



S.A.(MD).Nos.661 of 2020 and 463 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.12.2024

PRONOUNCED ON : 16.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).Nos.661 of 2020 and 463 of 2021

and

C.M.P.(MD)Nos.7041 of 2020, 6261 of 2021, 8632 and 8633 of 2023

S.A.(MD).No.661 of 2020:

B.Mukuntharamanujam

... Appellant

/Vs./

1.V.Kalyanaraman

2.The Town Benefit Fund Limited,
Represented by its Chairman,
having his Office at Dr.Besant Road,
Kumbakonam.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.27 of 2019, dated 13.03.2020, on the file of the Principal Subordinate Judge, Kumbakonam, confirming the Judgment and Decree made in O.S.No.157 of 2015 on the file of the Principal District Munsif Court, Kumbakonam, dated 10.01.2019.



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For Appellant : Mr.N.Sathish Babu
For R1 : Mr.S.Madhavan
For R2 : Mr.K.Prabhakar

S.A.(MD).No.463 of 2021:

The Town Benefit Limited,
(presently known as TBF Nidhi (Kumbakonam)
Limited,
Represented by its President,
Having Office at Besant Road,
Kumbakonam-612 001.

... Appellant

/Vs./

1.V.Kalyanaraman

2.B.Mukuntharamanujam

...Respondents

(Cause title accepted vide Court order, dated 16.07.2021,
made in CMP(MD)No.5239 of 2021 in SA(MD)Sr.No.
20753 of 2021)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.27 of 2019, dated 13.03.2020, on the file of the Principal Subordinate Judge, Kumbakonam, confirming the Judgment and Decree made in O.S.No.157 of 2015 on the file of the Principal District Munsif Court, Kumbakonam, dated 10.01.2019.

For Appellant : Mr.K.Prabhakar
For R1 : Mr.S.Madhavan
For R2 : Mr.N.Sathish Babu



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COMMON JUDGMENT

Both the appeals are arising from the judgment passed in O.S.No.157 of 2015 and A.S.No.27 of 2017. Hence both the appeals are taken together and common judgment is passed.

2.(i) The second appeal in S.A.No.661 of 2020 is preferred by the 2nd defendant in the suit namely B.Mukuntharamanujam against the Judgment and Decree passed in A.S.No.27 of 2019, dated 13.03.2020, on the file of the Principal Subordinate Judge, Kumbakonam, confirming the Judgment and Decree made in O.S.No.157 of 2015 on the file of the Principal District Munsif Court, Kumbakonam, dated 10.01.2019.

2.(ii) The second appeal in S.A.(MD)No.463 of 2021 is preferred by the 1st defendant in the suit namely, the Town Benefit Limited against the Judgment and Decree passed in A.S.No.27 of 2019, dated 13.03.2020, on the file of the Principal Subordinate Judge, Kumbakonam, confirming the Judgment and Decree made in



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O.S.No.157 of 2015 on the file of the Principal District Munsif Court, Kumbakonam, dated 10.01.2019.

3. The plaintiff V.Kalyanaraman in the suit is the 1st respondent in both the second appeals. The 1st defendant Town Benefit Limited in the suit is the appellant in S.A.(MD)No.463 of 2021 and is the 2nd respondent in S.A.(MD)No.661 of 2020. The 2nd defendant B.Mukuntharamanujam in the suit is the appellant in S.A. (MD)No.661 of 2020 and is the 2nd respondent in S.A.(MD)No.463 of 2021. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

4. The brief facts as stated in the suit filed by the plaintiff V.Kalyanaraman is that the suit property situated in T.S.No.416 is a vacant site with an extent of 499 square feet and having Door No.99/158 belongs to the plaintiff. Originally the property belongs to one Mahalingam Iyer, the grandfather of the plaintiff, had settled the property in favour of his wife Dharmambal by way of registered settlement with life estate only, without any power of alienation. After her



