



A.S.(MD).No.262 of 1992

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S.No.262 of 1992

1. Kalagamani ... Appellant/2nd Defendant
Vs.

1.Sundaraththammal (Died)

2.M.Rangasamy (Died)

3.P.Kandasamy (Died)

4.K.Anbumani (Died)

(Memo filed in USR.2207 dated 20.04.2017 effect that R3 died and R4 is LR of deceased R3 is recorded vide Court order dated 20.04.2017)

5.R.Amsavalli (Died)

6.R.Anbazhagan

7.R.Sampath

8.R.Arasu

9.R.Manoharan

((R3 & R4 brought on record as LR's of deceased R1 and R5 to R9 are brought on record as LR's of deceased R2 vide Court order dated 19.04.2017 made in MP(MD)Nos.1 to 6 of 2007 in A.S.No.262 of 1992



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by CVKJ) (Memo filed to the effect that R5 died and R6 to R9 are LR's of deceased R5 vide Court order dated 19.04.2017 made in MP(MD)Nos. 4 to 6 of 2007 in A.S.No.262 of 1992 by CVKJ)

10.Anbukarasi (Died)

11.Alaguselvi (Died)

(Respondents 10 & 11 are brought on record as LR's of the deceased 1st Respondent vide Court order dated 08.03.2022 made in CMP(MD)No. 4998 of 2017 in AS.No.262 of 1992 by RTJ)

12.Ramya Prabha

13.Kiruthika Devi

(Respondents 12 & 13 are brought on record as LR's of the deceased 4th Respondent vide Court order dated 14.03.2023 made in CMP(MD)Nos.6825 of 2022, 1102, 1104 and 2807 to 2810 of 2023 in AS.No.262 of 1992 by NSKJ)

14.Senthilkumar

15.Sasikumar

16.Kavitha

17.Megala

(Respondents 14 to 17 are brought on record as LR's of the deceased 10th Respondent vide Court order dated 14.03.2023 made in CMP(MD)Nos.6825 of 2022, 1102, 1104, and 2807 to 2810 of 2023 in AS.No.262 of 1992 by NSKJ)



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18.Rajesh

19.Suresh

20.Satheesh

... Respondents

(Respondents 18 to 20 are brought on record as LR's of the deceased 11th Respondent vide Court order dated 14.03.2023 made in CMP(MD)Nos.6825 of 2022, 1102, 1104, and 2807 to 2810 of 2023 in AS.No.262 of 1992 by NSKJ)

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree made in O.S.No.210 of 1988 on the file of the I Additional Sub Judge, Trichy District, Trichy, dated 02.12.1991.

For Appellants

: Mr.P.Vinoth
for Mr.M.Saravanan

For R1 to R5, R10 & R11

: Died (Steps Taken)

For R8

: Mr.R.Sundar

For R6, R7, R9, R12 to R20 : No Appearance

JUDGMENT

This appeal has been preferred as against the Judgment and decree passed by the I Additional Sub Judge, Trichy District, Trichy, in O.S.No. 210 of 1988, dated 02.12.1991, wherein, the first respondent/plaintiff



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herein have filed a suit for declaration and recovery of possession and also for means profit. The Trial Court decreed the suit in respect of one portion of the suit property and dismissed the suit in respect of another portion of the suit property. Aggrieved against the same, the present appeal has been preferred by the appellant/2nd defendant.

2.For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the trial Court.

3.The gist of averments made in the plaint are as follows:

The suit property was belonged to the defendants by way of sale deed dated 04.12.1971. The plaintiff was directed to discharge the debts mentioned in the sale deed and those debts were discharged only by the plaintiff. After discharging the debts, the original title deeds were given to the plaintiff. Therefore, the plaintiff is the owner of the suit property by virtue of the above said sale deed. One of the vendors of the suit property was the wife of the first defendant. After sale, the plaintiff allowed the first defendant to remain in possession and enjoyment of the suit property as tenant on the request made by him. From the date of sale,



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the first defendant remains in possession and enjoyment of the suit property as a tenant. The first defendant has sub-leased a portion of the suit property i.e., D.No.31-A to the second defendant and the second defendant is in possession of the same as sub tenant under the first defendant. However, the defendants have not paid the rent regularly. Hence, the plaintiff insisted the defendants to hand over the possession on several occasions, but, they have not done so. Therefore, the plaintiff called upon them to vacate the property and issued a notice to that effect. The defendants have sent a reply with false averments by denying the title of the plaintiff. Therefore, the plaintiff filed a suit for declaration and recovery of possession. The plaintiff is entitled to claim past profits, but, she is only claiming future means profits from the date of plaint till delivery of possession.

