



A.S.(MD).No.19 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2024

PRONOUNCED ON : 07.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

A.S. (MD) No.19 of 2022

T.Sridharan

... Appellant

vs.

1. N.Ranjani

2. P.Mahalakshmi

3. B.Umarani

4. S.A.Fathima

... Respondents

PRAYER: Appeal Suit is filed under Section 96 of Code of Civil Procedure against the Judgment and Decree dated 04.12.2019 made in O.S.No.58 of 2016 on the file of the first Additional District Judge, Madurai.

For Appellant : Mr. R.Suriyanarayanan

For Respondents : Mr. S.Siva Ilayaraja



A.S.(MD).No.19 of 2022

WEB COPY

JUDGMENT

This appeal suit has been preferred as against the decree and judgment passed in O.S.No. 58 of 2016 on the file of the first Additional District Judge, Madurai, dated 04.12.2019, wherein the appellant herein has filed the suit for declaration declaring his title of the suit property and for recovery of possession and to declare that settlement deed dated 08.02.2005 is null and void. The said suit was dismissed by the Trial Court. As against the same, the present Appeal Suit is filed by the plaintiff.

2. The brief averments are as follows:-

The plaintiff is the absolute owner of the suit property by virtue of the sale deed dated 22.05.2000 purchased from his vendor Rukmani Ammal through her power agent one Ramalingam for valuable consideration. The said power agent Ramalingam is none other than the son in law of the Rukmani Ammal and the plaintiff is the son in law of said Ramalingam. After the sale, the vendor Rukmani Ammal requested the plaintiff to permit her to be in possession of the suit property till her lifetime and expressed her sentimental attachment and thereby the plaintiff permitted her to be in



A.S.(MD).No.19 of 2022

WEB COPY

possession of the property. The plaintiff being the Doctor by profession practising in Kerala and has been residing therein. While so in the year 2010, the plaintiff came to understand that after the sale of property to him due to some misunderstanding between the Rukmani Ammal and her son in law and taking advantage of the permissive possession had executed the registered settlement deed dated 08.02.2005 in favour of her daughters namely the first to third defendants by cancelling the General Power of Attorney. Thereafter, the said Rukmani Ammal died on 11.11.2017 thereafter based on the above said settlement deed first to third defendants have sold the property to the fourth defendant on 31.01.2007.

3. On the date of settlement deed Rukmani Ammal did not have transfer of right and thereby settlement deed and sale deed in favour of the fourth defendant are not valid in the eye of law. The plaintiff purchased the property for valuable consideration and also had given the receipt for the sale price. Therefore, he filed the suit.



A.S.(MD).No.19 of 2022

WEB COPY

4. The brief facts of the written statement averments are as follows:-

The plaint averments are false. The suit property originally belongs to Rukmani Ammal through sale deed dated 17.11.1972. The said Rukmani Ammal is the mother of the first to third defendants and she executed the registered settlement deed dated 08.02.2005 in favour of the first to third defendants. Thereafter, these first to third defendants have executed the sale deed in favour of the fourth defendant on 31.07.2007 for valuable consideration. The fourth defendant is in possession and enjoyment of the suit property from the date of his purchase. The first to third defendants came to know that their mother had executed power deed dated 01.09.1975 in favour of the said Ramalingam. The said power deed was only to maintain the property alone and does not give any other rights relating to suit property. The said power deed does not contain any of the immovable properties including the suit property. The said power deed is only given to maintain the property and not to sale away the property. Therefore the sale deed dated 22.05.2000 in favour of the plaintiff is non-existence in law. Hence the plaintiff cannot claim any right or title over the property.

The plaintiff has not purchased the property for adequate consideration and



A.S.(MD).No.19 of 2022

the averments made in the para 2 and 3 of the plaint are denied as false.

