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C.S.No.214 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2024

Pronounced on : 09.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.214 of 2023

Sunil Kumar @ M.Kannan

.. Plaintiff

/versus/

1.Latha Nair

2.Chinthu Nair

3.Chanchu Nair

.. Defendants

This Civil Suit is filed under Order IV Rule 1 of the Madras High Court Original Side Rules read with Order VII, Rules 1 & 2 of CPC, prayed for a judgment and decree against the Defendants:-

a).For mandatory injunction directing the defendants 1 to 3 to hand over the original title deeds detailed below:

1).Original Sale Deed dated 03.04.1970 vide document No.1004/1970 before the SRO, Kodambakkam, Chennai by which plaintiff's mother purchased the suit schedule property.



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2).Original Settlement Deed executed by the plaintiff's mother P.L.Sumathi in favour of Late Madhavan Nair @ Sethu Madhavan and the plaintiff vide document No.1059 of 1972 dated 07.04.1972 of the suit schedule property before the SRO, Kodambakkam, Chennai.

b).Directing the defendants 1 to 3, their men, agents or anybody claiming their rights through them or under them to quit, vacate and deliver possession within any specified time as may be fixed by this Court of the premises admeasuring 3600 sq.ft. Bearing Door No.8, South Gangai Amman Koil, 1st street, Choolaimedu, Chennai – 600 094 morefully described in Schedule 'A' mentioned hereunder.

c).To direct the defendants to pay damages of Rs.1,50,000/- per month from 19.11.2022 till the defendants continue to illegally occupy the premises.

d).To direct the defendants 1 to 3 to pay the costs of the above suit.

For Plaintiff : Mr.B.Ravi Raja
For Defendants : Mr.N.Murali Kumaran,
Senior Counsel
For Mr.E.C.Ramesh



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JUDGMENT

The suit had been filed by the plaintiff, Sunil Kumar @ M.Kannan S/o. Late K.S.Madhavan Nair @ Sethu Madhavan seeking a judgment and decree in the nature of a mandatory injunction directing the 1st defendant, Latha Nair s/o. late K.S.Madhavan Nair @ Sethu Madhavan and the 2nd defendant, Chinthu Nair and the 3rd defendant, Chanchu Nair, both daughters of late K.S.Madhavan Nair @ Sethu Madhavan to handover original title deeds namely, the original sale deed dated 03.04.1970, registered as Doc. No.1004 of 1970 in the office of the Sub-Registrar, Kodambakkam and the original settlement deed executed by the mother of the plaintiff, P.L.Sumathi in favour of K.S.Madhavan Nair @ Sethu Madhavan and the plaintiff, registered as Doc. No.1059 of 1972 dated 07.04.1972 before the Sub-Registrar office at Kodambakkam and for a direction against the defendants to vacate and deliver the vacant possession of the property at Door No.8, South Gangai Amman Koil, 1st Street, Choolaimedu, Chennai – 600 094 measuring 3600 sq.ft., and also for a direction against the defendants to pay damages of Rs.1,50,000/-



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per month from 19.11.2022 till they continue to occupy the premises and for costs of the suit.

2.It had been stated by the plaintiff that his mother, P.L.Sumathi was the wife of K.S.Madhavan Nair @ Sethu Madhavan. The plaintiff was born to them. His mother had purchased the suit schedule property at Door No.8, South Gangai Amman Koil, 1st Street, Choolaimedu, Chennai – 600 094 measuring 3600 sq.ft., by a sale deed dated 03.04.1970 registered as Doc. No.1004 of 1970 in the office of the Sub-Registrar, Kodambakkam. It was claimed that she purchased the property from her own funds. She had mortgaged the property in favour of Jeevan Kavar by a registered deed in Doc. No.341 of 1972 for a sum of Rs.15,000/-. The mortgage money was used to repair the old house. It was stated that the mortgage was subsequently discharged.

3.The mother of the plaintiff then executed a settlement deed dated 07.04.1972 and she settled the property granting life estate in favour of her husband, K.S.Madhavan Nair @ Sethu Madhavan and that after his life time, the plaintiff was entitled to the property.



