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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:11.07.2025

Pronounced on:23.07.2025

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.306 of 2024

and

C.M.P.Nos.9843 and 9845 of 2024

1.S.Kavitha, W/o Mr.Late Mr.P.V.K.Saravanan,

2.S.Bhuvaneswari, D/o late P.V.K.Saravanan
(Both the plaintiffs are residing at Old No.49,

New No.10, 3rd Floor, 1st Main Road,

East Shenoy Nagar, Chennai 600 030)

..Plaintiffs/Appellants

/versus/

1.R.Sridevi, D/o late M.R.Ramarao

No.8, Valliammal Gardens,

Rangarajapuram 1st Street,

Kodambakkam, Chennai 600 024.

2.The Sub Registrar,

Koambakkam, Chennai 600 024.

(2nd defendant set exparte in the suit)

.. Respondents/Defendants

Appeal Suit has been filed under Section 96 of the Civil Procedure Code to set aside the judgment and decretal order made in OS.No.793 of 2020 dated 18.04.2024 on the file of the XVIII Additional Judge, City Civil Court, Chennai.



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For Appellants

:Mr.T.Murugamanickam, Senior Counsel
for Mr.S.Chandrasekharan

For Respondents

:Mr.N.Malaisaravanan for R1
Mr.R.Siddharth, AGP for R2

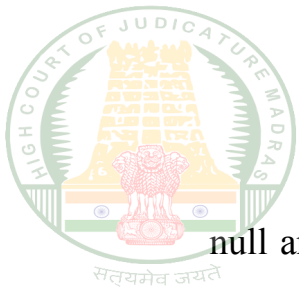
JUDGMENT

Suit O.S.No.793 of 2020 filed to declare the sale deed dated 23.06.2011 as Document No:2084 of 2011 registered at SRO, Kodambakkam, as null and void and to declare the plaintiffs as the absolute owners of the suit schedule property with consequential relief of permanent injunction, the suit was dismissed by the XVIII Additional Judge, City Civil Court, Chennai on 18.04.2024 with exemplary cost of Rs.25,000/-. Being aggrieved, the plaintiffs are before this Court as Appellants.

2. For convenience sake, the parties are described as per their status and ranking shown in the plaint.

3. Case of the plaintiffs/Appellants:

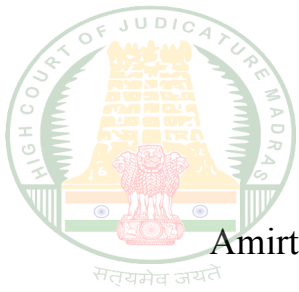
The suit property is the flat originally allotted to P.V.K.Saravanan in the partition among his brothers. The sale deed sought to be declared as



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null and void is the document executed by P.V.K.Saravanan in favour of R.Sridevi - the first defendant.

4. The plaintiffs are the wife and daughter of late P.V.K.Saravanan. The case of the plaintiffs is that, the suit property originally held by one Vellaiah Thevar, which he purchased under a sale deed dated 07.08.1958. After the death of Vellaiah Thevar on 28.08.1986, his only son P.V.K.Swamy @ P.V.Karuppasamy inherited the property and developed it as flats. On 31.08.1987, three sons of P.V.Karuppasamy Thevar got the property divided among them through a registered partition deed. In the said partition, the suit property was allotted to P.V.K.Saravanan. On 18.06.2011, Mrs.Amirthavalli, who is the sister of Saravanan, along with her sons, with an intention to grab the suit property, schemed and brought Saravanan from Kadaladi, Ramanathapuram District to Chennai under the guise of his father admitted in an hospital at Chennai for his ailment. Taking advantage of the mental and physical condition of P.V.K.Saravanan, with the help and connivance of their Auditor, Sridevi, who is the first defendant, got his signature in the sale deed fraudulently and got it registered in the name of Sridevi on 23.06.2011 in connivance with SRO, Kadambakkam. In the said fraudulent document, the son of



Amirthavalli is one of the attesting witnesses.