The settlement deed was executed in the year 2005 and the first to third defendants had executed sale deed in favour of the fourth defendants in the year 2007. Hence the suit is barred by law of limitation. Therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings, the Trial Court has framed the following issues:-

1. Whether the plaintiff is the owner of the suit property by virtue of sale deed dated 22.05.2000 ?

2. Whether the power deed dated 23.05.2001 was executed only for maintaining the suit property ?

3. Whether Rukmani Ammal was situated into the suit property as a permissive occupant ?

4. Whether the plaintiff is entitled to the relief of declaration as prayed for ?

5. Whether the plaintiff is entitled to other reliefs as prayed for?

6. To what other relief ?



A.S.(MD).No.19 of 2022

WEB COPY

6. Before the Trial Court, on the side of plaintiff, P.W.1 was examined and marked Ex.A.1 to Ex.A.12. On the side of defendants, D.W. 1 and D.W.2 were examined and Ex.B.1 to Ex.B.10 were marked and Ex.X1 and Ex.X2 were also marked. The Trial Court after considering the evidences adduced on both sides, dismissed the Suit.

7. The learned counsel appearing for the appellant would contend that the plaintiff has filed the suit before the Trial Court for the relief of declaration and for recovery of possession. The Trial Court dismissed the suit by holding that the power deed was executed to sell the property. However, the property was sold to fourth defendant in the year 2007 and the plaintiff has not objected the possession of fourth defendant prior to filing of the suit and the Ex.A3 sale deed is without consideration and the same is void. The above said observations of the Trial Court is not based on the pleadings or the evidences and in the written statement the defendants have not pleaded about passing of consideration by the Rukmani Ammal but the Trial Court without any pleadings or evidences rendered the findings. Once the power deed is executed and thereafter the



A.S.(MD).No.19 of 2022

power agent sold the property to the plaintiff, the defendants have to prove that they have not received the sale consideration. There is no proper issue in respect of Ex.A3 therefore the order passed by the Trial Court is erroneous.

7.1 The Trial Court failed to consider that the execution of Power deed dated 01.09.1975 through the Rukmani Ammal in favour of the Ramalingam through Ex.A2 has been proved by the plaintiff and the same was also accepted by the Trial Court. However erroneously held that the sale deed in favour of the plaintiff is null and void. Further the Trial Court failed to consider that the said power deed dated 01.09.1975 was later cancelled by the Rukmani Ammal on 23.05.2001 through Ex. A5, but the sale deed was executed through Ex.A3 on 22.05.2000. The said Rukmani Ammal has executed Ex.A6 settlement deed only on 08.02.2005 on that date she is not the owner of the property and prior to that the property was transferred in the name of the plaintiff. Therefore, the settlement deed executed by the Rukmani Ammal in favour of the first to third defendants is not valid. The sale deed in the name of fourth defendant dated 31.01.2007 by the first to third defendants is also not valid since the property already sold to the plaintiff on 22.05.2000 itself. But the above



A.S.(MD).No.19 of 2022

said aspects have not been considered by the Trial Court. The Trial Court has dismissed the suit. Therefore the Judgement and decree passed by the Trial Court are liable to be set aside.

7.2 The learned counsel appearing for the appellant in support of his contention, has relied upon the judgement in *Saroop Singh vs. Banto and others* reported in **2005 (8) SCC 330**.

8. The learned counsel appearing for the respondents would contend that originally the property belongs to Rukmani Ammal who is the mother of the first to third defendants by way of sale deed dated 17.11.1972 and she had executed settlement deed dated 08.02.2005 and based on the settlement deed, first to third defendants have executed sale deed in favour of the fourth defendant through sale deed dated 31.01.2007. The fourth defendant is in possession and enjoyment of the property. The Rukmani Ammal had executed Power of Attorney deed in favour of Ramalingam dated 01.09.1975 only to maintain the property and there is no mention about the property in the description of property. Therefore, the plaintiff cannot claim right over the property through the above said Power of Attorney deed. The Trial Court after taking into consideration of all these



A.S.(MD).No.19 of 2022

aspects, correctly dismissed the suit by holding that the sale deed in favour of the plaintiff dated 22.05.2000 was obtained fraudulently and no consideration was passed through the sale deed and thereby dismissed the suit. Therefore, the present appeal is liable to be dismissed.

8.1 The learned counsel appearing for the respondents has relied on the following judgments in (i) ***Smrithi Debbarma (Dead) through Legal Representatives Vs. Prabha Ranjan Debbarma and other*** reported in ***AIR 2023 SCC 379*** (ii) ***Kewal Krishnan Vs. Rajesh Kumar and others*** reported in ***AIR 2022 SCC 564***.

9. This Court heard both sides and perused the materials available on records. For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Trial Court.

