

IN THE COURT OF DISTRICT MUNSIF, NANGUNERI.

PRESENT : Tmt.A.V.Subashini, B.A.B.L.,

District Munsif, Nanguneri.

Tuesday the 15th day of September 2022

O.S.4/2009

Subramanian

..Plaintiff

/Vs./

Joint Receiver,

Kalaimagalsabha,

Chennai 17

...Defendant

This suit coming on today before me in the presence of Thiru.E.Seenivasan. Advocate for Plaintiff, and on the side of Defendant Thiru.T.Sivasubramanian. counsel for the Defendant, and on perusal of records and on hearing the arguments and havings stood over to this day for consideration, the Court delivers the following...

JUDGMENT

This suit has been filed for Declaration of title and for consequential permanent injunction restraining the defendant, his men, agents, subordinates, etc., from interfering with the plaintiff's peacefull possession and enjoyment of the plaint scheduled property and for cost of the suit.

2) The Plaintiff case in nutshell

According to the plaintiff, he purchased the schedule property by way of registered sale deed dated:23.09.1985 for valid consideration from Sethuramalinga Thevar, Kannabiran Thevar, Udaiyar Thevar, Murugan @ Subbiah Thevar, Muthaiah Thevar, Paramasiva Thevar, Nallakannu Thevar, Maharasiammal, Arumuga Thevar, Lakshmi Ammal, Krishnan, Udaiyar Thevar, Subbaiah, Nallakannu and Ganesan.

Plaintiff was issued with patta and he is paying tax to the Government. Plaintiff is in exclusive possession and enjoyment of the Plaintiff schedule property. On 17.12.2002 Plaintiff came to know through encumbrance Certificate that Defendant has got executed with a forged sale deed from some of the vendors of plaintiff. After execution of sale deed on 23.09.1985 they have no rights to execute any sale deed to the Defendant. The Plaintiff issued notice on 20.12.2002 to the defendant. The defendant received the notice but no reply was given. On 05.01.2009 the employees of defendant physically came to the schedule property and objected, threatened the plaintiff to oust from the possession of schedule property. Hence the suit for declaration of title.

3) The Defence urged by the Defendant:

The Defendant denied the entire case of plaintiff and put forth that defendant purchased the schedule property and some other property from Sethuramalinga Thevar, Kannabiran Udaiyar Thevar, Muruga Thevar, Muthaiah Thevar, Paramasiva Thevar, as per document 936/85 before the Nanguneri Sub Registrar Office. After knowing of the sale deed of defendant on 17.12.2002 suit has been filed in the year 2009 and suit is barred by limitation.

On considering the Pleadings following issues are formulated on 18.09.2009.

4) Issues-

On the above pleadings, the following issues were framed.

- 1) Whether the plaintiff is purchased the suit property dated: 23.09.1986 with the lawful owners of suit property?
- 2) Whether the plaintiff is in lawful possession over the suit property?
- 3) Whether the plaintiff is entitled the relief of declaration of title and permanent Injunction?
- 4) To what other reliefs to plaintiff?

Already Judgment was pronounced by this court on 08.03.2014 and in that Judgement the, then presiding officer framed Additional issues.

5) Whether the suit is barred by limitation?

5) Evidence on both side:

On the side of Plaintiff, Pw1 to Pw3 examined. Exhibits A1 to A7 marked, and Ex.X1 to X5 marked, Defendant side of Dw1 examined Ex.B1 marked.

6) Arguments advanced :

The learned counsel for the plaintiff submitted his arguments that defendant has the duty of purchasing the properties from wrong owner and already suit was dismissed, as the same is barred by limitation. The derivation of title is in favour of the plaintiff and plaintiff has got knowledge of the sale deed on 17.12.2002 and notice issued on 20.12.2002. Exhibit A1 is the sale deed of the plaintiff and Article 58 of limitation Act will not apply to the case. As with regarding the immovable property Art 61-67 will apply and plaintiff alone has got better title and the document of plaintiff is earlier one.

The learned counsel for the defendant submitted his arguments that defendant purchased the property as per sale deed 936/85 and after having knowledge about the sale deed on 17.12.2002, suit has been filed in the year 2009 and the suit hits by Art 56 of limitation Act.

