IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.01.2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

S.A.No. 1658 of 2011

and

MP.No.1 of 2011

A.Kathija Bi
W/o Sheik Abdul
Rawoof kattmannarkoil
Cuddalore, Rep By her
Power of Attorney
Mohammed Moideen
S/o Ibrahim Maraicar
178a, Dawood St
B Mutlur, Chidambaram .... Appellant

Vs.

V.Nagarajan
S/o Vaithinatha Padayachi
K.Pudur H.o.,
Karaikadu, Cuddalore ... Respondent

PRAYER: Second Appeal is filed under Section 100 of C.P.C , against the judgement and decree dated 17.08.2011 made in A.S.No.39/2009 on the file of the I Additional Sub Court, Cuddalore reversing the judgement and decree dated 25.08.2009 made in O.S.No.667/2006 on the file of the Principal District Munsif Court, Cuddalore.

For Appellant : Ms.A.Nilafer for M/S.R.Meena

For Respondent : No appearance.

JUDGEMENT

The plaintiff is the appellant. The suit has been filed for seeking the relief of declaration of the sale deed dated 24.03.2003 as null and void and also to declare that the plaintiff is the owner of the suit property and for recovery of possession. The Trial Court has decreed the suit as prayed. The First Appeal preferred by the defendant has been allowed by reversing the judgement and decree of the Trial Court and hence, the plaintiff has preferred this Second Appeal.

2. **The short facts pleaded in the plaint are as follows:**

The suit property and other properties belonged to one Ibrahim. After the death of Ibrahim, there was a partition among his legal heirs, through a partition deed dated 02.09.1978. The plaintiff is the daughter of the second wife of Ibrahim. She was allotted with the suit property in the said partition and it is set out under Schedule 'D' in the partition deed. At the time of partition, the plaintiff was a minor and was aged about two years. So her elder step brother Mohamed Moideen has been in possession and management of the property allotted to the plaintiff. Later, the plaintiff's mother, elder step brother and sister executed a mortgage deed in respect of the properties including the suit property in favour of one Vimaladevi on 09.05.1990 and delivered possession of the property in lieu of interest. Since the mortgagee caused damages to the properties mortgaged, the mortgagors filed a suit for redemption and recovery of possession in O.S.No.189 of 1997 on the file of the Sub Court and a preliminary decree was passed and thereafter, a final decree was also passed.

2.1. The plaintiff was married to Shek Abdul Raweef in the year 1995 and she went to Bombay along with her husband. As her husband went to Saudi Arabia, she returned to Kattumannarkoil. The plaintiff's elder brother also could not be in the village as he went to Saudi Arabia. To the shock of the plaintiff, the defendant was in possession and enjoyment of the suit property claiming under a sale deed alleged to have been executed by one Kathija Bi, wife of Abdul. The plaintiff's elder brother also returned from Saudi Arabia during September 2005. The plaintiff came to know that the sale deed was fraudulently executed and she never executed a sale deed in favour of the defendant. The defendant had managed to get the sale deed registered through impersonation. Some persons obliged to the defendant attested the sale deed and identified the witnesses before the Sub-Registrar. After coming to know about the fraud, the plaintiff had issued a notice to the defendant on 29.11.2006 calling upon the defendant to admit that he has no claim or interest to the suit property. The defendant was served with a legal notice on 30.11.2006. But he did not choose to send any reply. Hence, the plaintiff has filed a suit.

3. <u>The averments made in the written statement filed by the defendant are as follows:</u>

The allegation that the suit property belonged to the plaintiff is false. The further allegation that the plaintiff's elder stepbrother was taking care of the suit property is also false. The defendant's vendor alone was in possession and enjoyment of the suit property for several years prior to the sale in favour of the defendant. The defendant submits that the plaintiff is fully aware that the defendant is in possession and enjoyment of the suit property. The plaintiff with full knowledge kept quiet without objecting the enjoyment of the defendant and her predecessor in title. Therefore, the plaintiff is estopped from disputing the title of the defendant. The plaintiff has not impleaded the predecessor in title of the suit property from whom the defendant has purchased the suit property. Hence, the suit is not maintainable.