10. The ***points for determination*** in this appeal are as follows:-

1. Whether the power deed dated 01.09.1975 was executed to sale the property?



A.S.(MD).No.19 of 2022

2. Whether the plaintiff purchased the suit property through the sale deed dated 22.05.2000 based on the power deed dated 01.09.1975 ?

3. Whether the plaintiff is entitled to decree for declaration and consequential relief of recovery of possession over the suit property ?

4. Whether the plaintiff is entitled to decree for declaration in respect of settlement deed dated 08.02.2005 executed by Rukmani Ammal in favour of first to third defendants is null and void?

5. Whether the plaintiff is entitled to means profits as prayed for in the plaint ?

6. Whether the suit is barred by limitation ?

7. Whether the decree and judgement passed by the Trial Court are sustainable in law and on facts ?

8. Whether the appeal is to be allowed or not ?

11. Point No. 1:-

The plaintiff has filed the suit for relief of declaration and for recovery of possession. According to the plaintiff the property originally belongs to Rukmani Ammal and she has executed Power of Attorney deed



A.S.(MD).No.19 of 2022

in favour of one Ramalingam and the said Ramalingam had executed the sale deed on behalf of the Rukmani Ammal in favour of the plaintiff on 22.05.2000. The Rukmani Ammal is none other than the mother in law of the said Ramalingam and he is the father in law of the plaintiff. Since the plaintiff and the Rukmani Ammal are close relatives she was permitted to be in possession of the property till her life time. The defendants have admitted the execution of power deed dated 01.09.1975 but their contention is that the said power deed was not executed for the purpose of sale of the property and the Ramalingam was only permitted to maintain the property and no specific power was given to him to sale the property. Moreover there is no description of property mentioned in the power deed. Therefore the power deed is only executed to maintain the property.

12. In this context, the plaintiff was examined as P.W.1 and he deposed reiterating the plaint averments and he also stated that the Rukmani Ammal had executed power deed in the name of Ramalingam and the Ramalingam sold the property to him based on the power deed. The said power deed is marked as Ex.A2 and on perusal of the Ex.A2, it reveals that there is a recital in the power deed to sell the property. The Trial Court also in this context after perusal of the Ex.A2 Power deed held



A.S.(MD).No.19 of 2022

WEB COPY

that the A2 indicates that the power to sell away the property has also been given to the said Ramalingam. However, there is no description of property given in the Power deed. When the Power deed is given for particular purpose of sale, the description of property should be mentioned in the power deed and without mentioning the description of property in the power deed, the property cannot be sold through the power deed. Even as per the Ex.A2 power deed, the recitals shows the intention of the principal that the power was given to maintain the properties. In general when Power deed is given for sale of a particular property, the description of property should be mentioned in the document itself.

13. In the case on hand, there is no mention about the description of property and in the body of the document, it mentioned as entire property. It show the power deed is given only for common and the power deed is general Power of Attorney. The main intention of the parties is to maintain the property, though there is a recital in the Ex.A2 that the mortgage and sale of the property, on perusal of entire document it shows that intention of the parties is to maintain the properties.



A.S.(MD).No.19 of 2022

WEB COPY

14. Had the power is given for sale of the property then the documents should contain the description of property. In the absence of description of property, it would be presumed that power is given for maintaining the properties. In order to ascertain as to whether the power deed was given for maintaining the property or to sell the property, the entire recital of the document has to be looked into and the intention of the parties to be inferred from the recitals of the documents. On perusal of the Ex.A2 power deed, the recitals shows that the main purpose of executing power deed is for maintaining the properties. Moreover the said power deed was executed in the year 1975 and the alleged sale deed in favour of the plaintiff was in the year 2000.

15. Had the power deed was given for sale of the property, then it is for the plaintiff to explain as to why the properties were not alienate till 2000. In this context it is pertinent to note that the power agent had not sold the property till the cancellation of the power deed executed in favour of his wife dated 28.04.2000. The said power deed dated 28.04.2000 in favour of his wife of the earlier power agent was marked as Ex.B10. The sale in favour of the plaintiff by the power agent through power deed dated