The learned counsel for the plaintiff also relied upon *Surabhi Baburaw Vs Vullingala Surya Narayana and other* Judgment reported in 1993 (2) ALJ 317 (Andhra High Court) that part V of the Limitation Act contains Articles including Article 65, applicable for suits relating to immovable property, whereas part III which contains Art 58 deals with suits relating to declaration. When there is a specific chapter Viz Part V relating to suits for immovable property, Art 65 which is relevant Article which provides for limitation, has to be applied and not Article 58 which provides limitation for other declarations. The learned counsel for the plaintiff also relied upon “*Mechineni Chokka Rao and ors Vs Sattu Sattamma* on 13th september 2005 reported in 2006 (1) ALD 116 (Andhra highcourt) “That when a suit is filed based on title but claiming of title to the suit property with consequential relief of possession Art 65 of Limitation Act would apply and Article 58 would have no application”

The learned counsel for the plaintiff also relied upon 1993 AIR(Gauhati) 52 that mere entry of name of defendant in the record of right would not furnish any cause of action”

On the other hand the learned counsel for the defendant also relied upon 2022(2) TNCJ 348 (Mad) that “Document in Dispute came to the knowledge of plaintiff in the year 2015 and suit on that basis ought to have been filed in the year 2018 itself-suit filed in the year 2020-2021 failure to file the suit within the period of limitation.

Before going into discussions this court would like to bring into light of the description of property. Description of property.

தபசில் விபரம்

திருநெல்வேலி மாவட்டம், நான்குநேரி தாலுகா, மறுகால்குறிச்சி கிராமம், அயன்புஞ்சை சர்வே எண்.319(2) செண்ட் 97 தொன்னூற்றி ஏழு பூராஷம் (39 ஏர்ஸ்)

எல்கை- வடக்கு- மு.உடையார் தேவர் நிலம், தெற்கு- வை.சுப்பிரமணியன் நிலம்,

கிழக்கு- ரெயில்வே ரோடு, மேற்கு- வில்லராயன்குளம்.

Considered the rival submissions and perused the records with utmost case.

As fact has been elaborately deathwith let this court embarke into discussions.

7) Discussions and Decision on Issues:

Issues No.1 and 2 along with Additional Issues framed in 08.03.2014 with regarding limitation:

Admittedly this suit has been tried and based on the trial, Judgment has been pronounced on 08.03.2014 and during at the time of pronouncing of Judgment this court has framed the issue with regarding the limitation aspect and this suit has been dismissed as the same is barred by limitation. The plaintiff herein preferred appeal as AS.36/14 and in the Appeal, the Appellate court has come into conclusion to remand the suit with direction to answer the issues 1 to 4 which were remain un-answered. It

is settled by our Apex Court in Swarnan Latta Ghosh Vs H.K.Banerjee case reported in AIR.1969 1 SCC 709 and the provision in order.20 rule.5 of CPC also clear that “court to state its decision on each issue. “In suit in which issues have been framed, the court shall state its finding or decision, with the reasons therefore upon separate issues unless the finding upon any one or more of the issue is sufficient for the suit”.

The Hon’ble Appellate court has given a finding that to hear Arguments of both sides and to dispose of the same on merits and in accordance of order.XX Rule.5 of CPC.

As such there is no evidence adduced and counsel on either side rendered their submissions. As with regarding the issue No.1 and 2 the same relates with the ownership of plaintiff in suit property and possession. This suit has been filed for declaration of title and for consequential permanent Injunction based on the sale deed of plaintiff. The plaintiff claims right over the property based on sale deed executed by Sethuramalinga Thevar, Kannabiran Thevar, Udaiyar Thevar, Murugan @ Subbiah Thevar, Muthiah Thevar, Paramasiva Thevar, Nallakannu Thevar, Maharasiammal Arumuga Thevar, Lakshmiammal, Krishnan, Udaiyar Thevar, Subbiah, Nallakannu and Ganesan. On persuing Ex.A1 it reveals that it was executed on 23.09.1985 and the original deed is placed before the court. The Ex.A1 is aged above 30 years. As per Sec 90 of Indian Evidence Act.

“Any document beyond 30 years in title”. Presumption as to document 30 years old “Where any document, purporting or proved to be thirty years old is produced from any custody which the court in the particulars case consider property, the court may presume that the signature and relief other part of such document, which purports to be in the handwriting and in the case of a document executed or attested that it was duly executed and attested by the persons by whom it purports to be executed and attested. The vendors of the Plaintiffs father is one Vanamamalai Thevar and based on the Ex.A1 sale deed, Plaintiff also produced Ex.A2 patta, Ex.A3 tax receipt, Ex.A4 Encumbrance Certificate, Ex.A5 Legal Notice, Ex.A6 Acknowledgment card and Ex.A7 tax receipts.