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4. Thereafter, on 07.04.1972, the mother and father of the plaintiff entered into a dissolution of marriage agreement registered as Doc. No.41 of 1972 in the Sub-Registrar office at Kodambakkam. At that time, the plaintiff was a minor aged five years.

5. Thereafter, the plaintiff filed O.S.No.4671 of 2007 before the IV Assistant City Civil Court, Chennai, seeking permanent injunction against the 1st defendant therein, K.S.Madhavan Nair @ Sethu Madhavan and the 2nd to 5th defendants who are the 1st to 3rd defendants herein from creating any third party interest over the suit schedule property and not to interfere with the right of the plaintiff to visit the suit schedule property. In the said suit, K.S.Madhavan Nair @ Sethu Madhavan filed a written statement stating that the suit schedule property had been settled by him by a settlement deed dated 28.09.2007 in favour of the 1st, 2nd and 3rd defendants herein, whom he claimed to be his wife and two daughters, Latha Nair, Chinthu Nair and Chanchu Nair and also a grand daughter.



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6.The plaintiff, therefore, filed O.S.No.1382 of 2008 seeking a declaration that the said settlement deed dated 28.09.2007 registered as Doc. No.3489 of 2007 before the Sub-Registrar office at Kodambakkam as null and void. The suit was contested but decreed in favour of the plaintiff. This decree was also reflected in the encumbrance certificate. The defendants herein filed two separate appeals and they were also both dismissed. No further second appeal had been preferred.

7.The father of the plaintiff K.S.Madhavan Nair @ Sethu Madhavan died on 19.11.2022. Thereafter, the plaintiff had issued notice to the defendants herein calling upon them to vacate and handover the vacant possession of the property. The defendants refused to handover possession and the plaintiff therefore, filed Cont.P.No.656 of 2023 which was admitted on 18.04.2023. The Court had issued notice and they claimed a right of redemption. The Division Bench of this Court had referred the matter to the Mediation and Conciliation Centre, but efforts failed. It had been stated that the defendants are unlawfully residing in the said property and therefore, the suit had been filed seeking the reliefs sought for namely to handover the original title deeds of the property and



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to vacate and handover the property and to pay damages for use and occupation.

8.The 3rd defendant filed written statement, which was adopted by the 1st and 2nd defendants. In the written statement, the 3rd defendant stated that the plaintiff had been harassing the defendants by lodging false complaints and by filing a contempt petition. It had also been stated that the plaintiff had brought rowdy elements to the property and had threatened the defendants. It had also been stated that the suit is not maintainable in view of the bar contained under Order II Rule 2 of CPC read with Order XXIII Rule 4(a) and (b) of CPC.

9.It had been stated that the property was mortgaged by the mother of the plaintiff and it was the father K.S.Madhavan Nair @ Sethu Madhavan who had redeemed the same and therefore, in accordance with the principles of subrogation the father of the plaintiff was subrogated with rights of a mortgagee and that had devolved on to the other defendants.



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10.It was also contended that the suit is barred by limitation since the period to seek redemption had long since expired. The 3rd defendant further stated that the 1st defendant, Latha Nair wife of K.S.Madhavan Nair married him in the year 1973 and the 2nd and 3rd defendants are their daughters. The said K.S.Madhavan Nair @ Sethu Madhavan was a Stunt Master to the cinema. He married the mother of the plaintiff P.L.Sumathi in the year 1966.

11.It was specifically stated that he had provided the total sale consideration to purchase the suit schedule property but had purchased it in the name of the mother of the plaintiff. The building was also constructed by K.S.Madhavan Nair @ Sethu Madhavan. The property tax assessment stands in his name. The mother of the plaintiff had executed a mortgage deed in favour of Jeewan Kavar and had received a sum of Rs.15,000/- when Madhavan Nair came to know about this mortgage he redeemed the said mortgage. He also came to know about the unethical behaviour of P.L.Sumathi leading to the dissolution of the marriage and registration of the same. The settlement deed was executed on the same day by P.L.Sumathi granting life interest to Madhavan Nair



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and thereafter, absolute interest to the plaintiff. This was also registered in the office of the Sub-Registrar at Kodambakkam. Immediately after the dissolution of marriage, P.L.Sumathi left the house along with the plaintiff.

