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S.A.Nos.96 and 97 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.Nos.96 and 97 of 2023

S.A.No.96 of 2023

Mohammed Askar

...Appellant

Vs.

Chellammal (Died)

1. N.Nandakumar

N.Madhavaraj (Died)

2. N.Balakrishnan

3. N.Radhakrishnan

4.N.Ashok Kumar

5. N.Shanmugasundaram

6. N.Padmavathy

7. N.Krithika

8. Krishnaveni

9. C.Ramasamy

10. Murugesan

11. The Sub – Registrar,
Sub-Registration Office,
Ganapathy,
Coimbatore – 641 006

...Respondents

S.A.No.97 of 2023

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Mohammed Askar

...Appellant

Vs.

Chellammal (Died)

1. N.Nandakumar

N.Madhavaraj (Died)

2. N.Balakrishnan

3. N.Radhakrishnan

4.N.Ashok Kumar

5. N.Shanmugasundaram

6. N.Padmavathy

7. N.Krithika

...Respondents

PRAYER in S.A.No.96 of 2023:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the common judgement and decree dated 02.09.2022 made in A.S.No.15 of 2020 on the file of II-Additional Subordinate Judge, Coimbatore in reversing the common judgment and decree dated 22.11.2019 made in O.S.No.2447 of 2007 on the file of the II-Additional District Munsif, Coimbatore and to allow the Second Appeal.

PRAYER in S.A.No.97 of 2023:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the judgement and decree dated 02.09.2022 made in A.S.No.11 of 2020 on the file of II-Additional Subordinate Judge, Coimbatore in reversing the common judgment and decree dated 22.11.2019 made in O.S.No.2265 of 2007 on the file of the II-Additional District Munsif, Coimbatore and to allow the Second Appeal.



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In both appeals

For Appellant : MrV.Anandhamoorthy

For Respondents : Mr.Subhang P.Nair

COMMON JUDGMENT

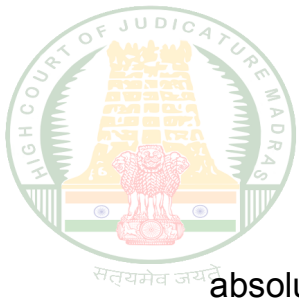
The Second Appeal No.96 of 2023 has been preferred by the first defendant in O.S.No.2447 of 2007 (on the file of II-Additional District Munsif Court, Coimbatore) against the judgment and decree dated 02.09.2022 passed in A.S.No.15 of 2020 by the II-Additional Sub Court, Coimbatore.

2. The Second Appeal No.97 of 2023 has been preferred by the plaintiff in O.S.No.2265 of 2007 (on the file of II-Additional District Munsif Court, Coimbatore) against the judgment and decree dated 02.09.2022 passed in A.S.No.15 of 2020 by the II-Additional Sub Court, Coimbatore.

3. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

4. Averments made in the plaint in a nutshell in O.S.No.2265 of 2007 / details of written statement filed in O.S.No.2447 of 2007:-

According to the plaintiff Mohammed Askar, the suit property



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absolutely belongs to one Murugesan, who purchased the said property from K.Palanisamy and Rangasamy by virtue of registered sale deed dated 10.11.1981 for valid consideration as per Document No.5177/1981 and he was in possession and enjoyment of the suit property. On 11.03.1997, the above said Murugasen through his power agent Mr.Kandasamy sold the property to Krishnaveni by way of registered sale deed for valid consideration as per Document No.915/1997 before the S.R.O. Ganapathy, Coimbatore. The said Krishnaveni was thereafter had been in possession and enjoyment of the suit property. The said Krishnaveni sold the property to C.Ramasamy by way of registered sale deed dated 30.03.2005 for valid consideration in Document No.1910/2005 before the S.R.O. Ganapathy Coimbatore. The plaintiff Mohammed Askar purchased the suit property from C.Ramasamy by way of registered sale deed on 27.10.2006 for valid consideration as per Document No.6020/2006 before the S.R.O. Ganapathy, Coimbatore. He purchased the suit property along with the building constructed thereon. His vendor got the house site approved by Coimbatore Municipal Corporation letter issued in reference Na.ka.No.8099/06/H2(N) dated 25.10.2006. After the purchase of the house property, the property tax stands in the name of the plaintiff. He purchased the suit property after perusal of the encumbrance certificate for the period from 01.01.1965 to

