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S.A.No.155 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.155 of 2022

Mrs.Rajakumari Jhamed (died)

Tejraj Jain (died)

- 1.Chanchal
- 2.Sunitha
- 3.Nirmala
- 4.Santosh
- 5.Tarun Kumar
- 6.Pinky
- 7.Deepak Kumar
- 8.Parika

... Appellants

vs.

V.N.Dorai Ammal (died)

- 1.Susila
- 2.V.R.Venkata Hariharan
- 3.V.R.Loganathan
- 4.Padmini
- 5.V.N.Subbaraman (Given up in A.S)

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 12.04.2019 in A.S.No.33 of 2017 on the file of the V Additional City Civil Court Judge, Chennai, reversing the judgment and decree passed in O.S.No.15520 of



1996 dated 29.09.2016 on the file of I Assistant City Civil Court Judge,
Chennai.

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For Appellants : Mr. S.Parthasarathy
Senior Advocate

For Respondents : Mr.M.S.Krishnan
Senior Advocate
for M/s.R.Vishnu

J U D G M E N T

The appellants/plaintiffs filed a suit for declaration of title and for delivery of possession of the suit property. They also sought for a declaration that the decree passed in O.S.A.No.33 of 1975 modifying the decree in C.S.No.23 of 1969 was not binding on the plaintiffs in respect of the suit property. The plaintiffs also prayed a decree for injunction restraining the defendants from interfering with the possession pursuant to the decree passed in O.S.A.No.33 of 1975. The suit was partly decreed by declaring the title of the plaintiffs over the suit property. The trial court also declared that the decree passed in O.S.A.No.33 of 1975 modifying the decree in C.S.No.23 of 1969 was not binding on the plaintiffs in respect of the suit property and the same was also in-executable against the plaintiffs.



The trial Court also granted a decree for possession directing defendants 2 to 6 to deliver possession of the suit property to the plaintiffs. The suit was dismissed partly in respect of the relief of permanent injunction. Aggrieved by the same, the contesting defendants 2 to 6 filed First Appeal (contesting defendant No.4 died pending suit and defendants 2, 3, 5 and 6 were recorded as his legal representatives). The First Appellate Court allowed the appeal and dismissed the suit. Aggrieved by the same, the plaintiffs have come before this Court.

Plaint Averments:

2(i). According to the appellants/plaintiffs, the suit property originally belonged to one Kandaswami Pillai of Valliyoor, he having inherited the same from his father Narayanaswami Pillai. It was also stated that originally the suit property was purchased by father of Narayanaswami Pillai namely, Subbaroya Pillai from one Venkatadri. After death of Subbaroya Pillai property was inherited by Narayanaswami Pillai and after his death, it was inherited by Kandaswami Pillai. Even during his lifetime, Kandaswami Pillai exercised right over the suit property by mortgaging the same.



2(ii). It was also claimed that even during the lifetime of Kandaswami Pillai, the husband of first defendant in the suit namely Narayana Pillai was in possession and enjoyment of the suit property on his own right by paying taxes. The said Narayana Pillai died on 31.03.1959 leaving behind the first defendant as his heir. The above mentioned Kandaswami Pillai died in the year 1923 without any issues leaving behind his wife Ratnammal. It was submitted that Ratnammal had only limited estate and she died in the year 1946. It was further claim of the plaintiff that the deceased first plaintiff Rajakumari Jhamed purchased the suit property under registered sale deed dated 21.11.1975 from first defendant wife of Narayana Pillai for valuable consideration and from that date onwards she had been in uninterrupted possession and enjoyment of the suit property. It was also stated that the plaintiffs was the bonafide purchasers for value without notice and she acquired knowledge about the earlier litigation only when the Bailiff of the Court came to the suit property to effect delivery of the same as per the decree passed in C.S.No.23 of 1969 as modified by O.S.A.No.33 of 1975.