4. The gist of the written statement filed by the first defendant are as follows:

The suit is frivolous, vexatious, unsustainable in law or on facts and the same is liable to be dismissed. The allegation in paragraph 3 of the plaint that the plaintiff is the owner of the property is false and



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denied. It is true that the plaintiff is purchased a suit property from Sellammal Amasavalli Ammal (wife of the first defendant namely, Rengasami) and Govindammal by a registered sale deed dated 04.12.1971. Though, the plaintiff purchased the property from the above said persons, she was not in possession and enjoyment of the the property. But, the said Amsavalli / wife of the first defendant and Kalagamani are in possession and enjoyment of the property in their own right as owners of the property. They are not tenants under the plaintiff and the first defendant has not sub leased the property to the second defendant. The said Amsavalli Ammal and Kalagamani are the absolute owners of the property. In fact, the first defendant and the plaintiff's husband namely, Kandasami both were employed in the Golden Rock Railway Accounts Office and they were also a very good friends. The first defendant used to borrow amount and execute a number of promissory notes in his wife's/plaintiff's favour. Though, Kandasami used to advance the amount, the pro-notes were got executed in the name of the plaintiff. In this way, many pro-notes have been executed in favour of the plaintiff. Many of the pro-notes have not been discharged and some of the pro-notes have been discharged. Two mortgage deeds



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were executed in respect of the suit property on receipt of the amount.

Sellammal, Amsavalli Ammal and Rengasami borrowed a sum of Rs.4,000/- from the Co-operative Society Bank. Finally, a decree was passed and Rs.6,697/- was due from them to the bank. Thereby, they decided to sell the property to the plaintiff for a sum of Rs.15,000/- to adjust the mortgage amount of Rs.8,000/- and directed her to discharge the decree amount due from them to the bank. Thereby, the property was sold to the plaintiff by a registered sale deed dated 04.12.1971. Having purchased the property, the plaintiff discharged the loan amount due from the Vendors, got back pass books and all the documents from the bank. Thereafter, the plaintiff want to sell the property. Since nobody interested to purchase the property, the plaintiff approached the first defendant and his wife to purchase the property. They also agreed to purchase the property for a sum of Rs.15,000/- and agreed to pay registration expense of Rs.1,000/-. Accordingly, on 15.02.1976, they paid a sum of Rs.8,000/- to the plaintiff. Thereafter, they paid a sum of Rs.16,000/- towards the sale amount and the amounts mentioned in the promissory notes i.e., Rs.37,500/- was also paid to the plaintiff's husband. Thereby, the plaintiff and her husband undertook to return the



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sale deed. However, later, they stated that the said sale deed was mingled with some other papers and the same could not be traced out. The first defendant and his wife also trusted the words of the plaintiff and her husband. Even thereafter, the plaintiff and her husband have not returned the papers. The first defendant sold the property bearing Door No.31-A to the second defendant in the year 1980. Since the property was in dilapidated condition, the second defendant spent a sum of Rs.20,000/- towards renovation of building. Therefore, the second defendant was in possession of the property in Door No.31-A. From the year 1964, the municipal House Tax Receipts also stands in the name of Amsavalli Ammal. Thereby, she is in adverse possession and enjoyment of the property for more than 12 years.

5. Based on the above said proceedings, the trial Court has framed the following issues.

- 1. Whether the plaintiff is entitled to the relief of declaration of title over the suit property?*
- 2. Whether the defendants are liable to hand over the possession of the property to the plaintiff?*



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3. Whether the plaintiff is entitled for means

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4. To what relief the plaintiffs are entitled to?

6. Before the trial Court on the side of the plaintiff was examined as P.W.1 and Exs.A1 to A13 were marked. On the side of the defendants D.W.1 to D.W.3 were examined and Exs.B1 to B23 were marked.

7. After analyzing the evidence adduced on both sides, the trial Court has decreed the suit in respect of declaration of title over the suit property and directed to hand over the possession of the property to the plaintiff in respect of Door No.31-A and was declined in respect of Door No.31 of the suit property.

8. Aggrieved over by the said decree and judgment, the present appeal has been preferred by the second defendant. The plaintiff has filed an appeal in A.S.No.374 of 1992 and the same was dismissed for non-prosecution, however, the first defendant has not filed any appeal or cross objection as against the decree and judgment passed in respect of Door No.30 of the suit property.



