of the District Munsif cum Judicial Magistrate, Karaikudi.



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For Appellants : Mr.V.Meenakshi Sundaram
for Mr.D.Rajkumar
For Respondents : Mr.R.Sundar Srinivasan

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1.Alamelu
2.Solaimalai
3.Bhuvaneswari
4.Periyanayaki
5.Packiyasali
6.Saroja ... Appellants

Vs.

1.Suresh
2.Somu
3.Solaimuthu ... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 04.04.2013 made in A.S.No.3 of 2013 on the file of Sub Judge, Devakottai, confirming the judgment and decree dated 07.09.2012 made in O.S.No. 142 of 2004 on the file of the Additional District Munsif Court, Karaikudi.

For Appellants : Mr.V.Meenakshi Sundaram
for Mr.D.Rajkumar
For Respondents : Mr.R.Sundar Srinivasan



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COMMON JUDGMENT

S.A.No.1064 of 2002: Being aggrieved by the judgment and decree of dismissal by both the trial Court and the first appellate Court, the daughter of the deceased Mariappa Nadar (sole plaintiff) has preferred this second appeal. (O.S.No.74 of 1999 on the file of District Munsif Court, Karaikudi, A.S.No.11 of 2011 on the file of Sub Court, Devakottai).

2. S.A.No.590 of 2013: Aggrieved by the judgment and decree passed by the trial Court as well as the first appellate Court, the second appeal is preferred by the defendants. (O.S.No.142 of 2004 on the file of District Munsif Court, Karaikudi, A.S.No.3 of 2013 on the file of Sub Court, Devakottai).

3. As the property and the issue involved in both the appeals are one and the same, on consensus, arguments were heard in both the appeals and disposed of by this common judgment.

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



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5. S.A.No.1064 of 2002 [O.S.No.74 of 1999 on the file of District Munsif Court, Karaikudi]

According to the plaintiff Mariappa Nadar, the suit property is in possession of the plaintiff situate at Pallathur Village, present Ward No. 6, G.R.S.No.57/7, Patasalai Street, 15 cents. Before 37 years, one Padmanabha Iyer constructed a tiled house and had been residing there. At the instance of said Padmanabha Iyer, the plaintiff Mariappa Nadar was also residing along with his family members. It is further claimed that based on the same, the plaintiff had been in continuous possession of the suit property. In 1921, the suit property was purchased by one Kaleeswara Iyer. In 1924, partition taken place in respect of the suit property.

6. Thereafter, Padmanabha Iyer came to the suit property as a tenant. Subburama Iyer is the son of Kaleeswara Iyer. In 1979, the plaintiff Mariappa Nadar's owner Padmanabha Iyer entered into an oral sale agreement in respect of the suit property and advance amount was also paid by Padmanabha Iyer.



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7. The plaintiff further claims that the said Padmanabha Iyer purchased 1/3rd share from Sankara Narayanan, who is the grandson of Vaidyanatha Ganapadigal on 26.10.1979. In 1981, Padmanabha Iyer also entered into a sale agreement with the son of Subburama Iyer viz., Sathyamoorthy in respect of 1/3rd share. In respect of the remaining 1/3rd share, Padmanabha Iyer was permitted to enjoy the 1/3rd share. Hence, he has got title to the suit property.

8. Mean while, misunderstanding arose between Padmanabha Iyer and the first defendant Ganesan. The said Ganesan by utilising his official position as Village Administrative Officer (VAO), created some documents and one among them is power document.

9. The said Ganesan as a power agent of Subburama Iyer filed a suit for declaration of title, recovery of possession and for rendition of accounts and the first two reliefs were granted.

10. Mean while, E.P.No.114 of 1990 in O.S.No.56 of 1983 was filed before Devakottai District Munsif Court by the first defendant. The first defendant Ganesan attempted to recover the possession of the suit property. Hence, the suit is filed for permanent injunction.



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11. Per contra, the details of the entire plaint was seriously disputed by the defendants and on behalf of the defendants, it was claimed that there is no cause of action for the suit and the filing of mere suit is not valid and sought for dismissal.

12. Based on the above said pleadings, the trial Court framed the following issues:

(i) At the time of filing of the suit, the suit property was in whose possession?

(ii) Whether the plaintiff is entitled to injunction as prayed for in the plaint?

