



S.A.No.973 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

S.A.No.973 of 2019
and CMP.Nos.20797 & 20799 of 2019

1.V.Ponnammal
2.V.Ganesan
3.Sundaramoorthy

... Appellants / Respondents 1-3/
Defendants 2 - 4

Vs

1.Ramanikanth
2.Union of India
Rep by its Chief Secretary
Office of the Chief Secretary
Beach Road
Union Territory of Pondicherry
Puducherry.
3.The Registrar
Registration Department
Saram, Pondicherry.
4.The Sub Registrar
Sub Registration Office
Oulgaret, Pondicherry.

... 1st Respondent / Appellant /
Plaintiff



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5.The Director

Office of Land and Survey Records
Saram, Pondicherry.

6.The Tahsildar cum Settlement Officer

Land and Survey Records
Saram, Pondicherry.

7.The Superintendent of Engineer

Electricity Department
Pondicherry.

8.The Junior Engineer

Electricity Department
Mettupalayam, Pondicherry.

... Respondents 2-8 / Respondents 4-10
/ Defendants 5-11

Prayer : Section Appeal filed under Section 100 of Civil Procedure Code praying to set aside the judgment and decree dated 25.04.2019 in A.S.No.12 of 2018 on the file of the Principal Subordinate Judge, Puducherry thereby reversing the judgment and decree dated 14.11.2017 in O.S.No.1726 of 2012 on the file of I Additional District Munsif, Puducherry.

For Appellants : Mr.Saikrishnan

For Respondents : Dr.Fr.Xavier Arul Raj
Senior Counsel for
Mr.U.Karunakaran for R1

Mr.P.S.Kothandaraman
Govt. Advocate (Pondy) for R2 - R8



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JUDGMENT

The present second appeal arises against the judgment and decree of the learned Principal Sub Judge, Puducherry in A.S.No.12 of 2018 dated 25.04.2019, in reversing the judgment and decree of the learned I Additional District Munsif, Pondicherry in O.S.No.1726 of 2012 dated 14.11.2017.

2. The suit in O.S.No.1726 of 2012 was filed for the following reliefs :

- i. to declare that the power of attorney deed dated 06.12.1991 registered in the office of the Sub-Registrar of Oulgaret under document No.1084/91 executed by defendants 1 to 3 and in favour of 4th defendant as null and void and *non-est* in the eye of law as the defendants 1 to 3 have no right or title over the property mentioned in this deed;
- ii. restraining the defendants No.1 to 4 and their men, agents, and the persons claiming through them from interfering with the plaintiff's lawful possession and enjoyment of the 'C' schedule property by way of permanent injunction;



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- iii. restraining the defendants No.6 and 7 not to register any sale deed or any deed affecting the plaintiff's title and possession over the 'C' schedule property by way of permanent injunction;
- iv. restraining the defendants No.8 & 9 not to cause any change of patta in the name of the defendants No.1 to 4 or any person claiming through them regarding the 'C' schedule property by way of permanent injunction;
- v. restraining the defendants No.10 & 11 not to give any temporary electricity service connection in the name of the defendants No.1 to 4 or any person claiming through them by way of permanent injunction and for costs;
- vi. the cost of the suit from the defendants 1 to 11;
- vii.and pass such other order as are necessary and proper to meet the ends of justice.

3. For the sake of convenience, the parties shall be referred to as per their rank in the suit.

4. The case of the plaintiff is that one Rasamballe owned two items of



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suit properties. The first item being 81 kuzhies 14 veesam, and the second item being 1 kani 28 kuzhies 4 veesam respectively. She had alienated the first item of suit schedule property in favour of a partnership concern functioning under the name and style of M/s.Rajeswari Fire Works. The said Rajeswari Fire Works had three partners namely Natarajan, Kandasamy and Kailasam. Natarajan executed a release deed and moved away from the partnership leaving Kandasamy and Kailasam to deal with the same. On 10.01.1996, the said Kandasamy and Kailasam executed a deed of power of attorney in favour of one Thiagarajan. It was for the entire extent denoted as 'A' schedule in the suit property. Thiagarajan had alienated a portion of the 'A' schedule property in favour of the plaintiff. The plaintiff after purchase, prepared layouts and divided the property alienated by Thiagarajan on behalf of M/s.Rajeswari Fire Works into 21 plots. The sale that was made by Thiagarajan in favour of the plaintiff relates to 'B' schedule property. Out of the 21 plots that were divided by the plaintiff, he had alienated 13 plots leaving out 8 plots as being unsold. The unsold 8 plots relate to the 'C' schedule property, which is the subject matter of the suit. Insofar as second item of the suit property is concerned, she had bequeathed it to her grandson, the third defendant, through a Will dated 13.01.1987.