A.S.(MD).No.19 of 2022

WEB COPY

01.09.1975 was after the cancellation of power deed in favour of Ragini (wife of Ramalingam) by the principal Rukmani Ammal. The said sale deed was executed in favour of the plaintiff on 22.05.2000. The cancellation of power deed in favour of Ragini (wife of Ramalingam) was cancelled by the Principal Rukmani Ammal was on 28.04.2000. It is admitted fact that the said Rukmani Ammal had executed the power deed in favour of her elder daughter Ragini on 23.09.1994 and the same was cancelled through Ex.B10 dated 28.04.2000. The said copy of the power deed was marked as Ex.B9. On careful perusal of the Ex.B9, it reveals that the properties of Rukmani Ammal were mentioned in the power deed whereas in the power deed dated 01.09.1975 there is no mention about the description of properties. Moreover there is no recitals in the Ex.B9 power deed in favour of the Ragini about the earlier power deed executed in favour of the Ramalingam who is the power agent through power deed dated 01.09.1975.

16. Had the power deed dated 01.09.1975 was executed to sale the properties of principal Rukmani Ammal, then once again she could not execute the power deed to sale the properties in favour of her daughter Ragini Ammal. The said Ragini Ammal is none other than the wife of the



A.S.(MD).No.19 of 2022

earlier power agent namely Ramalingam. The power agent also had not created any encumbrances over the properties from the date of execution of power deed dated 01.09.1975 till 22.05.2000.

17. Had the power deed dated 01.09.1975 was executed to sale the properties, the power agent himself could alienate the properties on behalf of the principal Rukmani Ammal and no necessity to execute another power deed dated 23.09.1994 in favour of her daughter Ragini Ammal. Therefore the recitals of the Ex.A2 and the conduct of the parties and the surrounding circumstances shows that the power deed dated 01.09.1975 was executed for maintaining the properties and not for sale of the properties of the Rukmani Ammal. Further the plaintiff has also not taken any steps to examine his vendor namely the power agent of Rukmani Ammal appointed through power deed dated 01.09.1975 and also he failed to examine any attesting witness of the above said power deed dated 01.09.1975 to prove that the said power deed was executed for the sale of the property. Though there is recital in Ex.A2 power deed that mortgage and sale of the property, the entire documents recitals shows the intention of the parties that the power was given only to maintain the properties and not for sale of the properties. The Trial Court failed to consider the said



A.S.(MD).No.19 of 2022

aspect and merely because of recital in respect of mortgage and sale found in the power deed erroneously held that the power was given to sale the property. Therefore, the said findings of the Trial Court are unsustainable and liable to be set aside. Therefore as discussed supra this Court is of the opinion that the power deed Ex.A2 was not intended to sale the properties and only to maintain the properties. Thus, the **Point No.1** is answered.

18. Point No. 2:-

According to the plaintiff, he purchased the property from the Power Agent of Rukmani Ammal namely Ramalingam through sale deed Ex.A3 dated 22.05.2000. On perusal of the Ex.A3, it reveals that the plaintiff purchased the suit property from the Ramalingam on behalf of the Rukmani Ammal based on the power deed dated 01.09.1975. According to the plaintiff, the said sale deed was supported by consideration and he paid the sale price to the said Ramalingam and after the sale the vendor Rukmani Ammal requested him to be in possession till her lifetime and due sentimental aspects he has also permitted her to be in possession. Therefore, the possession of the Rukmani Ammal is only the permissive possession. The plaintiff has not examined any other witnesses and only examined PW1 and he deposed about the purchase of the property and the



A.S.(MD).No.19 of 2022

WEB COPY

sale deed. The defendants also disputed the consideration of sale and they have disputed that the power deed dated 01.09.1975 was not executed to sale the property and thereby the Ramalingam had no right to execute the sale in favour of the plaintiff, therefore, the sale deed is not in accordance with law. Already this Court in the previous point decided that the Power deed was not executed to sale the property thereby the power agent Ramalingam had no right to sale the property to the plaintiff.

19. The fourth defendant has not filed any written statement and the first to third defendants alone have filed written statement. In the said written statement they have denied the sale consideration and other things. Their only contention is that the Ramalingam power agent had no right to transfer the property to the plaintiff. This Court also in the previous point decided that the power deed dated 01.09.1975 was not executed for sale of the property.

20. In this context the learned counsel appearing for the respondent has argued that the plaintiff has not paid the sale consideration and the sale without consideration is void and to support his contention he relied on the



A.S.(MD).No.19 of 2022

judgement in ***Kewal Krishnan Vs. Rajesh Kumar and others*** reported in ***AIR 2022 SCC 564*** wherein the Supreme Court in Para No.15 & 16 has held as follows:

“15. Section 54 of the Transfer of Property Act, 1882 (for short “the TP Act”) reads thus:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—*A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.”



