



S.A.No.805 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.08.2025
Pronounced on	10.10.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.805 of 2019

R. Ramesh

...Appellant

Vs.

1. B. Lakshmipathi
2. Neelakandan
3. Vinoth Kumar
4. Sivamma
5. M.V. Rajasekar
6. M.V. Aparna
7. M.V. Suresh

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 05.09.2018 passed in A.S. No.177 of 2017, on the file of the XVI Additional Judge, City Civil Court, Chennai, reversing the Judgment and decree dated 03.11.2016 passed in O.S.No.1063 of 2012, on the file of the XIII Assistant Judge, City Civil Court, Chennai.

Page 1 of 20



S.A.No.805 of 2019

WEB COPY

For Appellant : Mr. K. Bijai Sundar
for Mr.A. Balasingh Ramanujam
For Respondents : Mr. P. Sidharthan for R1
R2 to R7 - Notice dispensed with

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 05.09.2018 passed in A.S. No.177 of 2017, on the file of the XVI Additional Judge, City Civil Court, Chennai, reversing the Judgment and decree dated 03.11.2016 passed in O.S.No.1063 of 2012, on the file of the XIII Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court.

3. The 4th defendant in O.S. No.1063 of 2012 is the appellant herein. The 1st respondent, as plaintiff, filed the above suit for the following reliefs:



S.A.No.805 of 2019

WEB COPY (a) Declaring the sale deed dated 03.05.1982 registered as document No.4723/82 on the file of the Sub Registrar, Sembium, executed by the plaintiff in favour of the 1st defendant as sham and nominal and consequently declare the plaintiff to be the owner of the property more fully described in schedule-B of the plaint.

(b) Declaring the sale deed dated 15.11.2011 registered as document No.4723 of 2011 on the file of the Sub Registrar, Sembium, executed by the 1st defendant in favour of the 2nd defendant as illegal, void and *ab initio* and not binding on the plaintiff and consequently set aside the same and for costs.

4. The case of the plaintiff is that the he has purchased a vacant land measuring 3,302 sq. ft. as described in the suit 'A' schedule property by virtue of a sale deed dated 30.03.1981 and ever since the purchase, he is in absolute possession and enjoyment of the same. In the said property, the plaintiff has constructed a house measuring 2839 sq. ft and residing there with his family and kept the remaining portion, which is



S.A.No.805 of 2019

WEB COPY

described as 'B' schedule property in the plaint, for the purpose of parking the vehicles and for other household purposes. In the year 1982, the agnates of the plaintiff started claiming share over the properties and insisted the plaintiff to give the 'B' schedule property since it remained vacant. Therefore, in order to safeguard the 'B' schedule property, at the instance of the 1st defendant, the plaintiff executed a sale deed dated 03.05.1982 in favour of the 1st defendant to over come the above situation. Though the recitals of the sale deed would state that a sum of Rs.1,690/- was paid towards sale consideration by the 1st defendant, no sale consideration was passed since it was only a sham and nominal document. Moreover, the possession was not handed over to the 1st defendant and the same was retained by the plaintiff. According to the plaintiff, he alone is in possession and enjoyment of the 'B' schedule property as his own to the knowledge of the 1st defendant by paying necessary property tax and water charges and patta for the "B" schedule property also still stands in his name. The original title deeds pertaining to 'A' schedule property is in the custody of the plaintiff. He had also availed loan to the tune of Rs.4,000/- from Perambur Co-opertive



S.A.No.805 of 2019

WEB COPY

Building Society by depositing the original deed on 16.10.1982 and redeemed the same on 09.12.1987. In the year 1988, the plaintiff has also availed a sum of Rs.1,00,000/- as housing loan from LIC Housing Finance for construction of his house and also created another mortgage on 26.07.2005 in favour of Bank of India, Anna Nagar Branch, Chennai. The above three mortgages were done by the plaintiff to the knowledge of the 1st defendant. In the year 1994, the plaintiff let out a shop situated in the 'A' schedule property for rent to one M. Nandhakumar for the purpose of carrying his business under the name and style of "Channel 9 satellite System". After the demise of said Nandhakumar, his son Vinodh Kumar is carrying on his business by using the 'B' schedule property for parking his car. The said tenancy was renewed by virtue of a rental agreement dated 16.11.2011. The said tenant is also paying a sum of Rs.1,000/- to the plaintiff as rent towards usage of 'B' schedule property. The 1st defendant never objected to these acts as he had never acted upon the said sham and nominal sale deed dated 03.05.1982 and claimed any right or interest under the said deed. While so, the plaintiff came to know that the 1st defendant, through his power agent, has



S.A.No.805 of 2019

WEB COPY executed a sale deed dated 15.11.2011 in favour of the 2nd defendant with a malafide intention to create an encumbrance over 'B' schedule property to extract money from the plaintiff. Hence, the plaintiff was constrained to file the above suit.

