



A.S.No.379 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.379 of 2017

and

CMP.Nos.10269, 14245, 15303, 15304 & 15305 of 2018

1.V.Porkadi
2.V.Senthil
3.V.Gangapriya alias V.Ganga

... Appellants

Versus

R.Lakshmi Devi (Deceased)

2.The Sub-Registrar,
Villivakkam
Sub-Registrar's Office,
MTH Road, Chennai-600 050.

3.The Collector,
Thiruvallur District.

4.R.Padmanabhan

5.R.Ramkumar

... Respondents

(R4 & R5 are brought on record as LR's of the deceased 1st respondent vide order of this Court dated 17.07.2018 made in CMP.No.7217 of 2018 in A.S.No.379/2017 by NSSJ.)



A.S.No.379 of 2017

PRAYER: Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 20.04.2017 passed in O.S.No.49 of 2015 on the file of III Additional District Judge, Thiruvallur, Poonnamallee.

For Appellants : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.TKS. Bharathy Anandraj
For R2 & R3 : Mr.T.Sampath Kumar
Government Advocate
For R4 & R5 : Mr.T.V.Ramanujam, Senior Counsel
for Mr.A.Arumugam

ORDER

The appellant has filed this appeal to set aside the Judgment and decree dated 20.04.2017 passed in O.S.No.49 of 2015 on the file of III Additional District Judge, Thiruvallur, Poonnamallee.

2. Heard Mr. AR.L.Sundaresan, learned Senior Counsel, appearing for M/s.TKS. Bharathy Anandraj, learned counsel for the appellants and Mr. T.Sampath Kumar, learned Government Advocate appearing for the respondents 2 and 3 and Mr.T.V.Ramanujam, learned Senior Counsel for Mr.A.Arumugam, learned counsel appearing for the respondents 4 & 5 and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as

they are ranked in the suit.

<https://www.mhc.tn.gov.in/judis>



A.S.No.379 of 2017

4. The appellants herein are the defendants 1 to 3 in suit O.S. No. 49 of 2015 on the file of the III Additional District Judge, Thiruvallur, Poonnamallee. The defendants 1 to 3 have preferred this First Appeal challenging the findings rendered by the learned trial Judge in favor of the 1st respondent/plaintiff by granting relief of declaration as well as directing them to hand over possession of the ground floor with damages. The 1st respondent is the plaintiff who filed a suit against the defendants for declaration with consequential reliefs. After the decree, the plaintiff was died her legal heirs were added as respondents 4 and 5 in the appeal.

5. The brief facts of the case are as follows:

According to the plaintiff, she purchased the suit property in plot No.1026 in Padi village, Survey No.290, in TDS Colony, Anna Nagar West, from one Venugopal, who is the husband of the 1st defendant herein. The plaintiff further submits that originally the said plot was allotted to her vendor Venugopal through the Tamil Nadu Housing Board on 30.12.1985 by registering the sale deed in his favor. With an intention to sell, he entered into a sale agreement with the plaintiff on 31.07.1985. On that date, possession of the property and other relevant documents were handed over to her, and a General Power of Attorney was executed in favor of her son on the same day.



A.S.No.379 of 2017

Thereafter, on 09.01.1986, Venugopal executed a sale deed in her favor. On 01.12.1989, a release deed executed by the Housing Board was also handed over to her. Since the sale agreement dated 30.07.1985, the plaintiff has been in absolute possession and enjoyment of the property, having also constructed a building in 1985 with proper approval from CMD, along with water and electricity connections, and tax imposed on her. Due to her old age, she resides in Nagapattinam. Therefore, the ground floor and the 1st floor were rented to two individuals separately. Subsequently, the original vendor Venugopal died, and his legal heirs/defendants 1 to 3 claimed ownership of the property and also offered to sell it unlawfully. They also requested the Revenue Authority to transfer the tax in their favor, but upon a perusal of the records, their request was refused. The rectification deed was also mentioned in favor of the plaintiff as it was falsely recorded as a sale deed instead of a release deed. The plaintiff enjoyed the property without encumbrance, but the defendants 1 to 3 trespassed into the property and occupied the ground floor, leading to the suit. D1 to D3, the legal heirs of the plaintiff's vendor Venugopal, contested the suit as defendants 1 to 3, stating that the property was originally allotted to D1's husband Venugopal in 1974. Venugopal paid the installments to the Housing Board, and subsequently, on 07.01.1996, a sale deed was executed in his favor with a condition not to sell the property



A.S.No.379 of 2017

for 5 years. On 01.12.1989, the conditions were relaxed and a release deed was executed by the Board, after which D1's husband became the absolute owner and enjoyed the property. The defendants claimed that the plaintiff created fabricated documents and executed a fabricated sale deed in respect of the suit property, denying that Venugopal had executed any sale deed in favor of the plaintiff. The defendants argued that they had enjoyed the property for 40 years and denied the plaintiff's claim and before the trial court four issues were framed.

6. Both parties adduced oral and documentary evidence. On the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A1 to A39 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B1 to Ex.B19 were produced.