A.S.(MD).No.19 of 2022

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

16. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the complaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half share of the appellant in the suit properties. In fact, such a transaction made by



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A.S.(MD).No.19 of 2022

Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10th April 1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the respondents on 16th November 2021 have no relevance at all."

21. On careful perusal of the above said judgement, it will not be applicable to the present facts of the case. In this case there is no pleading by the defendants that the sale deed was not supported by consideration and the sale deed in favour of the plaintiff has not been challenged on the basis of non consideration. The defendants in the written statement averred



A.S.(MD).No.19 of 2022

that it is absolutely false to state that the plaintiff has purchased the suit property by giving an adequate consideration as alleged in the Para 7 of the plaint. Therefore the said denial is not specific and is only evasive denial. But the Trial Court without considering the said aspect erroneously held that there was no consideration was passed and thereby the sale is not valid. Therefore the said findings of the Trial Court are liable to be set aside. Moreover this Court in the previous point decided that the power deed dated 01.09.1975 in favour of Ramalingam who is the vendor of the plaintiff was not executed the sale of property and it was executed for managing and maintaining the property of Rukmaniammal. Therefore the vendor of the plaintiff Ramaligam had no right to execute the sale deed beyond the said power deed dated 01.09.1975. Therefore the sale deed in favour of the plaintiff dated 22.05.2000 is not valid in the eye of law and no title could be passed through the said sale deed in the name of the plaintiff.

22. Therefore as discussed supra this Court is of the opinion that the plaintiff failed to prove that he purchased the suit property through sale deed dated 22.05.2000 based on the power deed dated 01.09.1975. Thus the **point No. 2** is answered.



A.S.(MD).No.19 of 2022

WEB COPY

23. Point No. 6 :-

The defendants have taken plea that the suit is barred by limitation. According to the defendants, the settlement deed in favour of the first to third defendants is in the year 2005 and the sale deed in favour of the fourth defendant is dated 31.01.2007 but the suit is only filed in the year 2016, therefore the suit is barred by limitation. The plaintiff has filed the suit for relief of declaration of title in respect of suit property and also filed for relief of recovery of possession. As far as the recovery of possession is concerned, the limitation period is 12 years from the date of adverse to his possession but in this case, the sale deed in the name of plaintiff is in the year 2000 and according to him, Rukmani Ammal sought for permission and the same was granted therefore the Rukmani Ammal was in permissive possession and thereafter during the July 2010, the plaintiff came to knowledge about the encumbrance therefore the limitation starts from the July 2010. Therefore the suit is maintainable in respect of recovery of possession. As per Article 65 of the Limitation Act:-

“65:- For possession of im-Twelve years. When the possession of movable property or the defendant becomes any interest therein adverse to the based on title plaintiff.



A.S.(MD).No.19 of 2022

Description of suit Period of limitation Time from which period begins to run- Explanation.-For the purposes of this article- (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was not of possession.”

24. In the case on hand also the suit was filed in the year 2016 and the settlement deed is in the year 2005 and thereby the suit is filed within 12 years (i.e.) within limitation period.

25. The learned counsel appearing for the appellant has relied on the judgement and argued that the suit is filed within limitation and the defendants has to prove the plea of limitation. To support his contention he relied upon judgement in ***Saroop Singh vs. Banto and others*** reported in



A.S.(MD).No.19 of 2022

WEB COPY

2005 (8) SCC 330, wherein the Supreme Court in Para No. 10 has held as follows:

“10. As regards issue 4, it while holding that there was no cogent evidence proving the death of Indira Devi in the year 1961 recorded a finding that she was presumed to have died on account of her untraceability for more than 7 years in terms of Section 108 of the Indian Evidence Act. As regards Issues 5 and 6, the Trial Court held:

“...The defendant has nowhere pleaded that he became the owner of the suit land by way of adverse possession. No amount of evidence can be taken into account by travelling beyond the pleadings of the parties. The defendant has neither pleaded nor set up any adverse possession over the suit property. No period of limitation is prescribed for bringing a suit for possession on the basis of inheritance. The suit for possession on the basis of inheritance can fail if the defendant proves that he has perfected his title by way of adverse possession. In the instant case, the defendants have not set up any adverse possession and consequently the suit is within time under Article 65 of the Limitation Act, 1963”



