

IN THE COURT OF THE DISTRICT MUNSIF OF SULUR**PRESENT: Tmt. N.Renuga, B.A., B.L.,**

District Munsif, Sulur.

Friday the 9th day of December 2022**Original Suit No. 86 of 2020**

CNR.No.TNCB170000942020

1. Saranya,

2. Pavithra,

3. Marathal

...Plaintiffs

/vs/

Thangavelu

...Defendant

This suit is coming on 27.09.2022 for final hearing before me in the presence of Thiru.R.Arunachallam, Advocate for the plaintiffs, and the defendant being called absent set exparte and upon perusing records and having stood over for consideration till this day, this Court delivered the following:

JUDGMENT

Suit for Declaration to declare that the sale agreement dated 01.03.2007 entered into between late Chinnasamy, father of the plaintiffs 1 and 2 and the defendant as invalid, infructuous and unenforceable in any court of law due to limitation and for the cost of the suit under section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

1. The Brief averments of the Plaint as follows:

1.1. The suit property is an extent of 0.08 1/2 acre originally belonged to one late Chinnasamy, who was the father of the plaintiffs 1 and 2 and son of the 3rd plaintiff by a partition deed, dated 04.06.1952 registered as Doc.No.1897/1952 before the Sub-Registrar, Sulur. The said Chinnasamy had authorized one Thangaraj, son of Marappa gounder by way of registered general power of attorney dated 28.02.2007 to

deal with the suit property including sale in favour of third parties. The plaintiffs 1 and 2 were minors at that time represented by their father/guardian Chinnasamy, were added as parties to the registered power of attorney.

1.2. On the basis of the power of attorney, the said Thangaraj in order to dispose of the suit property, approached the defendant and agreed to sell the suit property to the defendant for a total sale consideration of Rs.50,000/- free of encumbrance. The terms agreed were reduced into writing by a registered sale agreement dated 01.03.2007 entered into between the said power holder Thangaraj on behalf of late Chinnasamy and the defendant. The said sale agreement, the defendant had paid a sum of Rs.10,000/- as advance towards sale consideration and as per the said sale agreement, the sale has to be completed within six months from the date of sale agreement and further, the balance of sale consideration was agreed to be paid at the time of execution of the sale deed in favour of the defendant. The parties to the said sale agreement consented to the terms of the sale agreement and the sale agreement was registered before the Sub-Registrar, Sullur doc.No.1247/2007.

1.3. After the execution of the said sale agreement, the defendant was never ready to get the sale deed executed in his favour after paying the balance sale consideration inspite of the fact that late Chinnasamy through his power holder Thangaraj was ready to get the sale deed executed after receiving the balance sale consideration. In fact, late Chinnasamy was in need of money at that time and so he, through his power holder, approached the defendant on several occasions, during his life time to get the sale deed executed as per the terms of the sale agreement. But the defendant was postponing the same under some pretext of other. Even after the expiry of six months period stipulated in the sale agreement, late Chinnasamy was ready to execute the sale deed, but the defendant failed to comply with the terms of the sale agreement.

1.4. The Chinnasamy and his wife Lakshmi were died intestate leaving behind their daughters who were the plaintiffs 1 and 2. Even after the death of Chinnasamy,

his legal heirs viz., the plaintiffs 1 and 2 pestering the defendant to get the sale deed executed in his favour as per the terms of the said sale agreement. But the defendant failed to comply with their demand for the best reasons known to him. The defendant was never ready and willing to get the sale deed executed as per the sale agreement, he lost his right under the registered sale agreement. As per registered sale agreement dated 01.03.2007 has lapsed, it become null and void and therefore it is just and necessary that the said agreement has to be declared as null and void and the same cannot be enforced in a court of law. Hence, the suit.

2. On summons the defendant had appeared before the court and the defendants side not ready to file written statement and the defendant called absent set exparte on 12.08.2022.

3. Points for consideration

Whether the plaintiffs are entitled declaration as prayed for?

4. On the side of the plaintiffs, the 1st plaintiff Saranya examined as PW.1 and Ex.A.1 to Ex.A.7 were marked.

5. Points:-

5.1. Heard learned counsel for plaintiff, the 1st plaintiff examined herself as PW.1 and deposed that the suit property is an extent of 0.08 1/2 acre originally belonged to his father late Chinnasamy, by a partition deed, dated 04.06.1952 registered as through Doc.No.1897/1952 before the Sub-Registrar, Sular. The said Chinnasamy had authorized one Thangaraj, son of Marappa gounder by way of registered general power of attorney dated 28.02.2007 to deal with the suit property including sale in favour of third parties. The said power of attorney dated 28.02.2007 marked as Ex.A.1. The plaintiffs 1 and 2 were minors at that time represented by their father/guardian Chinnasamy, were added as parties to the registered power of attorney.