4. Based on the above pleadings, the Trial Court has framed the following issues:

> *"1.Whether the sale deed dated 24.03.2003 is null and void?*
>
> *2.Whether the plaintiff is the absolute owner of the suit property?*
>
> *3.Whether the plaintiff is entitled to the relief of*

declaration and for recovery of possession?

4.Whether the plaintiff was ever in possession of the suit property since 1978?

5.Whether the suit is bad for non-joinder of necessary parties?

6.Whether the suit is in time?

7.Whether the suit is valued properly?

8.To what relief is the plaintiff is entitled to?"

5. During the course of the trial, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A7 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B4 were marked.

6. At the conclusion of the trial and on considering the evidence on record, the Trial Court has decreed the suit. The First Appeal preferred by the defendant was allowed by reversing the judgement and decree of the Trial Court. Aggrieved over the same, this Second Appeal has been filed.

7.This Court has admitted the second appeal on the following substantial questions of law:

"(1)Whether in law the lower appellate Court was right in overlooking that as the appellant had committed fraud, it was for him to prove his defence by examining the attestors and the identifying witness and that he failed to do so?

(2) Whether in law the lower appellate Court was right in misreading the evidence to come to a perverse conclusion, thus necessitating interference under Section 100 CPC?"

8. The learned counsel for the appellant submitted that the defendant has raised the defence stating that he has obtained the sale deed form other Kathija Bi, but he did not examine the said person as a witness. On the back side of the disputed sale deed Ex.A3, it appears that the Sub-Registrar has verified the identity of the executant through a train season ticket from 26.03.2003 to 25.04.2003. But the sale deed was executed on 24.03.2003 and registered on 27.03.2003. The Sub-Registrar is not supposed to rely on the railway ticket when the same has not been prescribed as a document to verify the identity of a person by the

Government guidelines. As the sale deed was not executed by the true owner, the First Appellate Court ought to have confirmed the judgment of the Trial Court. The First Appellate Court has made an observation that the plaintiff did not choose to examine the handwriting expert in order to disprove the signature in Ex.A3. The First Appellate Court had observed that the suit is barred by limitation. But according to Section 17 of the Limitation Act, the limitation would start only from the date on which the plaintiff gets knowledge about the commission of the fraud. Article 56 of the Schedule to the Limitation Act is applicable to the facts of the case as the plaintiff came to know about the sale deed only when she came to her native place in the year 2006. As per Article 65 of the Schedule of the Limitation Act, for the relief of recovery of possession, 12 years limitation is available and the suit itself is filed within the period of limitation.

9.Despite ample opportunities being given to the respondents by adjourning the matter repeatedly, no representation made for the respondents.

DISCUSSION:

10. Even according to the defendant, he has not purchased the suit property from the plaintiff KathijaBi but from someone with the same name. According to the written statement submitted by the defendant, his vendor is another KathijaBi, who alone was the owner of the suit property, and he has rightly got the sale deed from its owner. When the plaintiff could establish her title through a partition deed dated 02.09.1978, which has been marked as Ex.A1, the defendant did not disprove the same by producing the title deed of his vendor to show that his vendor, another alleged KathijaBi alone, was the owner of the suit property.

11. The categorical contention of the plaintiff is that the defendant has obtained the sale deed fraudulently from a person who did not hold any title to the suit property. Adding further fuel to the fire, it appears that the Sub-Registrar, who had registered the sale deed, had relied on the vendor's railway ticket to prove her identity instead of insisting on a proper document to confirm her identity. The sale deed itself was executed on 24.03.2003 and presented for registration on 27.03.2003. But the season ticket for the period from 26.03.2003 to 25.04.2003 was relied on by the Sub-Registrar, which itself is irrelevant to the date on which the sale deed was registered. Apart from the fact that the railway ticket cannot be an identity proof to confirm the identity of a person who is executing the document, the manner in which the Sub-Registrar had acted by being unmindful of the dates of the execution and the registration of the sale deed would also show that there is *some hand-in-glove action* executed at the end of the defendant.