7. By relying on the oral and documentary evidence, the learned trial Judge concluded that the execution of the sale deed was in favor of the plaintiff. The learned trial Judge held that the sale deed stands in the name of the plaintiff, which was accepted by DW.1 during the evidence, and that the sale deed is a 30-year-old document, thereby invoking the presumption under Section 90 that 30-year-old documents are deemed to be proved. The



A.S.No.379 of 2017

defendants did not provide material evidence to disprove Ex.A5, the sale deed executed by Venugopal in favor of the plaintiff, and the defendants did not file any suit despite being aware of the sale deed in the plaintiff's name. Accordingly, the sale deed in the plaintiff's name was deemed valid. Furthermore, the court noted that as per the condition imposed by the Housing Board, "if the purchaser intends to sell the property within a period of 5 years, the property would be offered for sale in the first instance to the vendor herein" with a pre-emption clause. However, since the Housing Board subsequently executed a release deed after Venugopal fulfilled the conditions embodied in the documents on 07.01.1996, any deviation by Venugopal would only entitle the Housing Board to raise objections, not third parties. Therefore, the objection raised by the defendants was not accepted, and the suit was decreed in favor of the plaintiff, declaring her as the absolute owner and ordering the defendants to vacate the ground floor and pay damages, with further directions to hand over the property within a period of two months.

8. Challenging the said findings, the defendants have preferred this First Appeal on the following grounds:

i. The trial Court failed to note that this first appellant, M.G.Venugopal got a conditional sale deed executed in his favour on 07.01.1986 by Tamil



A.S.No.379 of 2017

Nadu Housing Board with a condition that not to sale within five years to outsider and whereas this Court had appreciated a sale made in favour of this respondent / plaintiff on 09.01.1986, where it is unlawful as per the allotment order and also as per conditions in conditional sale deed and the Court also failed to note that on 09.01.1986 this M.G.Venugopal is not the absolute owner of the suit property who has no alienable right.

ii. The lower Court failed to observe that the last transaction pertaining to suit property viz., 01.12.1989 stands in the name of M.G.Venugopal, the husband of 1st appellant and the P.W.2 (Respondent / Plaintiff) son is a witness to the document having full knowledge of title in 1989 failed to file a suit for declaration of title within 3 years and had opted to file a suit in 2015 after 27 years is absolutely against Article 58 of the Limitation Act, whereas judgment is totally kept silent regarding this issue.

iii. The Lower Court failed to observe the real purpose for what the house site was allotted to allottees by Tamil Nadu Housing Board and now had supported the transaction which is void in law.

iv. The trial Court failed to observe as on 09.01.1986 this 1st appellant husband has no power to alienate whereas this Court had entertained a illegal transaction which is taken within two days from the conditional sale deed (i.e.) dated 07.01.1986.



A.S.No.379 of 2017

v. The trial Court had wrongly landed and raising a question as such why this appellant / defendant had not filed a suit to cancel the sale deed in favour of the plaintiff, whereas it is pertinent to note when this defendant's release cum sale deed falls as a last document to suit property and when this appellant / defendant are in peaceful possession of the property there arises no question to file a suit by this appellant / defendant as noted in Judgment and decree, whereas in contra when the plaintiff had full knowledge of release cum sale deed on 01.12.1989 why they have not opted for declaration of title in 1989 itself or within 3 years whereas the original owner M.G.Venugopal was alive in those period.

vi. The lower Court wrongly landed in declaration relying on revenue records as such revenue records such as temporary E.B. Receipts in 1989 valid only for 30 days will not render a valid title to declare ownership to the property.

Vii. The trial Court failed to observe that the conditional sale deed executed by Tamil Nadu Housing Board tot he allottee only for the purpose raising loan for construction which is evident is Ex.B4 and through deposition of D.W.3.



A.S.No.379 of 2017

WEB COPY

9. By submitting all these grounds, the learned counsel for the appellant argued that the decree passed by the trial court against the Judgment Debtor was unjust and liable to be set aside.

10. The learned counsel for the 1st appellant/legal heirs of R4 and R5 submitted that in 1985, the original allottee, Venugopal, had stated that the suit property was allotted as a vacant plot to the plaintiff's vendor, Venugopal, in 1974. Thereafter, a conditional sale deed was allotted. Subsequently, Venugopal entered into a sale agreement with the plaintiff on 31.07.1985 to sell the property to her, and possession of the property along with documents was handed over to her on the same day. An irrevocable Power of Attorney was also registered in the name of the plaintiff's son, Ramkumar.

Thereafter, on 09.01.1986, Venugopal executed a valid sale deed in her favor, two days after the sale deed was executed by the board. Subsequently, a release deed was also executed by the Tamil Nadu Housing Board on 01.12.1989 in favor of the plaintiff's vendors. The original documents were handed over to the plaintiffs. Therefore, from 1985 onwards, the plaintiff was in possession of the property. She subsequently obtained the necessary building approvals and constructed a superstructure. The property tax in her



A.S.No.379 of 2017

name was issued by CMDA alone, and water and electricity bill connections were secured. Further it is argued that, the defendant illegally occupied the ground floor and admitted to an encumbrance certificate. Hence, the suit was filed before the trial court. They adduced all the oral and documentary evidence, which was rightly appreciated by the trial judge. Although there was a condition imposed not to sell the property for five years, the Tamil Nadu Housing Board did not raise any objections even after the execution of the sale deed in favor of the plaintiff. The original vendor, Venugopal, was alive at the time and died nearly two years after the sale deed. He did not raise any objections during his lifetime.

