IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: **Tmt.G.Padmavathi, B.A.,B.L.,**
Principal District Munsif, Cuddalore,
Additional District Munsif, Cuddalore (FAC).
Wednesday, the 21st day of August – 2024

O.S.No.138/2020
TNCD040002752020

1. S.R.Mohana krishnan
2. Thaarani
3. Vinoth prabakar
4. Venkatesan ...Plaintiffs

-Vs-

1. Prabakaran
2. Rajagopal
3. Sub Registrar Joint-1, Cuddalore. ....Defendants

The plaintiff filed the suit for Declaration and Mandatory injunction. It came up for final hearing before this court in the presence of Advocate Mr.M.K.Arun babu for the plaintiffs, the defendants 1 to 3 remained exparte and upon perusal of records and having stood over for consideration till this day, this court delivers the following...

JUDGMENT

2. The Plaint Averments in brief:

(i) The suit properties were originally belonged to Seenuvasa Mudaliar - the paternal grandfather of the 1st plaintiff. On 02.09.1971 the said Seenuvasa Mudaliar executed a registered WILL in respect of his properties bequeathing 1/5th share out of the a total extent of 2 acres 13 cents to the 1st plaintiff and remaining to other descendants. The said Seenuvasa Mudaliyar died on 10.04.1974, therefore the WILL dated 02.09.1971 came into force and the

1st plaintiff acquired the title and ownership of the bequeathed property and took possession of the same and from then he was enjoying the said property i.e., the suit property.

(ii) The 1st plaintiff executed a general power of attorney dated 10.05.2006 appointing the 2nd defendant as his authorized agent in respect of the suit property. The 2nd defendant in order to defraud the 1st plaintiff entered into an agreement of sale with the 1st defendant in respect of the suit properties at a very low price of Rs.1,00,000/- (Rupees one lakh only)- on the very next day i.e., on 11.05.2006. 1st plaintiff instructed the 2nd defendant not to act as his power agent. The 1st defendant kept quiet without any further action. In order to cancel the aforesaid General Power of Attorney, the 1st plaintiff sent a notice dated 05.09.2011 to the 2nd defendant but he did not received it and was returned. The 1st plaintiff subsequently cancelled the aforesaid General Power of Attorney and again issued a notice dated 18.06.2012 to the 1st defendant and he received the same.

(iii) In the suit O.S.No.71/2006, on the file of the 2nd Additional Sub Court Cuddalore, filed by one Naresh kumar, the Hon’ble court gave its findings that aforesaid General Power of Attorney dated 10.05.2006 was cancelled on 05.09.2011. Thus, in lieu of the sale agreement dated 11.05.2006 there exists no contractual relationship as between the 1st and the 2nd defendant and the said sale agreement cannot be enforced and dismissed the said suit. As against said judgment, an appeal was preferred before the Additional District Court, by Cuddalore vide A.S.No.18/2015. The appellate court dismissed the appeal on 19.09.2017 and confirmed the judgment of the trial court.

(iv) On 29.08.2018, the 1st plaintiff executed a registered settlement deed in respect of the suit properties in favour of his wife - the 2nd plaintiff. The 2nd plaintiff on 24.01.2019 sold the suit properties under a registered sale deed by dividing the suit properties into two parts by north and south i.e., as suit A and B schedule to the 3rd and 4th plaintiffs respectively. The purchaser took possession of the same and mutated revenue records in their respective names. The 2nd defendant, having knowledge of the cancellation of the general power of attorney in respect of the suit properties by the 1st plaintiff; colluded with the 1st defendant, after filing of the aforesaid O.S.No.71/2006 and while the appeal A.S.No.18/2015 was pending, fraudulently renewed the time barred sale agreement dated 11.05.2006 as between them by another sale agreement.

(v) They took advantage of encumbrance already created and concealing all the afore narrated facts instituted the suit on 16.07.2012 vide O.S.No.210/2012 on the file of the Additional District Munsif court, Cuddalore for specific performance of sale and fraudulently obtained the exparte decree dated 18.10.2022. The decree holder then filed the execution petition and got the sale deed registered in his favour on 15.12.2014 with the 3rd defendant the Sub-Registrar office and hence this suit.