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5. The first defendant, Vaithianathan is the son of Rasamballe, and the second and third defendants are the the wife and son of said Vaithianathan (daughter-in-law and grandson of Rasamballe). The fourth defendant is the power of attorney of defendants 1 to 3. On 03.09.2012, the fourth defendant attempted to interfere with the "C" schedule mentioned property by erecting a fence. Immediately, the plaintiff fearing that the fourth defendant might dispossess him from the property, approached the Mettupalayam Police Station, Pondicherry, and lodged a complaint. The police authorities felt that this is a civil dispute and therefore, referred the parties to work out their rights by initiating civil proceedings. When the plaintiff came to know that the fourth defendant is creating fraudulent sale deeds regarding "C" schedule property by registering the same before the Sub Registrar Office and is also taking steps to transfer the patta of the said properties in the name of the third defendant, he laid the suit.

6. Summons were sent to all the 11 defendants. The defendants 1 to 4 remained exparte. The defendants 5 to 11 alone filed their written statements. In the written statement filed by the State defendants, it is alleged that the



jurisdiction of the civil Court is barred by virtue of provisions of Pondicherry Settlement Act, 1970 . They would also plead that the plaintiff ought to have filed a suit for declaration of title over the suit property, instead, he had filed a suit for declaration to declare that the power of attorney deed dated 06.12.1991 registered by the Sub-Registrar of Oulgaret, is null and void and therefore the suit is not maintainable.

7. On the side of plaintiff, 35 documents came to marked as Ext.A1 to Ext.A35. However, no document was produced by the defendants.

8. On the basis of these pleadings filed by the plaintiff and the defendants 5 to 11, the learned trial Judge had framed the following issues :

- 1. Whether the jurisdiction of this Court is barred under the provisions of Pondicherry Settlement Act, 1970?*
- 2. Whether the plaintiff is entitled for the relief of declaration as prayed for?*
- 3. Whether the plaintiff is entitled for the 2nd relief of permanent injunction as prayed for?*



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4. *Whether the plaintiff is entitled for the 3rd relief of permanent injunction as prayed for?*

5. *Whether the plaintiff is entitled for the 4th relief of permanent injunction as prayed for?*

6. *Whether the plaintiff is entitled for the 5th relief of permanent injunction as prayed for?*

7. *To what other relief?*

9. The learned Trial Judge held that the suit is barred by virtue of Section 25 of the Pondicherry Settlement Act, 1970. He further referred to paragraph No.11 of the plaint and held, as the fourth defendant had sold the property in favour of the third parties and since the said third parties were not made parties to the suit, the suit is not maintainable. He would thereafter refer to the police report and hold that since there are other pending suits between the parties and since the same had been suppressed by the plaintiff, the plaintiff is not entitled to a relief of injunction. On the above grounds, the suit was dismissed.

10. Aggrieved by the dismissal of the suit, a regular appeal was



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preferred by the plaintiff before the Principal Subordinate Court at Puducherry, and the appeal was received as A.S.No.12/2018.

11. Before the Appellate Court, the defendants 1 to 4 contested the same. The learned Appellate Judge vide his judgment dated 25.04.2019 had reversed the decree of the trial Court and allowed the appeal. His reasonings are :

- (a) the suit is not barred under Section 25 of the Pondicherry Settlement Act, 1970.
- (b) that the sales alleged to have been made by the fourth defendant in favour of third parties, are with respect to non-existing survey number and therefore, it will not bind the plaintiff ;
- (c) the Power of Attorney deed dated 06.12.1991 had been executed by the persons who were not authorised to do the same and hence, it is a sham document.

In view of the above findings, the appellate Court granted the declaration as prayed for by the plaintiff/appellant.