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lifetime, the property devolved upon the two sons namely, Jayaraman and Visvanathan. Two sets of property are adjacent to each other were settled by them. One property measuring 3381 square feet in T.S.No.416 was allotted to Jayaraman and another property in T.S.No.416 in Door No.99/158 was allotted to Visvanathan. After Dharmambal, the Jayaraman along with his wife Bagyalakshmi sold the property to the 1st defendant Town Benefit Limited through registered sale deed, dated 18.10.1995, after giving 200 square feet to the 2nd defendant Mukuntharamanujam. This document will establish that the 1st defendant Town Benefit Limited had purchased only 3181 square feet. The said Visvanathan enjoyed the property until his demise, then the property devolved among his four sons namely, Kalyanaraman (plaintiff) and other sons namely Sankaran, Pattabiraman and Chandrasekaran. The plaintiff Kalyanaraman filed another suit in O.S.No.57 of 2004 on the file of the Sub Court, Kumbakonam, for partition. During the pendency of the suit, the plaintiff Kalyanaraman purchased the share of Pattabiraman, thus Kalyanaram had got ½ share and also got right to enjoy common pathway along with other co-sharers. The suit was compromised. After the final decree, the said Sankaran sold his share to the 2nd defendant



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Mukuntharamanujam and his wife Manimekalai through registered sale deed dated 27.07.2006. Likewise, the said Chandrasekaran sold his undivided share to the 2nd defendant Mukuntharamanujam and his wife Manimekalai through registered sale deed dated 06.08.2006. The 1st defendant Town Benefit Limited proposed to sell the property measuring 3181 square feet in public auction and the plaintiff participated and he was declared as successful bidder. When the plaintiff was ready to purchase the property, the 2nd defendant requested the plaintiff that he may be permitted to purchase the property and in turn he offered to sell the property purchased by him and his wife Manimekalai to the plaintiff. The 1st defendant Town Benefit Limited also agreed to relinquish 99 square feet and the right of pathway and agreed to sell 30 square feet to the plaintiff. The total extent sold to the plaintiff by the 1st defendant is 129 square feet. As agreed, the 2nd defendant along with his wife Manimekalai sold the property covered under sale deed No.2531, dated 27.07.2006 and sale deed No.2775, dated 06.08.2006 to the plaintiff herein vide sale deed No.4573, dated 21.09.2011. The 1st defendant as agreed, sold 129 square feet to the plaintiff, vide sale deed No.4574, dated 22.09.2011.



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5. After execution of the sale deed in favour of the plaintiff, the 1st defendant owned 3052 square feet only. The 2nd defendant purchased from the 1st defendant 1869 square feet vide sale deed No.6252, dated 27.12.2011 and another sale deed No.2938, dated 27.07.2012 an extent of 1682 square feet mentioning wrong extent. A perusal of the sale deeds will reveal the wrong crept in. Thus, the total extent purchased by 2nd defendant from 1st defendant turns at 3552 square feet. In fact, the 1st defendant owned only 3052 square feet after the sale of 129 square feet to the plaintiff, vide sale deed No.4574, dated 22.09.2011. The 1st defendant has wrongly with deceptive concepts has mentioned only 30 square feet was sold to the plaintiff instead of 129 square feet sold to the plaintiff. This is a clear fraud mentioned in the sale deed. The remaining extent namely 3052 square feet alone can be sold by the 1st defendant to the 2nd defendant. The extent cannot be more than that was purchased by the 1st defendant. Deducting the extent sold to the plaintiff by the 1st defendant, the remaining extent of 3052 square feet alone can be sold to the 2nd defendant by the 1st defendant. The 1st defendant and 2nd defendant had colluded together in active connivance has put the extent wrongly without regard to the facts and the extent they have right to convey. They have put



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up 499 square feet in excess of what was available with them including the plaintiff's property for which they are not entitled to. The sale deeds executed by the 1st defendant and the 2nd defendant including plaintiff's property to the tune of 499 square feet is wrong, misconceived, highly illegal, unlawful and unjust. The plaintiff has got legal vested right over the suit property and can ignore the sale deeds as far his rights over the suit property is a legal one and conferred as per statues. Anyhow the present suit is filed to ascertain the rights of the plaintiff. The plaintiff contacted the defendants several times to rectify the mistake crept in but the defendants are jointly evading and are not willing to rectify the error with the aim to withhold the property. Finally, the plaintiff called on 27.12.2014 to rectify the error but the defendants refused. The plaintiff has already filed a suit in O.S.No.546 of 2012 for the relief of permanent injunction and mandatory injunction and the same was dismissed for default and the restoration petition filed by the plaintiff is yet to be taken on file. On these circumstances, it is just necessary that the sale deed No.6252, dated 27.12.2011 and sale deed No.2938, dated 27.07.2012 are null and void and unenforceable as far as plaintiff's property is concerned. Hence, the suit is filed by the plaintiff praying to declare the sale



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deeds as null and void, unenforceable and illegal as far as the plaintiff's right over the suit property is concerned.

