



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2024

PRONOUNCED ON : 19.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 148 of 2022

and

O.A.Nos.444 & 445 of 2022

1.T.Muthu Chettiar
2.T.Vairavan Chettiar
3.M.Alagammal
4.V.Sivagami

... Plaintiffs

Vs.

1.Kumudavalli
2.S.Padmapriya
3.M.Murali
4.M.Sundaramurthy
5.B.Gowri

...Defendants

Prayer : Complaint filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree to against the defendant:

i)Directing the defendants jointly and severally to quit and deliver vacant possession of the plaint schedule property to the plaintiffs;

ii)Directing the defendants jointly and severally to pay the plaintiffs damages for illegal occupation of the suit property at the rate of Rs.1,00,000/-



per month amounting to Rs.25,00,000/- from the date of plaint till the date of delivery of vacant possession of the suit property;

iii) To pass a Decree for permanent injunction restraining the defendants, their heirs, men, servants, agents, administrators, assignees etc., or any persons claiming through or under them from alienating or encumbering the suit schedule property by way of sale, mortgage, pledge, pawn or otherwise;

iv) To pass a decree for permanent injunction restraining the defendants, their men, servants, agents and subordinates from in any manner from putting up or making any improving, modifying, demolitions, constructions, additions, alterations or modifications in the suit property;

v). For the costs of the suit.

For plaintiffs : Mr. S.L.Sudersanam

For D1 & D2 : Mr. M.Selvaraju

D3 to D5 : Set exparte

JUDGMENT

The Suit had been filed seeking a direction against the defendants to jointly and severally vacate and to deliver the vacant possession of the suit schedule property and to pay damages to the plaintiffs for illegal occupation of the suit schedule property at the rate of Rs.1,00,000/- per month from the date of filing of the plaint till the date of delivery of the vacant possession and



to pass a decree of permanent injunction restraining the defendants from alienating the suit schedule property and for a permanent injunction restraining the defendants from making any improvement or demolition or construction of the suit property. The suit schedule property is land and building at New Door No.92/2, Rama Naicken Street, Nungambakkam, Chennai – 600 034 measuring 1485 sq.ft.

2.The 1st and 2nd plaintiffs are brothers and the 3rd and 4th plaintiffs are their respective spouses. The 1st and 2nd defendants are mother and daughter. The 3rd, 4th and 5th defendants had been set *ex-parte* on 13.03.2023. The husband of the 1st defendant, Mohan, and the husband of the 5th defendant, Baskaran and the 3rd and 4th defendants are all brothers and sons of Mehanatha Mudaliar.

3.It is the case of the plaintiffs that the suit schedule property was originally owned by T.Apparsundara Mudaliar. On 12.08.1953, he had executed a settlement deed in favour of Mehanatha Mudaliar and T.Saroja, the sister of Mehanatha Mudaliar. After the said settlement, Mehanatha Mudaliar had mutated all the revenue records in his name. He was paying necessary statutory taxes. From the date of settlement, he was in exclusive



possession and enjoyment of the property. The 1st and 2nd plaintiffs entered into an agreement of sale with Mehanatha Mudaliar, and he conveyed the property to the 3rd and 4th plaintiffs under a sale deed dated 17.11.1995 registered as Document No.1034 of 1995 in the office of the Sub-Registrar, Thousand Lights. It is claimed that the plaintiffs are in possession and enjoyment of the property and are also paying the taxes in their names. It is also contended that the defendants are aware of the sale executed by Mehanatha Mudaliar.

4.It is stated that the 1st and 2nd defendants and the legal heirs of yet another pre-deceased son of Mehanatha Mudaliar had filed C.S.No.433 of 1994 seeking partition of the suit property and other properties. The suit was transferred to the III Assistant City Civil Court, Chennai in O.S.No.2007 of 1996. The 1st and 2nd plaintiffs herein were the defendants in that suit. It had been stated that Mehanatha Mudaliar was also a defendant in that suit. The 3rd and 4th defendants herein were also defendants and they had been set *ex-parte*. Mehanatha Mudaliar died pending that particular suit. The legal heirs of another deceased son Ramesh who were the 3rd and 4th plaintiffs in the suit had entered into an agreement of understanding and had executed a document that they had no right over the suit property and had actually withdrawn the



suit as not pressed. After trial, the suit was dismissed by judgment and decree dated 21.04.2011. A specific finding was given that the sale deed executed by Mehanatha Mudaliar was binding and bonafide and the plaintiffs therein or the defendants herein cannot claim any share over the suit property.