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9. Grounds of Appeal:-

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i) The trial Court has failed to see that there is no separate schedule in respect of Door Nos.31 & 31-A of the suit property.

ii) The trial Court has failed to consider that the plaintiff has not given full possession of the suit property in the schedule in the plaint.

iii) The trial after having held that in the sale deed Ex.A3, there is specific recital of “possession having been delivered on the date of the suit”, ought to have held that the plaintiff's claim is illegal.

iv) The trial Court ought to have dismissed the suit on the ground of non-jointer of the necessary party.

v) The trial Court has failed to consider that the first defendant already paid a sum of Rs.37,000/- towards resale consideration of the property in favour of the first defendant.

vi) The trial Court erred in its finding that the sale deed in favour of the second defendant is not valid and legal document when there is no prayer to that effect in the plaint, by the plaintiff.

vi) The trial Court failed in its finding that the plaintiff has proved Ex.A.3.

vii) The trial Court ought to have rejected the evidence of P.W.1

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and accepted the evidence of D.W.1 to D.W.3 since the same is contrary to the defence case.

- Therefore, the judgment and decree passed by the trial Court is liable to be set aside by allowing this appeal.

10. The learned counsel appearing for the appellant would contend that originally the property was purchased by the plaintiff. Thereafter, the first defendant and his wife paid a sum of Rs.37,500/- to the plaintiff. Hence, the plaintiff also handed over the possession of the property to the defendants and they were in possession and enjoyment of the property. Though, the defendants have paid the entire sale amount, since the original title deeds are with the plaintiff, they have awaited for execution of sale deed in their favour. In the mean time, the plaintiff, executed a power deed in favour of the first defendant and the first defendant sold the property to the second defendant for valuable consideration. The said power deed has been marked as Ex.P.7. Based on the above said power deed dated 24.11.1980, the first defendant executed a sale deed in favour of the second defendant through Ex.P.8 dated 16.12.1980. From the date of sale deed onwards, the second defendant



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has been in possession and enjoyment of the suit property. The trial Court has failed to consider the same and simply decreed the suit. The second defendant was not examined as witnesses. However, the documents i.e., Tax Receipts etc., stands in the name of the second defendant were produced as Ex.P.12 to Ex.P.23. But, the trial Court has failed to consider the above said documents and simply decreed the suit and directed the defendants to hand over the possession of the property to the plaintiff in respect of one portion of the property. Hence, the plaintiff preferred an appeal and thereafter, the said appeal was dismissed for non-prosecution. Therefore, the findings of the trial Court with regard to the relief of declaration and recovery of possession in respect of Door No.30-A of the suit property is liable to be set aside. As per Ex.P.7 and Ex.P.8, the second defendant is the absolute owner of the property in respect of Door No.31-A of the suit property. But, the trial Court failed to consider the above said aspect and decreed the suit. Hence, the judgment and decree passed by the trial Court are liable to be set aside.

11. Even though notices were served and the names of the respondents 6, 7, 9, 12 to 20 were printed in the cause list, none appeared on behalf of them.

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12. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the eighth respondent and perused the records.

13. Points for consideration in this appeal are,

i) Whether the plaintiff executed a power deed in favour of the first defendant dated 24.11.1980?

ii) Whether the first defendant as power agent of plaintiff had executed a sale deed in favour of the second defendant dated 16.12.1980?

iii) Whether the suit is bad for non-joinder of necessary party since Amsavalli Ammal was not added as party to the suit?

iv) Whether the plaintiff is entitled to decree for relief of declaration and recover of possession over the suit property?

v) Whether the appeal has to be allowed or not?

14. Point No.1: *Whether the plaintiff executed a power deed in favour of the first defendant dated 24.11.1980?*

In this case, the plaintiff has filed a suit for declaration and recovery of possession. According to the plaintiff, she purchased the



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property in the year 1971 through sale deed dated 04.12.1971. Thereafter, the first defendant had been in possession and enjoyment of the suit property as tenant. Thereafter, the first defendant sub leased the property to the second defendant. According to the defendants, initially, they sold the property to the plaintiff for the loan borrowed from the plaintiff and to settle the loan borrowed by them in the bank. Thereafter, the defendants repaid the amount and again, they purchased the property. Even if they have not obtained any sale deed from the plaintiff, the possession of the property has been with the defendants. Thereafter, the plaintiff executed power of attorney deed in favour of the first defendant and the first defendant sold the property to the second defendant based on the said power deed. Therefore, the property in respect of Door No.30-A of the suit property was sold to the second defendant in the year 1980 and she is in possession and enjoyment of the property. The wife of the first defendant was in possession and enjoyment of the property in Door No.30. However, she was not added as a party. Therefore, the suit is liable to be dismissed for non-joinder of the party.