6. The 2nd defendant had filed a written statement and the 1st defendant had adopted the same through memo. The 2nd defendant denying all the allegations and stated the description of the property in the plaint is not correct and the extent and measurements are not correct. And stated Mahalinga Iyer was the absolute owner of T.S.No.416 situate in Sri Nageswaran Swamy Thirumanjan Veethi, Kumbakonam. The said Mahalinga Iyer had executed a registered settlement deed, dated 05.06.1963, in Document No.807 of 1963 in favour of his wife Dharmambal granting only life estate. No measurement was given in the deed. After the life time of Dharmambal, her sons Jayaraman and Viswanathan got the property situated in T.S.No.416 and Door No. 98. Then the property in T.S.No.416 was allotted to Jayaraman and Door No.98 was allotted to Viswanathan. After the demise of Viswanathan, his sons V.Kalyanaraman, V.Sankaran, V.Pattabiraman, V.Chandrasekar got the property jointly and they were enjoying jointly. The written statement had narrated the facts regarding the partition suit, which is



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already stated in the plaint. The 2nd defendant further stated that one S.M. Swaminathan, the Chairman of Town Benefit Fund, Kumbakonam, had purchased the property from the said Jayaraman and his wife Bakkiyalakshmi through sale deed, dated 18.10.1995 and the same was registered before the Sub Registrar, Kumbakonam, on 20.10.1995 in Document No.2140 of 1995. By virtue of the sale deed, the Town Benefit Fund, Kumbakonam, became the absolute owner of the property and it had purchased 3181 square feet in T.S.No.416. The 2nd defendant Mukuntharamanujam purchased 200 square feet in T.S.No.416 from Jayaraman and his wife Bakkiyalakshmi through sale deed, dated 18.10.1995 and was registered on 20.10.1995 as Document No.2139 of 1995 whereby the said Mukuntharamanujam became the absolute owner of 200 square feet. Thereafter the said Mukuntharamanujam has purchased 1869 square feet from M.Raman who is the chairman of the said Town Benefit Fund through a registered sale deed in Document No.6252 of 2011, dated 27.12.2011 and became the absolute owner of the property measuring 1869 square feet in T.S.No.416. Then the 1st defendant Mukuntharamanujan had purchased 1682 square feet in T.S.No.416/2, 417/2, 418/2, 419/2 and 420/2 on 27.07.2012 from one Raman, the Chairman of the



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Town Benefit Fund. The 1st defendant Town Benefit Fund proposed to sell the property of 3181 square feet in public auction. It is not true that the plaintiff who participated in the auction was declared as successful bidder and when the plaintiff was ready to purchase the property and the 2nd defendant requested the plaintiff that he may be permitted to purchase the property and in turn he offered to sell the property purchased by him and his wife to the plaintiff. It is not true that the 1st defendant agreed to relinquish 99 square feet and the right of common pathway and to sell 30 square feet to the plaintiff.

7. The 2nd defendant along with his wife sold the property to the plaintiff on 21.09.2011. The plaintiff has purchased 129 square feet from the 1st defendant through a sale deed, dated 22.09.2011. The 2nd defendant purchased 1869 square feet from the 1st defendant through a registered sale deed, dated 27.12.2011. Then, the 2nd defendant purchased 1681 square feet from the 1st defendant through a sale deed, dated 27.07.2012. It is not true that the 1st and 2nd defendants colluded together in active connivance has put up extent wrongly without regard to the facts and extent they have right to convey. The plaintiff had purchased 129 square



