



S.A.No.936 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.936 of 2022

1.B.Sahul Hammed
2.B.Imran Ahamed

... Appellants

Vs.

1.Rahimunissa Begum
2.A.Noor Mohammed
3.S.Srinivasa Rao
4.S.Mohammed Ramal
5.S.Jainulabdeen
6.M.Imam Shariff
7.Tamim Ansari

... Respondents

(Seventh respondent is impleaded vide court order dated 17.04.2024 made in C.M.P.No.5599/2024 in S.A.No.936/2022)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 11.01.2022 passed in A.S. No.257 of 2019, on the file of the XVI Additional City Civil Court, Chennai, upholding the decree and judgment dated 12.04.2018 passed in O.S.No.1858 of 2012, on the file of the III Assistant City Civil Court, Chennai.



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For Appellants	: Mr.S.Parthasarathy,
For RR1 to 3	: No appearance
For RR4 to 6	: Mr.Mukunth, Senior Counsel Assisted by Mr.K.M.Vivekanandan
For R7	: Mr.T.Mohan, Senior Counsel Assisted by Mr.Abhinav Parthasarathy

JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal.

2. The appellants / plaintiffs (1) B.Sahul Hammed (minor) (2) B.Imran Ahamed (minor) represented by their father and natural guardian F.R.Basheer Ahamed, filed the suit in O.S.No.1858 of 2012, before the III Assistant Judge, City Civil Court, Chennai, for the following reliefs :

- i. to declare the registered sale deed dated 14.10.2011 in document No.1155/2011 on the file of the Sub Registrar Office Triplicane, Chennai, executed by the defendants 2 and 3 in favour of the



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- ii. permanent injunction restraining the defendants, their men and agents from any manner disturbing the peaceful possession and enjoyment of the suit property by the plaintiffs.
- iii. permanent injunction restraining the defendants, their men and agents from alienating or in any way dealing with the suit property.
- iv. for costs.

3. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4. The case of the plaintiffs in a nutshell is as follows :

The plaintiffs are the absolute owners of the suit property through a registered settlement deed dated 13.02.2009 (Ex.A1) executed by their mother Rahimunissa Begum (first defendant). Ever since the date of the settlement deed, the plaintiffs are in peaceful possession and enjoyment of the suit property. While so, during January 2010, the first



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defendant under threat and ill advice of one Yuniskhan, Syed Adam and Inayathullah Sheriff, revoked the settlement deed through a Revocation deed dated 25.01.2010 (Ex.A2).

4.1. The first defendant has no right to revoke the settlement deed (Ex.A1). In fact, the first defendant had delivered the possession of the suit property to the plaintiffs on the date of settlement deed. She disclosed the revocation of settlement deed to the father of the plaintiffs only during February 2010. The plaintiffs were contemplating to file a suit against the first defendant. However, Yuniskhan, Syed Adam and Inayathullah Sheriff, kidnapped the first defendant and a police complaint was lodged by the plaintiffs' father on 24.02.2010.

4.2. Thereafter, the plaintiffs filed a suit in O.S.No.2455/2010 before the II Assistant Judge, City Civil Court, Chennai, against the first defendant for a declaration that the revocation of settlement deed as null and void. The said suit was decreed on 28.04.2010. During the pendency of the suit in O.S.No.2455/2010, the first defendant executed a registered General Power of Attorney dated 01.03.2010 (Ex.A5) in favour of Yuniskhan to sell the suit property. The said Yuniskhan entered into a



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registered sale agreement dated 08.03.2010 (Ex.A6) with the third defendant for a sale consideration of Rs.60,00,000/-. However, the first defendant had cancelled the General Power of Attorney dated 01.03.2010 through a Revocation deed dated 26.03.2010 (Ex.A7). Thereafter, she sold the suit property to the defendants 2 and 3 for a meagre amount of Rs.9,00,000/- through a registered sale deed dated 22.04.2010 (Ex.A8) despite an interim order of injunction granted by the II Assistant Judge, City Civil Court, Chennai, in I.A.No.4704/2010 in O.S.No.2455/2010.

