

IN THE COURT OF DISTRICT MUNSIF, BHAVANI

PRESENT. Tmt. S. SAPNA, B.B.M., L.L.M.,
DISTRICT MUNSIF, BHAVANI.

Monday the 17th day of July 2023
2054 Thiruvalluvaraandu Shobakiruthu Varudam Aadi month 1st day

Original Suit No.92/2022
CNR No.TNED0F0000712022

1. Veerayal
2. Santhana Maaraiyan
3. Jothieeswari

... Plaintiffs

- /vs/-

1. Samiyathal
2. P. GogulaKrishnan
3. P. Padmapriya
4. Sub Registrar, Sub Registrar Office, Kavundapadi

... Defendants

This Suit is coming before me on 03.06.2020 for final hearing in the presence of Thiru. R.M. Palanisamy, Counsel appearing for the plaintiffs and Thiru. N. Govindasamy, Counsel appearing for the 4th defendant, and 1st to 3rd defendants called absent and set exparte and upon hearing both side Arguments and on perusal of case records this court delivers for following

JUDGMENT

This suit is filed by the plaintiffs against the defendants, Declaring the sale agreement dated 28.09.1998 executed by the 2nd plaintiff and his father deceased P.A. Palanisamy in favour of deceased M.Palanisamy registered as document No.1654/1998 in the registrar office Kavundapadi is null and void and invalid; mandatory injunction directing the 4th defendant to remove the encumbrance pertaining to the registered sale agreement dated 28.09.1998 registered as document No:1654/1998 in the registrar office Kavundapadi and costs of the suit.

2. Brief facts of the plaint averments would be run as follows:-

2.1. The plaintiffs stated that the property described in the schedule below henceforth called as "The suit property" originally belonged to the grandfather of 2nd plaintiff Arthanarigounder by virtue of sale deed dated 21.08.1974 registered as document No.1241/1974 in the registrar office Kavundapadi. On 28.09.1998 2nd plaintiff's father P.A.Palanisamy borrowed a sum of Rs 15,000/- for his family expense from one M.Palanisamy of Kondaiyakattuvalasu, and to ensure the repayment of said debt he along with his son ie 2nd plaintiff executed a registered sale agreement in favour of said M.Palanisamy and the same was registered as document No:1654/1998 in the registrar office Kavundapadi. Father of 2nd plaintiff P.A.Palanisamy has been paying the interest till his death. Thereafter the 2nd plaintiff paid entire principal with interest accrued thereon last week of April 2021.

2.2. The plaintiffs stated that plaintiffs could not get the registered sale agreement cancelled due to the bedridden of the said M.Palanisamy But unfortunately he died due to Covit-19 leaving behind him the defendants as his legal heirs on 14.05.2021. Inspite of repeated demands, legal heirs said M.Palanisamy i.e defendants herein did not come forward to cancel the said sale agreement dated 28.09.1998.

2.3. The plaintiffs stated that even assuming without admitting that the said sale agreement is real one, as the time for performance of the said agreement expired already, it became time barredone and is inexecutable. Plaintiff's alone have been in possession and enjoyment the said property as absolute owners. Therefore, the said sale agreement dated 28.09.1998 which is reflecting in the encumbrance of the suit property has to be removed. Reflection of the said sale agreement dated 28.09.1998 in the encumbrance of the suit property causes hindrance in getting loan from the bank. Even inspite of repeated demands orally by the plaintiffs, defendants have not

come forward to cancel the encumbrances reflecting in the encumbrance of the suit property. Hence the suit for declaration and mandatory injunction to remove the above said encumbrance. Hence this suit.

3. Brief facts of written statement by the 4th defendant would run as follows:-

3.1. The 4th defendant stated that the document No.1241 dated 21.08.1974 and the document No.1654/1998 dated 28.09.1998 are the two documents registered in this defendant office above that the defendants not aware of the transactions between the plaintiff and defendant. According to the document dated 28.09.1998 no one approached the defendants office for the cancellation of said document by paying proper registration fees under the provision of Tamil Nadu Government Registration Act. Therefore the relief of the plaintiff to declare the document No.1654/1998 dated 28.09.1998 is not maintainable and liable to be dismissed.