3. <u>Written statement filed by the 1st defendant</u>:

This defendant was not aware about the alleged notice sent by the 1st plaintiff to the 2nd defendant and the cancellation of the General Power Deed on 05.09.2011 in favour of the 2nd defendant and there was a finding in O.S.No.71/2006 against this defendant and after knowing the cancellation of the power deed, this defendant and the 2nd defendant have conclusively renewed the agreement and filed the suit and the 2nd defendant wantonly remained exparte and the 1st plaintiff herein was not impleaded wantonly and the decree and judgment in O.S.No.210/2012 are not valid and this defendant did not take possession of the property and the sale deed was not given effect to and the 1st plaintiff was aware of the suit only when he executed the settlement deed in favour of the 2nd plaintiff on 29.08.2018.

4. <u>Written statement filed by the 2nd defendant</u>:

(i) As the 1st plaintiff already received the entire sale consideration, he had no occasion to question the actions of this defendant. Later in order to get unjust enrichment, the 1st plaintiff has created a settlement deed in favour of 2nd plaintiff and in turn executed sale deed in favour of plaintiffs 3 and 4. The sale deed was executed by the court in favour of 1st defendant on 15.12.2014. The plaintiffs were aware of the same. Hence the suit filed after six years is clearly barred by limitation. The 1st plaintiff told this defendant many times, that the power deed was cancelled and this defendant received the notice dated 18.06.2012 and as owner of the properties the 1st plaintiff has executed a settlement deed in favour of 2nd plaintiff and in turn 2nd plaintiff has executed sale deeds in favour of plaintiffs 3 and 4 and they have been in possession.

(ii) The 1st defendant did not take possession and the sale deed was not given effect to and the 1st plaintiff came to know about the activities of this defendant on 29.08.2018 when he executed the settlement deed.

5. Written statement filed by the 3rd defendant:

1st plaintiff on 10.05.2006 regarding the suit property, appointing the 2nd defendant as an authorized agent and writing a general power of attorney int he office of this defendant in Book No.IV registered in docket No.156/2006. The said general power of attorney was canceled by the 1st defendant on 05.09.2011 and the same was registered in the office of this defendant vide Doc.No.409/2011. One 11.05.2006 the 2nd defective entered into a purchase agreement with the 1st defective. It is registered in the office of this respondent as Doc.No.1101/2006. The plaintiffs claimed in their suit that the purchase agreement was fraudulent. But the said sale deed was registered in the office of this defective only after verifying the relevant document at the time of registration.

6. Records were perused and the following issues were framed:-

(1) Whether the suit is barred by limitation or not?

(2) Whether seeking Injunction without seeking Declaration relief is maintainable or not?

7. Following Additional Issues framed:

(1) Whether the 1st defendant is the bonafide purchaser for value or not?

(2) Whether the plaintiff is entitled for the relief of declaration - that judgment and decree passed in O.S.No.210/2012, dated 18.10.2012 is null and void or not?

(3) Whether the plaintiff is entitled for the relief of cancellation of the sale deed executed by executing court in E.P.No.102/2013 in O.S.No.210/2012 or not?

(4) Whether the plaintiff is entitled for the relief of Mandatory injunction as prayed for or not?

(5) To what other reliefs the plaintiffs are entitled?.

8. On the plaintiffs side, the 1st plaintiff was examined as PW-1, through him Ex.A-1 and Ex.A-21 were marked. The defendants after filing of the written statement did not participate in the trial and remained exparte.

9. Issues No.1 and 2 and Additional Issues No.1 to 4 –

(i) It is the case of the plaintiffs that – The suit properties were vested in the paternal father of the 1st plaintiff Seenuvasa Mudaliar and he has written a registered will. In that will he has written 1/5th share of the above total area of 2 acres 13 cents to the 1st plaintiff. The plaintiff executed a general power of attorney dated 10.05.2006 appointing the 2nd defendant as authorized agent. 2nd defendant sold the suit properties to the 1st defendant. 2nd defendant and canceled the General Power of Attorney. ***Per contra*** –