11. Indeed, the Board also released all the conditions imposed on the original allottee in 1989 by executing the release deed. Therefore, there was no objection on the part of the Housing Board, and the trial judge rightly appreciated this. Hence, the appeal is to be dismissed as it has no merits.

12. Now, the point for consideration is as follows:

“ i. Whether the sale deed executed by Venugopal in favor of Lakshmi Devi (Plaintiff), marked as Ex.A5, is valid or not?”



A.S.No.379 of 2017

13. According to the defendants, the sale deed executed by Venugopal, the husband of D1 and father of D2 and D3, in favor of the plaintiff is invalid since the sale deed registered in his name had a condition not to sell the property for five years to anyone except infavour of the Housing Board. This period started on 07.01.1986, but the sale deed in favor of the plaintiff was executed by Venugopal immediately on 09.01.1986, within five years. Therefore, the sale deed is not valid in the eyes of the law.

14. Admittedly, there was a condition imposed in the sale deed dated 07.01.1986 not to sell the property for five years, but within two days, a sale deed was executed in favor of the plaintiff (Ex.A5). According to the plaintiff, there was a sale agreement and an irrevocable Power of Attorney dated 31.07.1985, marked as Ex.A1 and Ex.A2. Therefore, before selling the property, a sale agreement with Venugopal and the execution of the sale deed was admitted by the defendants, but they contended that on the date of execution of the document, Venugopal had no authority due to the condition imposed by the Housing Board. However, the Housing Board did not raise any objections during Venugopal's lifetime, and he died approximately seven years after executing the sale deed.

<https://www.mhc.tn.gov.in/judis> 15. Furthermore, in 1989, the Housing Board also released all the



A.S.No.379 of 2017

conditions, and the release deed marked on 01.11.1989 as Ex.A6 proves that the Housing Board did not raise any objections until 1989. Admittedly, Venugopal died in 1993, nearly seven years after the execution of the sale deed in favor of the plaintiff. During Venugopal's lifetime, neither the defendants nor the Housing Board raised any objections against the plaintiff, who was in possession of the property from 1986 onwards.

16. It is an undisputed fact that the defendants and Venugopal were jointly living elsewhere and were not residing in the suit property during Venugopal's lifetime. Furthermore, as per the plan submitted in 1989 by the plaintiff, construction was put up, and no objections were raised by the defendants or Venugopal at that time. Therefore, even though conditions were imposed by the Housing Board, no objections were faced. On the contrary, the conditions were completely relaxed, and documents were handed over to Venugopal. Even after five years, when Venugopal was alive, neither he nor his legal heirs raised any objections. Therefore, as the absolute owner, the plaintiff enjoyed the property as rightly concluded by the learned trial judge, which needs no interference.

17. Another objection raised by the defendant is that they put up

construction and possessed the property, but there is no valid document to



A.S.No.379 of 2017

prove that they only constructed the ground floor and subsequently trespassed on the plaintiff's property. As discussed, the plaintiff is the lawful owner.

Therefore, the ground floor occupied by the defendants should be vacated, and they are entitled to pay damages as rightly fixed by the trial judge, which needs no interference..

18. Furthermore, there is another objection raised by the defendants that the plaintiff did not approach the court within three years from the date of denial of the title. However, from 1989, when the rectification deed was executed, no entry was made in the encumbrance register regarding the sale deed in Venugopal's name. It was subsequently rectified, so the title was not disputed when the defendant trespassed and caused interference by demanding tax payment from 2015 onwards. Hence, the plaintiff approached the court within the stipulated time and is not barred by limitation. Therefore, the findings given by the learned trial judge that the plaintiff is the absolute owner of the property and granted declaration and other consequential reliefs are valid under law, which needs no interference.

19. Hence, this appeal is dismissed as devoid of merit. Findings of the learned trial Judge is confirmed. Suit decreed as prayed for. The defendants



A.S.No.379 of 2017

are ordered to vacate the ground floor premises within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

01.07.2024

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

rri

Note: Issue order copy on or before 03.07.2024.

To

<https://www.mhc.tn.gov.in/judis>



A.S.No.379 of 2017

1. The III Additional District Judge,
Thiruvallur, Poonnamallee.

WEB COPY

2. The Sub-Registrar,
Villivakkam Sub-Registrar's Office,
MTH Road, Chennai-600 050.

3. The Collector,
Thiruvallur District.

4. The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.



WEB COPY



A.S.No.379 of 2017

A.S.No.379 of 2017
and
CMP.Nos.10269, 14245, 15303, 15304 & 15305 of 2018

01.07.2024