12. Thereafter, Madhavan Nair had married the mother of the 2nd and 3rd defendant and they lived together in the suit schedule property. It had been stated that the property was owned by Madhavan Nair. It was at that time, the plaintiff and his mother had filed a suit in O.S.No.4671 of 2007 before the IV Asst. City Civil Court, Chennai. Madhavan Nair had executed a settlement deed dated 28.09.2007 in favour of the defendant and the 3rd defendant minor daughter. This was questioned by filing O.S.No.1382 of 2008 in the City Civil Court. The suit relating to injunction in O.S.No.4671 of 2007 was decreed and the other suit in O.S.No.1382 of 2008 was partly decreed declaring that the settlement deed dated 28.09.2007 as null and void but dismissing the relief to deliver and cancel the settlement deed dated 28.09.2007. Two appeals were filed. Both the appeals were dismissed.



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13.It had been stated that it was the defendants who had looked after Madhavan Nair in his last days and the plaintiff was only permitted to pay his respects. The plaintiff then issued notices after the death of the father and filed a contempt petition in Cont.P.No.656 of 2023. The defendants appeared in the contempt hearing and mediation was also initiated but the plaintiff frustrated the mediation process. It was also stated that the plaintiff has no right to call upon the defendants to handover the title deeds since according to the principles of subrogation, Madhavan Nair stood in the possession of a mortgage and the plaintiff and the defendants as his legal heirs had acquired right and interest over the property. It was therefore contended that the suit should be dismissed.

14.This written statement filed by the 3rd defendant was adopted by the 1st and 2nd defendants.

15.On the basis of the pleadings, the following issues were framed for trial on 01.03.2024.



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- “1. Whether the defendants are liable to quite and deliver vacant possession of the suit property to the plaintiff?*
- 2. Whether the plaintiff has acquired any right in the suit property by virtue of redemption of the property by the father of the plaintiff?*
- 3. Whether the suit is barred in view of the previous proceedings between the parties?*
- 4. To what other relief parties are entitled?”*

16. Issue no.2 is recast since there is typographical error and it is recast as follows:

“2. Whether the plaintiff and the defendants have acquired any right in the suit property by virtue of redemption of the property by the father of the plaintiff, 2nd and 3rd defendants?”

17. However, in the issues framed on 01.03.2024, the issue whether the defendant were liable to pay damages at the rate of 1,50,000/- per month for use and occupation from the date of occupation till the date of handover possession was not framed but the parties had tendered evidence in this aspect. The following additional issue is framed as issue No.4:



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“4.whether the defendants are liable to pay damages at Rs.1,50,000/- per month for use and occupation of the suit schedule property from 19.11.2022 till the date when they actually vacate from the premises.”

18. The issues are thus:

“1.Whether the defendants are liable to quite and deliver vacant possession of the suit property to the plaintiff?

2.Whether the plaintiff and the defendants have acquired any right in the suit property by virtue of redemption of the property by the father of the plaintiff, 2nd and 3rd defendants?

3.Whether the suit is barred in view of the previous proceedings between the parties?

4.To what other relief parties are entitled?”

Additional Issue:

1.Whether the defendants are liable to pay damages at Rs.1,50,000/- per month for use and occupation of the suit schedule property from 19.11.2022 till the date when they actually vacate from the premises.



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19.During trial, the plaintiff examined himself as PW-1, he filed Ex.P1 to P15. Ex.P1 is the certified copy of the sale deed for purchase of the suit schedule property and Ex.P2 is the certified copy of the mortgage executed by P.L.Sumathi. Ex.P3 is the certificate copy of the dissolution of marriage between the K.S.Madhavan Nair @ Sethu Madhavan and P.L.Sumathi. Ex.P4 is the certified copy of the settlement deed executed by P.L.Sumathi. Exs.P5 and P6 are the certified copy of the decree in judgment in O.S.No.4671 of 2007. Exs.P7 and P8 are the judgment and decree of O.S.No.1382 of 2008. Exs.P9 to P11 are the certified copies of the judgments and decrees of A.S.Nos.32 of 2011 and 33 of 2011. Ex.P12 is the death certificate of K.S.Madhavan Nair @ Sethu Madhavan. Ex.P13 is the copy of the notice issued by the plaintiff. Ex.P15 is the order of the Division Bench in Cont.P.No.656 of 2023.