5. The claim of the plaintiff was resisted by the defendants 3 and 4 by stating that the plaintiff has approached the court of law after a lapse of 31 years for a declaratory relief to declare the sale deed executed on 03.05.1982 in favour of the 1st defendant without any valid reason. The plaintiff ought to have filed the suit within a period of 3 years from the date of its execution. No notice was issued by the plaintiff in favour of the defendants at any point of time. The suit property is a vacant land and it was in the exclusive possession and enjoyment of their vendors at the time when the above defendants purchased the same. The suit for mere declaration without recovery of possession is not maintainable. It is further submitted that the 3rd defendant has purchased an extent of 281.5 sq. ft. from the 2nd defendant on 12.03.2012 and he is in continuous possession and enjoyment of the property. The revenue records are



S.A.No.805 of 2019

WEB COPY

transferred in the name of the 3rd defendant. The 4th defendant purchased an extent of 281.5 sq. ft from the 2nd defendant for valid consideration and ever since the said purchase, the 4th defendant is in possession and enjoyment of the same. The revenue records are also transferred in the name of the 4th defendant. The 3rd defendant sold the property in favour of 4th defendant through a registered sale deed dated 25.03.2013. Therefore, the 4th defendant is in continuous possession and enjoyment of 'B' schedule property. Moreover, the plaintiff failed to seek the prayer for cancellation of the sale deed executed by the 2nd defendant in favour of the defendants 3 and 4. Therefore, there is no cause of action against the defendants 3 and 4. Hence, prayed for dismissal of the suit.

6. The trial court, upon considering the materials on record, dismissed the suit filed by the plaintiff. Aggrieved by this, the plaintiff preferred an appeal in A.S. No.177/2017 before the XVI Additional Judge, City Civil Court, Chennai. The first appellate court, vide its judgment and decree dated 05.09.2018, set aside the judgment and decree passed by the trial court and decreed the suit in favour of the



S.A.No.805 of 2019

WEB COPY

plaintiff. Assailing the said judgment and decree passed by the first appellate court, the present second appeal is preferred by the 4th defendant in the above suit.

7. The Second Appeal has been admitted on the following substantial questions of law.

"1) Whether the finding of the appellate court in reversing the judgment of trial court without considering the well established principle of law with regard to title followed by possession under Exhibit A1 is in accordance with the law?

2) Whether the appellate court has got any suo motto power to modify or mould the prayer in the appeal stage in the absence of any petition by the respondent for amendment and direct the first respondent to pay the additional court fee for the prayer which the first respondent never sought for as a prayer in the suit filed by him before the lower court?



S.A.No.805 of 2019

WEB COPY

3) *Whether the appellate court's finding is correct in reversing the judgment of the trial court when the respondent filed a suit under Section 25(d) for declaring his document as null and void as he himself as a party to the document beyond the period of three years for set aside the same?*

4) *Whether the finding of the trial court with regard to the court fee issue can be settled in any stage is applicable to the present fact of the appeal or not?*

5) *Whether the appellate court is right in reversing the judgment of the trial court where no evidence is adduced that the document executed by him is sham and nominal by any evidence when Exhibit A-1 is clearly speak out the consideration received by the first respondent warranting the appellate court to reverse the judgment in the absence of examining any witness in the document to prove the same."*



S.A.No.805 of 2019

WEB COPY 8. The learned counsel for the appellant/4th defendant submits that

Ex.A1 sale deed executed by the plaintiff in favour of the 1st defendant is for valid consideration and the plaintiff, after execution of Ex.A1 sale deed, handed over possession to the 1st defendant. The plaintiff ought to have filed the suit within a period of 3 years from the date of execution of Ex.A1 sale deed. But the plaintiff has filed the suit after a lapse of 31 years and therefore, the suit is liable to be dismissed on the limitation ground. The plaintiff ought to have filed the suit for setting aside the sale deed and not for declaring the above sale deed as null and void. It is further submitted that the appellant/4th defendant alone is in possession of the suit property and that the revenue records stands in his name. The first appellate court failed to consider the above factual aspects and the findings of the first appellate court with regard to payment of court fee is incorrect. The documents relied on by the first appellate court marked on the side of the plaintiff as Ex.A10 and Ex.A13 are fabricated documents for the sake of the suit and therefore, the same ought to have been rejected by the first appellate court. Moreover, the first appellate court erroneously held that the appellant/4th defendant is not a bonafide



S.A.No.805 of 2019

WEB COPY

purchaser, whereas, the appellant is a bonafide purchaser for valid consideration without notice. The appellate court erred in reversing the well considered judgment of the trial court and therefore, prayed for allowing the present second appeal.

