



A.S.No.943 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.943 of 2010

and

M.P.No.1 of 2010

and

Cross Objection No.59 of 2011

Judgment reserved on 22.02.2024	Judgment pronounced on 03.06.2024
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A.S.No.943 of 2010:-

Manivannan
S/o.Kannayya Nattar

... Appellant

Vs.

1. Karthikeyan
S/o.Kannayya Nattar
2. The District Registrar
Cuddalore.
3. The Sub-Registrar, Joint-I
Cuddalore.



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4. The Cuddalore Municipality
rep. by its Commissioner
Cuddalore.
5. The Superintending Engineer
Cuddalore Electricity Distribution Circle
Tamil Nadu Electricity Board
Cuddalore.

... Respondents

Cross Objection No.59 of 2011:-

Karthikeyan
S/o.Kannayya Nattar

... Cross Appellant

Vs.

1. Manivannan
S/o.Kannayya Nattar
2. The District Registrar
Cuddalore.
3. The Sub-Registrar, Joint-I
Cuddalore.
4. The Cuddalore Municipality
rep. by its Commissioner
Cuddalore.
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Cuddalore Electricity Distribution Circle
Tamil Nadu Electricity Board
Cuddalore.

... Respondents



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This First Appeal is filed under Section 96 and Order XLI Rule 1 of Code of Civil Procedure to set aside the judgment and decree dated 30.07.2009 in O.S.No.93 of 2005 on the file of the Court of the Principal District Judge, Cuddalore.

Cross Objection is filed under Order XLI Rule 33 of CPC to cross appeal against the judgment and decree dated 30.07.2009 in O.S.No.93 of 2005 on the file of the Court of the Principal District Judge, Cuddalore.

For Appellant in AS and
For R1 in Cross Objection

: Mr.R.Gururaj

For R1 in AS and
For Cross Appellant
in Cross Objection

: Mr.P.Valliappan
Senior Counsel
for Mr.G.RM.Palaniappan

For R4 in AS and Cross Objection

: Mr.P.Srinivas

For R2 & R3
in AS and Cross Objection

: Mr.V.Ramesh
Government Advocate

For R5 in AS and Cross Objection

: Mrs.J.Hemalatha Gajapathy



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JUDGMENT

An unsuccessful plaintiff is the appellant herein.

2. For the sake of convenience, parties are referred to as per their litigative status before the trial Court.

3(a). The plaintiff filed a suit seeking the relief of declaration of title to the suit property and for permanent injunction against the first defendant from interfering with the peaceful possession and enjoyment of the suit property. The suit was originally filed as *informa pauperis*, which was allowed by the trial Court by an order dated 05.10.2005 and the same was numbered as O.S.No.93 of 2005.

3(b). The plaintiff and the first defendant are the brothers. One Dakshinamurthy and Baskaran are the other brothers and one Amudha, Girija and Kavitha are the three sisters of the plaintiff and the first defendant.



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4. The plaint proceeds on the basis that since the plaintiff is virtually blind, his father through a Will dated 21.08.2000 bequeathed the suit property in his favour and Ex.A1 - Will dated 21.08.2000 was duly registered and registration copy of Will is Ex.A12 and the plaintiff is residing in the said premises. As the first defendant is trying to disturb his possession, the present suit has been filed.

5. The first defendant filed the written statement denying the title of the plaintiff *inter alia* contending that Ex.A1 - Will was duly cancelled by Ex.B1 on 27.11.2000 and on the very same day, Late Kannaiyan Nattar, who is father of plaintiff and the first defendant executed a registered sale deed in favour of first defendant under Ex.B2. Based upon the same, the first defendant had effected mutation in the Revenue Records and filed Ex.B3 to Ex.B9 and also filed Ex.B10, which is a petition copy of O.P.No.140 of 2001 wherein father Kannaiyan Nattar originally filed a petition to set aside the sale deed marked as Ex.B2, which was executed by him in favour of the first defendant. However, he filed a memo for not pressing the O.P.No.140 of 2001 which was



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marked as Ex.B11 and certified copies of petition and memo of not pressing O.P.No.140 of 2001 were marked as Ex.B12 and Ex.B13.

6. The trial Court has framed an issue as to whether the plaintiff or the defendant was in possession of the suit property as on the date of filing of the suit.

7. The trial Court, based upon oral and documentary evidence, has come to the conclusion that Ex.B2 - Sale Deed in favour of the first defendant is true and valid and it is stated that since the plaintiff is none other than the blind brother of the first defendant, his possession cannot be evicted without due process of law and accordingly, decreed the suit to the limited extent of injunction.

8. As against the rejected relief of declaration of title, the unsuccessful plaintiff has filed A.S.No.943 of 2010 and the first defendant has filed Cross Objection No.59 of 2011.



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9. After hearing learned counsel on both sides, this Court formulates the following points for determination in the appeal.

- (i) Whether the plaintiff is entitled for declaration of title?
- (ii) Whether the plaintiff is entitled for the relief of injunction?

10. Ex.A1 is a copy of registered Will executed by Kannaiyan Nattar. Ex.A12 is a registration copy of the Will. The execution of Will was admitted by the first defendant as well as his mother and brothers namely, DW2 and DW3.