2(iii). It was further pleaded by the plaintiffs that the defendants 2 and 3 herein filed a suit for declaration of title of defendants 2 to 6 and for



recovery of possession against the first defendant and others in C.S.No.23 of 1969. The present defendants 2 and 3 were the plaintiffs in the said suit. The present first defendant and defendants 4 to 6 were arrayed as defendants 1, 4 to 6 in the said suit. The husband of the present plaintiff was arrayed as 7th defendant in the said suit. In the said suit, it was the case of the defendants 2 to 3 herein/plaintiffs therein that the suit property was originally belonged to Ratnammal and she died on 24.04.1946. She left a registered Will dated 10.05.1943, which was duly probated before the High Court of Madras in O.P.No.212 of 1946. As per the terms of the Will, the suit property was bequeathed in favour of Narayana Pillai, the husband of the first defendant and others for life and thereafter to his issues and in case, he died issueless in favour of issues of other life estate holders.

2(iv). It was further pleaded that Narayana Pillai died on 31.03.1959 without any issues and hence the present plaintiffs and defendants 4 to 6 herein (defendants 2 to 6 in C.S.No.23 of 1969) got the properties as per the testamentary documents. It was further pleaded that the first defendant herein had contested the suit only by producing quit rent receipts but without mentioning anything about mortgage deed dated 19.04.1887. The said suit filed by defendants 2 and 3 herein was dismissed insofar as the present suit



property was concerned by holding that Ratnammal had only widow's estate and she was not competent to execute a Will in respect of the present suit property. It was also pleaded that subsequent to the dismissal of the suit, the present plaintiff purchased the suit property from the first defendant who succeeded in the earlier suit.

2(v). It was also pleaded by the plaintiffs that all along the present suit property had been treated as the property of the first defendant and before her, by her husband Narayana Pillai. It was also stated that the defendants 2 and 3 herein/unsuccessful plaintiffs in C.S.No.23 of 1969 preferred an appeal in O.S.A.No.33 of 1975 and the same was allowed on 29.01.1976. It was the case of the plaintiffs that the defendants 2 and 3 herein/plaintiffs in the earlier suit by playing fraud obtained the said decree. It was the case of the plaintiffs that above said Ratnammal had no right over the property and hence he cannot execute any Will. It was also pleaded that the present plaintiffs was bonafide purchasers for value without notice and hence the judgment and decree passed in O.S.A.No.33 of 1975 modifying the judgment and decree passed in C.S.No.23 of 1969 would not bind the present plaintiffs.



2(vi). It was also pleaded by the plaintiffs that the first defendant and her husband Narayana Pillai had been in possession and enjoyment of the property for quite long time and prescribed title over the suit property. It was also pleaded that 1887 mortgage deed was suppressed by the plaintiffs in the earlier suit. On these pleadings, the plaintiffs mainly contended that the judgment and decree passed in O.S.A.No.33 of 1975 was not binding on them and sought for present relief.

Averment in the written statement filed by the contesting defendants

2 to 6:

3(i). The contesting defendants contended that they filed a suit for declaration of title and recovery of possession against the vendor of the present plaintiffs, namely, first defendant herein and others in C.S.No.23 of 1969 and the said suit was dismissed as far as suit property was concerned. Subsequently, the appeal filed by the defendants 1 and 2 herein (plaintiffs in C.S.No.23 of 1969) in O.S.A.No.33 of 1975 was allowed by declaring title of contesting defendants and decree for possession was also passed against the first defendant and others. It was the main contention of the contesting defendants that the plaintiffs who purchased the property pending litigation is bound by the decree passed in O.S.A.No.33 of 1975 and hence the present suit is not at all maintainable. According to the defendants,



C.S.No.23 of 1969 was filed on 17.04.1968 and the same was disposed of on 17.08.1972. The appeal in O.S.A.No.33 of 1975 was preferred on 17.04.1973 and the same was disposed of on 29.01.1979. The present plaintiffs purchased the suit property from first defendant who was party to the earlier suit and O.S.A.No.33 of 1975 on 21.11.1975 pending proceedings. Therefore, according to the contesting defendants, the judgment and decree passed in the earlier litigation is binding on the present plaintiffs and they could not maintain the present suit.