4.3. Subsequently, the plaintiffs filed another suit in O.S.No.12524/2010 before the XV Assistant Judge, City Civil Court, Chennai, to declare the registered sale deed dated 22.04.2010 (Ex.A8) executed by the first defendant in favour of the defendants 2 and 3 as null and void and for a consequential relief of permanent injunction. The suit in O.S.No.12524/2010 was decreed on 27.06.2011. However, the defendants 2 and 3 have illegally sold the suit property in favour of the defendants 4 to 6 through a registered sale deed dated 14.10.2011 (Ex.A10).

4.4. When the plaintiffs are in possession of the suit property,



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the defendants 4 to 6 attempted to demolish the northern portion of the suit property in order to force the plaintiffs to vacate the suit property. The defendants 4 to 6 also approached the tenants of the suit property and threatened them with dire consequences if they do not vacate the premises. Hence the suit.

5. The defendants 1 to 3 remained absent and were set *ex parte*. The suit was resisted by the defendants 4 to 6 on the following grounds :

- i. The suit property was originally owned by the first defendant by virtue of a registered partition deed dated 02.01.1990.
- ii. Though the first defendant had executed a Settlement deed in favour of the plaintiffs, she had subsequently cancelled the same through a registered Revocation deed dated 25.01.2010 (Ex.A2). The first defendant has every right to revoke the said settlement deed.
- iii. The contentions of the plaintiffs that the first defendant delivered the possession of the suit property to them, is totally false.



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- iv. In fact there were three tenants in the suit property. The entire ground floor of the suit property was rented out to a hotel 'Ponnusamy Mess'. The other two tenants were in the second floor.
- v. The contentions of the plaintiffs that the first defendant informed the plaintiffs about the execution of the Revocation deed dated 25.01.2010 only in the first week of February 2010 and that the first defendant was kidnapped by the defendants 4 to 6 are concocted and invented by the plaintiffs for the purpose of filing the present suit. The defendants 4 to 6 were never shown as parties in any of the previous proceedings.
- vi. The plaintiffs though obtained an order of injunction against alienation of the suit property, had failed to make relevant entries with the Registration department in order to avoid multiplicity of proceedings.
- vii. The suit property was in a dilapidated condition at the time of purchase by these defendants and therefore was demolished. The suit property is now lying as a vacant site.
- viii. The defendants after making due enquiry and after perusing the



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decree and judgment passed in O.S.No.9757/2010 dated 09.06.2011 in which the defendants 2 and 3 were declared as the absolute owners of the suit property, had purchased the suit property.

ix. In fact, paper publication in both Tamil and English daily were effected before registering the sale deed in favour of the defendants 4 to 6. Hence the suit filed by the plaintiffs has to be dismissed.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- "i. Whether the description of the suit property is correct ?*
- ii. Whether the fourth defendant is a bonafide purchaser for valuable consideration?*
- iii. Whether the plaintiffs are entitled for a declaration as prayed for?*
- iv. Whether the plaintiffs are entitled for a consequential injunction as prayed for?*
- v. To what relief, the plaintiffs are entitled ?*



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7. In the trial Court, the plaintiffs' father was examined as PW1 and Ex.A1 to Ex.A12 were marked. The fourth defendant examined himself and marked Ex.B1 to Ex.B7. The certified copy of the order passed in W.P.No.19480/2017 was marked as Ex.C1. An advocate commissioner was appointed and his report was marked as Ex.C2.

8. The learned trial court judge, on considering the evidence on record, dismissed the suit filed by the plaintiffs, vide his decree and judgment dated 12.04.2018, on the following grounds:

- i. The first defendant had executed a settlement deed dated 13.02.2009 (Ex.A1) in favour of the plaintiffs and the said settlement deed was acted upon.
- ii. In fact the revocation of the settlement deed dated 25.01.2010 (Ex.A2) executed by the first defendant was declared as null and void in O.S.No.2455/2010.
- iii. Thereafter, the sale deed executed by the first defendant in favour of the defendants 2 and 3 was also declared as null and void in O.S.No.12524/2010.



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- iv. The defendants 4 to 6 have purchased the suit property from the defendants 2 and 3 after passing of the decree and judgment in O.S.No.12524/2010. Therefore, the defendants 4 to 6 cannot be said to be the bonafide purchasers for value.
- v. There is no dispute with regard to the identity of the suit property. The Advocate Commissioner, who inspected the suit property has in his report (Ex.C2) stated that the building in the suit property was demolished.
- vi. PW1, during the course of cross examination had admitted that the first plaintiff had attained majority. However, he did not take steps to declare him as major. He further admitted that he had sold the suit property through a registered sale deed in favour of one Thameem Ansari during the pendency of the present suit. Therefore, the continuation of the suit by the plaintiffs after conveying the right and title over the suit property in favour of a third party without disclosing the same to the court, is a clear abuse of process of law. Therefore, the plaintiffs are not entitled to the discretionary reliefs of declaration and injunction.