20.On the side of the defendants, the 3rd defendant examined herself as DW-1. She marked Ex.D1, the original mortgage deed executed by P.L.Sumathi and also marked Exs.D2, D3 and D4, original property tax receipts, original water tax receipts and original electricity



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card respectively. She also marked the copy of the settlement deed executed by P.L.Sumathi in favour of the daughter Sreekala as Ex.P5. She also filed Exs.P6 and P7 the original hospital receipts and original pharmacy bill respectively, relating to the treatment given to K.S.Madhavan Nair @ Sethu Madhavan. She also filed the copies of the pleadings in O.S.No.4671 of 2007 and O.S.No.1382 of 2008 as Exs.D9 and D10. The documents relating to Cont.P.No.656 of 2023 were marked as Exs.D11 and D12. The copies of the plan for building approval in the name of K.S.Madhavan Nair @ Sethu Madhavan was marked as Ex.D13. The death certificate of K.S.Madhavan Nair @ Sethu Madhavan and the burial ground report were marked as Exs.D14 and D8. Both the witnesses were also cross-examined.

21.Heard arguments advanced by Mr.B.Ravi Raja, learned counsel for the plaintiff and Mr.N.Murali Kumaran, Senior Counsel for Mr.E.C.Ramesh, learned counsel for the defendants.

22.Mr.B.Ravi Raja, learned counsel for the plaintiff took the Court through the pleadings. He pointed out that the property which is



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the subject matter of the litigation had been purchased by the mother of the plaintiff, P.L.Sumathi. The sale deed is in her name. It is therefore contended by the learned counsel that her title to the property cannot be questioned. He also stated that the contentions of the defendants that her husband, K.S.Madhavan Nair @ Sethu Madhavan had provided the sale consideration cannot now be examined by this Court, since he had not asserted the same during his life time. The learned counsel stated that exercising her right as title holder, the mother of the plaintiff had also mortgaged the property. She had also executed a settlement deed granting life interest to K.S.Madhavan Nair @ Sethu Madhavan and absolute interest to the plaintiff herein, which interest would flow after the death of K.S.Madhavan Nair @ Sethu Madhavan. The learned counsel stated that the marriage between the parents of the plaintiff had been dissolved by the deed of dissolution which had been registered and stated that the legality or otherwise of the same had not been questioned and the parties have understood the nature of that particular agreement and its effect.



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23.The learned counsel stated that since the defendants continued to reside in the property, the plaintiff initially filed O.S.No.4671 of 2007 before the IV Assistant City Civil Court at Chennai seeking permanent injunction against the defendant, K.S.Madhavan Nair @ Sethu Madhavan and against the present defendants who were defendants 2, 3 and 4 from creating any third party interest over the suit schedule property. In the written statement in that particular suit, K.S.Madhavan Nair @ Sethu Madhavan had disclosed that he had settled the property by a deed of settlement dated 28.09.2007 in favour of the 1st, 2nd and 3rd defendants herein. The plaintiff herein therefore filed yet another suit in O.S.No.1382 of 2008 seeking a declaration that the said settlement as null and void and calling upon the defendants to handover that particular document. Both the suits were contested. The suit in O.S.No.4671 of 2007 was decreed and in O.S.No.1382 of 2008 a decree was passed that the settlement deed was null and void and therefore since the document had become nullity, the plaintiff had withdrawn the relief sought to handover that particular document. The appeals preferred against those decrees also suffered adverse orders as against the defendants.



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24.The learned counsel pointed out that the plaintiff had then filed Cont.P.No.656 of 2023 and a Division Bench of this Court had given a detailed finding and the learned counsel pointed out Ex.P15 in this regard which is the judgment of the Division Bench dated 21.12.2023. The learned counsel stated that the defendants will necessarily have to handover the title deeds of the property since the plaintiff is the owner and also stated that the defendants will also have to pay damages and use for occupation at Rs.1,50,000/- per month. The learned counsel stated that the suit should be decreed.