On the side of plaintiffs pw2, VAO has been examined and through him X1 to X4 marked on the side of plaintiff to show that schedule of property is under the possession of the plaintiffs. Moreover through Pw3, X5 has been marked and X5 shows the name of plaintiffs.

But on perusal of Ex.A4 Encumbrance Certificate, it reveals that there was a document Ex.B1 was created on 28.11.1985 by Sethuramalinga Thevar, Kannabiran, Udaiyar Thevar, Muruga Thevar, Muthaiah Thevar, Paramasiva Thevar, Nallakannu Thevar as doc.936/1985 after to the sale deed of plaintiff.

According to the plaintiff, the vendors have no right to execute any sale deed after the sale deed of plaintiff and therefore the same does not binds upon the plaintiffs, but on the other hand, the defendant has objected that after 17.12.2002, the plaintiff having got knowledge about the document filed the suit for declaration in the 2009 and therefore the claim is barred by limitation. But admittedly no such issues framed during the time of framing of issues and this court has framed Additional issues only at the time of final adjudication. It is a trite law that in a suit for declaration of title the burden always lies upon the plaintiff to prove his case and the same is also settled by our honourable Apex Court in AIR.2014 SCC937=2014 2 SCC 269 union of India and other Vs Vasavi Cooperative Housing society case.

In the present case it is also noted that the defendant after raising the plea that suit is barred by limitation produced Ex.B1 to show his right through Dw1. Admittedly no other document produced on the side of defendants to show their possession over the schedule property. The Dw1 admitted during cross examination that they do not have any other document Ex.B1 and he do not know the person who sold the property and Dw1 do not have any knowledge of the encumbrance certificate and the same is revealed that.

“பி.சா.ஆ.1 பத்திரம் ஏற்படுத்தப்படும்போது எனக்கு நேரடியாக தெரியாது. இந்த வழக்கு சம்பந்தமாக பி.வா.சா.ஆ.1 ஆவணத்தை தவிர வேறு இல்லை. பி.வா.சா.ஆ.1 ஐ கிரையம்

கொடுத்த நபர்களையும் எனக்கு தெரியாது. பி.வா.சா.ஆ.1 பத்திரம் எழுதும் போது இந்த சொத்தில் வில்லங்கம் இருக்கிறதா என்று பார்த்த விவரம் எனக்கு தெரியாது”

More over there is no patta in the name of defendant The Dw1 admitted during cross examination that no tax was paid and Dw1 also admitted that they are not in enjoyment of the property. The only contention of the defendant is that the vendors of defendant is not the vendors of plaintiff. Admittedly he who alleges has no prove the fact.

In the instant case the plaintiff has disputed the sale deed Ex.B1 of the defendant as the same does not binds on the plaintiff and the defendant disputes that the suit claim of plaintiff is barred by limitation.

It is settled in 2000 7 SCC 702 “That where there is dispute that suit is filed beyond period of limitation, plaintiff would have to aver and prove that suit is within limitation as prescribed and in the absence of any averment or proof to show, the plaintiff who would fail”.

Admittedly it is settled law in AIR 1972 SCC 1935 B.B. of D.Mfg Co Vs ESI corporation.

It was observed by the Honourable Supreme Court that “The object of the status of limitation to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress state, take or fraudulent claim”.

The Burden of proof of limitation initially lies upon the defendant and there upon it will shift to the plaintiff. The burden of plaintiff will be strict so as to prove exclusion if any so that they can prove and get the period of limitation. extended.

Limitation bars the Judicial remedy. From Article 58 of Limitation Act it is clear that a suit for declaration, simpliciter without asking for any ancillary relief the period of Limitation is 3 years, According to Art 65 of limitation Act it is clear that whenever a suit for recovery of possession is filed based on title, the period of limitation is 12 years. The learned counsel for the plaintiff also relied upon the authorities Mechineni Chokka Rao and ors Vs Satha Sattamma 2006 (1) ALD 116

(Andra High Court) that Article 58 will not apply to the present case and Art 65 of Limitation Act applies to immovable property.