The 1st defendant contend that – This defendant was not aware about the alleged notice sent by the 1st plaintiff to the 2nd defendant and the cancellation of the General Power Deed on 05.09.2011 in favour of the 2nd defendant and also there was a finding in O.S.No.71/2006 against the 2nd defendant. This defendant denied the allegations that, he after knowing the cancellation of the power deed, conclusively renewed the agreement with the 2nd defendant and filed the suit and the 2nd defendant wantonly remained exparte and wantonly not including the 1st plaintiff as a party to the said suit and obtained a fraudulent decree and judgment in O.S.No.210/2012. He also denied the facts that this defendant did not take possession of the property and the sale deed was not given effect to and the 1st plaintiff was aware of the suit only when he executed the settlement deed in favour of the 2nd plaintiff on 29.08.2018 and further state that the sale deed executed by the court in favour of the 1st defendant on 15.12.2014 is valid.

The 2nd defendant contend that – the 1st plaintiff already received the entire sale consideration, he had no occasion to question the actions of this defendant. Later in order to get unjust enrichment, the 1st plaintiff has created a settlement deed in favour of the 2nd plaintiff and in turn executed sale deed in favour of plaintiffs 3 and 4. The sale deed was executed by the court in favour of 1st defendant on 15.12.2014. The plaintiffs were aware of the same. Hence the suit filed after six years is clearly barred by limitation. The 1st plaintiff told this defendant many times, that the power deed was cancelled and this defendant received the notice dated 18.06.2012 and as owner of the properties the 1st plaintiff has executed a settlement deed in favour of 2nd plaintiff and in turn 2nd plaintiff has executed sale deeds in favour of plaintiffs 3 and 4 and they have been in possession. The 1st defendant did not take possession and the sale deed was not given effect to and the 1st plaintiff came to know about the activities of this defendant on 29.08.2018 when he executed the settlement deed were denied.

The 3rd defendant contend that – This defendant categorically admitted the registration of several instruments in respect of the suit properties entered as between the parties with is office but alleges that the plaintiffs claimed the purchase agreement and the sale deed dated 15.12.2014 which was registered with the office of this defendant to be a fraudulent deeds and they were registered only after verifying the relevant document at the time of registration.

(ii) In respect of these issues the burden of proof lies on the plaintiffs. To prove the case of the plaintiffs, the 1st plaintiff himself was examined through proof affidavit as PW-1 deposed evidence reiterating the plaint averments and produced Ex.A-1 and Ex.A-21. The 1st and the 2nd defendants who filed the written statement did not participate in the trial. He not only did not cross examine the plaintiff side witnesses but also did not come to the witness box to depose evidence to prove his case and remained exparte. The 3rd defendant not chosen to file the written statement and remained exparte

(iii) The defendants who filed the written statement miserably failed to take part in the trial. The legal scenario in respect of this aspect is discussed here under as follows.

(a) The Hon'ble High Court of Madras *in*

BALAMMAL AND OTHERS -Vs- VELAYUDHAM AND OTHERS

cited in ***2002(3) MLJ 814***

Held that –*Where a party to the suit does not appear in to the witness box and states her own case on oath and does not offer herself to be cross-examined by the other side, a presumption would arise that the case pleaded by her or on behalf of her is not correct and the Court can draw a presumption under section 114 of the Evidence Act against the party who did not enter into the witness box.*

(b) The Hon'ble High Court of Madras *in*

KALIAPPAN AND OTHERS -Vs- VIJAYALAKSHMI AND OTHER

cited in ***2003(2) MLJ 291***

Held that *- The defendant not entering the witness box to prove his plea in the written statement - adverse inference can be drawn against him.*

(c) The Hon'ble High Court of Madras *in*

R.DURAISAMY -Vs- S.RAJAN AND OTHERS

cited in ***2013(2) MWN(Civil) 62***

Held that*-As per Section 114(g) of Indian Evidence Act- Defendant who filed Written Statement, but he did not state facts pleaded in Written Statement on oath- Defendant avoided witness box and did not offer himself to be cross-examined -Presumption would arise that* *case set up by him is not correct.*

As per the above precedents, the act of the defendant his gives raise to a presumption under section 114(g) of the Indian Evidence Act as against him that the case set by him to be not correct or untrue.