3(ii). It was also a case of the contesting defendants that the suit property belonged to Rathinammal, wife of Kandaswami Pillai and she executed a registered Will on 10.05.1943 which was duly probated in O.P.No.212 of 1946 on the file of this Court. She died on 24.04.1946. As per the terms of the Will, the suit property was bequeathed for life in favour of 5 persons namely: (i) T.G.Pattabiraman Pillai, (ii) Duraikannu Ammal, (iii) Pankajammal, (iv) Vandalur Narayana Pillai and (5) Vandalur Rukmangatham Pillai. The present defendants 2 to 6 are children of Rukmangatham Pillai. As per the terms of the Will, the suit property was bequeathed in favour of Vandalur Narayana Pillai for life with vested remainder in favour of his male or female heirs. There was a further clause



in the Will in the absence of issues to Narayana Pillai, the suit property should go to the issues of other life estate holders.

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3(iii). It was further pleaded that Narayana Pillai, husband of the first defendant, died without any issues on 31.03.1949. The above mentioned T.G.Pattabiraman Pillai, Duraikannu Ammal and Pankajammal also had no children. Therefore, the defendants 2 and 6 who are all children of Rukmangatham Pillai got the property as per the terms of the Will. It was further pleaded that the vendor of the present plaintiffs namely, the first defendant had no interest or right over the suit property and hence she cannot convey the same to the present plaintiffs. The husband of the present first plaintiff was added as 7th defendant in the earlier litigation and hence the plaintiffs were aware of the earlier suit and she purchased the suit property with full knowledge of the litigation.

3(iv). The first defendant herein, who was also arrayed as 1st defendant in the earlier suit contended that by virtue of long possession, she acquired right over the suit property by adverse possession and suit was barred by limitation. She further raised the plea that above mentioned



Ratnammal executed a codicil giving her right to enjoy her suit property and hence sought for dismissal of the suit.

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3(v). It was also contended by first defendant that some of the suit properties were inherited by Ratnammal from her husband, therefore, she was not competent to execute the Will.

3(vi). The husband of the present first plaintiff, who was arrayed as 7th defendant in the earlier suit, in his written statement contended that he was not interested in the nature of dispute between the plaintiffs and first defendant therein. He contended that he was a tenant under first defendant therein by virtue of registered lease deed and hence his possession was protected and he was not liable to pay any past or future profits to the plaintiffs therein.

3(vii). It was further pleaded by the contesting defendants that though the earlier suit filed by the defendants 2 and 3 was dismissed by the learned Single Judge of this Court and in the appeal filed before the Division Bench, it was held that there was no acceptable evidence to show that the suit properties belonged to Ratnammal's husband Kandaswamy Pillai and further gave a finding that suit property belonged to Ratnammal. As per the Will executed by her, the children of Rukmangatham Pillai were entitled to the suit property. On these pleadings, the defendants contended that the

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plaintiffs were not bonafide purchasers and being *pendente lite* purchasers, the plaintiffs were bound by the decree in O.S.A.No.33 of 1975 and sought for dismissal of the suit.

3(viii). In the written statement, the contesting defendants also referred about applications filed by the plaintiffs resisting the delivery of suit property pursuant to the decree passed in O.S.A.No.33 of 1975 and dismissal of the same. Therefore, according to them, the points raised by the plaintiffs in the present suit are all barred by constructive *res judicata*.

Evidence recorded before trial Court:

4. Before the trial court, the first plaintiff was examined as P.W.1 and 51 documents were marked on their side as Exs.A1 to A51. On behalf of the defendants, the 3rd defendant was examined as DW1 and 19 documents were marked on their side as Exs.B1 to B19.

Findings of Court below:

5. The trial court gave a finding that the present first plaintiff was a bonafide purchaser and hence she was entitled to the suit property. The trial court also found that the plaintiffs purchased the suit property after disposal of C.S.No.23 of 1969 and she had no knowledge of the appeal in O.S.A.No.33 of 1975 and hence the doctrine of *lis pendens* could not be



pressed against her and ultimately dismissed the suit. Aggrieved by the same, the contesting defendants filed an appeal in O.S.A.No.33 of 1975 on the file of V Assistant City Civil Court, Chennai. The First Appellate Court came to the conclusion that the first defendant who sold the property to present plaintiffs had no title to convey. It also found that the judgment and decree passed in O.S.A.No.33 of 1975 was binding on the plaintiffs as she was a *pendente lite* and consequently set aside the judgment and decree passed by the trial court and allowed the appeal. Aggrieved by the same, the present plaintiffs have come before this court.