A.S.(MD).No.19 of 2022

WEB COPY

26. On careful perusal of the above judgment, it is clear that in the suit for recovery of possession on the basis of inheritance can fail if the defendant proves that he has perfected his title by way of adverse possession. In this case, the plaintiff has knowledge about the sale deed in the year 2010 itself but he file the suit in the year 2016, thereby as per the Article 65 of the Limitation Act the suit is within a period of limitation as the suit is filed within 12 years.

27. As far as the limitation in respect of relief of declaration of settlement deed dated 08.02.2005 is concerned. The plaintiff had knowledge about the settlement deed in the year 2010 itself, but failed to file the suit within three years from the date of knowledge and the present suit is filed in the year 2016. As per Section 58 of Limitation Act, the period of limitation for declaration of settlement deed is three years from the date of knowledge. In this case the plaintiff had knowledge about the settlement deed in the year 2010 itself but the suit is filed only after six years (i.e.) in the year 2016. Therefore the relief in respect of declaration of settlement deed dated 08.02.2005 is null and void is barred by limitation. At the same time the relief in respect of declaration of title and recovery of possession of the suit property is not barred by limitation.



A.S.(MD).No.19 of 2022

Thus the **point No. 6** is answered.

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28. Point Nos. 3 to 5

This Court in the previous point decided that the suit in respect of relief of declaration of settlement deed is barred by limitation and the sale deed in favour of the plaintiff was not valid in the eye of law and it was not acted upon. The plaintiff is not entitled to the relief of declaration in respect of title of the suit property as well as the settlement deed dated 08.02.2005. Once the plaintiff is not entitled to main relief of declaration of title, she is entitled to the consequential relief of recovery of possession.

29. The learned counsel appearing for the respondents would contend that the plaintiff has not established his title and thereby he is not entitled to relief of declaration. To support his contention he relied on the judgement in ***Smrithi Debbarma*** (Dead) through Legal Representatives Vs. ***Prabha Ranjan Debbarma and other*** reported in ***AIR 2023 SCC 379*** wherein the Hon'ble Supreme Court in Para No.31 held as follows:-

“31. The burden of proof to establish a title in the present case lies upon the plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief. This is mandated in terms of Section 101 of the Evidence Act, which states that burden on proving the



WEB COPY



A.S.(MD).No.19 of 2022

fact rests with party who substantially asserts in the affirmative and not on the party which is denying it. This rule may not be universal and has exceptions, but in the factual background of the present case, the general principle is applicable. In terms of Section 102 of the Evidence Act, if both parties fail to adduce evidence, the suit must fail. Onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens, when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit. The plaintiff could have succeeded in respect of the Schedule 'A' property if she had discharged the burden to prove the title to the Schedule 'A' property which squarely falls on her. This would be the true effect of Sections 101 and 102 of the Evidence Act. Therefore, it follows that the plaintiff should have satisfied and discharged the burden under the provisions of the Evidence Act, failing which the suit would be liable to be dismissed. Thus, the impugned judgement by the High Court had rightly allowed the appeal and set aside the judgement and decree of the Trial Court. We, therefore, uphold



WEB COPY



A.S.(MD).No.19 of 2022

the findings of the High court that the suit should be dismissed. We clarify that we have not interfered or set aside any observations of the High Court in re the Tripura Land Revenue and Land Reforms Act, or defendants' claims etc. Notably, M/s. Hotel Khosh Mahal Limited is not a party to the present proceedings.”

30. On careful perusal of the judgement, it is clear that the burden of proof lies on the plaintiff as this burden lies on the party who asserts the existence of the particular state of things on the basis of which he claims relief as per Section 101 of the Evidence Act. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove the title. The weakness of the defence cannot be a justification to decree the suit. In the case on hand, the plaintiff has not proved his title over the property and this Court decided that the power deed dated 01.09.1975 was not given for sale of the property and thereby the power agent of the Rukmani Ammal (i.e) vendor of the plaintiff had no right to sale the suit property to the plaintiff. Therefore the sale deed in the name of the plaintiff is not valid in the eye of law. Moreover the plaintiff himself admitted that the possession of the property is not with him and he stated that at the time of sale of property at



A.S.(MD).No.19 of 2022

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request of the Rukmani Ammal she was permitted to be in possession but no piece of evidence to prove the same. Further the plaintiff has not produced any revenue records and payment of **kist** to the property and after the alleged sale, he transferred the patta and other revenue records in his name. Per contra the defendants have produced the revenue records and tax receipts in their names over the suit properties.

