



S.A.(MD)No.43 of 2017

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 16.08.2024**

**CORAM**

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**S.A.(MD)No.43 of 2017**

A.Subramanian

... Appellant / Appellant / Plaintiff

**Vs.**

1.Neelam Jaiswal

2.Manu Jaiswal

... Respondents / Respondents / Defendants

**Prayer** : Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 13.12.2012 in A.S.No.48 of 2011 on the file of the Court of the Subordinate Judge, Ambasamudram confirming the Judgement and Decree dated 06.04.2011 in O.S.No.173 of 2005 on the file of the Principal District Munsif, Ambasamudram.

For Appellant : Mr.V.George Raja

For Respondents : no appearance

**JUDGEMENT**

Heard the learned counsel for the appellant. The respondents have been served. Though they have entered appearance through counsel, there is no representation on their behalf.

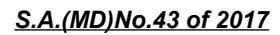


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2. The appellant filed O.S.No.173 of 2005 on the file of the Principal District Munsif Court, Ambasamudram seeking the relief of permanent injunction. The case of the plaintiff is that the registered sale deed dated 16.09.2004 executed by him in favour of the defendants pertained to land alone and did not cover the standing trees. The plaintiff wanted the Court to restrain the defendants from interfering with his right to cut and remove the standing trees.

3. The defendants filed written statement controverting the plaintiff's averments. According to them, the plaintiff sold the suit land with all the incidental rights and interests. Based on the divergent pleadings, the learned trial Court framed the necessary issues.

4. The plaintiff examined himself as P.W.1 and two other witnesses on his side. Ex.A1 to Ex.A13 were marked. The husband of the first defendant examined himself as D.W.1. One Arumugam was examined as D.W.2. Ex.B1 to Ex.B3 were marked. An advocate commissioner was appointed. His interim and final reports were marked as Court Exs.1 & 2. Valuation reports received from a private individual and the forest department were marked as Court Exs.3 & 4. After considering the evidence on record, the trial Court dismissed the



6. I am not swayed by the submissions of the learned counsel for the appellant. Admittedly, the plaintiff had sold the suit land vide registered sale deed dated 16.09.2004. It is true that there were standing trees. The plaintiff would claim that the standing trees were not sold. It is a fact that the standing trees were not specifically excluded from the conveyance. The question that calls for consideration is whether in such circumstances, it should be taken that the plaintiff had sold the standing trees also along with the land.



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7.The issue raised in this appeal is no longer res integra. The Hon'ble

Supreme Court in the decision reported in (2001) 10 SCC 221 (*Suresh Chand*

*Vs Kundan*) held as follows:

“3.....

Section 3 of the Act defines the expressions “immovable property” and “attached to the earth”. They read as under:

“3. \*\*\*

‘immovable property’ does not include standing timber, growing crops or grass;

‘attached to the earth’ means—

(a) rooted in the earth, as in the case of trees and shrubs;

(b) embedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached;”

4. Section 8 of the Transfer of Property Act provides that:

“8. 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....”

5. Section 3(26) of the General Clauses Act defines “immovable property” as under:

“3. (26) ‘immovable property’ shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;”



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6. A perusal of Section 3(a) of the Act shows that all things attached with the earth are included in the land. Thus the standing trees being embedded in the earth are part of the land. Section 8 of the Act provides that if there is any transfer of a property and unless there is any expressed or implied different intention appearing in the agreement, the interest in the property would also include anything attached with the land which is agreed to be sold. Thus when a vendor sells a property, he sells all his rights embedded in the property unless it is specifically or impliedly excluded. This Court in *Shantabai v. State of Bombay* [AIR 1958 SC 532 : 1959 SCR 265] held that although the Transfer of Property Act does not define immovable property excepting saying that immovable property does not include standing timber, growing crops or grass but Section 3(26) of the General Clauses Act defines “immovable property”. According to the said provision immovable property shall include land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth. As there is no special definition of immovable property, the general definition contained in the General Clauses Act would prevail and, therefore, trees are regarded as part of land because they are attached and rooted in the earth. In view of the said legal position, the trees, which at the time of agreement for sale were mere saplings on the land would vest in the transferee.

7. This matter can be examined from another angle. As noticed earlier that when the agreement for sale was entered into between the appellant and the defendant, no full-fledged trees were in existence on the land and there were only plants and saplings which, during the long period of litigation of 25 years have grown into full-grown trees. The question, therefore, arises whether the land, which was agreed to be transferred, would also include subsequent full-grown trees on the land. In *Divisional Forest Officer, H.P. v. Daut* [AIR 1968 SC 612 : (1968) 2 SCR 112] this Court held as under: (SCR p. 115 D-E)

“There can be no doubt that trees are capable of being transferred apart from land, and if a person transfers trees or gives a right to a person to cut trees and



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remove them it cannot be said that he has transferred land. But we are concerned with a different question and the question is whether under Section 11 of the Act trees are included within the expression ‘right, title and interest of the landowner in the land of the tenancy’. It seems to us that this expression ‘right, title and interest of the landowner in the land’ is wide enough to include trees standing on the land. It is clear that under Section 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on it. It seems to us that we should construe Section 11 in the same manner.”