25.Mr.N.Murali Kumaran, learned Senior Counsel on behalf of the defendants stated that the mother of the plaintiff had purchased the property on 13.04.1970 and the consideration shown in the sale deed was Rs.17,000/-. It is his contention that this consideration was paid entirely by the husband of the plaintiff and the father of the 2nd and 3rd defendants, K.S.Madhavan Nair @ Sethu Madhavan. He further pointed out that within two years on 09.02.1972, the mother of the plaintiff had mortgaged the property for a sum of Rs.15,000/-. Within two months



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thereafter on 07.04.1972, there was dissolution of the marriage between the parents of the plaintiff and the documents in that regard, was also registered and there is mention of the mortgage also in that particular document.

26.The learned Senior Counsel also pointed out that, in a rejoinder to the notices, the discharge of mortgage had been admitted. The learned Senior Counsel then pointed out Order II Rule 2 of CPC and stated that the plaintiff had instituted suit after suit against the defendants. The first suit was filed for injunction. The second suit was filed for mandatory injunction and both the suits went for trial. Thereafter, this present suit has been filed. The learned Senior counsel pointed out that the defendants had been dragged into Court again and again without any leave being granted for filing a separate suit.

27.The learned Senior Counsel then pointed out that the mortgage which had been executed by the mother of the plaintiff in the year 1972 had been redeemed in the year 1975 by the father of the plaintiff and the 2nd and 3rd defendants. In effect, according to the learned



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Senior Counsel, the father had stepped into the shoes of the mortgagee.

Thereafter, owing to the defendants being his legal heirs, they stepped into his shoes, and, according to the learned Senior Counsel, the principles of subrogation would apply. He also stated that the plaintiff as a legal heir would also be entitled to a share in the property along with the defendants.

28.In this connection, the learned Senior Counsel also pointed Section 91 of the Transfer of Property Act and stated that the plaintiff had lost the right for redemption.

29.Pointing out all these aspects, the learned Senior Counsel urged that the suit should be dismissed.

30.Mr.B.Ravi Raja, learned counsel for the plaintiff in his reply pointed out that in the decree which was passed by the City Civil Court, the settlement deed executed by K.S.Madhavan Nair @ Sethu Madhavan was declared to be null and void. It was under these circumstances, the consequential prayer for handing over that particular document was



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withdrawn by the plaintiff. The learned counsel contested the claim of the defendants that on redemption of the mortgage, the father of the plaintiff and the 2nd and 3rd defendants had stepped into the shoes of the mortgagee and had acquired title over the property. The learned counsel stated that the stand taken by the defendants should be rejected and that the Court should decree the suit.

31.I have carefully considered the arguments advanced and examined the records.

Issues:

Issue Nos. 1 and 2:

32.These issues surround the redemption from mortgage of the suit schedule property by the father of the plaintiff and the 2nd and 3rd defendants.

33.The brief facts are that the plaintiff's mother P.L.Sumathy was married to K.S.Madhavan Nair @ Sethu Madhavan. The plaintiff was born to them. K.S.Madhavan Nair @ Sethu Madhavan was a stunt



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master in the Cinema Industry. The suit schedule property was purchased in the name of P.L.Sumathi through Ex.P1 which is the certified copy of the sale deed registered as Document No.1004 of 1970 dated 03.04.1970. It is the contention of the defendants that the sale consideration was paid by K.S.Madhavan Nair @ Sethu Madhavan. A perusal of Ex.P1 would show that the said property had been purchased from P.V.Krishnamoorthy. The sale consideration was Rs.17,000/-. In the sale deed, it had been very specifically covenanted that the vendor had received an advance of Rs.15,000/- on 19.01.1970 from the purchaser of the property, P.L.Sumathi, by cash. The balance sale consideration of Rs.2,000/- was received by him in the presence of the Sub-Registrar, Kodambakkam. He thereafter acknowledged that he had received a total sale consideration of Rs.17,000/-. He therefore, executed the sale deed and also stated that the purchaser will have every right and title to deal with the property. She was also put in possession. This sale deed reflects that the consideration flowed only from the purchaser to the vendor. There is no mention about the contribution by K.S.Madhavan Nair @ Sethu Madhavan.



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34. Section 91 of the Indian Evidence Act, 1872 is as follows:

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

— When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.....

Exception 2.....

Explanation 1.....

Explanation 2.....