5.2. On the basis of the power of attorney, the said Thangaraj in order to dispose of the suit property, approached the defendant and agreed to sell the suit

property to the defendant for a total sale consideration of Rs.50,000/- free of encumbrance. The terms agreed were reduced into writing by a registered sale agreement dated 01.03.2007 entered into between the said power holder Thangaraj on behalf of late Chinnasamy and the defendant marked as Ex.A.2. The said sale agreement, the defendant had paid a sum of Rs.10,000/- as advance towards sale consideration and as per the said sale agreement, the sale has to be completed within six months from the date of sale agreement and further, the balance of sale consideration was agreed to be paid at the time of execution of the sale deed in favour of the defendant.

5.3. But the defendant was never ready to get the sale deed executed in his favour after paying the balance sale consideration inspite of the fact that Chinnasamy through his power holder Thangaraj was ready to get the sale deed executed after receiving the balance sale consideration. In fact, Chinnasamy was in need of money at that time and so he, through his power holder, approached the defendant on several occasions, during his life time to get the sale deed executed as per the terms of the sale agreement. But the defendant was postponing the same under some pretext of other. Even after the expiry of six months period stipulated in the sale agreement, Chinnasamy was ready to execute the sale deed, but the defendant failed to comply with the terms of the sale agreement.

5.4. The Chinnasamy and his wife Lakshmi were died intestate leaving behind their daughters who were the plaintiffs 1 and 2. The death certificate and legal heirs certificate of Chinnasamy were marked as Ex.A.3 and Ex.A.4 respectively. The death certificate and legal heirs certificate of Laksahmi were marked as Ex.A.5 and Ex.A.6 respectively. Even after the death of Chinnasamy, his legal heirs viz., the plaintiffs 1 and 2 pestering the defendant to get the sale deed executed in his favour as per the terms of the said sale agreement. The encumbrance certificate for the suit property marked as Ex.A.7. But the defendant failed to comply and the defendant was never ready and willing to get the sale deed executed as per the sale agreement,

he lost his right under the registered sale agreement. As per registered sale agreement dated 01.03.2007 has lapsed, it become null and void.

5.5. The defendant had not present before this court and became exparte, not contested this suit by filing his written statement. On perusal of Ex.A.1 to Ex.A.7, PW.1 averment the plaintiffs proved that the defendant has not get lapsed the sale deed executed as per the sale agreement, he lost his right under the registered sale agreement dated 01.03.2007. The defendant has not appeared and pleaded that, he is taken steps to executed the said agreement by way of filing any suit or any other proceedings pending before any court, or the power of attorney holder executed sale deed in his favour with in the time specified under sale agreement. The period fixed for sale is 6 months, after completion of 6 months, within 3 years the defendant as agreement holder must approach competent court to get the sale deed executed. But on perusal of Ex.A.7 no documents as like sale deed was got executed by the defendant with in the period of limitation under Indian Limitation Act. Hence, this court finds that the sale agreement dated 01.03.2007 is now before time barred, infractious. Hence, it needs to be declared as unenforceable invalid. This court finds that the plaintiffs had proved their case under section 101 of Indian Evidence Act. Hence, this court is of considered view that the plaintiffs is entitled for declaration.

In the result, this suit is decreed declaring that the sale agreement dated 01.03.2007 entered into between late Chinnasamy, father of the plaintiffs 1 and 2 and the defendant as invalid, infructuous and unenforceable in any court of law due to limitation. No cost.

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 9th day of December 2022.

District Munsif,
Sulur.

List of witnesses on plaintiffs side:-

PW.1- Saranya

List of documents on plaintiffs side:-

Ex.A.1	28.02.2007	General power of attorney executed by Chinnasamy in favour of Thangaraj	Certified copy
Ex.A.2	01.03.2007	Sale agreement between Thangavel and Chinnasamy's power agent Thangaraj	Certified copy
Ex.A.3	04.06.2008	Death certificate of Chinnasamy	Original
Ex.A.4	03.07.2008	Legal heir ship certificate of Chinnasamy	Original
Ex.A.5	09.03.2009	Death certificate of Lakshmi	Original
Ex.A.6	---	Legal heir ship certificate of Lakshmi	Original
Ex.A.7	---	Encumbrance certificate for the period 01.01.1987 to 12.02.2018	True copy

List of witnesses and documents on defendant side:-

Nil

District Munsif,
Sulur.

Draft/Fair/Copy of
Judgment
O.S.No.86/2020
Dated:09.12.2022
DMC, Sulur.