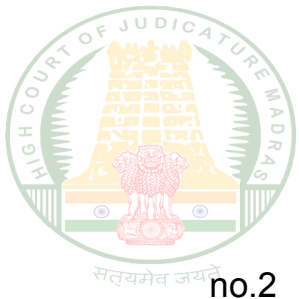


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31.12.1986 (Certificate No.14522 of 2007 dated 05.10.2007), from 01.01.1987 to 01.12.1993 (Certificate No.14310 of 2007 dated 10.10.2007) and from 02.12.1993 to 30.09.2007 (Certificate No.6192 of 2007 dated 01.10.2007). The plaintiff and his predecessors in title have perfected title to the suit property from the year 1981 onwards. After the purchase of the suit property, the plaintiff has been in possession, occupation and enjoyment of the suit property without any hindrance whatsoever. On 18.10.2007, the defendants visited the suit property along with some rowdy elements and demanded the plaintiff to vacate the suit property alleging that the suit property belongs to them. During the pendency of the suit, the defendants no.1 and 3 passed away and their legal heirs have been brought on record as defendants No.2 to 9 herein. The defendants are large in number and influential persons in that locality. Hence, the plaintiff laid the suit for permanent injunction.

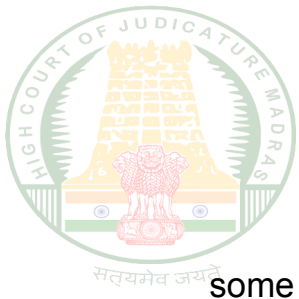
5. Per contra, the 3rd defendant N.Madhavaraj on behalf of respondents no.2, 4 to 9 would content that he is the legal heir of the deceased Narayanasamy. The fact that the defendants visited the suit property and attempted to vacate the plaintiff is not correct. The 1st defendant is the legally wedded wife of one Narayanasamy. The defendants



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no.2 to 9 are the son and daughters of the said Narayanasamy. Narayanasamy demised on 09.11.2005. One Murugesan son of Marudhasalam purchased the immovable property to an extent of 0.67 ½ cents in Document No.5177, Book No.1, Volume No.500, Page No.19 to 21, registered on the file of Gandhipuram Sub-Registrar Office, Coimbatore, who formed a layout called as Nehru Nagar in the said land therein and sold out house sites through his power agent V.Kandasamy, son of late Vaiyapuri. The general power of attorney is registered at the Sub Registrar Office of Gandhipuram is Document No.128, Book No.4, Volume No.16, Page No.285 to 287 on 26.12.1981. The said Narayanasamy purchased the suit property for valid consideration from the above Murugesan through his power agent V.Kandasamy in Document No.110, Book No.1, Volume No.507 Page No.171 to 174 on 20.01.1982 on the file of the S.R.O, Gandhipuram, Coimbatore. After execution of the sale deed in favour of Narayansamy, neither the above said Murugesan nor his power agent V.Kandasamy have right in the suit property. From the date of purchase, Narayanasamy was in possession and enjoyment of the suit property and thereafter, his legal heirs defendants no.2 to 9 are the owners of the suit property by way of succession. The Tamil Nadu Housing Board attempted to acquire the land. Thereafter, to get the approval of the layouts, the matter was pending for



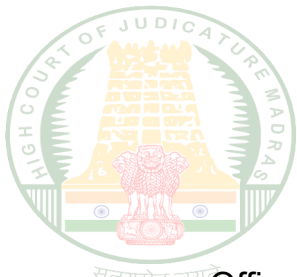
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some time. After the death of Narayanasamy, the defendants applied for encumbrance certificate on 22.03.2007 for the period from 01.01.1980 to 31.12.1986, on 01.01.1987 to 01.12.1993 and from 02.12.1993 to 21.03.2007 and the said encumbrance certificates revealed the fact that there is no encumbrance over the suit property. The sale proceedings mentioned are sham and nominal, illegal and they are not valid in the eye of law and binding on the defendants. The plaintiff is only trespasser in respect of the suit property. One Ramasamy has illegally raised a superstructure over the suit property, which necessarily has to be demolished at the cost of plaintiff. The plaintiff who claims title on the basis of illegal, void and unenforceable document has no right in the suit property. The claim of the plaintiff over the suit property is that of a trespasser.

O.S.No.2247 of 2007.

