



S.A.No.106 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 12.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.106 of 2019

and

C.M.P.No.2346 of 2019

1.President,
K.503, Erisanampatti Primary
Agricultural Co-operative Credit Society,
Erisanampatti,
Udumalpet Taluk,
Tiruppur District

2.Secretary,
K.503, Erisanampatti Primary
Agricultural Co-operative Credit Society,
Erisanampatti,
Udumalpet Taluk,
Tiruppur District

.. Appellants

Vs.

1.Kavitha

2.Tirumalaichamy

3.The Deputy Registrar,
Office of the Deputy Registrar of
Co-operative Societies,
Dharapuram Town,
Tiruppur District

.. Respondents



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Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.2 of 2017, dated 07.07.2018, on the file of the learned Subordinate Judge at Udumalpet confirming the judgment and decree passed in O.S.No.449 of 2014 on the file of the District Munsif Court at Udumalpet, dated 28.02.2017.

For Appellants : Ms.B.A.Nalini
for Mr.M.S.Palaniswamy

For R1 : Ms.A.Sumathy

For R2 : Served, No Appearance

For R3 : Dr.S.Suriya
Additional Government Pleader

JUDGMENT

The present Second Appeal arises out of the judgment and decree passed by the learned Subordinate Judge at Udumalpet in A.S.No.2 of 2017, dated 07.07.2018 in confirming the judgment and decree of the Court of the learned District Munsif at Udumalpet in O.S.No.449 of 2014, dated 28.02.2017.

2. O.S.No.449 of 2014 is a suit presented by the 1st respondent herein. She sought a declaration that the sale notice issued by the 1st defendant, with respect to the suit schedule mentioned property, is null and void and



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not binding on her and for the relief of permanent injunction restraining the defendants, their men agents and subordinates from, in any manner, alienating or creating any encumbrance over the property and for cost in the suit.

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

4. The case of the plaintiff is that the suit schedule mentioned property belonged to one Palani Gounder, her great grandfather. Palani Gounder had purchased the property by way of a registered sale deed, dated 28.05.1944 in document No.655/1944. She would add that on 01.10.1955, her great grandfather Palani Gounder had executed an oral settlement in favour of his son, one Kandasamy Gounder, who is the grandfather of the plaintiff. On and from the date of this oral settlement, Kandasamy Gounder became the owner of the property. On the strength of such settlement, he had also mutated the records and had exercised all the powers of the owner.



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5. The 4th defendant, namely, Thirumalaisamy, is the father of the plaintiff and the son of Kandasamy Gounder. He was working as a Chief Executive Officer in K.503, Erisanampatti Primary Agricultural Co-operative Credit Society at Udumalpet. On account of certain allegations against the 4th defendant, certain proceedings had been initiated against the 4th defendant by defendant Nos.2 and 3. This resulted in a surcharge order.

6. Under the surcharge order, the 4th defendant was called upon to pay a sum of Rs.1,98,613.74/-. The plaintiff came to know about these proceedings when a caveat was served on her by defendant Nos.1 to 3. Immediately, she approached the 3rd defendant and came to know that her property has been subjected to an attachment.

7. She claims that the suit schedule mentioned property became her property on account of a “WILL” written by Kandasamy Gounder in her name on 17.02.2005. She would state that Kandasamy Gounder passed away on 19.05.2011 and on his death, the “WILL” came into force. Pleading that she is the absolute owner of the property, she would state that



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the property is not answerable to any award that had been passed against the 4th defendant. Consequently, she filed the suit for the aforesaid reliefs.

8. Summons were issued by the learned Trial Judge and it was served on defendant Nos.1 to 3. They entered appearance through a counsel and filed a detailed written statement. Their specific plea is that, by virtue of Section 156 of the Tamil Nadu Co-operative Societies Act, the Civil Court will not have jurisdiction to decide matters falling within the purview of the Act and would rely upon an order that had been passed by this Court in W.P.No.5824 of 2005. The proceedings in the writ petition, as it clear from the written statement, was initiated by Kandasamy Gounder challenging the execution proceedings initiated by the 1st defendant.