8. The aforesaid decision makes it clear that interest in the property also includes anything attached to the land including trees standing on the land. Where a vendor sells his right, title and interest in the land unless expressly or impliedly provided in the agreement, sale of the land would also include trees standing thereon. But where trees are sold for being cut and removed it does not mean that the land is also transferred along with the trees. It is open to the vendor while transferring the land to exclude the trees from sale if he wants to appropriate it by cutting and removing them. In the present case, there was no mention in the agreement that the saplings were not being sold along with the land. In the absence of any expressed or implied intention in the agreement, it would be taken that the land along with the saplings standing on the land, which subsequently had grown into trees, were sold. The view taken by the High Court that unless the trees are sold separately, trees would not go with the land, is erroneous.”

8. The sale deed executed by the plaintiff does not state that the trees were not being sold along with the land. Applying the aforesaid decision, I conclude that the plaintiff had conveyed and transferred the suit trees also along with the land when he executed the sale deed dated 16.09.2004 in favour of the defendants.



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9.The learned counsel appearing for the appellant submitted in passing that the plaintiff was coerced into executing the said sale deed. This is an unjust insinuation. The plaintiff did not ask for cancellation of the sale deed. He did not disown the sale of the land. His only contention was that the trees were not parted with along with the land. This contention has already been found to be unsustainable. I therefore reject the allegation that the sale was vitiated by coercion.

10.The Courts below have given yet another solid reason for non-suiting the plaintiff. In the face of the specific stand taken in the written statement that the trees were also sold, the plaintiff was obliged to have sought the relief of declaration. He did not do so. In fact the first issue framed by the trial Court was whether the suit land alone was sold without the standing trees in favour of the defendants. The second issue that was framed by the trial Court was whether the suit was bad because the relief of declaration was not sought. The plaintiff asserted his title over the trees. The defendants' stand was that title over the trees also had passed on to them. Thus, there was a clear cloud cast on the plaintiff's claim over the trees. It was held in *Anathula Sudhakar v. Buchi Reddy (2008) 4 SCC 594* that in such circumstances, the plaintiff must ask for the relief of declaration also and a suit for injunction simpliciter will



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not lie. The Courts below have concurrently found against the plaintiff on this issue.

11.I am satisfied that the Courts below approached the issues from a proper perspective. No substantial question of law arises for consideration. The second appeal is dismissed. No costs.

12.The judgment was dictated in open court in the presence of the counsel for the appellant. While correcting the typed copy, I noted that the husband of the first defendant and father of the second defendant is Shri Anoop Jaiswal, I.P.S (Retd.). He had served as Superintendent of Police in Thoothukudi District. His experiences have been captured by the well known journalist and author V.Sudarshan in “Tuticorin Files”. The Tamil translation (Kutramum Karunaiyum) published by Kalachuvadu was released by me in September 2022. Should I recall my order ? Would I have recused myself had I noticed this earlier?. This question crossed my mind.

13.Question arose before the Supreme Court of Florida, USA, if Facebook friendship between a judge and an attorney appearing before him in a matter is a sufficient ground for disqualifying him from considering that matter



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on the ground of likelihood of bias. By 4:3 majority, it was ruled that this alone cannot be a ground for disqualification. The majority opinion expressed by Chief Justice Charles Candy is as follows :

“In some circumstances, the relationship between a judge and a litigant, lawyer, or other person involved in a case will be a basis for disqualification of the judge. Particular friendship relationships may present such circumstances requiring disqualification. But our case law clearly establishes that not every relationship characterized as a friendship provides a basis for disqualification. And there is no reason that Facebook “friendships”—which regularly involve strangers—should be singled out and subjected to a per se rule of disqualification.”

I need not travel to Florida to assure myself that the rule of disqualification on the ground of bias is not attracted in this case. I can look for inspiration from the life of Adi Shankaracharya. In the debate between Adi Shankara and Mandana Mishra, the umpire was none other than Ubhaya Bharati, wife of Mandana Mishra (Refer Pavan K.Varma's book, Page 28). M.Rama Jois in his book “Legal and Constitutional History of India Volume – I) quotes Dharmakosa which lays down the qualification of judges as follows :



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“Let the king appoint, as members of the Court of Justice, honourable men of tried integrity (Sabhyas) who are able to bear the burden of administration of justice and who are well versed in the sacred laws, rules of prudence, who are noble and *impartial toward friends or foes.*”

From the above sloka, it can be inferred that a judge is supposed to be neutral irrespective of whether the person seeking justice is friend or enemy.

14.My conscience assures me that I had dealt with the matter neutrally. That I released the book “Kutramum Karunaiyum” in September 2022 was not even present at the back of my mind. Even if I had recollected the same, it would have made no difference to the eventual outcome. Experience in the legal profession enables a judge to separate the personal from the judicial aspects of life by erecting a firewall between the two. The counsel for the appellant did not ask for my recusal. I am answerable to my conscience ; I have, therefore, put everything on record.

**16.08.2024**

Index : Yes / No  
Internet : Yes/ No  
NCC : Yes / No  
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To:

1. The Subordinate Judge, Ambasamudram.
2. The Principal District Munsif, Ambasamudram.

**Copy to:**

The Record Keeper, V.R. Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.R.SWAMINATHAN, J.**

**SKM**

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