5.As against the judgment and decree in O.S.No.2007 of 1996, the 1st and 2nd defendants herein had filed A.S.No.396 of 2011 which came up for consideration before the IV Additional City Civil Court, Chennai and by judgment dated 01.12.2018, the First Appeal was also dismissed. Thereafter, the 1st and 2nd defendants herein had also filed a Second Appeal and the delay was also condoned and had been taken on file as S.A.No.55 of 2024. Notice alone had been directed but no stay was granted. It had been further stated in the plaint that the plaintiffs have lawful title to the property. It is stated that the defendants had continued to occupy the suit property without any right. The plaintiffs demanded the defendants to vacate and hand over possession. It is under those circumstances that the suit had been filed seeking a direction against the defendants to hand over possession and to pay damages for occupation.

6.As stated earlier, the 3rd, 4th and 5th defendants had been set ex-parte



on 13.03.2023.

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7.The 1st and 2nd defendants filed written statement and they stated that the suit property belonged to the family of T.Sivarama Mudaliar and the title emanates from Doc. No.771 of 1928 registered in the office of the Sub-Registrar, Mylapore. He had two sons viz., Chengalvaraya Mudaliar and Thiruvengada Mudaliar. Chengalvaraya Mudaliar had two sons viz., T.Appar Sundara Mudaliar and T.Vinayaga Mudaliar. Thiruvengada Mudaliar had three sons viz., T.Kanniappa Mudaliar, T.Shanmuga Mudaliar and T.Subramaniya Mudaliar. T.Kanniappa Mudaliar had three sons viz., T.Manikka Vasaga Mudaliar, T.Sammantha Mudaliar and T.Somasundara Mudaliar. T.Shanmuga Mudaliar had one son viz., T.Loganatha Mudaliar. T.Subramaniya Mudaliar had one son viz., Panchanatha Mudaliar. It had been stated that the property devolved down the hereditary line of T.Sivarama Mudaliar and finally, an agreement of partition deed dated 12.05.1928 had been registered by Doc. No.771 of 1928 and the larger property of two grounds and 216 sq.ft had been divided into five parts and allotted among the parties to the partition deed. It is stated that the defendants are legal heirs through Mehanatha Mudaliar. It had thus been stated that there was an ancestral nucleus to the property and Mehanatha Mudaliar had no right to



convey the property to the disadvantage of the other co-parceners. It had been stated that the suit in O.S.No.2007 of 1996 and the appeal in A.S.No.396 of 2011 were dismissed on the ground that the plaintiffs therein were not able to prove that the suit property was ancestral in nature. It had been stated that they have now found the copy of the partition deed of the year 1928 and have filed a Second Appeal.

8.It had been stated that the suit property therefore is ancestral in nature and Mehanatha Mudaliar could not have sold the property and it had been contended that the said sale would not bind the defendants. It had been further stated that suppressing the lineal ancestral nature of the property, T.Appar Sundara Mudaliar had executed a settlement deed dated 12.08.1953 in favour of the Mehanatha Mudaliar and the same is non-est in the eye of law and would not bind the defendants. It had been further stated that Mehanatha Mudaliar and the defendants were the joint owners of the property. It had been further stated that the sale deed executed by Mehanatha Mudaliar in favour of the 3rd and 4th plaintiffs is null and void. It had been therefore contended that, since the issues can be crystallized only in the Second Appeal, the present suit will have to be dismissed.



9. On the basis of the pleadings, the following issues were framed for trial on 03.07.2023:

“1. Whether the plaintiffs are entitled to the claim made in the suit property?

2. Whether the settlement deed dated 12.08.1953 executed by T.Apparsundara Mudaliar in favour of Mehanatha Mudaliar is 'non-est' in the eyes of the law and will not bind the defendants?