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feet from the 1st defendant on 22.09.2011. The sale deeds executed by 1st defendant in favour of 2nd defendant will not affect the rights of the plaintiff. The plaintiff has no locus standi to file the suit and he is no way connected to the property. The plaintiff has no right or possession over the suit property. It is not true that the plaintiff has contacted the defendants several times to rectify the mistake but the defendants are jointly evading and not willing to rectify the mistake. There is no cause of action and the cause of action pleaded by the plaintiff is not true. The plaintiff had already filed O.S.No.546 of 2012 and the same was dismissed for default. The plaintiff filed another suit in O.S.No.109 of 2012 against the 2nd defendant and his wife Manimegalai for the relief of permanent injunction on file of the Principal District Munsif Court, Kumbakonam and the defendants are contesting the same. The plaintiff wants to purchase the property from the 1st defendant but he was unable to purchase the same from the 1st defendant. The 2nd defendant had purchased the same from the 1st defendant. Hence, there is enmity between the plaintiff and the 2nd defendant. The plaintiff has filed number of suits against the 2nd defendant and gave pressure to purchase the property from the 2nd defendant. The plaintiff had purchased 129 square feet



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from the 1st defendant through a registered sale deed. But the description of property contained total extent of 499 square feet. Hence, the description of the property given in the plaint is not correct. Hence, the 2nd defendant prayed to dismiss the suit.

8. The plaintiffs had marked Ex.A1 to Ex.A6 as documents and PW1 and PW2 had deposed in favour of the plaintiff. The defendants had marked Ex.B1 to Ex.B8 and no witness. After considering the pleadings, evidence and deposition, the suit was allowed. Aggrieved over the same, the second defendant had preferred an appeal suit, but the 1st defendant had not preferred any appeal suit. The appeal suit filed by the second defendant was dismissed. Aggrieved over the same, the present second appeal is preferred by the 2nd defendant. The second appeal was not admitted and the same was in notice of motion stage. In the second appeal the following substantial questions of law:

“1. Whether the Courts below considered Sections 6 and 8 of Transfer of Property Act as per law?

2. Whether the Courts below properly appreciate the documentary evidence as per Section 61 and other provisions of the Indian



Evidence Act?

3. Whether the Courts below failed to apply Section 92 of the Indian Evidence Act?”

9. The 1st defendant Town Benefit Fund had not preferred any appeal suit. However, had preferred a second appeal in S.A.(MD)No.463 of 2021 and the second appeal is admitted on the following substantial questions of law:

“1. Whether the Courts below are right in the interpretation of exhibit A2 by relying on the description of the property without reference to the recital in the sale deed and whether such an interpretation would fall foul of Section 6 and 8 of the Transfer of Property Act?

2. Whether the Courts below have properly applied the rules of evidence vis-a-vis documentary evidence as envisaged under the Evidence Act in appreciation of exhibits A2, A3, A4 and B8?”

10. Both the 1st defendant and the 2nd defendant had raised similar substantial question of law. Hence the first substantial question of law is “whether the Courts below considered sections 6 and 8 of Transfer of Property Act while



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considering Ex.A2?” And the second substantial question of law is “whether the section 61 and 92 of Indian Evidence Act are properly applied while considering the documentary evidence?”. The first substantial question of law of section 6 and 8 of Transfer of Property Act is taken for discussion.

11. Originally the entire property belongs to one Mahalingam Iyer, the grandfather of the plaintiff Kalyanaraman. The said Mahalingam Iyer had settled the property in favour of his wife Dharmambal by way of registered settlement with life estate only without any power of alienation vide Doc No.807/1963 dated 06.05.1963. After her lifetime, the property devolved upon her two sons namely, Jayaraman and Visvanathan. Two sets of property are adjacent to each other were settled to them, one property measuring 3381 square feet in T.S.No.416 in Door No.98 was allotted to Jayaraman and another property in T.S.No.416 in Door No. 99 was allotted to Viswanathan.