9. On the other hand, the 1st respondent/plaintiff would submit that he has clearly proved that the 1st defendant had not received any sale consideration under Ex.A1 sale deed and it was only a sham and nominal sale deed. The 1st defendant failed to prove that Ex.A1 sale deed was executed for valid consideration. Neither the 1st defendant nor his legal heirs established that the the 1st defendant had valid title over 'B' schedule property by virtue of Ex.A1 sale deed. In the absence of the same, the trial court ought to have decreed the suit in favour of the plaintiff by holding that Ex.A1 sale deed was a sham and nominal document and it was never intended to be acted upon. The suit was filed after a lapse of 31 years after the execution of the sale deed in favour of the 1st defendant, since no situation arose for the plaintiff to file the suit until the 1st defendant executed a sale deed fraudulently in favour of the



S.A.No.805 of 2019

WEB COPY

2nd defendant. He would further submit that when the possession was always with the plaintiff in respect of the 'B' schedule property and Ex.A2 to Ex.A6, Ex.A10 and Ex.A13 were not disproved by the defendants, the above documents establish the fact that the plaintiff alone is in possession and enjoyment of the 'B' schedule property. In fact, D.W.1 himself admitted that he had not filed any document to prove his possession over the suit property. D.W.1 also admitted that under Ex.A5 mortgage deed, the plaintiff had mortgaged the suit property and the same was not disputed by the 1st defendant. Moreover, the 1st defendant himself admitted at the time of enquiry by the bank officials that Ex.A1 sale deed is only a sham and nominal document. If really Ex.A1 sale deed was intended to be acted upon, the 1st defendant would have taken steps to get the revenue records transferred in his name after 1982. But, in fact, he waited for three decades for transferring the revenue records, which would clearly establish the fact that Ex.A1 is only a sham and nominal document. Moreover, D.W.1 had categorically admitted that the survey land extracts marked as Ex.B7 and Ex.B8 were issued during the pendency of the case and it was obtained under the patta pass book act



S.A.No.805 of 2019

WEB COPY

and no notice was issued to the plaintiff by the Tahsildar. He would further submit that whenever the proceeding is held by a Tahsildar and when it is found that there is lis pending in respect of the suit property, it is the duty of the Tahsildar to call the rival parties and enquire before issuing the patta. The trial court failed to consider that the plaintiff alone is in possession and enjoyment of the suit property. Whereas, the first appellate court considered the above facts and circumstances of the case in a proper perspective manner and decreed the suit filed by the plaintiff and set aside the judgment and decree passed by the trial court. His further contention is that the present suit is filed to declare the sale deed dated 03.05.1982 as null and void. Accordingly, the plaintiff has paid the court fee under Sections 25(d) and 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and moreover, the plaintiff has not sought for the relief of possession of the suit property as is obvious from the perusal of the copy of the plaint. Section 7(iv)(c) of the Court Fee Act, 1870, stipulates that as regards suits in which a declaratory relief is sought along with a consequential relief, the plaintiff would state the amount the relief sought is valued at, with the amount of fee payable to



S.A.No.805 of 2019

WEB COPY

be accordingly applicable. Since the plaintiff is already in possession of the suit property, the court fee paid in the present suit is correct. Hence, he prayed for dismissal of the present second appeal.