Explanation 3.....”

35. Section 91 of the Indian Evidence Act, 1872 states that when any contract is reduced in the form of the document then, it should be proved in accordance with the terms and the document and not by oral evidence. Conversely, no amount of oral evidence can be tendered to



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36. None of the defendants have pleaded any of the above factors. Therefore, the contention of the defendants that it was the father who had paid the sale consideration has to be rejected by this Court.

37. Exercising her right as absolute owner of the property, the mother of the plaintiff had executed a mortgage deed in favour of Mrs. Jeevan Kavar on 09.02.1972 by Document No.341 of 1972. The mortgage amount was for a sum of Rs.15,000/-. As title holder, the mother of the plaintiff had every right to execute that particular mortgage deed. Even in that mortgage deed Ex.P2, the mother of the plaintiff had very categorically stated that the property had been “*purchased by her with her own funds*” and stated that she was “*in need of funds for the purpose of putting further constructions on the said property*”. She had further stated that she alone has got right and interest in the property. The mortgage amount was to be repaid in 23 equal instalments of Rs.810/-



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quite apart from the first instalment of Rs.870/-. This is a simple mortgage.

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38. Whoever redeems the mortgage cannot claim better title than the mortgager. Any redemption would be only on behalf of the mortgager. Therefore, even if it is to be admitted that it was K.S.Madhavan Nair @ Sethu Madhavan who redeemed the mortgage, it would never mean that he had stepped into the shoes of the owner of the property. He had only repaid the borrowal made and if for such borrowal, the title deed of the property had been given to the mortgagee, once he receives back the title deed, he is under compulsion to hand it over to the title holder. There are no records available to show that K.S.Madhavan Nair @ Sethu Madhavan had sought repayment of the amounts paid by him towards redemption of the mortgage either from P.L.Sumathi or from the legal heir / plaintiff. As a matter of fact, he had benefited directly by a further document executed by P.L.Sumathi. This is Ex.P4 a settlement deed executed by P.L.Sumathi on 07.04.1972 and registered as Document No.1059 of 1972. By this document, P.L.Sumathi had settled the property in favour of K.S.Madhavan Nair @ Sethu



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Madhavan, asserting her title by stating “*whereas settler is the owner of house and ground bearing Door No.24, Gangai Amman Koil Street, Periyar Nagar, Kodambakkam, Chennai, having purchased the same by sale deed dated 03.04.1970*”. By this settlement deed, it had been very specifically covenanted that the settlee shall “*enjoy the settled property during his life time without any power of alienation whatsoever*”. Thus, K.S.Madhavan Nair @ Sethu Madhavan, by way of the settlement deed was permitted to reside in the property till his life time. By residing in the property, he had effectively gained the amount and he had spent in redeeming the mortgage. Therefore, there can never be any issue of subrogation or claim to be the owner of the property. The title of the property is to devolve on the plaintiff “*with full powers of alienation*”.

39.K.S.Madhavan Nair @ Sethu Madhavan, however, executed a settlement deed in favour of the defendants. That document was struck down as null and void by judgment of the IV Assistant City Civil Court, Chennai in O.S.No.1382 of 2008 dated 04.12.2009. Exs.P7 and P8 are the certified copies of the judgment and decree. The appeal therefrom was also dismissed in A.S.No.33 of 2011 by the II Additional City Civil



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Court, Chennai by judgment dated 11.03.2013 in Ex.P11. Therefore, the title of the property vests only on the plaintiff and none of the three defendants can claim any right to either be in possession of the property, or to hold on to the title deeds of the property. They are strangers to the property.

40.The evidence of DW-1 asserting right has to be rejected since, she was born in the year 1975 and the property was purchased prior to her birth. The property was mortgaged prior to her birth and the property was redeemed when she was an infant. The evidence deposed surrounding mortgage and redemption are hearsay evidence.

“Q10:What was your age in 1975?

A:I am not born.

Q:11.Whatever you deposed was hearsay?

A:Yes, the above statements are informed by my father.”

41.It is evident that the defendants are clutching at straws.



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42.In view of the above reasonings, I hold that issue no.1 is answered that the defendants are liable to quit and deliver vacant possession of the suit property to the plaintiff. It is answered in favour of the plaintiff.