Submission of Senior Counsel for Appellants:

6. The learned Senior Counsel appearing for the plaintiffs would contend that Ratnammal under whose Will the contesting defendants are claiming right had no right to bequeath the suit property in favour of contesting defendants and the same has not been properly appreciated by the First Appellate Court. The learned counsel also submitted that the plaintiffs have been in continuous possession and enjoyment of the suit property right from the days of their predecessor in interest and therefore perfected adverse title over the suit property. The learned counsel submitted that the defendants 4 to 6 who are also entitled to share in the suit property as per the case of the contesting defendants did not file any appeal challenging the



judgment and decree passed in C.S.No.23 of 1969 and they were also given up by the defendants 2 and 3 who alone preferred appeal in O.S.A.33 of 1975 and in such circumstances, the decree for possession passed in O.S.A.No.33 of 1975 in favour of defendants 2 and 3 for entire suit property was not sustainable in law.

7. The learned Senior Counsel also submitted that the present suit property was purchased by the plaintiffs after the dismissal of the suit in .C.S.No.23 of 1969 and hence she is a bonafide purchaser for value and the decision in O.S.A.No.33 of 1975 would not be binding on him.

Submission of Senior Counsel for Respondents:

8. The learned senior counsel appearing for the respondents by taking this Court to the judgment and decree passed by the Division Bench of this Court in O.S.A.No.33 of 1975 submitted that the findings rendered in the said judgment is binding on the present plaintiffs who are all *pendente lite* purchasers and hence sought for dismissal of the present second appeal.

Discussion:

9. It is seen from the typed set of papers, the defendants 2 and 3 herein filed the suit in C.S.No.23 of 1969 on the file of this court against the first defendant herein (the vendor of the present first plaintiff and others)



seeking declaration of title and recovery of possession in respect of three properties. The present suit property was one of the item in the suit property described in C.S.No.23 of 1969. The said suit was dismissed by the learned Single Judge in so far as the present suit property was concerned. The defendants 2 and 3 herein/plaintiffs therein filed appeal before the Division Bench in O.S.A.No.33 of 1975 and the same was allowed. As per the judgment and decree passed in O.S.A.No.33 of 1975, the title of the present defendants 2 to 6 (plaintiffs and defendants 2 to 4 therein) was declared. A decree for delivery of possession was also passed in their favour by directing the first defendant, vendor of the present plaintiffs, to deliver the possession of the suit property to them. Ex. A36 is the decree passed in C.S.No.23 of 1969. A perusal of the same would establish that the suit was dismissed by the learned Single Judge on 17.08.1972. Ex.A37 is the copy of the decree in O.S.A.No.33 of 1975. A perusal of the same would indicate that the appeal filed by the plaintiffs therein was allowed by the Division Bench on 29.01.1979. Ex.A3 is the sale deed executed by first defendant in favour of present first plaintiff dated 21.11.1975. The first defendant was party to the suit in C.S.No.23 of 1969 and appeal in O.S.A.No.33 of 1975. Therefore, it is clear that the sale deed executed by first defendant in favour of present first plaintiff is hit by doctrine of *lis pendens* and the plaintiffs are bound by the judgment and decree passed

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in O.S.A.No.33 of 1975 declaring the title of defendants 2 to 6 with consequential relief of possession.

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10. A perusal of Ex.A37 would indicate that plaintiffs' vendor first defendant herein filed a suit in O.S.No.3592 of 1963 on the file of City Civil Court, Chennai seeking permanent injunction restraining the father of contesting defendants namely Rukmangathan Pillai from interfering with her possession over the suit property and right to collect rents from his tenants. The said suit was dismissed by holding that first defendant herein (plaintiff therein) had no possession over suit property and had no right to collect the rent from the tenants of the suit property. In the said suit it was also found that as per the Will executed by Ratnammal, the first defendant cannot have any right over the property . The Division Bench also found as per the Will executed by Ratnammal, Narayana Pillai, husband of the first defendant had only life estate and after his death, the first defendant had no right over the property and only children of other life estate holder, Rukmangatham Pillai namely the contesting defendants were entitled to absolute right over the suit property. Thus, the Division Bench upheld the title and right to possession of the contesting defendants over the suit property. The present plaintiffs who are claiming right under the sale



deed executed by first defendant are bound by the judgment and decree passed in O.S.A.No.33 of 1975 as first defendant was party to the said suit.