(iv) The defendant though raised the pleas of - relief barred by limitation, the suit is bad for want of relief of declaration of title, facts narrated were not genuine and hence not entitled for equity reliefs and under valuation of the suit and improper court-fee, did not produce any oral or documentary evidence to prove his case. Thereby, the case of the plaintiff remained uncontradicted.

(v) The plaintiffs to prove their case, produced- Ex.A1 - WILL executed by Seenuvasa Mudaliar, Ex.A2 - General Power of Attorney executed by the 1st plaintiff in favour of 2nd defendant. There is no dispute in respect of Ex.A-1 and Ex.A-2. The Ex.A3 being the Registered sale agreement dated 11.05.2006 entered as between the 1st and 2nd defendants in respect of the suit properties, the Ex.A4 being the Cancellation deed dated 05.09.2015 under which the Ex.A-3 the General power of Attorney executed by the 1st plaintiff in favour of the 2nd defendant was cancelled, the Ex.A5 and Ex.A6 were the certified copy of Judgment and Decree in O.S.No.71/2006 on the file of the Additional Sub-Court, Cuddalore, the Ex.A7 and Ex.A8 were the certified copy of Judgment and decree in A.S.No.18/2015 on the file of the Cuddalore District Court. Ex.A9 being the registered settlement deed dated 29.08.2018 executed by the

1st plaintiff in favour of the 2nd plaintiff in respect of the suit properties.

The Ex.A10 and Ex.A-11 being the registered sale deeds dated 24.10.2019 executed by the 2nd plaintiff in favour of 3rd and the 4th plaintiff in respect of the suit A and suit B schedule property respectively. The Ex.A12 being the Patta in the name of 3rd plaintiff, in respect of suit "A" schedule property; similarly, the Ex.A13 being the Patta in the name of 4th plaintiff, in respect of suit"B" schedule property. The Ex.A14 being the registered sale agreement dated 11.05.2019 between the 1st and 2nd defendants, Ex.A15 being the certified copy of the plaint in O.S.No.210/2012 on the file of Additional District Munsif court, Cuddalore.

Ex.A16 - Defendants Summon copy of O.S.No.210/2012 on the file of Additional District Munsif court, cuddalore, Ex.A17 and Ex.A18 were the certified copy of the Judgment and decree in O.S.No.210/2012. Ex.A19 - Petition copy of E.P.No.102/2013 in Principal District Munsif court, Cuddalore, Ex.A20 - Registered sale deed in E.P.No.102/2013 in Principal District Munsif court. (by the 1st defendant) Ex.A21 - Encumbrance certificate of Suit property.

(vi) The oral testimony of PW-1 along with the Ex.A-1 and Ex.A-21 proved the fact that the 2nd defendant, having knowledge of the cancellation of the general power of attorney in respect of the suit properties by the 1st plaintiff; colluded with the 1st defendant, after filing of the aforesaid O.S.No.71/2006 and while the appeal A.S.No.18/2015 was pending, fraudulently renewed the time barred sale agreement dated 11.05.2006 as between them by another sale agreement. Further, they took advantage of encumbrance already created and concealing all the afore narrated facts instituted the suit on 16.07.2012 vide O.S.No.210/2012 on the file of the Additional district munsif court, Cuddalore for specific performance of sale and fraudulently obtained the exparte decree dated 18.10.2022. The decree holder then filed the execution petition and got the sale deed registered in his favour on 15.12.2014 with the 3rd defendant Sub-Registrar office and this court believes them to be true.

(vii) Thus; it is clear from above all discussions that the plaintiffs proved their case through sufficient oral and documentary evidence. This court comes to a conclusion that, the plaintiff are entitled to the relief of declaration with other reliefs as prayed. **These issue are decided in favour of the plaintiff and as against the defendants.**

10. <u>Issues No.5</u> :

In the light of narration of case, discussions and answers arrived in issue Nos.1 and 2 and additional issue Nos. 1 to 4 considering the facts and circumstances of the case; the plaintiffs are entitled to costs of this suit. **This issue is decided accordingly.**