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5. The said Amirthavalli had instituted a civil suit against her father and brothers in O.S.No.7967 of 2005 before the II Assistant City Civil Court, Chennai and same is pending. While so, Saravanan, deceitfully taken from Kadaladi to Chennai and was severely beaten by culprits. Saravanan was admitted at Public Health Centre, West Mambalam, where he was treated as inpatient from 20.06.2011 to 24.06.2011. The fraudulent sale deed appears have been registered on 23.06.2011 at SRO, Kodambakkam, showing Chennai address as his residence, when Saravanan was actually in the hospital as in-patient. In fact, he was permanent resident of Kadaladi along with the plaintiffs - his wife and daughter. Just to show he is residing in the suit property, bank accounts opened few day prior to the registration.

6. The suit property was let out by Saravnan to different tenants and the rent was collected by Saravanan till his death on 24.07.2019 and was utilized for his medical expenses. The property was managed through P.V.K.Rajamahendiran, who is the elder brother of Saravanan. When the plaintiffs came to Chennai, after the demise of Saravanan through

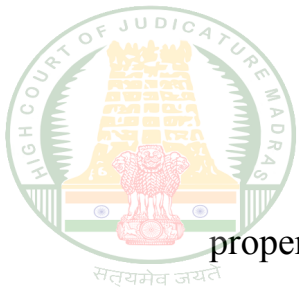


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Rajamahendiran, they came to know about the fraudulent sale deed dated 23.06.2011 and the suit O.S.No.1150 of 2018 filed by the tenant by name Shanmugavadivel for injunction against Sridevi, the first defendant. Hence, after causing notice under Section 80 C.P.C. to the second defendant, namely, the Sub-Registrar, Kodambakkam, the suit for declaration and injunction.

7. Case of the first defendant/ first respondent:

The suit averments are false and denied. The suit is devoid of merits and frivolous. The suit property was sold to this defendant by Saravanan on 23.06.2011 for due consideration. After the purchase, the property was renovated by this defendant and was keeping it vacant. One Velusamy, filed O.S.No.341 of 2012 for permanent injunction against this defendant and Kavitha, the first plaintiff, based on a fraudulent and bogus tenancy agreement. In that suit, the first plaintiff entered appearance through Counsel but, later remained absent and was set exparte. Later, the suit came to be dismissed on the ground that the rental receipts relied by the plaintiff, Velusami are doubtful. The said suit was engineered by Rajamahendiran, the elder brother of Saravanan, with an intention to grab the property. He broke open the suit property and trespassed into the



property along with his henchmen, Velusamy and Shanmugavadivel.

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When this defendant lodged a complaint to the police, Shanmugavadivel produced a fake rental agreement dated 14.06.2012 as if Saravanan as the landlord executed rental agreement in favour of Shanmugavadivel.

8. A valid sale deed executed by Saravanan, when he was hale and health, is sought to be nullified 9 years after its execution, despite knowledge of the sale, even in the year 2012, when O.S.No.341 of 2012 filed against this defendant and the first plaintiff by one Velusamy. The present suit is therefore suffers limitation.

9. Based on the pleadings, the Trial Court framed the following Issues.

1. Whether the sale deed 23.06.2011 was executed by the first plaintiff husband out of threat and coercion?

2. Whether the plaintiffs are entitled to declare the sale deed dated 23.06.2011 as null and void?

3. Whether the plaintiffs are entitled for declaration of the suit property as absolute owner?

4. Whether the plaintiffs are entitled for permanent injunction



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restraining 1st defendant from alienating or encumbering the suit property?

5.To what other relief?

10. The testimony of 8 witnesses and 16 documents were relied by the plaintiffs. On behalf of the first defendant, three witnesses and 10 documents relied.

11. The Trial Court held that the first defendant is a bona fide purchaser of the suit property and she is prevented from peaceful enjoyment of the property. Hence, dismissed the suit with cost of Rs.25,000/-.

12. The grounds of appeal are as under:-

The first defendant had not specifically denied the plaint averments, which is fundamental requirement for any written statement. The plaintiffs side documents like, medical records and the evidence of the Nurse in the Hospital as well as the evidence of the person, who attended Saravanan in the hospital, while he was admitted as inpatient from 20.06.2011 to 24.06.2011 overlooked by the Trial Court without



assigning any plausible reasons.