9. A reading of the written statement would show that the defendant had agreed to the plea of the plaintiff that the property had been purchased by Palani Gounder on 28.05.1944 and that it was his self acquisition.

10. The case of the defendants is that the suit is barred and the “WILL”, said to have been executed by Kandasamy Gounder in favour of



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the plaintiff/Kavitha, is a false one that had been created by Kavitha/the Plaintiff, Thirumalaisamy/the 4th defendant and Kandasamy Gounder/the deceased grandfather to evade the claim of the defendants.

11. On these pleadings, the learned trial Judge framed the following issues :

“1. தமிழ்நாடு கூட்டுறவு சங்கங்களின் சட்டம் பிரிவு 156ன் படி இவ்வழக்கை விசாரணை செய்ய இந்நீதிமன்றம் தடை செய்யப்பட்டுள்ளதா?

2. வாதி கோரியவாறு விளம்புகை நிவாரணம் பெற உரிமை உடையவரா?

3. வாதி கோரியவாறு நிலைக்கால உறுத்துக்கட்டளை பெற உரிமை உடையவரா?

4. வாதிக்கு கிடைக்கத்தக்க வேறு நிவாரணம் என்ன?”

12. On behalf of the plaintiff, she examined four witnesses and marked Ex.A1 to Ex.A9. On behalf of the defendants, the Secretary of the Society, one Senniappan, was examined as D.W.1 and one Senthilkumar was examined as D.W.2. On the side of the defendants, Ex.B1 to Ex.B11 were marked. During the course of the trial, the documents in the custody of the Sub Registrar were summoned and marked as Ex.X1 and Ex.X2.



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13. The learned trial Judge appreciating the evidence, both oral and documentary let in before him, came to the conclusion that the suit has to be decreed and accordingly proceeded to decree the suit on 28.02.2017. Aggrieved by the said judgment and decree, defendant Nos.1 to 3 preferred a regular appeal before the learned Subordinate Judge at Udumalpet in A.S.No.2 of 2017.

14. The learned Appellate Judge concurred with the judgment of the trial Court and dismissed the appeal on 07.06.2017. Against the concurrent findings of the Courts below, the present Second Appeal came to be presented before this Court.

15. The Second Appeal came to be admitted on 30.01.2019 on the following substantial questions of law :

“ (1) Whether a civil suit questioning the orders passed by an authority under the Tamilnadu Co-operative Societies Acts & Rules are maintainable?



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(2) Whether the predecessor in title to the 1st respondent filed a

W.P.No.5824 of 2005 questioning the auction sale notice was directed by this Hon'ble Court seek his remedy under Tamilnadu Co-operative Societies Act, the 1st respondent can approach the civil court questioning the sale notice issued by the sale officer by way of a civil suit?

(3) Whether the civil court is barred from declaring or passing a judgement a decree of permanent injunction against the appellants and 3rd respondent as defendants in the suit from acting as per the Rules of the Tamilnadu Co-operative Societies Rules?

(4) Whether a decree for permanent injunction can be granted against the appellants and the 3rd respondent? ”

16. Notice was ordered in the appeal and the plaintiff entered appearance through Ms.A.Sumathy.

17. Heard Ms.B.A.Nalini, for Mr.M.S.Palaniswamy, appearing on behalf of the appellants, Ms.A.Sumathy, appearing on behalf of the 1st respondent and Dr.S.Suriya, Additional Government Pleader, appearing on behalf of the 3rd respondent.



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18. Ms.B.A.Nalini would submit two points as against the judgment and decree of the Courts below. She would state that the suit is barred by virtue of Section 156 of the Tamilnadu Co-operative Societies Act. She would plead that it is a self contained code and therefore, the remedy available to a party is only to approach the authorities created under the said statute for the purpose of obtaining any remedy.