6. The 1st plaintiff is the legally wedded wife of one Naranasamy. The plaintiffs no.2 to 9 are the children of the deceased Narayanasamy. The said Narayanasamy passed away on 09.11.2005. The 4th defendant Murugesan son of Marudhasalam has initially purchased immovable property on 10.11.1981 to an extent of 0.67½ cents in Document No.5177, Book No.1, Volume No.500 page no.19 to 21 registered at Sub-Registrar



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Office, Gandhipuram, Coimbatore.

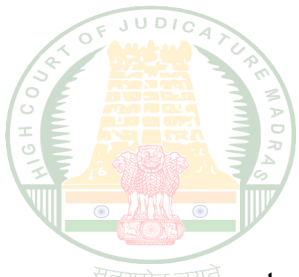
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7. As both the suits were filed in respect of the same property, common evidence was recorded and common judgment was passed by the Trial Court on 22.11.2019. The Trial Court framed the relevant issues. On the plaintiff side, Mohammed Askar examined himself as P.W.1 and the staff of the Sub-Registrar Office, Gandhipuram was examined as P.W.2 (Saravanan) and 16 documents were marked. Ex.A15 dated 27.10.2006 is the sale deed executed by C.Ramasamy in favour of the plaintiff M.Mohammed Askar. On the defendants side, one Radhakrishnan was examined as D.W.1 and 15 documents were marked and copy of the sale deed executed by the 4th defendant through his power agent V.Kandasamy in favour of Narayanasamy dated 20.01.1982 is Ex.B1.

8. The following Substantial Questions Law arise for consideration:-

i. Whether the Lower Appellate Court was right in holding that the plaintiffs are entitled to suit relief based on Exhibit-B1 dated 20.01.1982 alone de hors the Sale Deed dated 10.11.1981 under Exhibit-A1 and Revenue Documents under Exhibits A-11 to A-14?

9. In both the cases, the suit property is one and the same namely 4



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cents 227 sq.feet in Plot No.14 at Nehru Nagar (பட்டா நெ.79ல் கச.40.1 நெ.காலை பு.ஏ.1 டி 87 க.ச.43/1 நெ.காலை பு.ஏ.1 டி75), the land and the RCC building constructed upon the land to an extent of 1969 sq.ft. The Trial Court in O.S.No.2265 of 2007, as the plaintiff Mohammed Askar has clearly established by way of title deed and revenue records, O.S.No.2265 of 2007 was decreed in favour of Mohammed Askar (Plaintiff) and the suit in O.S.No.2447 of 2007 was dismissed with a liberty to seek compensation from the 4th defendant Murugesan before the appropriate forum.

10. The learned counsel for the appellant (Mohammed Askar) would vehemently contend that according to the defendants, the property was purchased from Murugesan through his power agent on 10.11.1981. Except the sale deed, no other document was filed to substantiate that the sale deed was acted upon and he has been in possession of the suit property. Followed by the said sale in his favour, the revenue records were mutated and the possession is also with the plaintiff Mohammed Askar. He would further submit that the plaintiff is in continuous possession and enjoyment of the property.

11. The learned counsel for the appellant would further submit that



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based on the principle of acquiescence, the legal heirs of Narayanasamy are not entitled for the relief in respect of the suit property. He would further add that subsequent to the purchase of the suit property by his predecessor Ramasamy, he constructed RCC building and by keeping quite Narayanasamy did not raise his fingers and object the construction of the suit property. To substantiate his arguments, he placed reliance on the following judgements:-

i). *The Associated Cement Companies Limited by its Manager Sri J.P.Munsiff Vs. L.S.Ramakrishna Gowder [AIR 1965 MAD 318]*

ii). *S.Palanivelu Vs. K.Veradammal [AIR 1977 MAD 342]*

iii). *R.S.Muthuswami Gounder Vs. A.Annamalai and others [AIR 1981 MAD 220]*

iv). *Seetharaman represented by Power Agent, Narasimman Vs. Jayaraman and others [2014 (2) MWN (Civil) 643]*

v). *Chairman, State Bank of India and Another Vs. M.J.James [2022 (2) SCC 301]*



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12. The learned counsel for the respondents would vehemently argue that subsequent to the execution of the sale deed (Ex.B1) dated 20.01.1982, the owner of the suit property namely Murugesan does not have any right or title to the suit property. When the vendor has no right in the suit property, he cannot transfer his title in the name of other person. Therefore, Ex.B7 to Ex.B9 sale deeds are not valid in the eye of law. He would further contend that, in these circumstances, the question of bonafied purchaser does not arise at all. More so, the suit is filed for the relief of permanent injunction alone without prayer for declaration of title is not maintainable in law and sought for the dismissal of the appeal. To strengthen his arguments, the following judgement is referred to:

