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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13-10-2026

Pronounced on : 03-11-2026

CORAM

THE HON'BLE MRS.JUSTICE THIRUMAGAL CHANDRASEKAR

SA(MD) No. 512 of 2014

CNR:{HCMD010844972014}

CMP(MD) No. 10734 of 2019 and MP(MD).No.3 of 2014

Arumugam .. 1st defendant / Appellant

Vs

1. Jeevanandam

.. 1st respondent / Plaintiff

2. V.Thulasi Brindha Devi

(R-2 Impleaded, Vide Court Odr. Dt.6.9.16 Made in Cmp(md)6508/16 In Sa(md)512/14 By SSSRJ)

... 2nd respondent

Prayer : Second Appeal filed under Section 100 CPC against the Judgment and Decree passed in Cross Appeal A.S.No.72 of 2007 dated 29.10.2007 on the file of learned Subordinate Judge, Ramanathapuram confirming the Judgment and decree passed in O.S.No.15 of 2004 dated 12.12.2006 on the file of the learned District Munsif Cum Judicial Magistrate, Rameswaram.

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For Appellant : Mr.C.Kasirajan

For Respondents : Mr.A. Sivaji - R1
Mr.P.T.S.Narendravasan – R2

JUDGMENT

This Second Appeal has been filed against the Judgment and Decree passed in Cross Appeal A.S.No.72 of 2007 dated 29.10.2007 on the file of Subordinate Court, Ramanathapuram confirming the Judgment and decree passed in O.S.No.15 of 2004 dated 12.12.2006 on the file of the District Munsif Cum Judicial Magistrate Court, Rameswaram.

2. The Brief facts of the case are as follows:

(i) The suit was instituted by the plaintiff seeking a declaration of title and consequential permanent injunction in respect of the suit property, or, in the alternative, partition and separate possession of the shares of the plaintiff's vendors acquired under the sale deed Ex.A4 dated 29.11.1999. The suit property, measuring 15 cents in total, originally belonged to Haridoss, who acquired title thereto under a sale deed Ex.A1 dated 16.10.1976. On 20.06.1980, Haridoss settled the property in favour of his wife, Selvarani, under a settlement deed marked as Ex.A2. Subsequently,

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Haridoss and Selvarani jointly executed another settlement deed Ex.A3 dated 23.01.1982, settling the entire extent of 15 cents in favour of their minor children, namely, the 4th defendant / Thulasi Brindadevi, Punitha Devi and Durai Balaji.

(ii) The plaintiff claims title to an extent of 8½ cents under the sale deed Ex.A4 dated 29.11.1999, which, according to the plaintiff, represents the shares of Durai Balaji and Punitha Devi, two of the settlees under Ex.A3. The said sale deed was executed in favour of the plaintiff by three members Durai Balaji, the husband of Punitha Devi and her minor son. The said Punitha Devi had died prior to the execution of Ex.A4, and her husband and minor son purportedly conveyed the said extent to the plaintiff.

(iii) The defendants set up rival claims over portions of the suit property. The first defendant claims to have purchased 3 cents from the 4th defendant / Thulasi Brindadevi and Punitha Devi under a sale deed Ex.B2 dated 13.05.1994. The third defendant contends that Haridoss had agreed to sell 3 cents situated in the middle portion of the property in his favour and that, pursuant to the agreement of sale Ex.B7 dated 24.03.1994, he constructed a house and has been residing therein. The fifth defendant

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claims to have purchased 2 cents situated to the west of the portion claimed by the plaintiff under a sale deed Ex.B8 dated 27.12.1991, executed by Haridoss. The second defendant and the fourth defendant remained ex parte before the trial Court and were also non-contestants in the appeal.

(iv) The plaintiff alleged that the defendants 1 to 5 attempted to encroach upon the property purchased by him under Ex.A4, representing the shares of Durai Balaji and Punitha Devi. Accordingly, the plaintiff sought a declaration of title and consequential injunction or, in the alternative, partition and separate possession of the shares of his vendors claimed to have been conveyed to him.