12. The said Viswanathan enjoyed the property in T.S.No.416 in Door No. 99 until his demise, then the property devolved among his four sons namely,



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Kalyanaraman (plaintiff) and other sons namely Sankaran, Pattabiraman and Chandrasekaran. The plaintiff Kalyanaraman filed another suit in O.S.No.57 of 2004 on the file of the Sub Court, Kumbakonam, for partition. During the pendency of the suit, the plaintiff Kalyanaraman purchased the share of Pattabiraman, thus Kalyanaram had got $\frac{1}{2}$ share and also got right to enjoy common pathway along with other co-sharers. The suit was compromised. After the final decree, the said Sankaran sold his share to the 2nd defendant Mukuntharamanujam and his wife Manimekalai through registered sale deed dated 27.07.2006. Likewise, the said Chandrasekaran sold his undivided share to the 2nd defendant Mukuntharamanujam and his wife Manimekalai through registered sale deed dated 06.08.2006. The said shares of Sankaran and Chandrasekaran (for the purpose of identification it is said as shares of Sankaran and Chandrasekaran) was sold by the 2nd defendant Mukuntharamanujam and his wife Manimekalai to the plaintiff Kalyanaraman through sale deed Document No. 4573 dated 21.09.2011 marked as Ex.A5. Based on this sale the plaintiff Kalyanaraman had purchased the entire property inherited by his father Viswanathan. All the parties admit the above facts.



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13. As far as the property in T.S.No.416 in Door No.98 inherited by Jayaraman is concerned, the property is having as extent of 3381 square feet. The said Jayaraman along with his wife Bagyalakshmi sold an extent of 200 square feet to the 2nd defendant Mukuntharamanujam through Document No.2139 dated 18.10.1995. Likewise on the same date i.e. on 18.10.1995 through Document No. 2140 the balance 3181 square feet was sold by the said Jayaraman along with his wife Bagyalakshmi to the 1st defendant Town Benefit Limited. This document will establish that the 1st defendant Town Benefit Limited had purchased only **3181 square feet**.

14. Thereafter the 1st defendant Town Benefit Limited had sold 129 square feet of land to the plaintiff Kalyanaraman through Document No.4574 dated 22.09.2011, wherein it is clearly stated that “in the land which the plaintiff Kalyanaraman had purchased through public auction, “the pathway used by the Town Benefit Limited” and “30 square feet land belonging to the institution” which is marked in the sketch”. Based on this description in the body of the sale deed the schedule of property was given in the A schedule and B schedule. In A



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schedule consist of 99 square feet of land. In B schedule consist of 30 square feet of land. Totally 129 square feet of land. The description of the land in the body of the sale deed in “the pathway used by the Town Benefit Limited” would indicate the 99 square feet of land stated in A schedule. The description of the land in the body of the sale deed in “30 square feet land belonging to the institution” would indicate the 30 square feet of land stated in B schedule. Infact in measurement stated in the aforesaid sale deed also clearly matches for A schedule and B schedule. Further the same is clarified by the sketch attached to the sale deed. Infact the parties were cautious and was aware the same may create ambiguity, hence in order to have a clear sale without any ambiguity the sketch is attached with the sale deed. In other words, the sketch unequivocally unambiguously indicates the 99 square feet and 30 square feet totally 129 square feet was sold to the plaintiff Kalyanaraman. The said sketch is extracted hereunder:



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15. On perusing the sale deed dated 27.11.2011 Document No.6252 it is seen while describing the extent and measurement of the property the 30 square feet is explicitly mentioned. But the 99 square feet is not mentioned. Even while mentioning the 30 square feet the 1st defendant had committed mistake. Since on the east-west 6 feet and north-south 5 feet totally 30 square feet was given for the plaintiff, which is an admitted fact. If this is taken into account, then the 1st defendant can sell only from 22 feet only (28 feet minus 6 feet is 22 feet). But the document states 24 $\frac{1}{4}$ feet on the east-west on the southern side, which is wrong. In order words, even the admitted 30 feet is wrongly mentioned in the document dated 27.11.2011 Document No.6252 marked as Ex.A3. Therefore, seen from any angle the document dated 27.11.2011 Document No.6252 marked as Ex.A3 executed by 1st defendant to 2nd defendant, the extent is totally wrong. Instead of rectifying Ex.A3 the respondents had rectified the Ex.A4.