Atla Sidda Reddy Vs. Busi Subba Reddy and others reported in 2010

(6) SCC 666.

i). The issue in the said case is that the petitioner had acquired title to the suit properties by virtue of the deed of sale dated 05.03.1984 executed in his favour by Shed Ghouse Bi Alias Chand Begum in view of the case of the defendant that Lakshamma had already sold the suit property to one T.M.Basha by a registered deed of sale dated 22.05.1968 (Ex.B2), the Trial Court came to the finding that in view of the registered sale deed dated 22.05.1968 executed by Lakshamma in favour of T.M. Basha in respect of the



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suit property, she was no longer competent to execute sale deed subsequently in respect of the same property in favour of Syed Ghouse Bi through whom the petitioner-plaintiff claims title and the trial Court dismissed the suit.

ii. The First Appellate Court held that the testimony of D.W.4 Lakshamma did not inspire confidence and accordingly, discarded the same as far as the sale deed in favour of T.M.Basha dated 22.05.1968 (Ex.B2) and relied on the subsequent sale deed Syed Ghouse Bi dated 10.05.1974 (Ex.A1) and decreed the First Appeal.

iii. Whereas, the High Court accepted the evidence of D.W.4 Lakshamma and came to the finding that by virtue of Ex.B2, she had transferred all her rights, title and interest in the suit properties in favour of T.M.Basha and having divested her of the title to the suit properties, she was no longer competent to execute the further sale deed in properties in respect of the same property in favour of Syed Ghouse Bi on 10.05.1974 (Ex.A1). On such finding, the High Court reversed the decree of the First Appellate Court. The Apex Court held that Ex.B2 is a crucial document and was admittedly anterior in point of time to Ex.A1 subsequently executed by D.W.4 Lakshamma in favour of Syed Ghouse Bi when she had already divested herself of title to the suit property and concluded that the plaintiff did not therefore acquire any title to the suit property and the order of the High



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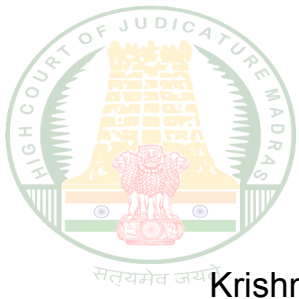
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Court impugned herein was confirmed by dismissing the appeal.

13. O.S.No.2265 of 2007 has been filed by Mohammed Askar for the relief of permanent injunction restraining the defendant, his men and agent not to interfere with his peaceful possession and enjoyment of the suit property.

14. O.S.No.2447 of 2007 has been filed by the legal heirs of one Narayanasamy for the relief of declaration that the sale deeds dated 11.03.1997, 30.03.2005 and 27.10.2006 are null and void, illegal and to direct the Registration Department to remove those entries by way of mandatory injunction and to order to demolish the illegal superstructure raised in the suit property by way of mandatory injunction.

15. It is the evidence of P.W.1- Mohammed Askar that the suit property belongs to one Murugesan, who had purchased the suit property from K.Palanisamy and Rangasamy by virtue of a registered sale deed dated 10.11.1981 for valid consideration. On 11.03.1997, the said Murugesan through his power agent Mr.Kandhasamy sold the property to Krishna Veni by way of a registered sale deed for valid consideration (Ex.A2). The said



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Krishnaveni sold the suit property to C.Ramasamy (Doc. No.1910/2005) by way of registered sale deed dated 30.03.2005 (Ex.A3) for valid consideration in Document No.1910 of 2005 before the SRO Ganapathy, Coimbatore. The plaintiff purchased the suit property from C.Ramasamy by way of registered sale deed dated 27.10.2006 (Ex.A4) for valid consideration in Document No.6020/2006 before the SRO Ganapathy, Coimbatore. He purchased the suit property along with building constructed thereon. He got the site approval from the Coimbatore Municipal Corporation and thereafter, property tax stands in his name.