10. Heard on both sides. Records perused.

11. The appellant herein is the unsuccessful 4th defendant before the lower appellate court. Admittedly the above suit is filed by the plaintiff for declaring the sale deed dated 03.05.1982 executed by the plaintiff in favour of the 1st defendant as sham and nominal document and to declare the plaintiff to be the owner of the property described as 'B' schedule property in the plaint and to declare the sale deed dated 15.11.2011 executed by the 1st defendant in favour of the 2nd defendant as void *ab initio* and not binding on the plaintiff and consequently set aside the same. It is the specific case of the plaintiff that the sale deed marked as Ex.A1 was a sham and nominal document, which was executed by him in favour of the 1st defendant not with an intention to sell the property to the 1st defendant, but, to tide over the difficult situation when his agnates



S.A.No.805 of 2019

WEB COPY started claiming share over the said property. However, even after execution of the above sale deed, the plaintiff alone is in possession and enjoyment of the 'B' schedule property by paying necessary taxes to the Government. While so, the 1st defendant with a malafide intention executed a sale deed in favour of one Neelakandan (2nd defendant) on 15.11.2011. The plaintiff came to know about the alleged sale transaction only when he applied for the Encumbrance Certificate and also about the subsequent sale transaction of the defendants 3 and 4.

12. On the other hand, the contentions of the defendants is that the vendors of the defendants in their own right and title executed a sale deed in their favour and there is no malafide involved in the above transactions. According to the defendants 3 and 4, they are bonafide purchasers without notices. The plaintiff has marked Ex.A2 to A6 and A10, A13 and A14 to prove his possession in respect of 'B' schedule property even after execution of Ex.A1 sale deed in favour of the 1st defendant. Though it was contended on the side of the defendants that the



S.A.No.805 of 2019

WEB.COM

above documents are fabricated, the same is not established. It is also not established on the side of the appellants / defendants that Ex.A1 sale deed was executed for valid consideration. In fact, the 1st defendant waited for three decades for transferring the revenue records. D.W.1 himself admitted that he has not filed any document to prove his possession over the suit property. He also admitted that, under Ex.A5 mortgage deed, the plaintiff had mortgaged the suit property and the same was not disputed by the 1st defendant. Therefore, if really Ex.A1 sale deed was intended to be acted upon, the 1st defendant would have taken steps to get the revenue records transferred in his name immediately after execution of the sale deed in the year 1982. Moreover, it is also not in dispute that Ex.B7 and Ex.B8 were issued during the pendency of the case without putting on notice to the plaintiff by the revenue authorities. On 16.11.2011, the plaintiff had entered into rental agreement with the 3rd defendant which was extended for the period from 16.11.2011 to 15.09.2012 in respect of the shop portion along with the disputed portion. This shows that the plaintiff was in possession of the suit property even in 2011. While so, the 3rd defendant tenant could not



S.A.No.805 of 2019

WEB COPY

have purchased the suit property from the 2nd defendant during the rental period without cancelling the rental agreement entered between himself and the plaintiff. The 3rd defendant failed to appear and adduce evidence in this regard. Moreover, the 3rd defendant without getting into the witness box has filed an affidavit in the Civil Miscellaneous Application which was marked as Ex.A13 in which he had disowned the registered sale deed (Ex.B3) in his favour executed by the 2nd defendant. All the above facts were well considered by the first appellate court and the first appellate court rightly concluded that Ex.A1 sale deed is nothing but a sham and nominal document and the plaintiff never intended to sell his property to the 1st defendant and the same was never acted upon.

13. With regard to limitation, the plaintiff has clearly stated that there was no situation arose for him to file the suit until the 1st defendant executed a sale deed fraudulently in favour of the 2nd defendant. Since the question of limitation is a mixed question of fact and law, the above contention made by the plaintiff is sustainable. With regard to court fee, the plaintiff has paid the court fee under Sections 25(d) and 27(c) of the

Page 17 of 20



S.A.No.805 of 2019

WEB COPY

Tamil Nadu Court Fees and Suits Valuation Act, 1955. The plaintiff has not sought for the relief of possession of the suit property. The plaintiff has established his possession in the suit property. Section 7(iv)(c) of Court Fee Act, 1870, pertains to suit seeking declaratory decree or order for consequential relief and specifies that the court fee is calculated based on the value of the subject matter of the suit. In such case, the plaintiff can place and value on the relief sought. Hence, the court fee paid by the plaintiff is found to be correct. No infirmity or perversity is found in the findings rendered by the first appellate court. All the substantial questions of law are answered against the appellant.

14. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The judgment and decree dated 05.09.2018 passed in A.S. No.177 of 2017, on the file of the XVI Additional Judge, City Civil Court, Chennai, is upheld.

10.10.2025



S.A.No.805 of 2019

WEB COPY

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga

To

1. The XVI Additional Judge, City Civil Court, Chennai.
2. XIII Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.805 of 2019

K.GOVINDARAJAN THILAKAVADI,J
bga

Pre delivery Judgment in
S.A.No.805 of 2019

10.10.2025