12. Aggrieved by the same, the present second appeal is filed before



this Court. The second appeal was admitted on the following substantial questions of law :

- 1. Whether the lower appellate Court was right in decreeing the suit particularly for cancellation of power of attorney, more so, when the Agent had sold the properties to various third parties under the said power of attorney, without those purchasers being made parties to the suit?*
- 2. Whether the suit for negative declaration is maintainable in view of Section 34 of the Specific Relief Act?*
- 3. Whether the suit is barred by Limitation?"*

13. Heard Mr.T.Saikrishnan for the appellants and Dr.Fr.Xavier Arul Raj, learned Senior Counsel for Mr.U.Karunakaran for first respondent and Mr.P.S.Kothandaraman, learned Government Advocate for official respondents.

14. Expanding on the questions of law framed, Mr.T.Saikrishnan would argue that the suit is not maintainable as it is one for negative declaration. He would point out that the purchasers of the property had not been impleaded as parties to the suit and hence, the suit ought to have been dismissed. He would state that on account of the sale deeds executed by the



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fourth defendant in favour of third parties, rights have been created over the property in favour of third parties and the plaintiff ought to have brought those purchasers on record. Above all, he would submit that the suit is barred by limitation.

15. Per contra, Dr.Fr.Xavier Arul Raj would submit that it is not a suit claiming negative declaration, but one seeking a declaration that the power of attorney that had been executed by a person who has no right over the property, is null and void. He would point out that asserting his title and possession, the plaintiff has sought for permanent injunction. He would state that since the property is a vacant land, possession follows title, and since the plaintiff is the title-holder, he is entitled to maintain the suit. He would plead that as the plaintiff is not a party to the alleged power of attorney, the limitation will commence only on the date the power of attorney came to his knowledge and this occurred only when his brother and neighbouring land owner Natarajan had informed him about the fraudulent power of attorney, just before the filing of the suit. He would then draw my attention to Ext.A5, Will executed by Rasamballe and Ext.A8, sale deed executed by Rasamballe, to plead that on the date of power of attorney, the first defendant who is the



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son of Rasamballe did not have any right over the property. Finally, he would submit that the sale deeds in favour of third parties have been created in Survey No.160/4B, which is a non-existing survey number. He also added that the defendants 1 to 4 are not entitled to agitate any matter on appeal as they remained *exparte* in all the proceedings. He would plead that the Courts must draw adverse inference as against the appellants / defendants 1 to 4, as they have neither filed written statement nor entered the witness box to substantiate their case.

16. Mr. P.S.Kothandaraman, learned Government Pleader (Pondy) would bring to my notice Section 25 of the Pondicherry Settlement Act, 1970 and would refer to a judgment of this Court in ***Sabina Detergents Private Ltd., Vs. Janabai and Nine others*** [2009 (3) CTC 770 (Mad)] to argue on the scope and application of the Pondicherry Settlement Act, 1970.

17. Heard the learned counsel on all sides and I have gone through the records.

18. A perusal of the records produced in the suit would point out that



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Rasamballe had purchased two properties under Notaire sale deeds viz., Ext.A1 dated 23.05.1944 and Ext.A3 dated 01.07.1948. She had executed a notaire sale deed on 07.06.1966 in favour of Rajeswari Fire Works, the translation of which had been presented as Ext.A9. Under the said sale deed, Rasamballe had alienated 81 kuzhies and 14 veesam in cadastre No.2228/1/3 in paimash No.1427 to 1430 of Uzhavarkarai Commune, Uzhavarkarai Village, Pondicherry. It is pertinent to note that the first defendant Vaithianathan, namely the son of Rasamballe was a witness to the said sale deed, in confirmation of the sale made by her on 07.06.1966 in favour of Rajeswari Fire Works. Rasamballe had executed Ext.A5, a Will on 13.01.1987 in favour of his grandson Ganesan, the third defendant. In the said document, Rasamballe had specifically stated that the property that was bequeathed to her grandson under this Will excludes the property alienated by her in favour of Rajeswari Fire Works on 07.06.1966. The Will also does not relate to Cadastre No.2228/1/3, but relates to Cadastre No.2223, R.Sy.No.156/11, and Cadastre No.2360/, R.Sy.No.99/1 to an extent of 1 kani 28 kuzhies and 4 veesam. Therefore, whatever right Rasamballe had with respect to the suit schedule mentioned properties by virtue of her purchase in 1944 and 1948 stood transferred in favour of Rajeswari Fire Works to the



extent covered by Ext.A9.