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13. The Trial Court failed to take note of the fact that the suit is filed for recovery of possession, based on the title. Hence, under Article 65 of the Limitation Act, the period of limitation is 12 years and not 3 years. The declaration is sought, since the sale deed was obtained by fraud. Neither the parent document nor the title deed filed by the first defendant. She had not pleaded and proved her possession. Ex.B-1 the affidavit for proof of residence alleged to have been sworn by P.V.K.Saravanan does not contain the date on which the Notary signed. It is a false affidavit fabricated in the name of P.V.K.Saravanan. The Trial Court failed to consider the law, which mandates Ex.A-9 has to prove through the attesting witnesses, as per Section 68 of the Indian Evidence Act, 1872. The defendant, who relies on Ex.A-9 had not examined the attesting witnesses to that document.

14. In the oral and written argument submitted on behalf of the appellants, the Trial Court judgment broadly attacked for its failure to consider the fact that the evidence adduced by the defendants are mostly without pleadings. There is no averment in the written statement that

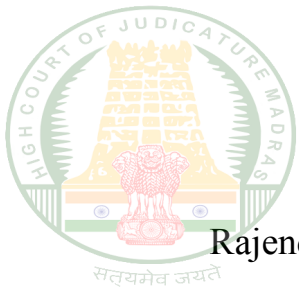


there was agreement for sale with P.V.K.Saravanan prior to the sale deed.

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There is no averment in the written statement about the mode of payment of the sale consideration. No averment in the written statement about the delivery of possession. The plaintiffs side documents Ex.A-1 to Ex.A-3 which are the Family Cards and Aadhar Card to prove that P.V.K.Saravanan was not a resident of Chennai and the medical records Ex.A-4 to Ex.A-6 and Ex.A-8 to prove that P.V.K.Saravanan was not in good mental health at the time of executing Ex.A-9 sale deeds, were not considered by the Trial Court.

15. Per contra, the learned Counsel for the 1st respondent/1st defendant submitted that, the appellant had knowledge of the sale by her husband. She had not chosen to implead her own family members against whom she alleges as persons arranged for the sale. No proper explanation given by the plaintiffs for delay of 9 years to challenge the sale deed. She in her cross examination claims that she came to know about the sale deed only after the death of her husband. Falsehood in her case is exposed by her own document Ex.A-7 a letter alleged to have been written by P.V.K.Saravanan intimating his father, about abduction and admission in the Public Health Center requesting to sent his brother



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Rajendiran and rescue him. PW-1 in the cross examination had stated that she got this letter Ex.A-7 from the brother of her husband. However, she had not examined him but chosen to examine the sister of her husband Mrs.Mangaiyarkarasi and her husband Mr.R.Prakash as PW-3 and PW-8. In the cross examination, PW-3 had admitted that she is not aware of the case or the content of her proof affidavit filed in lieu of the chief examination.

16. Contrary to the case of the plaintiffs as projected through Ex.A-7, their own witness PW-8, had stated in his proof affidavit that, he was attending P.V.K.Saravanan in the Public Health Centre, West Mambalam, on the request of his father-in-law (i.e. father of P.V.K.Saravanan). He had further deposed that he know P.V.K.Saravanan was inpatient from 20.06.2011 to 24.06.2011 till 3.30 p.m and was discharged on the advice of the Doctor. Contrary to his evidence, the discharge summary of Saravanan Ex.A-8 shows that Saravanan got discharged against medical advice. PW-6,Mrs.S.Vasumathi, staff at Public Heath Centre, West Mambalam, based on the hospital record, had deposed that P.V.K.Saravanan was discharged against medical advice.

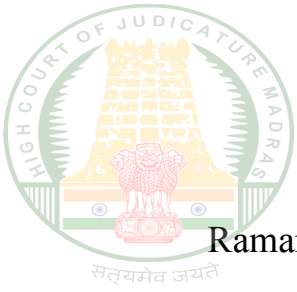


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17. Thus, it is very clear that the plaintiffs and her family members had created documents as if the said P.V.K.Saravanan was not keeping good mental health on the date of executing Ex.A-9 and the document was obtained by fraud. Due to multiple proceedings initiated through fabricated rental agreements, the respondent prevented from taking possession of the property. The Trial Court, after considering the concoction of facts and fabrication of documents, had rightly dismissed the suit with costs. Hence, the appeal should be dismissed with exemplary cost.