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14.1. On the side of the plaintiff, he examined P.W.1 and marked Ex.A1 to Ex.A13. On the side of the defendants the first defendant was examined as D.W.1 and D.W.2 & D.W.3 were examined and marked Ex.B1 to Ex.B.23. The second defendant was not examined as witness. Though, the first defendant filed written statement by stating that he sold the property to the second defendant through the power deed dated 24.11.1980 but the said power deed was denied by the plaintiff. However, P.W.1, in his cross examination stated that the second defendant is in possession and enjoyment of the property for the past 29 years and he does not know in what capacity she is residing in the suit property and also denied the power deed dated 24.11.1980. The first defendant sold the property to the second defendant. The plaintiff already issued a notice to the defendants through her Advocate and the same was marked as Ex.B.1 and he also given a advertisement in Thina Thanthi daily news paper on behalf of the plaintiff and the same was marked as Ex.B.2. In the said notice, Ex.B.1, the plaintiff cancelled the power deed executed in favour of the first defendant dated 24.11.1980. In the said notice, she admitted the power deed dated 24.11.1980. The plaintiff executed power of attorney in favour of the first defendant and the same



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was cancelled through notice dated 19.07.1988. Therefore, from the above said Ex.B.1 notice dated 19.07.1988, the plaintiff admitted the execution of power deed in favour of the first defendant. The said notice was denied by the plaintiff. But, the plaintiff has not examined the Advocate, who issued notice based on the instruction given by the plaintiff. Per contra, the defendants have examined the Advocate, who issued Ex.B1, notice on behalf of the plaintiff as D.W.2 and he deposed about the issuance of notice Ex.B1 on the instruction of the plaintiff. Therefore, the defendants proved the issuance of Ex.B1, notice and in Ex.B1, by cancelling the power deed, she admitted the earlier execution. Therefore, it is clear that the plaintiff has executed a power deed dated 24.11.1980 in favour of the first defendant. A copy of the power deed was marked as Ex.B.7. From the perusal of the D.W.1 and Ex.B.1, it clearly shows that the plaintiff executed a power deed infavour of the first defendant and the first defendant has proved that the plaintiff had executed a power deed in favour of the first defendant. Thus, the point is answered.



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15. Point No.2 : *Whether the first defendant as power agent of plaintiff had executed a sale deed in favour of the second defendant dated 16.12.1980?*

According to the plaintiff, the first defendant leased out the one portion of the property to the second defendant. Thereby, she was in possession of the property as sub tenant. According to the defendants, the plaintiff executed a power deed infavour of the first defendant and in turn, the first defendant sold the property to the second respondent through sale deed dated 16.12.1980 and thereby, she is in possession and enjoyment of the property in Door No.30-A. The said sale deed was marked as Ex.B.8. In order to prove the said sale deed Ex.B.8, the second defendant has not been examined as witness in this case. However, the husband of the second defendant was examined as witness D.W.3 and he deposed about the purchase of the property and execution of sale deed in favour of the second defendant. Moreover, already, this Court has decided in the previous point that the plaintiff has executed a power deed in favour of the first defendant and the first defendant, who executed sale deed in favour of the second defendant was also admitted the execution of sale as a power of attorney of the plaintiff. As per admission made by



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the executor and as per the evidence of D.W.3, they proved that the sale deed was executed in favour of the second defendant based on the power deed. The plaintiff also admitted the possession of the second defendant over the suit property. However, she is not in a position to say in what capacity, the second defendant was in possession of the property. Further, the plaintiff has not explained in what basis the second defendant entered into premises as sub tenant. D.W.3, who is the husband of the second defendant categorically deposed about the purchase of the property and possession of the property from the date of sale deed. Therefore, the defendants have proved that one portion of the property i.e., Door No.31-A was purchased by the second defendant through power agent of the plaintiff and she has been in possession of the property. Thus, the point is answered.

16. Point No.3 : *Whether the suit is bad for non-joinder of necessary party since Amsavalli Ammal was not added as party to the suit?*

The plaintiff has filed a suit for declaration and recovery of possession of the suit property. Admittedly, the plaintiff purchased the



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suit property in the year 1971 from the first defendant and others.