12. The learned First Appellate Judge has observed that the plaintiff did not examine the handwriting expert to disprove the signature in the Ex.A3 sale deed. The defendant himself has admitted that he did not obtain the sale deed from the plaintiff; there is no obligation caused upon the plaintiff to disprove that the signature in Ex.A3 was not affixed by her. When the 3rd defendant has admitted that the signature found in Ex.A3 was affixed by some other KathijaBi, it is unnecessary for the First Appellate Court to expect the plaintiff to disprove the signature in Ex.A3.**Thus, the first substantial question of law is answered in favour of the appellant.**

13. The further observation of the First Appellate Court is that the plaintiff has not filed a suit to declare that the sale deed dated 24.03.2003 executed by some other KathijaBi in favour of the defendant as null and void. In fact, the plaintiff could know the existence of the sale deed dated 24.03.2003 only when she came to her native place and she had chosen to file the suit immediately after she came to know about the sale deed.

14. The plaintiff, not being a party to the sale deed in Ex.A3, is not bound to seek a relief for declaring the sale deed as null and void and she could have simply ignored the same. By way of abundant caution, the plaintiff had chosen to seek relief to declare the sale deed Ex.A3 as null and void within 3 years from the date on which she came to know about the existence of the sale deed. So the relief in respect of the declaration of the sale deed as null and void is well within time, and the First Appellate Court was not right in concluding that the suit is barred by limitation. For the reasons best known to the First Appellate Court, no seriousness has been attached to the non-examination of the vendor of some other KathijaBi of Ex.A3 by the defendant in order to prove how the said vendor KathijaBi has acquired title in respect of the suit property in order to enable her to pass the same in favour of the defendant.

15. To be noted, the plaintiff has not only sought a relief for declaring the sale deed Ex.A3 as null and void, but she has also sought the relief of recovery of possession. So far as the relief of recovery of possession is concerned, the period of limitation is 12 years as per Section 65 of the Limitation Act. Whatever angle the matter is looked at, it should be only made clear that the plaintiff has filed the suit within the period of limitation.

16. In this regard it is appropriate to rely on the judgment of the Hon'ble Supreme Court in the case of ***N.Thajudeen Vs. Tamil Nadu Khadi and Village Industries Board*** (reported in ***2024 SCC OnLine SC 3037***) wherein it is held that the suit is not simply for declaration but, along with the relief of recovery of possession, the period of limitation that would be applicable is as prescribed under Section 65 of the Limitation Act. The relevant part of the above judgment is extracted as under:

> *"22.In the case at hand, the suit is not simply for the declaration of title rather it is for a further relief for recovery of possession. It is to be noted that when in a suit for declaration of title, a further relief is claimed in addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for recovery of possession based upon title and as such its limitation would be 12 years in terms of Article 65 of the Schedule to the Limitation Act."*

17. In the instant case, the plaintiff has not only sought the relief of declaration but also prayed the relief of recovery of possession. Hence the First Appellate Court ought to have considered the limitation for the suit under Article 65 of the schedule to the Limitation Act. But the same was not properly done by the First Appellate Court. When the Trial Court rightly held that the suit had been filed within 3 years from the date of acquiring knowledge about the existence of the sale deed, the First Appellate Court had misled itself and recorded a erroneous finding extraneous to the scope of the suit and thereby allowed the first appeal by setting aside the well-reasoned judgement of the trial Court. As the judgement of the first appellate court is palpably wrong and short of merits, it is bound to be set aside. Accordingly, **the second substantial question of law is answered in favour of the appellant.**

18. In the result, the second appeal is **allowed.** The judgement and decree dated 17.08.2011 made in A.S.No.39/2009 on the file of the I Additional Sub Court, Cuddalore is set aside and the judgment and decree passed by the trial Court in O.S.No.667/2006, dated 25.08.2009 is restored. Time one month. No costs. Consequently connected miscellaneous petition is closed.

24.01.2025

jrs
Index: Yes/No
Speaking: Non-Speaking Order
Internet: Yes/No

Neutral:Yes/No

To

1. The Additional Sub Court, Cuddalore.

2. The Principal District Munsif Court, Cuddalore.

R.N.MANJULA, J

jrs

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and
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