It is also pertinent to mention that husband of present first plaintiff was also party to the earlier suit and O.S.A.No.33 of 1975. The Division Bench had given a categorical finding that first defendant's husband, Narayana Pillai had taken benefit under the Will executed by Ratnammal and enjoyed the suit property until his death and the first defendant claims right over the suit property as a heir of her husband and in such circumstances, she was estopped from contending that Ratnammal was not the owner of the suit property and hence not entitled to deal with the property under the Will.

11. In view of such categorical finding of the Division Bench, the first defendant could not question the title of Ratnammal to execute the Will. The present plaintiffs who are claiming right under the sale executed by the first defendant are also not entitled to question the title of Ratnammal over the suit property and her entitlement to execute a Will. The present first plaintiff is only a *pendente lite* and the decision rendered in O.S.A.No.33 of 1975 is binding on her.



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12. In such circumstances, this court is unable to accept the contention raised by the learned Senior Counsel appearing for the appellants.

13. In the light of the categorical finding rendered by the Division Bench that the first plaintiff's vendor namely the first defendant and her husband were estopped from questioning the title of Ratnammal as they derived benefit under the Will executed by her, the submission made by the learned senior counsel appearing for the appellants cannot be countenanced. Further, in the earlier suit, the first defendant pleaded that Ratnammal executed a codicil giving her life estate over the suit property. Having raised such a plea neither the first defendant nor the plaintiffs who are claiming under the title of the first defendant are entitled to say Ratnammal had no right to execute the Will in respect of the suit property. The present suit filed by the plaintiffs is nothing but a re-litigation attempting to re-open the findings rendered by the Division Bench in the earlier proceedings. It is pertinent to mention that the vendor of the present first plaintiff and also the husband of the first plaintiff were party to the earlier proceedings. Further, the First Appellate Court also gave a factual finding that there was no deliberate suppression of material facts either by the defendants 1 and 2



herein who were the plaintiffs in the earlier suit and the present first defendant.

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14. As far as contention raised by the learned Senior Counsel appearing for appellant that the defendants 4 to 6 herein did not file any appeal challenging judgment and decree passed in C.S.No.23 of 1969 and in the appeal filed by defendants 2 and 3 in O.S.A.No.33 of 1975, the defendants 4 to 6 were given up and hence benefit of decree passed in O.S.A.33 of 1975 will not enure to defendants 4 to 6, is concerned, the same is not acceptable to this Court as the Division Bench in O.S.A.No.33 of 1975, after noting the defendants 4 to 6 did not file O.S.A, in order to avoid in-consistent decrees, clearly declared the title of suit property in favour of defendants 2 to 6 herein [plaintiffs and defendants 4 to 6 in C.S.No.23 of 1969]. A decree for declaration and possession passed by Division Bench is binding on present plaintiffs, who are only *pendente lite* purchasers. After judgment and decree passed by Division Bench, the decree for possession was executed and possession was delivered to plaintiffs. This Court already came to the conclusion that the decree for declaration of title and possession passed in favour of defendants 2 to 6 in O.S.A.No.33 of 1975 is binding on



present plaintiffs as *pendente lite* purchasers. In such circumstances, the plaintiff's cannot claim adverse title also.

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15. In view of the discussion made earlier, I am unable to accept the contention raised by the learned Senior Counsel appearing for the appellants. I do not find any substantial question of law arising for consideration in the second appeal and accordingly, the Second Appeal is dismissed.

27.04.2026

Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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To

1.The V Additional City Civil Court,
Chennai.

2.The I Assistant City Civil Court,
Chennai.



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S.SOUNTHAR, J.

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