3. Whether the possession of the defendants over the suit property is unlawful?

4. Whether the plaintiffs are entitled to get the relief of recovery of possession?

5. Whether the plaintiffs are entitled to get the mesne profit as prayed?

6. Whether the plaintiffs are entitled to get the relief of permanent injunction against the defendants restraining them from alienating the suit schedule property?

7. Whether the plaintiffs are entitled to get the relief of permanent injunction restraining the defendants from making any improvements or alterations to the suit property?



8.To what relief if any?”

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10.During trial, the 1st plaintiff, T.Muthu Chettiar, examined himself as PW-1. He marked Exs.P1 to P14. Ex.P1 is the copy of the settlement deed dated 12.08.1953. Ex.P3 is the copy of the sale deed dated 17.11.1995 executed by Mehanatha Mudaliar in favour of the 3rd and 4th plaintiffs. Ex.P4, P5, P6, P7 and P8 are the original patta, the original property tax bill and electricity charges bill in favour of the 3rd and 4th plaintiffs. Ex.P9 is the receipt executed by Mehanatha Mudaliar, Kumuthavalli and Ramesh dated 22.03.1992. Exs.P11 and P12 are the copies of the judgment and decree in O.S.No.2007 of 1996 and Ex.P13 is the copy of the judgment in A.S.No.396 of 2011. Ex.P14 was the copy of the plaint in C.S.No.433 of 1994. During cross-examination of PW-1, 1st and 2nd defendants marked Ex.D1, a copy of the complaint dated 10.01.2010.

11.On behalf of the 1st and 2nd defendants, the 1st defendant, Kumudavalli, was examined as DW-1. She did not mark any document during the course of trial.

12.Heard arguments advanced by Mr.S.L.Sudersanam, learned counsel



for the plaintiffs and Mr.M.Selvaraju, learned counsel for the 1st and 2nd defendants. The 3rd, 4th and 5th defendants had taken a decision to remain *ex-parte* and had been set *ex-parte* on 13.03.2023.

13.It is the contention of the learned counsel for the plaintiffs that the 1st and 2nd plaintiffs had entered into an agreement of sale with Mehanatha Mudaliar for purchase of the suit schedule property. Subsequently, Mehanatha Mudaliar had conveyed the suit property to the 3rd and 4th plaintiffs who are the spouses of the 1st and 2nd plaintiffs respectively. It is contended that the property had devolved consequent to a settlement deed executed in the year 1953 by T.Appar Sundara Mudaliar in favour of Mehanatha Mudaliar and his sister, Saroja. It had been further stated that subsequent to the said settlement deed, Mehanatha Mudaliar had mutated the revenue records in his name and had also put up construction and was paying all statutory taxes to the authorities. It had also been stated that in the year 1985, exercising his right as title holder, Mehanatha Mudaliar had sold a portion of the property by way of registered sale deed. It had been further stated that subsequent to the agreement of sale by Ex.P3, Mehanatha Mudaliar had sold the suit property to the 3rd and 4th plaintiffs. This fact was also known to the defendants. It had been further stated that after purchase,



the 3rd and 4th plaintiffs had obtained patta in their names and had also mutated the revenue records. The learned counsel pointed out that among the documents filed, the plaintiffs have also filed documents for payment of statutory dues / property tax and water tax and also electricity charges. It had therefore been contended that the plaintiffs have perfected title.

14. It had been stated that the 1st and 2nd defendants along with two others had instituted C.S.No.433 of 1994 before the Original Side of the High Court. That suit was transferred to the City Civil Court and renumbered as O.S.No.2007 of 1996 before the III Assistant City Civil Court, Chennai. After trial, the suit was dismissed. The contention of the plaintiffs therein that the property was ancestral in nature was rejected. The appeal filed in A.S.No.396 of 2011 also suffered an order of dismissal. As on filing of this suit, the Second Appeal had been filed with delay. It had been stated that the defendants continued to be in occupation unlawfully and it had therefore been stated that the plaintiffs, as title owners, are entitled for possession of the property and also for damages for use and occupation. It had been contended that they are also entitled for injunction restraining the defendants from alienating the property or putting up any construction or alternation of the property. The learned counsel was insistent that the plaintiffs are also entitled



for costs of the suit.