(v) Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined, and Exs.A1 to A4 were marked. On the side of the defendant, D.W.1 to DW.5 were examined, and Exs.B1 to B28 were marked.

(vi) The trial Court, upon considering the rival pleadings and evidence, held that the title deeds relied upon by the plaintiff and defendants 1 and 5, as well as the agreement of sale relied upon by the third defendant, were invalid, as the alienations were impermissible under the

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terms of the settlement deed Ex.A3 dated 23.01.1982, and accordingly dismissed the suit. Aggrieved by the judgment and decree, the plaintiff preferred an appeal, while the first defendant filed a cross-appeal. The first appellate Court dismissed both the appeal and the cross-appeal, thereby confirming the judgment and decree of the trial Court.

3. Challenging the findings of the Judgment passed in Cross Appeal, the appellant / 1st defendant has preferred the present Second Appeal.

4. This Second Appeal was admitted by this Court on the following substantial questions of law:

(1) Whether the Courts below are right by holding the purchase of property by the appellant vide sale deed Exhibit B-2 is not valid, when the same is not at all an issue in the suit?

(2) Whether the trial Court is justified by deciding the validity of Exhibit B-2 without framing specific issue?

5. Heard Mr. C. Kasirajan, learned counsel appearing for the Appellant / 1st defendant and Mr. A. Sivaji, learned counsel appearing for the 1st respondent and Mr. P. T. S. Narendravasan, learned counsel

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appearing for the 2nd respondent and perused the materials available on record.

6. The suit was instituted by the 1st respondent/plaintiff seeking a declaration of title and permanent injunction in respect of the suit property, or, alternatively, a preliminary decree for partition and separate possession of 8½ cents claimed to have been purchased under Ex.A4 sale deed dated 29.11.1999. The suit property, measuring 15 cents, originally belonged to Haridoss, who purchased it under Ex.A1 dated 16.10.1976 and subsequently settled it in favour of his wife, Selvarani, under Ex.A2 dated 20.06.1980. Thereafter, Haridoss and Selvarani jointly settled the property in favour of their minor children viz., Thulasi Brinda Devi, Punitha Devi and Durairaj Balaji, under Ex.A3 dated 23.01.1982. The 1st respondent/plaintiff claimed to have purchased 8½ cents from the husband of the deceased Punitha Devi and Durairaj Balaji. The appellant/ 1st defendant claimed title under a sale deed executed by Thulasi Brinda Devi and another person, while the third defendant relied upon an agreement of sale dated 24.03.1994 executed by Haridoss in respect of 3 cents in the middle portion of the property. The fifth defendant claimed to have purchased 2 cents from Haridoss under a sale deed dated 27.12.1991. Alleging interference with his possession, the 1st respondent / plaintiff

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instituted the suit seeking the aforesaid reliefs.

7. The learned counsel appearing for the appellant / 1st defendant submitted that the Courts below had failed to consider the legal effect of Sections 10 and 11 of the Transfer of Property Act, 1882. According to the learned counsel, a condition absolutely restraining the transferee from alienating the property is void in law when an absolute interest has been created in favour of the transferee. It was further submitted that the appellant/ 1st defendant had purchased the property from Thulasi Brinda Devi, one of the beneficiaries under Ex.A3, and that the restriction against alienation during the lifetime of the settlors could not invalidate the subsequent sale deed. In support of his contention the learned counsel for the appellant / 1st defendant relied upon the judgment of the Hon'ble Supreme Court reported in ***2019 SAR (Civil) 990*** in the case of the ***State of Andhra Pradesh and Others v. B. Ranga Reddy (D) by LRs and Others*** and prayed for allowing the Second Appeal.