19. She would state that Kandasamy Gounder himself having presented the Writ Petition in W.P.No.5824 of 2005 and that having been dismissed by the Court directing the parties to approach the authorities under Section 152 of the Tamilnadu Co-operative Societies Act or to file a claim petition before the 1st defendant, the suit filed by the plaintiff is not maintainable.

20. Secondly, she would submit that the suit was presented only for a declaration that the sale notice is null and void and not for declaration of title and therefore, she would state that the suit is not maintainable. In support of her submissions, Ms.B.A.Nalini would rely upon the judgment of



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this Court in *Paravakottai Village Co-operative Agricultural Loan Society*

vs. *J.Karthikeyan [(1999) 1 LW 180]* and would plead that the suit is barred.

21. Per contra, Ms.A.Sumathy would submit that the plaintiff and Kandasamy Gounder are not the members of the Society and therefore, any proceeding initiated against the 4th defendant would not be binding on them. She would state that the property is the property of Kandasamy Gounder and therefore, the question of Thirumalaisamy having a right over the property during the lifetime of his father does not arise for moments consideration.

22. She would point out that Kandasamy Gounder died on 19.05.2011 and the order in writ petition was passed by the High Court on 12.01.2012, and an order having been passed against the dead person, no validity can be attached to the same.

23. She would further state that the title of the plaintiff not having been denied, the question of plaintiff seeking expensive relief of declaration



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of title does not arise. She would state that being the concurrent findings of fact, this Court need not interfere with the judgments of the Courts below.

In support of her submissions, M/s.A.Sumathy would rely upon two judgments of this Court in ***Mattadhari Primary Agricultural Co-operatives Bank vs. Saroja Ammal and Another [(1997) 1 CTC 378]*** and ***M.Narisimhan vs. The Deputy Registrar of Co-operative Societies, Tuticorin and 2 Others [(2003) 1 CTC 327]***.

24. I have carefully considered the arguments on either side and I have gone through the records.

25. A reading of the pleadings would show that there is no dispute between the parties that the suit schedule mentioned properties had been purchased by the great grandfather of the plaintiff, namely, one Palani Gounder. As against the specific plea taken by the plaintiff that the property is a self acquired property of Palani Gounder, there has been no plea or evidence let in by the defendants to dislodge the same.



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Oral Settlement is unknown to civil law

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26. Under Order VIII Rule 4 read with Order VIII Rule 5 of the Code of Civil Procedure, an evasive pleading or denial does not help the case of the defendant. In order to substantiate that the property had, in fact, been purchased by Palani Gounder, the plaintiff has filed Ex.A1, namely, the original sale deed under which Palani Gounder got the property. There is no dispute that Kandasamy Gounder is the only son of Palani Gounder. A plea had been raised by the plaintiff that there had been an oral settlement of the suit property by Palani Gounder in favour of Kandasamy Gounder. Taking advantage of this pleading, Ms.B.A.Nalini would vehemently submit that the oral settlement is unknown to civil law and therefore, no reliance can be placed upon the same.

27. I have to agree with Ms.B.A.Nalini that the oral settlement is not contemplated under the Transfer of Property Act. In terms of Section 123 of the Transfer of Property Act, a settlement or a gift, that is executed by one person in favour of the other, has to be effected only by way of a registered document and the said document has to be attested by two witnesses. Therefore, the plea of oral settlement need not detain us even for a second.



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Therefore, as required by law, I have to ignore the oral settlement and proceed accordingly.

28. Even if I were to ignore the plea of oral settlement, there is no dispute that Kandasamy Gounder was the only son of Palani Gounder. Therefore, by virtue of operation of the Hindu Succession Act, on the death of Palani Gounder, the property will automatically vest with Kandasamy Gounder. Therefore, on the death of Palani Gounder, Kandasamy Gounder succeeds to the estate as the sole legal heir of his father/Palani Gounder and hence, he is entitled to enjoy the property as its absolute owner.