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19. The continuing partners of Rajeswari Fire Works namely Kandasamy and Kailasam had executed a power of attorney under Ext.A14 in favour of one Thiagarajan on 10.01.1996. Thereafter, the said Thiagarajan alienated the property in favour of the plaintiff under Ext.A15 on 31.03.1998. By virtue of the documents of sale under Ext.A15, Ext.A22 to Ext.A31, the plaintiff became the absolute owner of 'B' and 'C' schedule mentioned properties. It is on record that the plaintiff had alienated some portion of the properties in favour of third parties after his purchase from Thiagarajan, the power agent of Kandasamy and Kailasam.

20. Now turning to the impugned document under Ext.A6, it is clear that Vaithianathan, the first defendant, who is the signatory to the sale deed executed by Rasamballe in favour of Rajeswari Fire Works, was emboldened to state that he continued to have title to the property which had been alienated by his mother. When Rasamballe herself lost title to the property by virtue of execution of sale deed in favour of Rajeswari Fire Works as early as in the year 1966, the family of Vaithianathan, which includes the defendants



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2 and 3 did not have any right or interest over the properties constituted in Cadastre No.2228/1/3. I have referred to the last Will and Testament of Rasamballe and even the said document does not relate to this Cadastre number. On the contrary, the Will also confirms the fact that Rasamballe had executed the sale deed for the property in favour of Rajeswari Fire Works. The plaintiff, who is the bonafide purchaser of the property from Thiagarajan, on the basis of the sale executed in favour of Rajeswari Fire Works by Rasamballe, had in turn transferred the properties in favour of several third parties. Taking advantage of the fact that there are unsold plots in his layout, which is the 'C' schedule mentioned property, the power of attorney seems to have been created by the defendants 1 to 3.

21. Turning to the point of limitation that was pleaded by Mr.T.Saikrishnan, I have to state here that the power of attorney is not a document of title for a person to have a notice thereof. In fact, the provisions of Section 3 of the Transfer of Property Act cannot be extended to such an extent that the true owner must be deemed to have been put on notice about the execution of documents dealing with his property though he nor his duly authorised agent are not a party to the same. A deed of power of attorney,

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not being available in Book-1, that imputation could also not be made to the plaintiff. Therefore, the argument that the suit is barred by time, does not appeal to me.

22. On the second plea that the suit is one for negative declaration, a careful perusal of the plaint shows that the plaintiff had sought for a declaration that the power of attorney is null and void on the ground that the defendants 1 to 3, who had executed the said power of attorney, do not have any title over the property mentioned in the power of attorney. This is an assertion by the plaintiff that he has the right over the same and that the defendants 1 to 3 did not have any right over the same. Therefore, it is not a suit *stricto sensu* seeking for negative declaration. This is clarified further because the plaintiffs in prayer No.(ii) seeks for a permanent injunction restraining the defendants 1 to 4 not to interfere with his possession. Hence, the plea of negative declaration also fails.

23. Mr.T.Saikrishnan would refer to the sale deeds executed by the fourth defendant in favour of third parties which have been filed in C.M.P.No.20799 of 2019 under Order XLI Rule 27 of Code of Civil



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Procedure. Looking into the documents, I would state that the defendants 1 to 4 did not even file a written statement before the Trial Court, in fact, they did not take a leave of the lower Appellate Court to file the written statement. They could have produced these alleged documents now sought to be received as additional documents in this CMP, even before the lower Appellate Court, which is the final court of facts. Having failed to do so, they are not entitled to file an application in terms of Order XLI Rule 27 of the Code seeking to introduce the documents for the first time before this Court. It is a basic principle of civil law that, unless and until there is a pleading, any amount of evidence cannot be looked into.

24. To reiterate, though the defendants 1 to 4 had ample time to file the written statement and plead before the trial Court. They could have atleast moved an application to file written statement before the lower Appellate Court and could have produced the documents. In fact, before the lower Appellate Court, they could have sought permission to produce oral and documentary evidence. They failed to do so before the Trial Court as well as before the lower Appellate Court. As the appellants/defendants 1 to 4 kept themselves away from the witness box, this Court has a point to draw adverse



inference against them. The adverse inference is that, had they entered into the witness box, they would have been confronted with the sale said to have been made by Rasamballe to Rajeswari Fire Works, and this not having been done, it thereby shows that on the date of execution of power of attorney, they had no title to the property.

25. The defendants 1 to 4 having not filed any pleading before the trial Court, I therefore cannot look into the evidence that has been produced by them in the second appeal. Nonetheless in order to satisfy myself, I have perused the documents produced by the appellants/defendants 2 to 3 in C.M.P.No.20799 of 2019. They all relate to Survey No.160/4B of Thattanchavadi Village, Oulgaret Commune, Pondicherry Registration District.