(iii) What are the other reliefs the plaintiff is entitled to?

13. At trial, P.Ws.1 and 2 were examined and Exs.A1 to A14 were marked. The sale deed executed by Subburama Iyer along with his sons Sathyamurthy and Sundarraju in favour of Mariappa Nadar in respect of the suit property, dated 23.03.1988 is Ex.A2. On the defendants side, the first defendant Ganesan was examined as D.W.1. Exs.B1 to B13 were marked. The sale deed dated 31.07.1981, executed by the sons of Subburama Iyer viz., Sathyamurthy and Sundarraju in



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favour of the first defendant Ganesan in respect of western side 8 cents out of 15 cents is Ex.B1.

14. The trial Court concluded that as per the judgment passed in O.S.No.56 of 1983 on the file of District Munsif Court, Devakottai, Padmanabha Iyer was in permissive possession of the suit property and he is not a tenant. It was further observed that plaintiff Mariappa Nadar was admittedly staying along with the said Padmanabha Iyer and the plaintiff cannot be a lawful occupant of the suit property. Therefore, the plaintiff was denied the relief of permanent injunction and the suit ended in dismissal.

15. Against the said judgment, the plaintiff Mariappa Nadar preferred first appeal and the first appellate Court also dismissed the appeal by observing that the plaintiff cannot be a lawful occupant of the suit property.

16. Against the concurrent findings, at present, after the death of Mariappa Nadar, his daughter Alamelu has preferred this second appeal (S.A.No.1064 of 2002).



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17. S.A.No.590 of 2013 [O.S.No.142 of 2004 on the file of District Munsif Court, Karaikudi]

The above said Ganesan and his three children filed a suit in O.S.No.142 of 2004 before the District Munsif Court, Karaikudi for declaration of title and for recovery of possession in respect of the suit property.

18. According to the plaintiff, originally the suit property was purchased by one Kaleeswara Iyer in 1924. After his death, his only son Subburama Iyer let out the suit property to Padmanabha Iyer and Subburama Iyer had executed a power deed in favour of the deceased first defendant. In order to evict Padmanabha Iyer, when the E.P. proceeding was pending, the tenant Mariyappa Nadar and his family members were brought to the suit property and they were staying there and they are in occupation of the suit property illegally. Padmanabha Iyer died in the year 1996.

19. It was further contended that he purchased part of the suit property on 31.07.1981, from the sons of Subburama Iyer viz, Sathyamurthy and Sundarraju. On 09.03.1986, Ganesan's brother



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Chidambaram, on the strength of power deed executed by Subburama Iyer in his favour, in turn executed a sale deed in favour of Ganesan in respect of eastern 7 cents. It was further claimed by the plaintiff that on 17.03.1988, Subburama Iyer executed a ratification deed. The suit filed by Mariappa Nadar in O.S.No.74 of 1999 on the file of District Munsif Court, Karaikudi for the relief of permanent injunction was dismissed by the trial Court as well as the first appellate Court. The plaintiff has been paying the house tax and hence, declaration of title and recovery of possession were sought for.

20. Whereas the defendants claimed that besides refuting the allegations made in the plaint, Mariappa Nadar has purchased the suit property from Subburama Iyer and his sons by way of sale deed on 23.03.1988. Based on the above said sale deed, they sought for dismissal of the suit.

21. At trial, the third plaintiff Somu was examined as P.W.1. Exs.A1 to A15 were marked. On the defendants side, D.Ws.1 and 2 were examined and Exs.B1 to B6 were marked.



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22. The trial Court, after evaluating the evidence concluded that based on Exs.A1 to A4, the first plaintiff Ganesan has got title over the suit property. The plaintiffs 2 to 4 are the children of the deceased first plaintiff Ganesan. Following the above said findings, the trial Court also concluded that within three months, the defendants 2 to 7 had to surrender the possession of suit schedule property to the plaintiff.

23. In both the suits, the suit property is one and the same and separate judgments came to be passed.

24. Since the parties are one and the same and the suit properties are also one and the same, both the appeals are taken up together. After hearing both sides, substantial questions of law arise for consideration as follows:

(i) Whether the vendor's of the plaintiff had exclusive title over the suit property?

(ii) Whether the deed of rectification given by the vendor of the plaintiff is legally valid document, recognising an invalid document in the absence of fresh sale deed?



