IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS. No. 261 of 2018

Sekar

... Appellant

Vs.

1.Nepolean
2.Tharakeswari
3.S.Ramya

..Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 11.10.2017 passed in O.S No. 52 of 2012 on the file of the Principal District Judge, Kancheepuram, Chengalpattu and dismiss the suit OS No. 52 of 2012.

For Appellant : Mr.V.Srikanth

For R1 : Mr.R.Thiagarajan

For R2 : Mr.V.Ragavachari, Senior counsel, for Mr.V.Victor

For R3 : Not appeared.

JUDGMENT

The appellant herein is the third defendant in suit OS No. 52 of 2012 filed by the first respondent herein/plaintiff on the file of the Principal District Judge, Kancheepuram. The said suit was filed by the plaintiff/first respondent for the relief of declaration and for recovery of possession and also to vacate the third defendant/appellant herein from the B schedule property and also to declare the alleged release deed dated 08.01.1997 and the power of attorney dated 10.10.2008 as null and void and not bind the plaintiff and claiming that he is the absolute owner of the 21 cents in the A schedule mentioned property. The plaintiff stated that he purchased the A schedule property from the legal heirs of Sengal Gramini and Indirani Ammal namely Pushhanam, S.Venkatesh s/o Sengali Geramani, Lakshmi, Thangaraj, Pushpawathi, Sundari and Tharageswari through their power agent Loganathan through the registered sale deed dated 23.02.1994 ever since he was in possession of property. Thereafter, his vendor sold 18 cents to one Rajakumari. Before that, his vendor sold 12 cents to one kabali and

Vetrivel through registered sale deed. Therefore, available extent in survey No. 62-1A is three cents. The legal heirs of Sengali Geramani except plaintiff's wife fraudulently created the relased deed in favour of the first defendant as if available extent is 12 cents. All the defendant colluded with each other created fraudulent document in order to grab the suit property. When the plaintiff attempted to transfer the patta revenue officials informed that patta was transferred in the name of third defendant in respect of 12 cents . In fact, out of 12 cents 11 cents belongs to the plaintiff for which third defendant obtained patta fraudulently. Therefore, they filed the suit to cancel the release deed and other documents as null and void and also prayed for recovery of possession in respect of B schedule property.

2. The First and third defendant contested the suit filed their written statement, in which, the first defendant stated that as a legal heir of Sengali Gramani she is provided with 12 cents S.No. 62/1 of Rajakilpakkam Village through release deed dated 08.01.1997, from the first defendant, third defendant purchased the suit property through sale deed dated 08.11.2008. Further, the first defendant stated that one Indirani Ammal wife of Sengali Gramani purchased an extent of 45 cents through sale deed dated 07.06.1957 out of 1.28 acres and through another sale deed/Ex.A3 dated

21.10.1957 she purchased 18 cents in the same S.No.61-1A(old S.No. 62/1) totally she purchased 63 cents out of 1 acre 28 cents. The legal heirs of the Indirani Ammal gave a power of attorney in favour of one Loganathan for entire extent of 63 cents out of 1 acre 28 cents of land, till her life time Indirani Ammal ever since from her purchase she was in possession and enjoyement of the property(i.e., 1956-1993). The plaintiff purchased the property through sale deed/Ex.A1from the legal heirs of the Indirani Ammal including his wife. Even she has not come forward to say that out of 54 cents 24 cents was coveyed. In fact, an extent of 12 cents Sridhana property was given to Pushpanam/wife of the plaintiff during the life time of the plaintiff's vendor, the plaintiff has not disputed the extent of property. In fact, on the date of executing the sale deed/Ex.A1 36 cents was conveyed out of which 12 cents is entitled for his wife. After taken into account of the sale deed dated 07.02.1994(12 cents) and certified registration copy of the sale deed/Ex.A5 dated 14.05.1993 an extent of 18 cents, totally 30 cents deducting said 33 cents in out of 63 cents remaining extent available on the date of Ex.A1 plaintiff purchased is only 33 cents. But it was wrongly mentioned as 54 cents. Therefore out of 33 cents plaintiff or his wife pushpanam entitle for only 21 cents. Besides, plaintiff close relative of his vendor family failed to implead all the legal heirs. Therefore, the plaint as such is bad for non joinder of necessary parties and through Ex.A1 he is entitle for 21 cents. The plaintiff wife of Pushpanam also not disputed release deed/ Ex.A6 executed by other legal heirs in favour of the first defendant, through which 12 cents was belongs to her in S.No. 62-1. Therefore, third defendant entitle for only 12 cents in Survey number. Hence, he prayed to dismiss the suit.