Thereafter, the first defendant requested the plaintiff to remain in possession as tenant and thereby, he was in possession of the property as tenant. But, in order to prove the same, there is no evidence adduced by the plaintiff.

16.1. Per contra, according to the defendants, the sale deed was executed for settlement of the dues and thereafter, the plaintiff settled the amount with the bank. Thereafter, the defendants also settled money to the plaintiff and the sale amount was adjusted. Thereafter, the plaintiffs wanted to sell the property. Since nobody come forward to purchase the property, the plaintiff agreed to sell the property to the defendants and the defendants also paid a sum of Rs.37,000/- to the plaintiff towards sale consideration. However, the plaintiff failed to execute the sale deed in favour of the defendants. Therefore, the defendants were in possession of the property based on the above said amount given to the plaintiff. To that effect, no document was produced by the defendants. However, the suit was filed for relief of declaration and recovery of possession, the plaintiff has admitted the possession of the defendants, but not proved under what basis they are in possession of the suit property.



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16.2. According to the first defendant, his wife namely, Amsavalli is in possession and enjoyment of the property and she is also a proper and necessary party to the suit since the suit is filed for declaration and recovery of possession and the first defendant categorically stated about the possession of Amsavalli. She is also necessary party for the relief of recovery of possession. But, the plaintiff has not added the said Amsavalli as one of the party to the suit. Therefore, the suit is bad for non-joinder of the necessary party. Thus, the point is answered.

17.Point No.4 : *Whether the plaintiff is entitled to decree for relief of declaration and recover of possession over the suit property?*

The plaintiff has filed a suit for declaration and recovery of possession and this Court already decided in the previous points that the suit is bad for non-joinder of necessary party. Further, decided that the plaintiff failed to prove that how the possession was handed over to the defendant and also the plaintiff executed power deed in favour of the first defendant and based on the power deed executed sale deed in favour of the second defendant on 16.12.1980. Since the property was sold to the second defendant on 16.12.1980, she was in possession and enjoyment of



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the property from 16.12.1980 onwards. The plaintiff has failed to prove that she is the owner of the property to the entire extent of suit property.

Therefore, the plaintiff is not entitled to the relief of declaration as well as the recovery of possession in respect of Door No.31-A of the suit property. Thus, the point is answered.

18. Point No.5 : *Whether the appeal has to be allowed or not?*

The suit is filed for declaration and recovery of possession. The trial Court also elaborately discussed about the evidences adduced by both sides and come to the conclusion that in respect of D.No.31, one Amsavalli was in possession and enjoyment of the property. But, she has not been added as a party. Hence, the trial Court decreed the suit for possession in respect of one portion. However, the trial Court decreed the suit in respect of declaration of the property. The trial Court has failed to consider about Ex.B.7, Power Deed executed by the plaintiff in favour of the first defendant and in turn, the first defendant sold the property to the second defendant through sale deed, Ex.B8. Further, the trial Court failed to consider that already the plaintiff issued notice to the defendants through Ex.B.1 and the same was denied by the plaintiff. However, the



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defendants, to prove the same, examined the Advocate, who issued notice on behalf of the plaintiff as D.W.1 and he has deposed about the notice issued on behalf of the plaintiff. In the said notice, there was a categorical admission made by the plaintiff in respect of execution of power deed and the said power deed, and the said power deed was later cancelled by the same plaintiff. Therefore, she admitted the execution of power deed. This Court, already, decided in the previous point, once the trial Court come to the conclusion that the suit is bad for non-joinder is necessary party to the suit property, the trial Court ought to have dismissed the suit. But, the trial Court decreed the suit for declaration without considering the documents pertaining to D.No.31-A. Therefore, the decree and judgment passed by the trial Court in respect of D.No.31-A is unsustainable in law.

19. In view of the above said discussion, this Court is inclined to set aside the judgment and decree passed by the trial Court.

20. **In the result**, this Appeal Suit is **allowed** and the judgment and decree passed by the I Additional Sub Judge, Trichy District, Trichy, in



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O.S.No.210 of 1988 dated 02.12.1991 is hereby set aside. The suit in

O.S.No.210 of 1988 is dismissed in respect of Door No.31-A of the suit

property. There shall be no order as to costs.

27.03.2024

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

1. The District Judge,
Karur.
2. The Record Keeper,
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Madurai Bench of Madras High Court,
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P. DHANABAL,J.

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