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15.The learned counsel for the 1st and 2nd defendants, however, denied and contested every statement made by the learned counsel for the plaintiffs. According to him, the property originally emanated through a partition deed of the year 1928 and devolved to T.Sivarama Mudaliar. The lineage had been given in the written statement. It had finally devolved on to Mehanatha Mudaliar who had inherited the property as an ancestral property. It had been stated that the settlement deed executed by T.Appar Sundara Mudaliar in favour of Mehanatha Mudaliar was a document which could be categorized as non-est, since an ancestral property could not be settled like an individual property. It had therefore been stated that the agreement of sale and the settlement deed executed by Mehanatha Mudaliar were both null and void and not binding on the defendants.

16.It had been further contended that the suit in O.S.No.2007 of 1996 and first appeal in A.S.No.396 of 2011 had been dismissed only on the ground that the plaintiffs were not able to establish that the property was ancestral in nature. It was pointed out by the learned counsel that the defendants had now obtained a copy of the partition deed registered as Doc. No.771 of 1928 in the office of the Sub-Registrar, Mylapore and therefore, it



was contended that the plaintiffs have every reason to succeed in the Second Appeal, which is pending in S.A.No.55 of 2024. It had therefore been contended that the suit will have to be dismissed and it would only be appropriate that the decision in Second Appeal is awaited.

17.I have given my careful consideration to the arguments advanced and perused the records.

Issues:

Issue Nos.1 and 2:

18.These two issues surround the claim of the plaintiffs to the suit property and the claim of the defendants that the settlement deed dated 12.08.1953 executed by T.Appar Sundara Mudaliar in favour of Mehanatha Mudaliar is non-est and not binding on the defendants.

19.The suit property originally belonged to T.Sivarama Mudaliar. This was evident in the recital given in the partition deed dated 12.05.1928 registered as Doc. No.771 of 1928 in the office of the Sub-Registrar, Mylapore. The parties to the partition deed were T.Appar Sundara Mudaliar, T.Vinayaga Mudaliar on the one hand and T.Manikka Vasaga Mudaliar on the other hand, T.Sammantha Mudaliar on the other hand and T.Somasundara



Mudaliar on yet another hand and T.Loganatha Mudaliar and Panchanatha Mudaliar on yet another hand. The larger extent of two grounds and 216 sq.ft had been divided into five parts and allotted to the parties to the said partition deed. Subsequently, T.Appar Sundara Mudaliar had executed a settlement deed dated 12.08.1953 in favour of Mehanatha Mudaliar and his sister, Saroja. It is the case of the defendants that this document is not binding on them. However, it is seen that Mehanatha Mudaliar had executed a sale deed registered as Doc. No.586 of 1985 on 17.12.1985 in favour of a third party to the suit. That sale deed had not been assailed by the defendants herein. Subsequently, the 1st and 2nd plaintiffs had entered into an agreement of sale with Mehanatha Mudaliar and thereafter, Mehanatha Mudaliar had conveyed the suit property by way of a sale deed registered as Doc. No.1034 of 1995 dated 17.11.1995 to the 3rd and 4th plaintiffs. This document had been marked as Ex.P3.

20.It is the claim of the defendants that Mehanatha Mudaliar had no right or title to convey such sale deed. It is contended that the property was ancestral in nature and therefore, Mehanatha Mudaliar could not have executed such sale deed. Mehanatha Mudaliar had five sons. They are Baskaran, Murali, Sundaramurthy, Mohan and Ramesh. Mohan, Baskaran



and Ramesh had died. The legal representative of Mohan namely, his wife and daughter / Kumudavalli and Padmapriya and the legal representatives of Ramesh namely, Padmavathy and Karthikeyan had instituted C.S.No.433 of 1994 against Mehanatha Mudaliar, Baskaran, Murali, Sundaramurthy and against the 1st and 2nd plaintiffs herein. Baskaran had died and his wife was subsequently impleaded. That suit was filed seeking partition and separate possession of the suit schedule property therein namely, land and building at Door No.92/2, Rama Naicken Street, Nungambakkam, Chennai – 600 034, which is the suit property in the present suit. In that suit, the only relief was sought was for partition and separate possession. In that particular suit, it had been claimed that the property was the ancestral property of Mehanatha Mudaliar, the 1st defendant and therefore the plaintiffs as legal heirs were entitled to a share and that therefore, the suit had been filed seeking partition and separate possession.