3. On the side of the plaintiff, 19 documents were marked as Ex.A1 tpo Ex.A19 and one witness was examined and on the side of the defendants, 5 witnesses were examined and marked 8 documents.

4. Considering the oral and documentary evidence, the Trial Court framed five issues and held that through Ex.A1 Indirani Ammal purchased 43 cents from original owner in suit S.No. 62 -1. Subsequently, through Ex.A3, she purchased 18 cents in suit survey number along with other survey number. Therefore, total extent purchased by the Indirani Ammal in S.No. 62-1 is comes around 63 cents. The defendant also pleaded same and equilent and then the Trial Judge spaced of Ex.A1/sale deed old S.No. 62 sub-divided as 61-1A and also it is an admitted by both parties. The plaintiff purchased an extent of 21 cents from the legal heirs of Indirani Ammal

namely the first defendant and her brothers and sisters including the plaintiff's wife but the extent was mentioned as out of 54 cents 21 cents was sold during the sub division under UDR scheme and the same was enjoyed by the legal heirs of the Indirani Ammal another extent 63 cent as they pleaded. Furthermore, the Trial Court also taken into consideration of the Ex.A4 and Ex.A5 sale deeds through which one Rajkumar, Vetrivel and others purchased the property from the legal heirs of the Indirani Ammal. Accordingly, sold 18 cents in S.No. 62-1, through A another 12 cents. Thereby, 30 cents were sold after deducting purchase made by the plaintiff an extent of 21 cents. Available property is only 3 cents in S.No. 62-1A after deducting total extend of 54 cents in S.No. 62-1A as per UDR scheme. Therefore, the release deed executed in favour of the first defendant by Indirani Ammal is illegal and no such extent is available. Further, the Trial Court considering the Ex.A8, Ex.A19/report of the revenue officals wherein, in suit survey number 62-1A total extent equivalent to 62 cents but available S.F. 62-1A stands in the name of the Indirani Ammal as per the UDR scheme but patta granted in favour of the Indirani Ammal is only to the extent of 54 cents. Considering the oral and documentary evidence the Trial court finally held that as per UDR scheme patta was granted in favour of the Indirani Ammal only to the extent of 54 cents out of which 51 cents were sold remaining only 3 cents, however the release deed made in favour of the firs defendant as if 12 cents available in ground as such is erroneous also not valid. Accordingly, release deed , power deed , sale deed declared as null and void. It is also declared that as per Ex.A1/sale deed plaintiff is entitled for 21 cents. That apary the Trial judge also held that suit is filed within time hence the plea of limitation would not arise. Accordingly, suit was decreed. Challenging the said findings, the third defendant/purchaser of the B schedule property preferred an appeal.

5. The learned counsel for the appellant submitted that the Trial Court has erroneously granted decree in favour of the plaintiff without appreciating the evidence adduced on the side of the defendants indeed the plaintiff not proved that the defendant has encroached the plaintiff's property which was shown as B schedule property. Without framing proper issues decree granted by the trial judge is unjust and liable to be set aside.. Further submits that there is no material evidence on the side of the plaintiff to establish that original vendor Indirani Ammal possessed only 54 cents in S.No. 62-A without which the decree was granted in favour of the plaintiff as such is erroneous and liable to be set aside. Further, submitted that other

legal heirs of the Indirani Ammal not been impleaded as party in the suit, despite raising the plea of non joinder of necessary of party the Trial Court erroneously decreed the suit. Hence, he prayed to set aside the findings of the Trial Court .