8. Since the appellant / 1st defendant has questioned the validity and effect of the restriction against alienation, it is necessary to refer to the relevant recitals in Ex.A2, the settlement deed executed by Haridoss in favour of his wife, Selvarani. The material recital in Ex.A2, in substance,

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provides that the settlor and his wife would jointly enjoy the property and that, after the lifetime of the settlor, the wife would be entitled to enjoy the property with absolute rights, including the right of alienation. It further stipulates that, during the lifetime of the settlor, if any mortgage, usufructuary mortgage, sale or other document concerning the property were required to be executed, both the settlor and his wife should execute the document jointly. Neither of them was permitted to execute such a document independently, and any document executed in violation of the said stipulation was stated to be invalid. The relevant recitals of Ex.A2, the settlement deed, reads as follows:

> *"டாக்டர் T.R. ஹரிதாஸ் ஆகிய நான், அரியாங்குண்டில் வசிக்கும் என்னுடைய மனைவியும், V. முத்து விநாயகம் அவர்களின் மகளுமான R.I.M.P. டாக்டர் செல்வராணிக்கு எழுதிக் கொடுத்த செட்டில்மென்ட் பத்திரம் என்னவென்றால்:*
>
> …
>
> ***இன்று முதல், இதன் கீழே கண்ட சிறு நான்கு மாலுக்குட்பட்ட 0.15 சென்ட் நிலத்தை என்னுடன் சேர்ந்து நீரும் கூட்டாக அனுபவித்து வந்து, என் ஜீவியதசைக்குப் பின்னால், நீர் சர்வ சுதந்திரப் பாத்தியமாய்,***

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தானம், வினியோகம், விற்கிரயம் ஆகியவற்றிற்கு யோக்கியமாக ஆண்டு அனுபவித்துக்கொள்ள வேண்டியது.

….

என்னுடைய ஜீவியதசைக்குள், இதன் கீழே கண்ட நிலத்தை அடமானம், ஒத்தி, கிரையம் போன்ற தஸ்தாவேஜுகள் எழுதிக் கொடுக்க வேண்டிய தேவை ஏற்பட்டால், அப்போது நானும் நீருமாகச் சேர்ந்தே தஸ்தாவேஜுகள் எழுதிக் கொடுக்க வேண்டியது. ஒருவரை விட்டு ஒருவர் தனியாகப் பத்திரங்கள் எழுதிக் கொடுக்கக் கூடாது. மீறி எழுதிக் கொடுத்தாலும் அது செல்லத்தக்கது அல்ல.

….

இதன் கீழே கண்ட சிறு நான்கு மாலுக்குட்பட்ட 0.15 சென்ட் நிலத்தைப் பொறுத்து எவ்வித வில்லங்கமும் இல்லை என்று உறுதி கூறி, என் மனைவியான உமக்கு என் இஷ்டப்படியே இந்தச் செட்டில்மென்ட் பத்திரத்தை எழுதிக் கொடுத்திருக்கிறேன்."

9. The said Haridoss was examined as D.W.3 on behalf of the third defendant. His deposition is material insofar as it relates to the execution of Ex.A3, the alleged retention of possession, and the subsequent transactions

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concerning the property. In his examination, D.W.3 stated, in substance, that he and his wife had executed the settlement deed in favour of their children. He further asserted that possession of the property had not been handed over to the beneficiaries and that he continued to enjoy the property. D.W.3 also stated that he had cancelled the settlement deed executed in favour of his children through the office of the Sub-Registrar. During cross-examination, he admitted that he had not obtained cancellation of the settlement deed through a competent civil court. He also admitted that the property-tax assessment and electricity connections continued in his name. With regard to the third defendant's claim, D.W.3 deposed that he had entered into an agreement of sale dated 24.03.1994 in respect of 3 cents situated in the middle portion of the suit property, agreeing to sell the same at the rate of Rs.20,000/- per cent and receiving an advance of Rs.12,500/-. He further referred to a subsequent registered agreement dated 21.02.2002 and stated that the third defendant had constructed a house, a well and a toilet and was enjoying the property. The testimony of D.W.3 establishes his assertion that he continued in possession and purported to cancel the settlement deed.