In the result the suit is decreed,

i. Declaring that the Judgment and decree dated 18.10.2012 passed in favour of 1st defendant in O.S.No.210/2012 on the filed of the Additional District Munsif court, Cuddalore, is null and void on the ground of fradulent decree,

ii. Declaring that the E.P.No.102/2013 in O.S.No.210/2012 on 15.12.2014 the suit property writtened in respect of 1st defendant in Principal District Munsif court Cuddalore, and cancel the deed Reg.No.1216/2015 recorded in the office of the 3rd defendant,

iii. Mandatory injunction is granted directing the 3rd defendant to remove the entry of Doc.No.1101/2006, dated 11.05.2006 from the Encumbrance of suit property declaring that that Deed, dated 15.12.2014 executed and Registered as Doc.No.1216/2015 by the Executing court, in pursuance of order in E.P.No.102/2013 in O.S.210/2012. On the file of Principal District Munsif Court is null and void, as the same is based on the aforesaid fradulent decree,

iv. Mandatory injunction is granted to directing the 3rd defendant to remove the entry of Doc.No.1216/2015, dated 15.12.2014 from the Encumbrance of suit property by issuing a power of attorney to the 3rd defendant.

v. No order as to costs.

Dictated by me and directly typed in the computer by Steno typist and printed out by her and corrected and pronounced by me in open court, on this day, the 21st day of August 2024.

Additional District Munsif,
Cuddalore (FAC).

<u>List of Witnesses on Plaintiffs side</u>:-

PW1 - Mr.Mohanakrishnan, S/o.Ramadoss.

<u>List of Documents on Plaintiffs side</u>:-

ExA1	02.09.1971	Certified copy of the Registerd Will executed by Seenuvasa mudaliar (Copy)
ExA2	10.05.2006	Certified copy of the General Power of Attorney executed by the 1st plaintiff in favour of the 2nd defendant
ExA3	11.05.2006	Copy of the registered sale agreement between the 1st and 2nd defendants
ExA4	05.09.2015	Cancellation deed for General power of Attorney executed by 1st plaintiff
ExA5	20.02.2015	Certified copy of Judgment in O.S.No.71/2006 on the file of Additional Sub-Court, Cuddalore.
ExA6	20.02.2015	Certified copy of decree in O.S.No.71/2006 on the file of Additional Sub-Court, Cuddalore.
ExA7	19.09.2017	Certified copy of Judgment in A.S.No.18/2015 on the file of District Court, Cuddalore.
ExA8	19.09.2017	Certified copy of decree in A.S.No.18/2015 on the file of District Court, Cuddalore.
ExA9	29.08.2018	Certified copy of the registered Settlement deed executed by the 1st plaintiff to and in favour of the 2nd plaintiff
ExA10	24.10.2019	Certified copy of the registered sale deed executed by the 2nd plaintiff to the 3rd plaintiff
ExA11	24.10.2019	Certified copy of the registered sale deed executed by the 2nd plaintiff to the 4th plaintiff
ExA12	-	Patta of "A" schedule property in the name of 3rd plaintiff
ExA13	-	Patta of "A" schedule property in the name of 4th plaintiff
ExA14	11.05.2019	Certified copy of the registered sale agreement between the 1st and 2nd defendants
ExA15	-	Certified copy of Plaint in O.S. No. 210/2012 of Additional District Munsif court, cuddalore

ExA16	-	Certified copy of Summon issued to the defendant in O.S.No.210/2012 of Additional District Munsif court, cuddalore
ExA17	18.10.2012	Certified copy of Judgment in O.S.No. 210/2012 of Additional District Munsif court, cuddalore
ExA18	18.10.2012	Certified copy of decree in O.S.No. 210/2012 of Additional District Munsif court, cuddalore
ExA19	-	Certified copy of the petition in E.P. No. 102/2013 of the Principal District Munsif court, Cuddalore
ExA20	15.12.2014	Certified copy of the registered sale deed in E.P.No.102/2013 executed by the Principal District Munsif court in favour of the 1st defendant
ExA21	-	Encumbrance certificate of Suit property.

<u>List of Documents and Witnesses on Defendant side</u>:- Nil.

Additional District Munsif,
Cuddalore (FAC).