3.2. The 4th defendant stated that the claim of the plaintiff is that the document registered dated 28.09.1998 is after 22 years the plaintiff claiming as a void document is not tenable in law. The suit is barred by limitation Act. Both the plaintiff and defendant has colluded and filed the suit with a bad intention to cause a revenue loss to the Government by not paying the relevant registration fees. Therefore the relief sought by the plaintiff is liable to be dismissed in prima facie.

3.3. The 4th defendant stated that the relief claimed by the plaintiff for mandatory injunction according to the document no.1654/1998 is not entitled as per law. If the plaintiffs have filed proper documents along with proper registration fees then only the defendants can registered the document as claimed by the plaintiff. Further the defendant stated that the relief claimed by the plaintiff should be dismissed with costs and there is no prima facie in this case. There is no merit in the claim of the plaintiff. There is no cause of action in the suit.

4. Based on the plaint pleadings and written statement this court has framed the following issues:-

1. Whether the plaintiff is entitled to the relief of declaration that the sale agreement dated 28.09.1998 is null and void?
2. Whether the plaintiff is entitled for the relief of Mandatory injunction against the 4th defendant?
3. Whether the suit is barred by law of limitation?
4. What other relief the plaintiff is entitled to?

5. On the plaintiff's side 2nd plaintiff examined as PW1 and Ex.A1 to Ex.A4 were marked. On the other hand defendants side neither oral nor documentary evidence marked.

6. Answering to Issue No.1:-

6.1. According to the plaintiffs case the 2nd plaintiff himself has been examined as PW1. PW1 has deposed that the 1st plaintiff is his mother and the 3rd plaintiff is his sister. Originally the suit property belongs to one grandfather of 2nd plaintiff namely Arthanari Gounder by a virtue of sale deed dated 21.08.1974. The father of the PW1 one namely P.A. Palanisamy along with the 2nd plaintiff borrowed a loan for sum of Rs.15,000/- for a family expenses from one namely M. Palanisamy on 28.09.1998 and executed a Registered Sale Agreement.

6.2. PW1 further deposed that his father P.A. Palanisamy died on 14.05.2021 and to prove the same death certificate has been marked as Ex.A1. Further stated that the plaintiffs are the legal heirs of deceased P.A. Palanisamy and to prove the same legal heir certificate has been marked as Ex.A2. PW1 stated that his father has paid all interest till his death and thereafter he paid the entire principal with interest and the last week of April 2021. M. Palanisamy died due to COVID'19 on 14.05.2021 and prove the same death certificate has been marked as Ex.A3 leaving

behind the defendants 1 to 3 as his legal heirs and to prove the same legal heir certificate marked as Ex.A4. The plaintiff further stated that the defendants not come forward to cancelled the sale agreement dated 28.09.1998.

6.3. In this case after issuance of summons to the defendants 1 to 3 received the same and remained exparte. The 4th defendant has filed the written statement alleged that none of the party has not filed any deed to cancel the above said sale agreement dated 28.09.1998. The suit has been barred by law of limitation. To prove the same 4th defendant side neither oral nor a documentary evidence has been produced.

6.4. On considering both side pleadings, arguments, oral and documentary evidences this court is of a view that the plaintiff has stated that his father paid the interest till his death but there was no document produced by the plaintiff to show that his father paid the interest. Further in plaintiff averments has stated that the 2nd plaintiff who is the PW1 has paid entire principal amount with interest till last week of April 2021 and to prove the same no document has been produced before this court. On perusal of the plaintiff side documents the vital document to this case is the sale agreement dated 28.09.1998 has not been marked as a document on the plaintiff side. Though the same has been filed in court records. The 2nd plaintiff has filed additional proof affidavit stated that when he paid the entire loan amount to M. Palanisamy he assured that he will cancel the sale agreement in the registrar Office at that time he will return the original sale agreement. Therefore the plaintiff has filed the copy of the sale agreement, the above said statement of PW1 in additional chief affidavit has not stated in the plaint. Therefore this court is of a view that it is well settled law that no amount of pleadings no amount of evidence. Further in this case the plaintiff has not come forward to mark the vital document a copy of the sale agreement to prove his case.