Section 156 of the Tamilnadu Co-operative Societies Act cannot bar suits by third parties

29. Insofar as the plea that the suit is not maintainable under Section 156 of the Tamilnadu Co-operative Societies Act is concerned, it requires me to go through the said provision. Under Section 156 of the Tamilnadu Co-operative Societies Act, where any order is passed by a Registrar, Liquidator, Arbitrator, etc., or any other officer empowered under the said Act to initiate proceedings against a person, then the said order is not



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susceptible to be challenged before the Civil Court. The bar of jurisdiction of Civil Court should not be readily concurred and there are catena of judgments that require me to read the bar of jurisdiction strictly.

30. It is not in dispute that neither the plaintiff nor her predecessor in title/Kandasamy Gounder are the members of the Society. Furthermore, Kandasamy Gounder does not claim under Thirumalaisamy/the 4th defendant, the delinquent against whom an award had been passed under the Act, nor is Kavitha staking the claim to the property through Thirumalaisamy. Both Kandasamy Gounder and Kavitha are strangers to the Primary Agricultural Co-operative Society, who has been arrayed as the 3rd defendant. Therefore, I would interpret Section 156 of the Tamilnadu Co-operative Societies Act to apply only in those cases where a member of the Society seeks to agitate the correctness or otherwise of the proceeding, or a legal representative, or an assignee of a person against whom the proceedings have been initiated and concluded in terms of Section 87 of the Tamilnadu Co-operative Societies Act.



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31. As stated above, Kandasamy Gounder is not the legal representative of Thirumalaisamy and therefore, Kavitha, who succeeds to the estate under the “WILL”, cannot also be treated as legal representative of Thirumalaisamy, though she is his own daughter. Kandasamy Gounder being the son of Palani Gounder became the absolute owner of the property. By law, he is entitled to alienate the property in favour of anyone. He chose his grand daughter as the beneficiary under the “WILL”. On the death of Kandasamy Gounder, she became the owner. The right of Thirumalaisamy in the property of his father is only spes successionis which is incapable of attachment.

32. This fact makes the judgment strongly relied upon by Ms.B.A.Nalini distinguishable to the present case. The verdict in ***Paravakottai Village Co-operative Agricultural Loan Society vs. J.Karthikeyan [(1999) 1 LW 180]*** was rendered in a suit for permanent injunction. The plaintiff in that suit pleaded that he is not answerable to the debts of his father and mother as he became the owner of the property. The said argument was rejected by this Court placing reliance upon Section 73 of the Tamilnadu Co-operative Societies Act of 1961, whereby, a legal



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representative of a debtor to the Co-operative Society was also held to be answerable to the claim made by the Society for the property which comes into his hands on account of the death or otherwise of the debtor. The fact in that case was that the plaintiff was the legal representative of the deceased member and the fact in this case is that, Kavitha is not claiming as the legal representative of Thirumalaisamy, but that of her grandfather Kandasamy Gounder. This makes a whole lot of a difference.

33. I need not reinvent the wheel as this position has been settled in two judgments of this Court in *Mattadhari Primary Agricultural Co-operatives Bank vs. Saroja Ammal and Another [(1997) 1 CTC 378]* and *M.Narisimhan vs. The Deputy Registrar of Co-operative Societies, Tuticorin and 2 Others [(2003) 1 CTC 327]*. I would respectfully apply the principles of law laid down in the aforesaid judgments in the facts of this case and come to a conclusion that the suit by a third party claiming permanent injunction on the basis of title as against the Co-operative Society would not fall within the teeth of Section 156 of the said Act.



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An order of the Court cannot be enforced against a dead person

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34. In terms of Section 30 of the Hindu Succession Act, a Hindu is entitled to alienate the property by way of a testamentary document. In exercise of that power, Kandasamy Gounder had executed a “WILL” on 17.03.2005 in favour of the plaintiff/Kavitha. The “WILL” automatically comes into force when the testator moves on to meet his maker. That event took place in the present case on 19.05.2011. The date is crucial because the Writ Petition, on which Ms.B.A.Nalini placed heavy reliance upon to push the parties to the alternate remedy as ordered in W.P.No.5824 of 2005, was pronounced on 12.01.2012.