On analysing that whether in the present case the period of limitation to file the suit is 12 years or 3 years, admittedly it is clear that Art 58 of Limitation applies only to the case where declaration simpliciter is sought without any consequential relief. This issues is also settled in Ashok Kumar and others Vs Gangadhar and others.

It is also settled by our Apex court in AIR 1961 SCC 808 Mohd Yunus Vs Syed Unnissa.

The Apex court held that “ A suit for declaration with a consequential relief for injunction is not a suit for declaration simpliciter, it is a suit for declaration with further relief. Whether the further relief claimed in a particulars case as consequential upon a declaration is adequate facts and circumstance of the case. It is also held in “Pavan kumar and another Vs V.Gopalakrishnan and other that “Where a suit is filed on title but claiming declaration of title to the suit property with consequential relief of possession. Art 65 of Limitation Act would apply and Art 58 would not be applicable.

Under the present set of circumstances to the facts here in, admittedly suit was filed for declaration with consequential relief and this suit has not been filed simpliciter for declaration, the defendant has raised the plea of limitation that after issuing of Legal Notice on 20.12.2002, this suit has been filed in the year 2009 and therefore suit is barred by limitation, but admittedly the defendant has not proved his possession over the schedule property and is the plaintiff who filed the suit has proved his possession over the schedule property.

It is also noted that the sale deed of plaintiff was executed on 23.09.1989 and the sale deed of defendant was executed after the sale deed of plaintiff and it is the case of plaintiff that after execution of sale deed to plaintiff the legal heirs of Vanumamalai Thevar do not have any right to execute sale deed to defendant. Admittedly after execution of sale deed the vendors do not have any title and the defendant also did not prove his possession over the schedule property and no patta

also has been obtained. The Dw1 also admitted that they are not in possession of the property. When the defendant has come forward that his vendor and plaintiff's vendor are not same person it is upon the defendant to prove the same.

The plaintiff has proved his continues possession over the schedule property and this court on considering the facts and circumstance comes into conclusion that since the suit has been filed for declaratin and for consequential releif Art 58 will not apply and Article 65 of the Limitation Act alone applies to the present case and therefore the suit is within Limitation. Moreover the plaintiffs also has established his possession over the schedule property as the owner with respect of the sale deed Ex.A1 created infavour of the plaintiffs. Accordingly issues 1 and 2 and additional issues framed with regarding the limitation aspect is answered.

8) Issues No.3

This court has already come into conclusion that plaintiff has proved his possession and title over the property. This court also has come into conclusion that Act 58 of Limitation Act will not apply to the present case. The Act 65 of the Limitation Act applies and suit is well with in limitation. When the plaintiff has proved his possession and title over the schedule property, the plaintiff is entitled for declaration over the schedule property and the consequential relief of permanent injunction is also granted. According issues No.3 is answered.

9)Issues No.4 To what other relief to plaintiff?

No other relief is granted to the plaintiff. Already this court has come into conclusions that plaintiff is entitled to the relief declaration and for consequential relief of permanent injunction. As with regarding cost parties shall bear their own cost.

10) a) In the result suit is decreed in favour of plaintiff and the relief of declaration is granted in favour of plaintiff along with the consequential relief of permanent Injuncttion.

b) As with regarding cost, parties shall bear their own cost

Dictated by me to the stenographer, typed by the stenographer directly in computer, and corrected and pronounced by me in open court this the 15th day of September, 2022.

**District Munsif,
Nanguneri.**

Plaintiff side evidence

PW1. - Subramanian

PW2. -N.Vaikundaraj

PW3. - S.Sankar

Plaintiff side documents

Doc.No.	Date	Particulars of the documents
A1	23.09.1985	Sale deed
A2	--	Patta
A3	--	Property Tax Receipt
A4	01.01.1985 to 31.12.198	Encumbrance Certificate
A5	20.12.2002	Adovcate Notice
A6	--	Post Acknowledgment Card
A7	--	Property Tax Receipt

Defendants side evidence

DW1. Thandabani

Defendants side documents -

Doc.No.	Date	Particulars of the documents
B1	--	Sale deed

Witness side documents

Doc.No.	Date	Particulars of the documents
X1	--	Patta
X2	--	Map
X3	--	S.No.19/2 A Register
X4	--	S.No.1423 Pasali Adangal
X5	--	Pasali

**District Munsif,
Nanguneri.**