43.With respect to issue No.2, I hold that the plaintiff had acquired title owing to the settlement deed executed by his mother under Ex.P4 and also as the surviving legal heir of the mother. The defendants have not acquired any right by virtue of redemption of property by K.S.Madhavan Nair @ Sethu Madhavan, the father of the plaintiff, 2nd and 3rd defendants. This issue is answered accordingly, that the plaintiff alone has right, title and interest over the property.

Issue No.3:

44.This issue surrounds the determination whether the suit is barred under Order II Rule 2 and Order XXIII Rule 4 of CPC.



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45. There has been a separate cause of action for filing of each one of the three suits by the plaintiff. The first suit was filed for injunction to protect the property from being sold to third parties. In the written statement filed in the said suit, the plaintiff came to know that his father had settled the property in favour of his daughters. The cause of action for that particular suit arose only on knowledge of that execution of the settlement deed. Therefore, the second suit was filed. Both the suits were decreed. Now, by this suit, the plaintiff seeks return of the title deeds of the property and damages for use and occupation. The cause of action for this suit had arisen only after the judgment and decree of the earlier suits had become final. They became final after the period of limitation expired to file a Second Appeal by the defendants questioning the judgment and decree in A.S.No.32 of 2011 and A.S.No.33 of 2011. This suit is totally independent of the earlier two suits. The relief sought in this suit could never have been sought in the earlier suit. Therefore, I hold that neither of the above two provisions would apply and there is no bar in filing this suit or claiming the relief in this suit. This issue is answered accordingly, that there is no bar in the filing of this suit.



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Additional Issue:

46.This issue arise consequent to the possession of the defendants in the suit schedule property to the disadvantage of the plaintiff. The plaintiff has claimed damages of Rs.1,50,000/- per month from 19.11.2022. That particular date arose, since it was on that date, that K.S.Madhavan Nair @ Sethu Madhavan died and the full right and title had vested with the plaintiff. The plaintiff is the absolute title holder of the property and the defendants are strangers to the property. They have no right to continue to be in possession. Everyday they continue to be in possession, they will have to pay damages for use and occupation. The plaintiff has valued the same at Rs.1,50,000/- per month. There is no evidence produced by the defendants that this valuation is not correct or that the valuation has been inflated.

47.The plaintiff had filed application in A.No.5672 of 2023 seeking interim direction to pay the amount. But since, final judgment is passed in this suit, that application has become otiose and had been



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dismissed. The property is situated in a central portion within the city of Chennai and it measures 3600 sq.ft. I hold that the amount claimed is not excessive, but rather, there is no evidence produced on behalf of the defendants that it is excessive. The Court will have to go according to the valuation of the suit as claimed by the plaintiff.

48.In view of that particular fact, I hold that since the plaintiff's title has been upheld by this Court, the defendants will necessarily have to pay damages for use and occupation. The issue is answered in favour of the plaintiff.

Issue No.4:

49.In the result, the suit is decreed as prayed for. Since, there is a decree against the defendants for damages for use and occupation and also taking into consideration, the tangential relationship of there being a common father for the plaintiff and 2nd and 3rd defendants, I would refrain from imposing costs. Two months time is granted to quit and deliver vacant possession.



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50.The suit is decreed, but however, without costs.

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smv

Neutral citation : Yes / No

Index : Yes / No

Speaking order : Yes / No

Plaintiffs' side Witnesses:

P.W.1-Mr.Sunil Kumar @ M.Kannan

Defendant's side Witnesses:

D.W.1-Chanchu Nair

Plaintiffs' side Documents:

Ex.P.1	03.04.1970	Certified copy of the sale deed entered between P.L.Sumathi and P.V.Krishnamoorthy vide document No.1004/1972
Ex.P.2	09.02.1972	Certified copy of the deed of simple mortgage in