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9. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiffs filed an appeal in A.S. No.257 of 2019, before the XVI Additional City Civil Court, Chennai. The learned XVI Additional Judge, City Civil Court, Chennai, after analysing the evidence on record, upheld the findings recorded by the trial court judge vide her decree and judgment dated 11.01.2022, as against which the present second appeal is filed by the plaintiffs.

10. During the pendency of the present second appeal the purchaser (*pendente lite*) from the plaintiffs had filed a petition in C.M.P.No.5599 of 2024 to implead himself as a respondent in the second appeal and the said petition was allowed by a learned single judge of this Court (Hon'ble Mr.Justice RMT.Teeka Raman) vide his orders dated 17.04.2024 which reads as under :

"This miscellaneous petition is filed by a purchaser,



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who purchased the property on 06.03.2015 at that time, suit in O.S.No.1858 of 2012 was pending before the III Assistant City Civil Court, Chennai and the same was dismissed. Challenging the same, appeal in A.S.No.257 of 2019 was preferred by the plaintiffs on the file of XVI Additional City Civil Court, Chennai and the same was also dismissed. Challenging the same, the second appeal is preferred.

2. Pending second appeal, the purchaser/petitioner herein sought to implead himself as a respondent in the second appeal since he is a necessary party for adjudication.

3. This Courts finds that petitioner is a proper and necessary party for the adjudication and in the interest of justice, this petition is allowed."

11. At the time of admission, the following substantial questions of law were framed by my learned predecessor.

"(1)Whether the Courts below erred in ignoring that the title of the respondents 4 and 5 who claims under the respondents 2 and 3 was hit under the principles of lis pendence under Section 52 of the Transfer of Property Act, 1882?

(2)Whether the Courts below were right in



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WEB COPY *ignoring Section 35 of the Specific Relief Act, 1963, in declining the relief sought for in O.S.No.1858 of 2012, when the revocation of the Settlement Deed dated 25.01.2010 executed by the 1st respondent was held as null and void and not binding on the plaintiffs in O.S.No.2455 of 2010 on 28.04.2010?”*

12. Heard Mr.S.Parthasarathy, learned counsel for the appellants, Mr.Mukunth, learned Senior Counsel assisted by Mr.K.M.Vivekanandan, learned counsel for the respondents 4 to 6 and Mr.T.Mohan, learned Senior Counsel assisted by Mr.Abhinav Parthasarathy, learned counsel for the seventh respondent.

13. Mr.S.Parthasarathy, learned counsel appearing for the appellants contended that though both the Courts below had held that all the transactions in favour of the defendants 2 to 6 are null and void as per the decree and judgment passed in O.S.No.2455/2010 and O.S.No.12524/2010, they dismissed the present suit only on the ground that the plaintiffs have alienated the property during the pendency of the



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suit to a third party and therefore, he cannot continue the suit. According to him, the approach made by both the Courts below are totally wrong. He also relied on the following decisions :

- a) ***Sethuraman and Others Vs Arulsamy*** reported in **2020 (5) CTC 719** ; and
- b) ***Masilamani vs Sathasivam and Another*** reported in **2020 (2) CTC 481**

and contended that since the plaintiffs are seen sincerely defending the title they have parted with in favour of *pendente lite* purchaser, impleading the very purchaser in the suit is not necessary. He also relied on the decision of this Court in ***C.Chinnappa vs Jayamma and Others*** reported in **2024-2-L.W.783** and contended that even a stranger to a proceeding can file an appeal, if he satisfies the Court that he is an “aggrieved person”. His specific contention is that the defendants 4 to 6 have no right over the suit property in view of the decree and judgment passed in O.S.No.2455/2010 and O.S.No.12524/2010 and therefore, they cannot question the plaintiffs' right to maintain the suit.