35. An order passed against a dead person is of no use and cannot be put against the said person or a person claiming under him. When Kandasamy Gounder had passed away on 19.05.2011, an order passed dismissing his Writ Petition, seven months thereafter, cannot be of any use to the defendant. Therefore, the reliance placed on an order passed after the death of Kandasamy Gounder is absolutely misplaced.



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36. As rightly pointed out by Ms.A.Sumathy that the plaintiff in order to substantiate the fact that Kandasamy Gounder had executed a “WILL” in her favour had examined one attesting witness and by way of abundant caution had also examined the Scribe thereof. The attesting witness one Rathinasamy was examined as P.W.2 and the Scribe one Mohanraj was examined as P.W.3. They were subjected to cross examination and the Courts below were convinced with the evidence that had been given by them. Therefore, the “WILL” has been proved in terms of the Indian Evidence Act read with the Indian Succession Act.

37. The “WILL” having been proved on the death of Kandasamy Gounder on 19.05.2011, Kavitha automatically becomes the owner of the property. If Kavitha is the owner of the property, then the fact that her father has a surcharge order passed against him does not entitle the defendants to attach her property.

38. This brings me to the next point raised by Ms.B.A.Nalini that the plaintiff should have sought relief of declaration of title and not for mere declaration that the notice is null and void.



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A suit for declaration is not bad in law

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39. As held by the Supreme Court in Paragraph No.13 in the classic case of *Anathula Sudhakar vs. P.Buchi Reddy [(2008) 4 SCC 594]*, a plaintiff need to seek expensive relief of declaration of title only when the defendant denies the title of the plaintiff. In the facts of the present case, I have searched in vain through the written statement and I do not find anywhere that the defendants have denied the title of the plaintiff.

40. The judgment of the Supreme Court had been applied by Hon'ble Mr.Justice N.Seshasayee in *Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam, rep. by its Trustees and Others vs. G.K.Kannan and Others [(2020) 3 CTC 69]* to state that in order for the plaintiff to be pushed to file a suit for declaration of title, a bald denial by the defendants is not sufficient, the defendant should either set up title in himself or herself or should set up a title in favour of a third party. It is only in such circumstances, a “cloud” is created over the title of the plaintiff and the plaintiff should take steps to dispel the same.



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41. Applying the law stated above to the facts of the present case, I have to come to the conclusion that since the defendants have nowhere denied the title of the plaintiff, the question of non-suiting the plaintiff for having sought the relief of declaration that the sale notice is null and void and for permanent injunction does not arise at all.

Decision

42. Therefore, the attractive arguments placed by Ms.B.A.Nalini does not deserve consideration in the present appeal. Insofar as the 1st, 3rd and 4th questions of law that had been framed in this Second Appeal are concerned, they are answered accordingly. Insofar as the 2nd question of law that the order passed in W.P.No.5824 of 2005 would bind Kavitha is concerned, I have to answer that since the said order was passed against a dead person, the same would not have any force and would not bind Kavitha.

43. In fine, the questions of law framed by the appellant are answered against her. Though I am dismissing the appeal, this does not bar defendant Nos.1 to 3 from initiating the proceedings as against the 4th defendant seeking his arrest or other remedies as provided under the Tamilnadu Co-operative Societies Act, if it is otherwise open to them.



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44. In the light of the above discussion, the Second Appeal is dismissed. The judgment and decree of the Court of the learned Subordinate Judge at Udumalpet in A.S.No.2 of 2017, dated 07.07.2018 in confirming the judgment and decree of the Court of the learned District Munsif at Udumalpet in O.S.No.449 of 2014, dated 28.02.2017 stands confirmed. Costs through out. The connected Civil Miscellaneous Petition is closed.

12.06.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

- 1.The learned Subordinate Judge,
Udumalpet
- 2.The District Munsif Court,
Udumalpet

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and
C.M.P.No.2346 of 2019

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