18. The point for determination is whether the oral evidence of PW-1 to PW-8 and the documentary evidence Ex.A-1 to Ex.A-16 prove that Ex.A-9 sale deed dated 23.06.2011 was obtained by fraud by the first respondent/first defendant in collusion with the second respondent/second defendant the SRO, Kodambakkam.

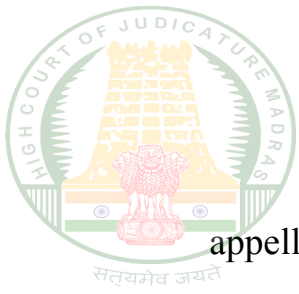
19. The Learned Senior Counsel for the appellants to make out a case relies on the address of P.V.K.Saravanan shown in Ex.A-9 sale deed which is the address of the property sold. His contention is that when Ex.A-1 to Ex.A-3 proves that he was a residence of Kadaladi,



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Ramanathapuram, the sale deed, which shows P.V.K.Saravanan, a resident of Chennai, is one of the suspicious circumstance, which surrounds the document. The medical records and the evidence of PW-3 and PW-4 who are the sisters of P.V.K.Saravanan and the PW-5-the Doctor, who treated him at Madurai, is relied by him as the other suspicious circumstances. However, the examination of these evidence, it is clear as crystal, that P.V.K.Saravanan was not suffering from any serious mental illness, which will incapacitate him from taking decision of his own on the date of executing Ex.A-9.

20. The medical record of Public Health Center, West Mambalam Ex.A-8, does not disclose, who admitted P.V.K.Saravanan. PW-8 says he admitted P.V.K.Saravanan and took care of him on all the four days, Saravanan was admitted as inpatient, on the instruction of father of P.V.K.Saravanan. Whereas, Ex.A-7 letter indicates that, P.V.K.Saravanan was forcibly taken away and beaten up by his sister's sons and was admitted in the hospital for his injuries. This letter is to his father and PW-1 had deposed that she got the letter from the brother of P.V.K.Saravanan and she does not know about the content of the document. This inconsistency and contradiction belies the case of the



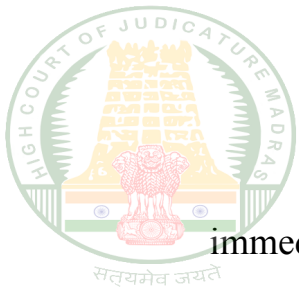
appellants.

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21. If P.V.K.Saravanan was mentally ill, the narration of the facts, in Ex.A7 letter, so cogently, which had laid foundation for the suit, is not possible. Further, if he was mentally ill, the attenders of the neighbouring patients would have not obliged to write such a letter and carried it to the father of P.V.K.Saravanan. Above all, neither his father, who received the letter nor the brother of P.V.K.Saravanan from whom PW-1 claims that she got it, were examined.

22. If really P.V.K.Saravanan had written such letter, after his discharge from the hospital against medical advice on 24.06.2011, he would have protested the execution of Ex.A9 immediately strongly till his demise on 24.07.2019, he had not whispered or protested about the sale deed, he executed.

23. It is an admitted fact that there were litigations between Amirthavalli and her family members. P.V.K.Saravanan was one of the party in that litigation. If what narrated in Ex.A-7 were true and if he had really written the letter Ex.A-7, there is no reason why he did not



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immediately give complaint against her sister, sister sons and others for abduction, torture and extortion of sale deed. No explanation given by the plaintiffs in this regard.