31. The above said conduct of the plaintiff shows that the sale deed was not acted upon and the same is sham and nominal. As far as the relief of mesne profit is concerned. In the view of the answers made in the previous points that the plaintiff is not entitled to decree for declaration and for recovery of possession, he is not entitled to relief of mesne profits from the defendants. Therefore in view of the said judgment and above discussions this Court is of the opinion that the plaintiff is not entitled to any relief as prayed in the suit. Thus **point Nos. 3 to 5** are answered.

32. Point No. 7 & 8:

Before the Trial Court the plaintiff has filed the suit for declaration and for recovery of possession and also declaring that the settlement deed dated 08.02.2005 is null and void. The Trial Court held that the power



A.S.(MD).No.19 of 2022

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deed executed by the owner of the property namely Rukmani Ammal in favour of the Ramlingam dated 01.09.1975 is valid but the sale deed executed by the said Ramalingam in favour of the plaintiff is not supported by consideration. The defendants have not specifically denied the passing of consideration but the Trial Court without any documents and evidences erroneously held that the sale deed in favour of the plaintiff dated 22.05.2000 is not supported by the consideration. Further the Trial Court failed to consider that the recitals of power deed dated 01.09.1975 shows that the power deed was given for maintaining the property and the surrounding circumstances shows that the deed was executed only for maintaining the properties of Rukmani Ammal. Per contra held that power deed was given for sale of property. The above said findings of the Trial Court an erroneous and the same is liable to be set aside accordingly, set aside.

33. Further, the Trial Court has not framed issue in respect of Limitation though the defendants raised the limitation point. The plaintiff had knowledge about the execution of settlement deed in favour of the defendants 1 to 3 and thereafter the sale deed in favour of the fourth defendants by the first to third defendants, but the plaintiff has not taken any steps to challenge the same in accordance with law. Thereafter in the



A.S.(MD).No.19 of 2022

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year 2016, the plaintiff has filed the suit for declaration in respect of title of the property and also consequently sought for recovery of possession.

34. The plaintiff having knowledge about the settlement deed and the sale deed in respect of the suit property has not filed the suit immediately within the limitation period and the said aspects have been discussed in the previous points and this Court held that the suit is barred by limitation but the Trial Court has failed to consider the same and erroneously dismissed on the ground that there is no consideration was passed and the sale deed was executed only after 25 years from the date of execution of power deed. There is no limitation to execute the sale deed after execution of power deed and there is no bar to execute the sale deed after 25 years from the date of power deed. The defendants have also not denied the execution of power deed. Their contention is only power deed is to maintain the property and not to sell the property. Once the Trial Court came to conclusion that power deed was executed for the sale of property, the Trial Court ought not to have gone into the aspect of sale consideration without any pleadings and evidences. Therefore, the findings of the Trial Court are unsustainable. This Court also in the previous point set aside the findings of the Trial Court. However the Trial Court dismissed the suit. This Court already decided that the suit is not filed within a limitation period in



A.S.(MD).No.19 of 2022

WEB COPY

respect of prayer of settlement deed and the sale deed in the name of plaintiff was not acted upon and the same is not valid in the eye of law and thereby the appellant/plaintiff is not entitled for any relief through the appeal. Therefore, the appeal is liable to be dismissed on the above said grounds. Thus the **Point Nos. 7 & 8** are answered.

35. In view of the above said discussions, this Court is of the opinion that this appeal has no merits and liable to be dismissed.

36. In the result, the appeal suit is dismissed by confirming the judgment and decree dated 04.12.2019 made in O.S.No. 58 of 2016 on the file of the first Additional District Judge, Madurai. There shall be no order as to costs.

.06.2024

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Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No



A.S.(MD).No.19 of 2022

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1. The I Additional District Court, Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J

ns1

Pre-delivery judgment in
A.S. (MD).No.19 of 2022



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A.S.(MD).No.19 of 2022

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