11. Mr.R.Gururaj, learned counsel for plaintiff would contend that since the plaintiff is a visually challenged person, his father Kannaiyan Nattar has shown some mercy and executed Ex.A1 - Will bequeathing the suit property in favour of the plaintiff and the first defendant is another brother of the plaintiff, who has fraudulently obtained the sale deed in his favour under Ex.B2 and the same is sham and nominal and learned counsel also drew my attention to O.P.No.140 of 2001, which was filed before the Sub-Court, Cuddalore by none other than his father Kannaiyan Nattar during his lifetime



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challenging the very same Ex.B2 - Sale Deed.

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12. Per contra, Mr.P.Valliappan, learned Senior Counsel appearing for the first defendant would contend that Ex.B2 - Sale Deed was executed by Kannaiyan Nattar for a due sale consideration since he has suffered more debts for his daughter's marriage and for the amount borrowed for the marriage of the daughter he has to repay the amount and hence, he sold the property to the first defendant under Ex.B2 and one of the brothers and mother of the plaintiff are the attestors to Ex.B2 and made the submissions in support of the order of trial Court and also stated that the injunction granted by the trial Court is liable to be vacated since there can be no order of injunction against true owners and relied upon the judgement in the case of ***Padhiyar Prahladji Chenaji (deceased) through L.R.s Vs. Maniben Jagmalbhai (deceased) through L.R.s and others*** reported in ***2022 LiveLaw (SC) 241***.

13. The relationship between the plaintiff and first defendant are that they are sons of Kannaiyan Nattar. The plaintiff relied upon Ex.A1 - Will.



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The defendants relied upon Ex.B1 and Ex.B2 whereby Ex.A1 - Will was cancelled under Ex.B1 and a registered Sale Deed was executed by father Kannaiyan Nattar in favour of first defendant under Ex.B2. Perusal of documents goes to show that it is the sale deed for consideration and to prove the same namely, execution of Ex.B1, the first defendant examined the witnesses to the said document as DW2 and DW3 and scribe of Ex.B2 - Sale Deed was examined as DW4.

14. It remains to be stated that DW2 is none other than one of the brothers of the plaintiff and the first defendant. Besides DW2, the mother of the plaintiff is also signed as one of the attesting witnesses. Ex.B1 is the cancellation deed cancelling Ex.A1 - Will which is the sheet anchor of the plaintiff. As the owner of the property, the Testator Kannaiyan Nattar is competent enough to cancel Ex.A1 - Will, the trial Court has rightly come to the conclusion that Ex.B1 has been clearly proved by the attesting witnesses DW2 and DW3 about the conscious execution of Ex.B1 by Kannaiyan Nattar whereby Ex.A1 - Will by the said Testator Kannaiyan Nattar to plaintiff stands cancelled and hence, the sheet anchor of the plaintiff goes.



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15. The next point that arises for consideration is whether Ex.B2 - Sale

Deed is sham and nominal as contended by the plaintiff. In connection with the execution of Ex.B2 - Sale Deed, DW2 and DW3, who are brothers of the plaintiff are also attestors of Ex.B2 - Sale Deed and it remains to be stated that the mother has also attested the document. DW4 is scribe to the said document. Further more, the case of the first defendant is that to dispose of the debts and to meet out the expenses incurred for the celebration of marriage of the last daughter, the father Kannaiyan Nattar opted to sell the suit property and the first defendant purchased the suit property for a valuable consideration after cancellation of Will executed by the father Kannaiyan Nattar namely, Ex.A1. So is the evidence of DW2, DW3 and DW4. There is nothing in the cross-examination of DW2 to DW4 that the attesting witnesses namely, Baskar, Prabakar and his mother Roobavady are inimically deposed towards the plaintiff and neither such pleading nor any suggestion was put to them during the cross examination of those witnesses in the witness box and therefore, the trial Court has rightly come to the conclusion that by virtue of Ex.B2 - Sale Deed, the first defendant is the owner and accordingly, rejected the relief of declaration of title by the plaintiff and the same is hereby



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confirmed since the said finding does not suffer from any irregularity or illegality warranting interference at this appellate stage.

16. Pursuant to Ex.B3-Patta, Ex.B4- transfer of house tax receipts and Ex.B9 - Electricity Bills, the trial Court has held that based upon Ex.B2 - Sale Deed in favour of the first defendant, he had effected mutation in the Revenue Records. Since the plaintiff is in possession of the suit property, he can be evicted by due process of law by the first defendant. With that observation, the suit was dismissed.

17. Cross Objection No.59 of 2011 has been filed challenging the said finding at Paragraph No.17 of the said judgement. Admittedly, the plaintiff had examined himself as PW1 and PW2 is one Ramakrishnan, who had deposed that PW1 is residing in the said house. The plaintiff is a virtually challenged person. He claims to be living in the part of the house and the same was corroborated by the evidence of PW2 and hence, the protection given by the trial Court appears to be just and fair in favour of the visually challenged person which need not be disturbed and hence, the Cross



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Objection is liable to be rejected.

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18. Accordingly, I find no merits in this case and the Appeal Suit as well as Cross Objection are dismissed and the judgment and decree dated 30.07.2009 in O.S.No.93 of 2005 on the file of the Court of the Principal District Judge, Cuddalore is hereby confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

.06.2024

Index : Yes / No
Neutral Citation : Yes/No
Speaking / Non-speaking order

mk

To

1. The Principal District Judge,
Cuddalore.
2. The Section Officer,
VR Section, High Court,
Madras.

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RMT.TEEKAA RAMAN, J.

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