26. The lower Appellate Court had gone through Ext.A34 and Ext.A35, which are the deposition of witnesses made in another suit in O.S.No.206/2006 on the file of Principal District Munsif, Puducherry. These witnesses are the official witnesses and they have specifically stated that there is no sub-division in the said property corresponding to Survey No.160/4.



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The positive assertion seems to be that the property in Survey No.160/4 was never sub-divided, and it continues to be only Survey No.160/4. Hence, the plaintiff should have sought for a declaration of title, had the sale deeds been executed for the properties purchased by him. On the contrary, as pointed above, all the sale deeds executed show Survey No.160/4B, which is not the subject matter of the suit.

27. The cause of action seems to have arose when on the strength of the power of attorney, the fourth defendant attempted to interfere with the possession of the plaintiff, and the plaintiff had sought for the declaration that that the power of attorney deed dated 06.12.1991 executed by defendants 1 to 3 in favour of fourth defendant as null and void and also for an injunction against the Registration Department, Land and Survey Department, and Electricity Department.

28. Finally, I have to turn to the point on the scope of Section 25 of the Pondicherry Settlement Act, 1970. Under Section 25 of the Act, the bar of the suit relates to any challenge that is being made to any assessment made under the Pondicherry Settlement Act, 1970. It also bars the jurisdiction of



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the civil Courts in taking up matters challenging any authority taken by the Officer under the said Act. The bar of civil Courts must be read strictly.

The Civil Courts are deemed to have jurisdiction in all matters unless exclusively or impliedly barred. A reading of Section 25 of the Pondicherry Settlement Act shows that the bar is contemplated with respect to any challenge to orders made under the Act. The extract of prayers made in the suit would show that the plaintiff has not challenged any proceedings under the Act, but has only sought for injunction restraining the State authorities from acting based on Ext.A6, power of attorney which is fraudulent.

29. In this regard, I am supported by the view taken by this Court in ***Sabina Detergents*** case wherein the learned Judge has specifically held that the civil Courts are not barred from going into the question of title, even if the Director of Settlements had passed an order under Section 23 of the said Act.

30. The case on hand has a better position than the case dealt with by Hon'ble Justice Mr.S.K.Krishnan (as His Lordship then was). Since, the plaintiff has not challenged any proceedings under the Pondicherry Settlement Act, no exception can be taken by the trial Court with respect to Section 25 of



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the Pondicherry Settlement Act.

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31. The conclusion I arrive at, based on the above discussion, is that on the date of the impugned power of attorney, the alleged principals did not have any title. On the contrary, on the date of filing of the suit, the plaintiff had title to the suit properties by virtue of having purchased it through Thiagarajan, the power agent of the true owners, viz., Kandasamy and Kailasam of Rajeswari Fire Works. The defendants 1 to 4 are not entitled to place reliance upon the documents of sale executed by the fourth defendant to create any encumbrance over the property as their predecessor-in-title had lost title by voluntary alienation in favour of predecessor-in-title of the plaintiff.

32. The substantial questions of law framed are answered against the appellants/defendants 2 to 4, and are in favour of the first respondent/plaintiff. The judgment and decree of the learned Principal Sub Judge, Puducherry in A.S.No.12/2018 dated 25.04.2019 reversing the judgment and decree of the learned I Additional District Munsif, Puducherry in O.S.No.1726 of 2012 dated 14.11.2017, deserves confirmation. Accordingly, the second appeal is dismissed with costs. The plaintiff/first



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respondent is entitled for costs in this appeal. Connected miscellaneous petition in C.M.P.No.20797 of 2019, filed to stay the proceedings of the lower Appellate Court cannot be extended and hence, it is closed.

33. Insofar as C.M.P.No.20799 of 2019 is concerned, I find no reason to exercise the power under Order XLI Rule 27 of CPC, as the appellants/defendants 2 to 4 have not given sufficient explanation as to why they have not produced these documents, which are now sought to be introduced as additional evidence in this miscellaneous petition, either before the Trial Court or the lower Appellate Court. Hence, this civil miscellaneous petition stands dismissed.

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

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1.The Principal Sub Judge
Pondicherry.

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2.The I Additional District Munsif
Puducherry.

3.The Section Officer,
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

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