10. Section 10 of the Transfer of Property Act, 1882, deals with conditions absolutely restraining alienation. The provision declares that,

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where property is transferred subject to a condition or limitation absolutely restraining the transferee, or any person claiming under the transferee, from parting with or disposing of the interest in the property, such condition or limitation is void, subject to the statutory exception relating to leases. Section 11 of the Act deals with restrictions repugnant to the interest created. Where an interest in property is created absolutely in favour of a person, but the terms of the transfer direct that the interest shall be applied or enjoyed in a particular manner, the transferee is ordinarily entitled to receive and dispose of that interest as if there were no such direction, subject to the statutory qualification contained in the section.

11. In the present case, Ex.A2 contains provisions concerning joint enjoyment and the execution of documents during the lifetime of Haridoss. Ex.A3 is the subsequent settlement deed jointly executed by Haridoss and Selvarani in favour of their children, including the 2nd respondent herein viz., Thulasi Brinda Devi. The rights of the beneficiaries and the validity of the alienations relied upon by the parties must consequently be examined with reference to the operative terms of Ex.A3, read in the context of the earlier settlement deed. The evidence of D.W.3 regarding retention of possession and unilateral cancellation cannot, by itself, determine whether the settlement deed had validly created rights in favour of the beneficiaries.

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Equally, the fact that the property-tax assessments or electricity connections continued in the name of Haridoss would not, standing alone, conclusively establish title in his favour.

12. The appellant / 1st defendant's claim is founded upon the sale deed executed by one of the beneficiaries under Ex.A3. The 1st respondent / plaintiff, in turn, claims title to 8½ cents under Ex.A4, relying upon the rights of his vendors under the same settlement deed. The trial Court and the first appellate Court considered the rival documents and concluded that the subsequent transactions were invalid in view of the restrictions contained in Ex.A3. The appellant / 1st defendant has also failed to establish that the sale deed upon which he relies conveyed a legally enforceable interest in the particular portion claimed by him. A claim to a specified portion of an unpartitioned property cannot automatically be equated with exclusive title to that portion without examining the rights of the other co-owners and the effect of the conveyance. Further, the assertion of adverse possession cannot be accepted merely on the basis of long possession or the existence of constructions. The necessary elements of adverse possession must be established by legally sufficient evidence.

13. In the present case, the appellant / 1st defendant has not

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established sufficient grounds to displace the concurrent findings of the Courts below or to secure the relief claimed in the cross-appeal. The evidence of D.W.3, considered along with the documentary evidence, does not by itself establish the appellant / 1st defendant's exclusive title to the disputed portion. The judgment relied upon by the learned counsel for the appellant / 1st defendant does not dispense with the requirement of construing the settlement deed in question and establishing the nature of the interest conveyed under the subsequent sale deed. The impleadment of the 2nd respondent herein viz., Thulasi Brinda Devi, does not, by itself, alter the requirement to determine the rights of the parties in accordance with the terms of Ex.A3 and the applicable law.

14. Though the appellant / 1st defendant contends that the Courts below were not justified in holding Ex.B2 to be invalid when no specific issue had been framed in that regard, the mere omission to frame a separate issue would not, by itself, vitiate the adjudication, provided that the parties were aware of the controversy, had an adequate opportunity to adduce evidence, and no prejudice had been caused to either party. Nevertheless, a finding on the validity of a document must be founded upon the pleadings, the issues arising therefrom, and the evidence on record. In the present case, having regard to the rival claims of title and the findings recorded by the

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Courts below, this Court finds no ground to interfere with the Judgment and Decree dated 29.10.2007 passed in Cross Appeal A.S.No.72 of 2007 on the file of Subordinate Court, Ramanathapuram. Accordingly, the substantial questions of law are answered against the appellant/1st defendant

15. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

T. RAJAPRABA

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To

1. The Subordinate Judge, Ramanathapuram
2. The District Munsif Cum Judicial Magistrate, Rameswaram.
3. The Section Officer, VR Section, Madurai Bench of Madars High Court, Madurai.

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THIRUMAGAL CHANDRASEKAR, J.

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