21. In that particular suit, there had been suppression of the fact that Mehanatha Mudaliar had conveyed a portion of the property by sale deed dated 17.12.1985. The plaintiffs therein had not questioned that particular sale deed. The plaintiffs therein had also not brought to the notice of the Court about the settlement deed dated 12.08.1953. In the instant case, in the



written statement, it is the contention of the defendants that the said settlement deed was non-est and not binding on the defendants.

22.The plaintiffs in C.S.No.433 of 1994 could have claimed partition and separate possession, only if they had sought a declaration that the said settlement deed of the year 1953 was non-est and not binding on them. They had not sought such a relief. The said suit had been transferred to City Civil Court, Chennai and re-numbered as O.S.No.2007 of 1996. Even after transfer, the plaintiffs have not sought any relief to claim that the settlement deed of the year 1953 was non-est and not binding on them. Even in this suit, while filing a written statement, the defendants have not filed any counter claim that the settlement deed of the year 1953 and the sale deeds of the year 1985 and 1995 are both not binding on them. Having not sought such a relief, it would be impermissible on the part of the Court to examine whether such relief can be granted to the plaintiffs.

23.The suit in O.S.No.2007 of 1996 was dismissed by judgment dated 21.04.2011. The copy of the said judgment and decree had been filed as Exs.P11 and P12. A specific finding had been rendered in that suit that the



plaintiffs therein had not established that the property had an ancestral nucleus. In the face of that finding, the plaintiffs should have sought a declaration that the said settlement deed of the year 1953 and sale deed of the year 1985 and the sale deed of the year 1995 in favour of the 3rd and 4th plaintiffs are null and void and not binding on them.

24. The law provides the defendants to seek counter claim and pay necessary Court fees for such counter claim and to invite the Court to render a finding on the counter claim. A counter claim is to be taken as a plaint in itself and the issues raised therein will have to be answered by the Court. The defendants in the instant case, have taken a conscious decision not to seek that relief before this Court or before the Court where O.S.No.2007 of 1996 was adjudicated. Even when the plaintiffs filed an appeal in A.S.No.396 of 2011, they had not marked as additional documents, the settlement deed of the year 1953, the subsequent sale deeds in the year 1985 and 1995. They had completely suppressed from the Court all those documents. Mehanatha Mudaliar had dealt with the property at least once while executing a sale deed dated 17.12.1985 registered as Doc. No.586 of 1985 and marked as Ex.P2 in the suit.



25. It is also seen that subsequent to the purchase, the 3rd and 4th defendants had obtained patta in their name. The Tamil Nadu Patta Passbook Act, 1983 provides for a contest on grant of such patta and an appeal challenging such grant of patta would lie before the Revenue Divisional Officer and a further appeal would lie before the District Revenue Officer. The 1st and 2nd defendants have not taken that step seeking to cancel the patta granted in favour of the 3rd and 4th plaintiffs. Therefore, the 1st and 2nd defendants can never claim any right or title over the interest of the property and can never claim that the property has an ancestral nucleus. The nucleus has far long vanished. The ancestry has far before disappeared. The coparcenors had deserted the 1st and 2nd defendants. The 3rd, 4th and 5th defendants had taken a conscious decision to remain exparte. As a matter of fact, the 3rd and 4th plaintiffs in O.S.No.2007 of 1996 had also executed Ex.P9, a receipt dated 22.03.1992 affirming the title of the plaintiffs herein. The plaintiffs have also mutated the revenue records in their names and this is evident by Exs.P6, P7 and P8. These are payments of property tax, water tax and electricity charge.

26. Thus, the 3rd and 4th plaintiffs had perfected title from the date of purchase in the year 1995. The defendants have not filed any counter claim



and they are now barred by the law of limitation to seek any such relief. It is clear that the defendants are residing in the property without any title and unlawfully.