16. Whereas, the case of the defendants, who are the legal heirs of Narayanasamy is that the deceased Narayanasamy purchased the suit property for valid consideration on 20.01.1982 from the owner Murugesan through his power agent V.Kandasamy in Document No.110, Book No.1, Volume No.507 and Page No.171 to 174 on the file of SRO - Gandhipuram, Coimbatore. After the demise of the Narayanasamy, the legal heirs who are the defendants, are the owners of the suit property by way of succession. It is the further case of the legal heirs of Narayanasamy that the owner Murugesan has no saleable interest, title over the suit property after executing the sale deed in favour of the deceased Narayanasamy for valid



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consideration and the sale proceedings mentioned in their plaint are Sham and nominal and they are not valid in the eye of law and binding on the defendants. Therefore, Mohammed Askar is a trespasser and he has no right or title over the suit property.

17. The suit property in both the suits are one and the same. Mohammed Askar has purchased the suit property for a valid consideration from his predecessor in total on 27.07.2006. Whereas, the deceased Narayanasamy had purchased the suit property on 20.01.1982 from the owner of the suit property Murugesan through his power agent V.Kandasamy.

18. From a careful perusal of Ex.A1 to Ex.A6, it is evident that subsequent to the purchase of the suit property, the property tax, water charges, and electricity connections changed in the name of the plaintiff.

19. In this regard, it is relevant to refer to legal maxim *Nemo dat quod non habet*, which means no one can give what they do not have.

20. The owner, who does not have right in the property as he transfers



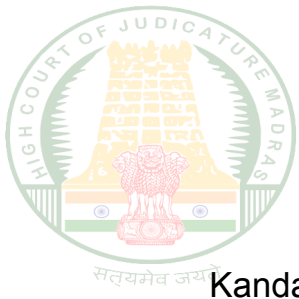
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all his rights, title and interest. Once the owner has divested his title to the suit property on another person, then he is not competent to execute a further sale deed in respect of the same property. The learned counsel for the appellant much argued about the acquiescence. The same is not pleaded by the plaintiff, Mohammed Askar.

21. It is relevant to refer the provisions of Section 48 of Transfer of Property Act. For better understanding, the said provision is extracted hereunder:

*“Section 48 – Priority of rights created by transfer:
Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.”*

22. The moot point in both the appeals is whether the owner of the suit property Murugesan had a right to execute the sale deed in favour of Krishnaveni in the year 1997 after transferring all rights in the suit properties in favour of Narayanasamy in the year 1982. It is also not in dispute that the owner of the suit property namely Murugesan through his power agent



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Kandasamy has executed a sale deed in favour of deceased Narayanasamy on 20.01.1982. After the execution of the said sale deed, the right, title and interest in the suit properties is transferred to the vendee Narayanasamy and he having divested himself of the title of the suit properties. The said owner Murugesan was not competent to execute another sale deed in respect of the same property in favour of Krishnaveni on 11.03.1997. When Krishnaveni does not get any right from Murugesan in respect of the suit property, the subsequent purchaser Ramasamy and Mohammed Askar do not get any right in the suit property.

23. In one suit, the purchaser Mohammed Askar, who purchased the property in the year 2006 filed the suit for the relief of permanent injunction. The defendants who are the legal heirs of one Narayanasamy laid a suit for declaration of title and for mandatory injunction.

24. Their main contention is that the deceased Narayanasamy purchased the suit property from lawful owner on 20.01.1982 itself (Ex.B1). In view of the written statement filed by the defendants in O.S.No.2447 of 2007, the plaintiff's title (Mohammed Asker) is under cloud. When the title is disputed, he has to seek for the relief of declaration of title.



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25. In the given circumstances, this Court does not find any good reason to upset the finding of the First Appellate Court and this Court does not find any perversity or infirmity in the findings of the First Appellate Court.

26. i). Based on the aforesaid discussions and observations, these Second Appeals stand dismissed.

ii). Sequel to this, the judgment and decree dated 02.09.2022 made by the learned II-Additional Subordinate Judge in A.S.No.15 of 2020 stands confirmed.

iii). O.S.No.2447 of 2007 filed by Mohammed Askar is dismissed.

iv). O.S.No.2265 of 2007 filed by the legal heirs of the deceased Narayanasamy is decreed as prayed for.

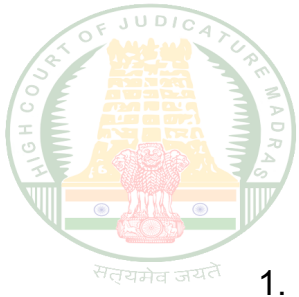
v). However, the appellant herein is at liberty to seek compensation against the Owner of the suit property Murugesan before the appropriate Legal Forum. There is no order as to costs.

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R.KALAIMATHI, J.



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