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25. The learned counsel appearing for the appellants in both the appeals Mr.V.Meenakshi Sundaram would strenuously contend that there is no cause of action for the plaintiff in O.S.No.142 of 2004 with regard to recovery of possession. He also drew the attention of this Court that during the life time of Subburama Iyer, sons would never get any title in the suit property and as such, Ex.A1, sale deed cannot convey a title to Ganesan in respect of western 8 cents.

26. On the other hand, the learned counsel appearing for the respondents Mr.R.Sundar Srinivasan would vehemently argue that based upon Exs.A1 to A3 documents, Ganesan became owner of the entire extent of the suit property. It is further strengthened by Ex.A4, ratification deed executed by Subburama Iyer in favour of Ganesan on 17.03.1988. It is the further argument of the learned counsel that both the Courts on finding of facts favoured the first respondent Ganesan.

27. The moot point in this appeal is who has got a better title for the suit property whether Mariappa Nadar or Ganesan.

28. Before going into the main issue, two documents have been filed by the appellants in the Second Appeal No.590 of 2013,



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under Order 41 Rule 27 of C.P.C., and sought for permission to receive two documents viz.,

(i) Ratification deed executed by Subburama Iyer in favour of Ganesan dated 17.03.1988, in respect of the suit property.

(ii) Certified copy of sale deed executed by one Ramachandra Iyer in favour of Kaleeswara Iyer dated 19.10.1921, in respect of the suit property.

29. In an application under Order 41 Rule 27 of C.P.C., in order to advance the cause of justice, at a later stage, documents may be received in evidence. The first document is already marked as Ex.A4. The sale deed in the name of Kaleeswara Iyer is not marked by either side. Absolutely there is no dispute that the suit property originally purchased by Kaleeswara Iyer. As the said sale deed is the base document of both the cases, the second document mentioned supra is received and marked as Ex.B21 (S.A.(MD).No.590 of 2013).

30. To buttress the argument of the learned counsel for the respondents, following judgments were referred to:

(i) *Kajaushan and others vs. Govindakarani* in Second Appeal Nos.67 and 68 of 2012, judgment of this Court, dated 11.11.2014.



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(ii) *Rajkumar Selvanathan vs. Murugan* in A.S.Nos.46 and 91

of 2013, judgment of this Court, dated 30.09.2021.

(iii) *Amar Nath vs. Gian Chand and another* in Civil Appeal No.

5797 of 2009, judgment of the Supreme Court, dated 28.01.2022, in order to contend that when the registered power of attorney deed is cancelled, the same should have intimated to the agent in writing about the cancellation of power. In the absence of the same, the action of the power agent is not liable to be questioned.

(iv) *Suresh Chand vs. Kundan and others* reported in 2000 (7)

SCALE 620, judgment of the Supreme Court, dated 07.09.2000, in order to contend that even if the immovable property is purchased without mentioning the building thereon, as per Section 8 of the Transfer of Property Act, 1882, all the things attached with the earth are included in the land so also the building constructed thereon.

31. Both sides have not disputed as to the fact that originally the suit property was purchased by one Kaleeswara Iyer on 19.10.1921, as per Ex.A16. The plaintiff Ganesan claimed to have become the owner of the property, based on Exs.B1 to B4. The details of the said documents have already been tabulated supra.



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32. It is not in dispute that Subburama Iyer is the only son of Kaleeswara Iyer. Subburama Iyer had two sons viz., Sathyamoorthy and Sundarraju. The said two sons of Subburama Iyer had executed a sale deed in favour of Ganesan on 31.07.1981, in respect of western side 8 cents of the suit property.

33. The learned counsel appearing for the respondents would stoutly contend that when the father was alive, the sons are not entitled to sell the undivided share as per Ex.A16, dated 19.10.1921. On the other hand, the learned counsel appearing for the respondents Mr.R.Sundar Srinivasan drew the attention of this Court that as contended by the learned counsel for the appellants the sale deed was not executed without the knowledge of Subburama Iyer, because Subburama Iyer has signed as identifying witness before the Sub Registrar. Therefore, I do not find much force in the arguments of the learned counsel for the appellants.