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		favour of Mrs.Jeevan Kavar vide document No.341 of 1972
Ex.P.3	07.04.1972	Certified copy of the dissolution of marriage deed entered between late Madhavan Nair @ Sethu Madhavan and P.L.Sumathi vide document No.41 of 1972
Ex.P.4	07.04.1972	Certified copy of the settlement deed executed by P.L.Sumathi in favour of late Madhavan Nair @ Sethu Madhavan vide document No.1059 of 1972
Ex.P.5	04.12.2009	Certified copy of the decree in O.S.No.4671 of 2007 passed by IV Assistant Judge City Civil Court, Chennai
Ex.P.6	04.12.2009	Certified copy of the judgment in O.S.No.4671 of 2007 passed by IV Assistant Judge City Civil Court, Chennai
Ex.P.7	04.12.2009	Certified copy of the decree in O.S.No.1382 of 2008 passed by IV Assistant Judge City Civil Court, Chennai
Ex.P.8	04.12.2009	Certified copy of the judgment in O.S.No.1382 of 2008 passed by IV Assistant Judge City Civil Court, Chennai
Ex.P.9	11.03.2013	Certified copy of the decree in A.S.No.32 of 2011 passed by II Additional Judge, City Civil Court, Chennai
Ex.P.10	11.03.2013	Certified copy of the judgment in A.S.No.32 of 2011 passed by II Additional Judge, City Civil Court, Chennai
Ex.P.11	11.03.2013	Certified copy of the judgment and decree in A.S.No.33 of 2011 passed by II Additional Judge, City Civil Court, Chennai
Ex.P.12	09.01.2023	Online death certificate of late Madhavan Nair @ Sethu Madhavan



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Ex.P.13	13.12.2022	Office copy of the legal notice issued by the plaintiff's counsel to the defendant with postal receipt dated 13.12.2022.
Ex.P.14	18.04.2023	Online certificate copy of the encumbrance certificate of the suit schedule property dated 18.04.2023
Ex.P.15	21.12.2023	Certified copy of the order passed by the Division Bench of this Court in Contempt Petition No.656 of 2023 (as per direction)

Defendant's side Documents:

Ex.D.1	09.02.1972	Original mortgage deed executed by P.L.Sumathi in favour of Jeevan Kavar vide Document No.341 of 1972
Ex.D.2	-	Series of original property tax receipts (Nos.6) issued in the name of Late K.S.Madhavan Nair @ Sethu Madhavan
Ex.D.3	-	Series of original water tax receipts (Nos.18) issued in the name of Late. K.S.Madhavan Nair @ Sethu Madhavan
Ex.D.4	-	Series of original electricity card (Nos.3) issued in the name of Late K.S.Madhavan Nair @ Sethu Madhavan
Ex.D.5	31.03.2005	Certified copy of the settlement deed executed by plaintiff's mother in favour of Sreekala
Ex.D.6	-	Series of original hospital receipts (Nos.7) issued by Be Well Hospital towards payment of Medical Bills in the name of Madhavan Nair from 10.10.2022 to 17.11.2022.
Ex.D.7	-	Original pharmacy bill issued by Be Well Hospital for the year 2022



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Ex.D.8	20.11.2022	Original Burial Ground Report issued by the Greater Chennai Corporation.
Ex.D.9	-	Office copy of the written statement in O.S.No.4671 of 2007 filed by the defendants and Late K.S.Madhavan Nair @ Sethu Madhavan. (The counsel for the plaintiff side objected for marking this document)
Ex.D.10	-	Office copy of the written statement in O.S.No.1382 of 2008 filed by the defendants and K.S.Madhavan Nair @ Sethu Madhavan. (The counsel for the plaintiff side objected for marking this document)
Ex.D.11	13.07.2023	Office copy of the affidavit filed by the defendants in Cont.P.No.656 of 2023 (The counsel for the plaintiff side objected for marking this document)
Ex.D.12	21.09.2023	Office copy of the notes on submission filed by the defendants in Cont.P.No.656 of 2023 (The counsel for the plaintiff side objected for marking this document)
Ex.D.13	26.07.1973	Photocopy of the plan for building approval applied by Late K.S.Madhavan Nair @ Sethu Madhavan (The counsel for the plaintiff side objected for marking this document)
Ex.D.14	19.11.2022	Photocopy of the death certificate of K.S.Madhavan Nair @ Sethu Madhavan issued by Be Well Hospital (The counsel for the plaintiff side objected for marking this document)

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C.V.KARTHIKEYAN,J.

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Pre-delivery Judgment in
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