24. The Learned Senior Counsel for the appellant submitted that the written statement is not in compliance of Order VIII, Rule 5 of C.P.C. He referring the judgment of the Hon'ble Supreme Court rendered in ***Thangam and another –vs- Navamani Ammal reported in [(2024) 4 SCC 247]***, submitted that the written statement of the first defendant without specific denial of the plaint averment, is fatal to the defendants. The above judgment had summarized the effect of failure to make specific/para wise reply/denial in the written statement as contemplated under Order VIII Rule 5 of C.P.C as below:-

28. The issue regarding specific admission and denial of the pleadings was considered by this Court in *Badat & Co. v. East India Trading Co.* [*Badat & Co. v. East India Trading Co.*, 1963 SCC OnLine SC 9 : AIR 1964 SC 538] While referring to Order 8 Rules 3 to 5 CPC it was opined that the aforesaid Rules formed an integrated Code dealing with the manner in which the pleadings are to be dealt with. Relevant parts of para 11 thereof are extracted below: (*Badat case [Badat & Co. v. East India Trading Co., 1963 SCC OnLine SC 9, AIR pp. 544-45]*)

“11. Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall



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give in the plaint the facts constituting the cause of action and when it arose, and the facts showing that the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order 8 provides for the filing of a written statement, the particulars to be contained therein and the manner of doing so; ... These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.”

29. The matter was further considered by this Court in *Lohia Properties (P) Ltd. v. Atmaram Kumar* [*Lohia Properties (P) Ltd. v. Atmaram Kumar*, (1993) 4 SCC 6] after the 1976 Amendment Act in CPC whereby the existing Rule 5 of Order 8CPC was numbered as sub-rule (1) and three more sub-rules were added dealing with different situations where no written statement is filed. In paras 14 and 15 of the aforesaid judgment, the position of law as stated earlier was reiterated. The same are extracted below : (SCC pp. 8-9, paras 14-15)

“14. What is stated in the above is, what amounts to admitting a fact on a pleading while Rule 3 Order 8 requires that the defendant must



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deal specifically with each allegation of fact of which he does not admit the truth.

15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.”

25. In so far as omission to deny the plaint averments specifically in view of this Court, pleadings has to be read as a whole and denial of an assertion can be either direct or implicit by pleading a contrary facts. Order VII, Rule 5 of C.P.C has to be read and understood as a Rule in general with exceptions. Mere failure to deny explicitly any of the plaint averment will not be a proof of the averment. The party, who pleads the fact has to necessarily prove that fact with evidence. Failure to deny the plaint averment in the written statement will be fatal to the case of the defendant only, in case the Court is unable to frame Issue for decision or to decide the case of the plaintiffs on its own merits. In this case, the Court was able to frame relevant Issues and had decided. Likewise, the Court in appeal is able to frame the point for determination from the

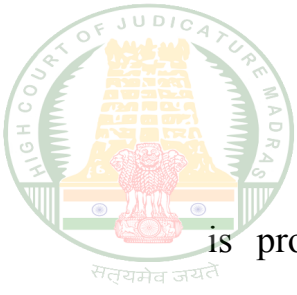


evidence adduced on either side and the judgment under challenge.

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Therefore, on this score also this Court finds that the appellants have no ground to canvass.

26. Regarding the plea about the failure to examine the attesting witnesses to Ex.A-9, when its execution is denied, certainly, Section 68 and Section 69 of the Indian Evidence Act, 1872, requires that atleast one of the attesting witnesses to be examined or in case of non-availability of the attesting witnesses person conversant with the signature of the attesting witness to be examined. However, in this case, none of the two attestors was examined Nonetheless, unfortunate to the plaintiffs and fortunate to the defendants, the non-compliance of Sections 68 and 69 of the Indian Evidence Act, 1872, is substantially cured by examining PW-7, the Sub Registrar of the concern Registration Office. Section 68 of the Indian Evidence Act, 1872 and its proviso, has been interpreted by the Courts that in case of settlements and other documents, which requires attestation as well as registration as a mandatory conditions, unlike Will, the non-examination of the attesting witnesses for the other kind of documents, which are duly registered as compliance of statute, is not lethal to the case of the propounder of the document, if its due execution



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is proved otherwise. Registration of a document being a statutory function, the same is presumed to be done in accordance with law.

Therefore, on this reason also, the plaintiffs/ appellants case cannot be countenanced.

27. For the above said reasons, ***the Appeal Suit is dismissed.***

Consequently, connected Miscellaneous Petitions are closed. No order as to costs.

23.07.2025

Index:yes
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To:

- 1.The XVIII Additional City Civil Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Chennai.

DR.G.JAYACHANDRAN,J.

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