6. Further, the learned counsel for the respondent/plaintiff submitted that the original vendor Indirani Ammal possessed only 54 cents in S.No. 62-A Old S.F. No. 62-1 though the extent mentioned in her sale deed is 63 cents but on ground 54 cents alone is available same was affirmed through revenue records and accordingly under UDR scheme available extent in S.No. 62-1 was sub divided into 62-1A , 62-1B, and the plaintiff's original vendor Indirani Ammal allotted with 62-1A an extent of 0.22.0 ares , remaining 54 cents allotted to another sharer 62-1B and as per the sale deed made by the legal heirs of the Indirani Ammal in three sale deeds some legal heirs legal heirs of Indirani Ammal total extent of 51 was sold out of 21 cents purchased by the plaintiff. Therefore, three cents alone is available on ground not 12 cents as pleaded by the first defendant as well as purchaser the same was rightly observed by the Trial Court and decreed the suit which needs no interference. Hence, he prayed to dismiss this appeal.

7. The foremost points to be decided is whether the available extent in S.No. 62-1A is 63 cents or 52 cents?

8. As per the sale deeds dated 07.06.1957, 21.10.1957 Indirani Ammal purchased 45 cents and another 18 cents, respectively in S.No. 62-1, which is an admitted fact. Ex.A2 and Ex.A3 reveals that at that time of purchase made by the Indirani Ammal Survey number is S.No. 62-1, after resurvey it was sub divided as 62-1A and 62-1B. Though the said sale deeds covers 63 cents but as per the UDR scheme original vendor Indirani Ammal allotted with only 0.22.0 ares (i.e., 54 cents). The report of the revenue Divisional officer, obtained under RTI Act, was marked as Ex.A18, Ex.A19. On perusal of the report of the revenue Divisional officer, obtained under RTI Act/A register/Ex.A18, EX.A19, patta was granted in favour of the Indirani Ammal in respect of 54 cents in S.No. 62-1A and another extent of 0.21.0 ares (54 cents) in S.No. 62-1B was granted to Sathasivam, Kailasam and Chandiran. Furthermore, as per the original A register and revenue records, old S.No. 62-1 was mentioned as extent of 1.28 acres. Though, in original sale deed stands in the name of the original vendor Inidirani Ammal an extent of 1.28 acres was mentioned pertaining to

the suit survey No. 62-1 but as per UDR scheme, extent was mentioned as 1.08 acres Accordingly, 54 cents each allotted to Indirani Ammal and another individuals. It is an undisputed fact that the legal heirs of the Indirani Ammal was conveyed the property to three different persons through sale deeds of the year 1993, 1994 which was marked as Ex.A1, Ex.A4 and Ex.A5 thereby total extent of 51 cents were sold therefore only 3 cents alone is available the same was rightly concluded by the court below which needs no interference. Further, according to the defence taken by the defendants, 68 cents was purchased from the Indirani Ammal, out of which 56 cents was sold, remaining 12 cents was available, other legal heirs released in favour of the first defendant through released deed, thereafter, she gave a power of attorney to the second defendant, based on that 12 cents purchased by the third defendant but ignoring extent which was mentioned as 1.28 acres in the original deed of the vendor. Admittedly, in the sale deed belongs to the Indirani Ammal Ex.A2 and Ex.A3 an extent of 1.28 acre was mentioned but as per the Revenue records Ex.A18 and Ex.A19 on ground only 1.08 acres is available same was equally divided into 54 cents each to Indirani Ammal in S.F NO. 62/1A and another in 62-1B. Moreover, the contention of the plaintiff is that at that time of purchase made in the year 1994 he measured the property found only 54 cents available on ground, out of which, he purchased 21 cents and the same was described in the schedule. On perusal of the documents in new S.No. 62-1A an extent of 54 cents is shown, out of which, 21 cents was purchased by the plaintiff, so on the date of purchase made by the plaintiff an extent of 54 cents available under UDR scheme the plaintiff proved his claim which is rightly decreed by the Court below. There is no evidence on the side of the defendants that after UDR his vendor have 64 cents on ground. Accordingly, this appeal is dismissed.

9. In the result, this appeal is dismissed as no merits. No Costs. Consequentially, connected miscellaneous petition(s), if any, is/are closed.

05.11.2024

pbl

To
1.The Section Officer,
V.R Section.
2. The Principal District Judge, Kancheepuram, Chengalpattu.

T.V.THAMILSELVI,J.

Pbl

SA. No.261 of 2018

05.11.2024