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14. Mr.T.Mohan, learned Senior Counsel for the seventh respondent / purchaser contended that a document executed during the pendency of the suit cannot be declared as void. Section 52 of the Transfer of Property Act creates only a right to be enforced to avoid a transfer made *pendente lite* and such transfers are voidable at the option of the affected party to the proceedings. It is his further contention that the sale deed dated 22.04.2010 (Ex.A8) executed by the first defendant in favour of the defendants 2 and 3 and the revocation of the settlement deed dated 25.01.2010 (Ex.A2) executed by the first defendant have been declared as null and void by a competent court of law and therefore, the suit filed by the plaintiffs ought not to have been dismissed by both the Courts below. He therefore prayed for allowing the present second appeal.

15. Per contra Mr.Mukunth, learned Senior Counsel for the respondents 4 to 6 would contend that the plaintiffs during the pendency of the suit had sold the suit property in favour of the seventh defendant herein and the seventh defendant can file an independent suit against the



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defendants. He also would contend that the *transferee pendente lite* cannot argue in the present appeal, since he did not get the leave of the court to continue the proceedings under Order XXII Rule 10 CPC. It is also his contention that Section 52 of the Transfer of Property Act would not apply to the facts of the present case and the plaintiffs have suppressed the material facts of selling the suit property even during the pendency of the suit. Both the Courts below were right in dismissing the suit filed by the plaintiffs. Moreover, the father of the plaintiffs despite knowing the fact that his son (first plaintiff) had attained majority had continued to contest the suit on behalf of his major son. He did not file a proper application to declare him as major and to discharge him from the guardianship. The father of the plaintiffs who was examined as PW1 had clearly admitted that he is not in possession of the suit property on the date of his deposition and therefore, he cannot seek for a permanent injunction against the defendants. He therefore, prayed for dismissing the present appeal.

16. In this regard, the relevant law is contained in Order XXII



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Rule 10 CPC which reads as under :

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

17. In the decision in ***Monghibai vs Cooverji Umersey*** reported in ***AIR 1939 (PC) 170*** it was held that "No doubt, it is true that parties who have assigned the whole of their interest *pendente lite* cannot ask for a judgment in respect of rights which are no longer theirs. But it does not follow that their assignees are thereby precluded from recovering. If it were so, no assignments of property during the course of a trial would be possible. Such a contention is, on the face of it, improbable,..."

In the decision in ***Dhulji Ramaji Jat and another vs Vijaykumar***



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WEB COPY **Madanlalji Garg and another** reported in (1998) AIHC 4101 it has

been held thus :

"From the perusal of Order 22, Rule 10 CPC it is clear that in case of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. Rule 10 CPC considers two situations. It clearly states that a person in whose favour the rights have devolved may continue with the suit or the suit may be continued against the person in whose favour the rights have devolved. The two Courts have not appreciated the legal provisions in their true perspective. Rule 10 of Order XXII CPC does nowhere say that even after culmination or termination of the plaintiff's right in the property he can continue with the suit for and on behalf of a third party who has refused to join as a party in the suit. Rule 10 is a rule of equity. It says that if somebody steps into the shoes of the plaintiff, he may continue with the suit. In another situation if somebody steps into the shoes of the defendant by purchasing the property or getting certain rights in his favour, then the plaintiff may continue his suit against such a party. The equity right goes with section 52 of



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Transfer of Property Act to show that if a party commits breach of the statutory injunction then the other party would not be permitted to suffer. If the defendant during the pendency of the suit transfers his right, then the plaintiff with the permission of the Court may continue his suit against such a person upon whom the rights have devolved. A person feeling that after the transfer of the property the plaintiff may not look after his property or may not look after his interest properly, may seek permission of the Court to join as co-plaintiff and may continue with the suit against the defendant. Rule 10 CPC would not clothe the plaintiff with any right to continue with the suit when on his own showing he has no existing right, title or interest in the property. Having alienated his right, title and the interest in the property he cannot sue any person or a third party. The moment he transfers his right and title, it is such transferee who is entitled to sue such defendant for such reliefs which he deems proper.....

The Courts below were not justified in holding that in view of the provisions of Order XXII, Rule 10 CPC the plaintiff could continue with the suit and was entitled to a decree. The error is apparent on the face of the record. After the



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WEB COPY *property was transferred in favour of a third party, the plaintiff lost his right to continue with the suit. The suit ought to have been dismissed by the Courts below."*

In the decision in ***Gouri Shankar vs Naveen Chand (Dead) through LRs Smt.Snehlata Jain and Another*** reported in ***2004 (3) MPJ 246*** it has been held that "*the suit for eviction after the sale of suit house by the owner could not have been prosecuted further without bringing the transferee on record.*"

From the above cases, it is clear that when the interest in the property is vested in a third party, then the transferee / assignee only has the right to proceed further with the case.