34. That apart, Ex.A2 is the special power of attorney deed executed by Subburama Iyer in favour of Chidambaram, brother of Ganesan, in order to sell the suit property. This was cancelled by



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Subburama Iyer on 03.03.1988 (Ex.B1). But, on the strength of Ex.A2, power, the said Chidambaram executed a sale deed in favour of his brother Ganesan in respect of eastern 7 cents (Ex.A3). The learned counsel appearing for the appellants Mr.V.Meenakshi Sundaram would vehemently contend that the special power of attorney executed by Subburama Iyer was cancelled by him through Ex.B1, as mentioned supra, the sale deed, Ex.A3, does not have any sanctity at all and ultimately the sale deed cannot be held to be valid. In turn, the learned counsel appearing for the respondents would draw the attention of this Court by referring to the decisions of this Court in *Kajaushan and others vs. Govindakarani* in Second Appeal Nos.67 and 68 of 2012, dated 11.11.2014, *Rajkumar Selvanathan vs. Murugan* in A.S.Nos.46 and 91 of 2013, dated 30.09.2021, *Amar Nath vs. Gian Chand and another* in Civil Appeal No.5797 of 2009, dated 28.01.2022, to the effect that unless and until the power agent is intimated about the factum of cancellation of power of attorney deed, he cannot be found fault with and the actions based on the power deed holds good and valid in the eye of law.

35. In this regard, it is useful to refer to Section 208 of the Indian Contract Act, 1872.



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208. When termination of agent's authority takes effect as to agent, and as to third persons.-

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

36. Section 208 provides that the termination of the power agent takes effect only when it becomes known to the agent. Revocation has taken place on 03.03.1988 vide Ex.B1. But the termination of the power was not intimated to the agent at all. When there is no intimation to the agent as to the cancellation of the power, then his actions cannot be questioned. Therefore, Ex.A3 cannot be held to be an invalid document.

37. On 17.03.1988, Subburama Iyer executed a ratification deed in favour of Ganesan in respect of eastern 7 cents_(Ex.A4). The learned counsel for the appellant Mr.V.Meenakshi Sundaram drew the attention of this Court to the effect that *de hors* the termination of the power by Subburama Iyer through Ex.B1, the ratification deed executed by Subburama Iyer (Ex.A4) does not have significance. In this regard, it is useful to refer to the provisions of Section 196 of the Indian Contract



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Act, 1872. Section 196 of the Indian Contract Act, 1872 is extracted hereunder:

196. ***Right of person as to acts done for him without his authority.*** *Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.*

(Explanation for 196 or Power of Attorney Act)

38. Therefore, as per Section 196 of the Indian Contract Act, the action of Subburama Iyer by ratifying the action of Chidambaram (Ex.A3) is perfectly valid in the eye of law. Whereas, the first defendant Mariappa Nadar claims to have purchased the suit property from Subburama Iyer on 23.03.1988 and his two sons (Ex.B3) as early as on 09.03.1986 itself. The entire suit property was purchased by Ganesan through Ex.A1 and Ex.A3 sale deeds. Ex.A3, sale deed was further strengthened by Ex.A4 – ratification deed executed by the original owner Subburama Iyer. It is a futile exercise on the part of Mariappa Nadar to have the sale deed executed by Subburama Iyer in respect of the suit property through Ex.B3. On the said date, Subburama Iyer did not have any right or title over the suit property.



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39. In view of the foregoing discussions, the above said substantial questions of law are answered in favour of the plaintiff Ganesan.

40. Based on the aforesaid discussions, the Second Appeal No.1064 of 2002 stands dismissed. O.S.No.74 of 1999 on the file of District Munsif cum Judicial Magistrate Court, Karaikudi is dismissed. Second Appeal No.590 of 2013 is also dismissed and O.S.No.142 of 2004 on the file of Additional District Munsif Court, Karaikudi stands allowed. Time for delivery of possession two months from today. M.P. (MD).No.2 of 2013 in S.A.(MD).No.590 of 2013 stands allowed by marking certified copy of sale deed. There is no order as to costs.

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

Note: Ex.B21, Certified copy of sale deed, dated 19.10.1921 marked before this Court.

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1.The District Munsif cum Judicial Magistrate,
Karaikudi.

2.The Subordinate Judge,
Devakottai.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

(The Additional document Ex.B21 marked before
this Court shall be send back to the trial Court
along with the documents already received, on duly
indexing the same, after expiry of appeal time.)



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