16. On perusing Ex.A4, the sale deed dated 27.07.2012 in Document No. 2398 and the rectification deed dated 15.12.2015, the same is nothing to do with the suit property and the same would be evident from the sketch annexed hereunder:



17. Under the above background the provisions of section 6 and 8 of Transfer of Property Act ought to be applied. The provisions of sections 6 and 8 of Transfer of Property Act are extracted hereunder:

“6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

4 [(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.]

*(e) A mere right to sue 5***cannot be transferred.*

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military 6 [naval], 7 [air-force] and civil pensioners of 8 [Government] and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of



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the interest affected thereby, or (2) 9 [for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee]. 10[(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]

.....

8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where the property is machinery attached to the earth, the moveable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith; and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes



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effect.”

18. The section 6 states that the *property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force*. The present facts do not fall under any of the exceptions stated thereunder. And the section 8 states *Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof*. The contention of the defendants is that the documents executed in favour of the 2nd defendant had clearly stated except 30 square feet the entire extend is sold to the 2nd defendant, then as per section 8 the entire extent less 30 square feet ought to pass on. On the plain reading of the 2nd defendant's document dated 27.11.2011 in Document No.6252 marked as Ex.A3 and the provisions of section 8 is applied, then the 2nd defendant claim is acceptable. But the 2nd defendant document ought to be read along with the document of the plaintiff executed in sale deed dated 22.09.2011 in Document No.4574 marked as Ex.A2 especially the body of the sale deed, A schedule and B schedule and the sketch



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attached to the sale deed would indicate that the section 8 would favour the plaintiff more than the defendants. Further the plaintiff's document dated 22.09.2011 is prior to the 2nd defendant's document dated 27.12.2011. Therefore, the plaintiff's document would prevail over the 2nd defendant's document. Consequently, balance available land alone can be sold to the 2nd defendant by the 1st defendant. The mischief is committed by the 1st defendant Town Benefit Fund. For the reasons stated supra, the 1st substantial question of law is held in favour of the plaintiff/respondent and against the defendants/appellants.

19. The second substantial question of law raised by both the appellants is section 61 and 92 of Indian Evidence Act and the same is taken for discussion.

The Sections 61 and 92 of the Indian Evidence Act are extracted hereunder:

“61. Proof of contents of documents. — The contents of documents may be proved either by primary or by secondary evidence.

...

92. Exclusion of evidence of oral agreement. — When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or



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statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). — Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1 [want or failure] of consideration, or mistake in fact or law.

Proviso (2). —The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). —The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). —The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). — Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident



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would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). — Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations (a) A policy of insurance is effected on goods “in ships from Calcutta to London”. The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called “the Rampore tea estate” is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B’s as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of



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payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written —"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board. A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered."

20. The section 61 states that the *contents of documents may be proved either by primary or by secondary evidence*. In the present case the plaintiff is relying on the primary evidence of his original document wherein the 1st defendant had sold the property of 30 square feet along with 99 square feet totally



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129 square feet, wherein this Court had elaborately dealt supra. Therefore, the section 61 favours the plaintiff rather than the defendants.

21. As far as the section 92 is concerned the provision states that the *no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument*. But this provision is not completely barring the admissibility of oral evidence there are exceptions to the same as stated in proviso and illustrations. However, in the present case the document itself proves that the 1st defendant had sold the 30 square feet alone with 99 square feet totally 129 square feet, which is elaborately dealt supra. And the 1st defendant is having right to sell the balance land alone. And the 1st defendant has no right to sell that portion which already sold to the plaintiff. Therefore, the second substantial question of law is held in favour of the plaintiff/respondent and against the defendants/ appellants.

22. For the reasons stated supra, the second appeals stand dismissed. The Judgment and Decree passed in A.S.No.27 of 2019, dated 13.03.2020, on the file



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of the Principal Subordinate Judge, Kumbakonam, confirming the Judgment and Decree made in O.S.No.157 of 2015 on the file of the Principal District Munsif Court, Kumbakonam, dated 10.01.2019 is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

16.12.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Principal Subordinate Judge,
Kumbakonam.
2. Principal District Munsif Court,
Kumbakonam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).Nos.661 of 2020 and 463 of 2021

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD).Nos.661 of 2020 and 463 of 2021

Dated:
16.12.2024