18. It is pertinent to point out that under Order XXII Rule 3 and 4 CPC where one of the parties to the suit dies, the legal representatives of the deceased plaintiff / defendant shall be made a party on an application filed by them and they shall proceed with the case. If the application is not filed, the suit shall abate. However, [Order XXII Rule 7 CPC](#) provides that a suit is not abated by marriage of a



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female party. This provision makes it clear that if the female plaintiff or defendant gets married, then the suit will not abate merely by virtue of her getting married. [Order XXII Rule 10 CPC](#) clearly deals with the situation in which the interest of one of the parties is assigned or transferred to another person. It provides that "in other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved". It is appropriate to point out that in Rule 10 CPC it is not specifically mentioned that 'the suit will not abate' in case of devolution of interest.

19. As per [Order XXII Rule 10 CPC](#) a transferee / assignee MAY by leave of the court be made a party while in Rules 3 and 4, the courts shall make the legal representatives as parties on an application by such legal representatives. This distinction cannot be said to be enough for concluding that the suit does not abate in cases of assignment. In fact cases falling within the precincts of Rules 3 and 4 should be distinguished from those falling within the precincts of Rule 10. In case



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of death, the interest of the original party does not get extinguished and it is inherited by his / her legal representatives. However, in the case of assignment, the original party voluntarily extinguishes his rights and surrenders them to a third party. It is the latter situation which makes the suit infructuous *vis-a-vis* the original party / assignor / transferor and therefore, leaves it to the discretion of the court whether the assignee can be permitted to proceed with the suit or not. Therefore, [Order XXII Rule 10 CPC](#) cannot be interpreted to mean that even if the plaintiff transfers / assigns his interest in favour of some other party, the suit can be proceeded by him. In fact, it should be interpreted to mean that on the assignment of interest, the suit cannot be continued by the assignor / transferor unless the assignee / transferee has been made a party. In the instant case, the father of the plaintiffs (PW1) admitted that the plaintiffs during the pendency of the suit have sold the suit property in favour of a third party and that the plaintiffs are not in possession of the suit property.

20. The decision in *Sethuraman and Others Vs Arulsamy*



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WEB COPY (cited supra) may not apply to the facts of the present case because the learned single judge of this Court did not have an occasion to deal with Order XXII Rule 10 CPC. In the decision in **Masilamani vs Sathasivam and Another** (cited supra) only a part of the property was sold during the pendency of the suit and therefore, it was held that the plaintiff can continue with the suit. In the present case, it is the interest of the plaintiffs that has devolved upon another party and the plaintiffs had divested themselves of the right, title or interest in the suit property. Therefore, the suit filed by the plaintiffs have virtually become infructuous. It is now the assignee / transferee who has the right to proceed against the defendants and to claim possession from them. It was in 1939 that the three judges bench of the Hon'ble Privy Council held that the suit shall abate if the transferee / assignee is not sought to be brought on record. Since then, the Hon'ble Supreme Court and the Hon'ble High Courts of various states have given various conflicting views. However, the view and judgment of the Privy Council has not been overruled by a larger bench. Moreover, even if the judgment is passed in favour of the plaintiffs they cannot get the decree executed in



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WEB COPY their favour.

21. Another important aspect is that the first plaintiff had attained majority during the pendency of the suit and this was admitted by his father (PW1). However, PW1 continued to prosecute the suit on behalf of his major son and did not file a petition to declare him as a major. These aspects have been rightly taken into account by both the Courts below. Therefore, the decree and judgment passed by both the Courts below cannot said to be perverse and the substantial questions of law are answered against the appellants.

22. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. the decree and judgment dated 11.01.2022 passed in A.S. No.257 of 2019, on the file of the XVI Additional City Civil Court,



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Chennai, and the decree and judgment dated 12.04.2018 passed in O.S.No.1858 of 2012, on the file of the III Assistant City Civil Court, Chennai. are upheld.

26.03.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

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



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R. HEMALATHA, J.
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