27. In view of these reasons, the first issue is answered that the plaintiffs are entitled for the claim made in the suit property and is answered in favour of the plaintiffs. The second issue is answered that the settlement deed is binding on the defendants and answered against the defendants.

Issue Nos.3, 4 and 5:

28. All these three issues relate to the possession of the defendants and whether the plaintiffs are entitled for recovery of possession and for mesne profit. While discussing issues Nos.1 and 2, this Court had given a definite finding that the 3rd and 4th plaintiffs had perfected title. They had not only perfected title by way of the sale deeds in their favour, but also by way of revenue records namely, the patta in their favour and also by paying statutory taxes as payable by any land owner. The patta stands in their name. The property tax receipt stands in their name. The water tax receipt stands in their name. The electricity service connection stands in their name. The plaintiffs are unfortunately not in a possession. The 1st and 2nd defendants necessarily have to vacate and handover possession.



29. The contention that this Court will have to await the decision of the Second Appeal has to be rejected. Even in the Second Appeal, notice of motion alone has been ordered. Therefore, I would hold that the defendants herein are in unlawful possession of the suit property and are liable to pay mesne profit. The 3rd, 4th and 5th defendants had remained ex-parte and have not contested the claim of the plaintiffs. They are also in unlawful possession of the suit property.

30. In view of the above discussion, issue No.3 is held against the defendants stating that their possession is unlawful and issue No.4 is answered in favour of the plaintiffs that they are entitled for recovery of possession and issue No.5 is also answered in favour of the plaintiffs that they are entitled to seek mesne profit as sought by them in the plaint.

Issue Nos.6 and 7:-

31. Both these issues relating to grant of permanent injunction in favour of the plaintiffs against the defendants restraining the defendants from alienating the suit property or making any improvements or alteration. Once title has been affirmed in favour of the plaintiffs and it is also held that they are entitled for recovery of possession, it naturally follows that they are



entitled for permanent injunction restraining the defendants from either alienating or from creating any alteration or modification of the property.

Both these issues are answered in favour of the plaintiffs.

Issue No.8:-

32.In the result,

i).The Suit is decreed with costs as prayed for.

ii).The defendants are directed to vacate and hand over vacant possession of the suit property to the plaintiffs within a period of four weeks from the date of receipt of a copy of this Judgment.

iii).Connected Original Applications stand closed.

smv

.07.2024

Internet:Yes/No

Neutral Citation:Yes/No

Speaking Order : Yes/No

Plaintiffs' side Witnesses:

P.W.1-Mr.T.Muthu Chettiar

Defendant's side Witnesses:

D.W.1-Mrs.Kumudavalli

Plaintiffs' side Documents:



Ex.P.1	12.08.1953	Certified copy of the settlement deed dated 12.08.1953
Ex.P.2	17.12.1985	Certified copy of the sale deed in Doc. No.586 of 1985
Ex.P.3	17.11.1995	Certified copy of the sale deed in Doc. No.1034 of 1995
Ex.P.4	16.04.1996	Original patta in favour of Alagammai and Sivagami
Ex.P.5		Copy of the patta in favour of Alagammani and Sivagami
Ex.P.6		Original property tax card and receipt.
Ex.P.7		Original water tax card with receipt.
Ex.P.8		Original Electricity Board card with receipt
Ex.P.9	22.03.1992	The receipt executed by Meganatha Mudaliar, Kumuthavalli and Ramesh
Ex.P.10	10.04.2010	The CSR receipt issued by F-3 Nungambakkam Police Station
Ex.P.11	21.04.2011	Certified copy of the judgment in O.S.No.2007 of 1996
Ex.P.12	21.04.2011	Certified copy of the decree in O..No.2007 of 1996
Ex.P.13	01.12.2018	Certified copy of the judgment in A.S.No.396 of 2011
Ex.P.14		Copy of the plaint in C.S.No.433 of 1994
Ex.D.1	10.04.2010	Copy of the complaint given by the 3 rd plaintiff (through PW-1 cross)

19 .07.2024

C.V.KARTHIKEYAN, J.



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Pre-Delivery Judgment made
in
C.S.No. 148 of 2022

19.07.2024