6.5. Further the plaintiff stated that the plaintiff alone have been in a possession and enjoyment of the suit property but to prove the same not produced any documents. In this case the plaintiff himself admitted that he is the party to the document.

6.6. In such circumstances the plaintiff has to file a suit for cancellation of the sale agreement deed dated 28.09.1998 but the plaintiff has filed the suit for the relief of declaration that the sale agreement dated 28.09.1998 is to be declared as null and void. A person seeking specific performance must show that his conduct has been blemish less throughout. Hence the plaintiff has failed to prove that he has performed his legal obligations. In a suit for declaration, burden always lies on the plaintiff to make out and establish a clear case for granting such a relief. The weakness of the defendants will not be a ground to grant relief to the plaintiff. As per Sec.101 of Indian Evidence Act the burden on the plaintiff to prove his case but in this case the plaintiff has failed to produced the documents to show that when he has repaid the entire loan amount. Therefore the plaintiff has not prove his case by document and oral evidence. On considering the above said reasons this court comes to the conclusion that the plaintiff is not entitled to the relief of declaration. According answered to this issue.

7. Answering to Issue No.2:-

7.1. As already decided vital issue no.1 that the plaintiff is not entitled for the relief of declaration therefore the plaintiff is not entitled for the consequential relief of mandatory injunction. According answered to this issue.

8. Answering to Issue No.3:-

8.1. The plaintiff has admitted in his pleadings that at the time of performance of the sale agreement expired already. In such circumstance the plaintiff has not proved the last date of his transaction to claim his limitation. As per sec.6 of Specific

Relief Act time is the essence of contract and the same was admitted by plaintiff in his pleadings that the sale agreement deed became time barred one and it is inequitable. It is important to state here that the plaintiff nowhere averred in his plaint about the stipulated time period of the agreement. Further the defendant has also stated that the suit is barred by a law of limitation that the document is of the year 1998 suit has been filed after 22 years. The plaintiff has not explained the delay of 22 years and also not produced a single document to claim his limitation. As per Article 58 of the Limitation Act the suit for declaration has to file within 3 years from the date of the deed. The plaintiff has admittedly averred that the defendant not come forward to cancel the sale agreement deed dated 28.09.1998. As per Sec.33 of the Specific Relief Act to cancel the sale agreement the limitation is for 3 years from the date of the agreement. The plaintiff has not exercised his right within the period of limitation. On the above said reasons this court is of view the suit filed by plaintiff on the facts pleaded by him is barred under the provisions of Limitation Act. Accordingly the above issue is answered.

9. Answering to Issue No:4:-

Since, the main relief is not granted infavour of the plaintiff, this court comes to the conclusion that the plaintiff is not entitled to any other relief. Hence, this issue is answered accordingly.

10. In the result,

1. that the suit be and the same is hereby dismissed.
2. that there be no costs.

Dictated to the steno-typist, typed by her directly in the computer, corrected and pronounced by me in the open court dated this the 17th day of July 2023.

**District Munsif,
Bhavani.**

Appendix:-**Plaintiffs side witnesses:-**

PW1 – Santhana Maaraiyan

Plaintiffs side Exhibits:-

Ex.A1	14.09.2020	Death certificate of P.A. Palanisamy	Original
Ex.A2	05.01.2017	Legal heir certificate of P.A. Palanisamy	Original
Ex.A3	12.07.2021	Death certificate of M. Palanisamy	Computerized copy
Ex.A4	24.12.2021	Legal heir certificate of M. Palanisamy	Computerized copy

Defendants' side witnesses and Exhibits:- NIL

**District Munsif,
Bhavani.**