

**IN THE DISTRICT MUNSIF-CUM-JUDICIAL MAGISTRATE COURT,
CHEYYUR**

PRESENT: Tmt. N. Preethi, B.A.,B.L.,
District Munsif-Cum-Judicial Magistrate,
Cheyyur.

Thursday, the 21st day of July 2022.

I.A. No.267/2021

in

O.S.No.135/2020 (Old OS.NO. 180/2016)

CNR.No.TNKP1A 000063 2020

....

Sheela

...Petitioner/ 2nd Defendant...

/Vs/

1. Sri Pattabirama Swamigal
Bajanai Koil, A. Kolathur,
Represented by its Trustee Mohan

....1st Respondent/Plaintiff..

2. Shalini

...2nd Respondent/ 1st Defendant..

This Petition coming before me today for final hearing on 12.07.2022 in the presence of Thiru. G.S. Suresh Babu, Counsel for the Petitioner / 2nd Defendant and Thiru. K. Ayyasamy, Thiru. S. Senthil kumaran, Thiru. V. Mohanraj, Counsels for the 1st Respondent/ Plaintiff. This instant suit in O.S No.180/2016 was originally filed before the Hon'ble District Munsif court, Maduranthagam and subsequently transferred to this court and renumbered as O.S No.135/2020. Now, after hearing the submission of both the Learned Counsels and on perusal of all the material on record, this Petition having stood over for consideration till this date, this court delivers the following.

ORDER

1.1. The Petitioner has filed this petition under Section 151 CPC seeking to direct the Sub Registrar, Acharapakkam to remove the encumbrance dated 15.11.2017 bearing document No. 18 of 2017 created by the 1st respondent/ plaintiff.

2. CONCISE STATEMENT OF THE AVERMENTS IN THE AFFIDAVIT FILED BY THE PETITIONERS/ 2ND DEFENDANT:

2.1. The petitioner herein and the 2nd defendant submitted that, originally the suit property to an extent of 2.17 in wet survey No.131/1B2 acres was owned and possessed by one Gandhamani Ammal w/oVedachalam. The patta for the suit property stands in the name of Gandhamani Ammal under patta No.32 and the above said Gandhamani Ammal had given a general power to his son R.V. Seshan under the registered general power of attorney deed dated 16.07.2007 bearing document No.5540 of 2007. As per the general power of attorney deed the power agent of Gandhamani Ammal viz., R.V. Seshan had sold the suit property to the 2nd respondent Shalini w/o Rohini Kumar under the registered sale deed dated 08.08.2007 bearing document No.4007 of 2007 for valid consideration. It is further submitted that, since the date of purchase the above said Shalini w/o Rohini Kumar had been in possession and enjoyment of the suit property and the Government had also recognized her title and possession and granted patta to her under patta No.172. Thereafter the above said 2nd respondent Shalini had sold the same to the petitioner/2nd defendant under the registered sale deed dated 10.08.2016 bearing document No.3452 of 2016. Therefore, since the date of purchase the petitioner is in actual possession and

enjoyment of the suit property and had raised casuarinas trees which had also been ripe for harvest.

2.2. It is submitted that, the petitioner appeared on summons and filed Vakalat in the above suit but failed to file her written statement before due to her ill health. Hence this court was pleased to pass a exparte decree as against the petitioner on 09.10.2017 and taking undue advantage of the exparte decree that the 1st respondent/plaintiff insisted the Sub Registrar, Acharapakkam and has created encumbrance in respect of the suit property under the name and style of court orders dated 15.11.2017 bearing document No.18 of 2017. Further it is submitted that the document executed by the 2nd respondent infavour of the petitioner is null and void and the same would be revealed in the online encumbrance certificate dated 11.01.2020 for the period from 01.01.1987 to 10.01.2020 .

2.3. Furthermore, it is submitted that the exparte decree against the petitioner was set aside by this court on 27.11.2019. Therefore it is stated that the encumbrance dated 15.11.2017 bearing document No.18 of 2017 is not valid in law and it is not binding upon the petitioner as the exparte decree is set aside. Hence the petitioner have filed this application to direct the Sub Registrar, Acharapakkam to remove the encumbrance dated 15.11.2017 bearing document No.18 of 2017 created by the 1st respondent/plaintiff as against the petitioner. The petitioner prays that unless this application is allowed the petitioner will be put to great loss and hardship but on the other hand by doing so no hardship will be caused to the other side.

3. CONCISE STATEMENT OF THE AVERMENTS IN COUNTER FILED BY THE 1ST RESPONDENT/PLAINTIFF:-

3.1. The 1st respondent/Plaintiff submits that the petition is incorrect and unsustainable in law and on facts. He denies the entire allegations in the affidavit as false except those that are specifically admitted herein and puts the petitioner to strict proof of each of the same.

3.2. It is submitted that the respondent/plaintiff is the absolute owner of the schedule mentioned property and the temple Sri Pattabiram Swamigal Bajanai Koil is in possession and enjoyment of the same and the said property was given to Respondent/plaintiff's temple by Senga reddy and 6 others through a register settlement gift deed dt. 16.06.1929. The gift deed was acted upon and from the date of gift deed the temple is in his possession and enjoyment till today. The patta was also transferred in the name of the temple. The suit property was given to the temple by the above said persons to perform Neivethiyam and Dheepam in the temple. The suit property is being cultivated by the temple through third parties and income from the suit property is used for the above said purpose and one Gandthamaniyammal was orally permitted to cultivate the land 25 years back by the temple. Ganthamaniammal was permitted to cultivate the land and the said Ganthamaniyammal by using her influence with revenue officials have changed the patta to the suit property in her name. Patta was granted wrongly and fraudulently in her favour without any documents or evidence. Therefore, after it came to light the trustee of the temple and the public in General gave applications to revenue

authorities to cancel the wrong patta in the name of Ganthamaniyammal which is obtained by her during the UDR scheme and the same is pending and she was not permitted to cultivate the lands. During the month of January 2009 the plaintiff came to know that the Ganthamaniyammal created a sale deed infavour of his son sheshan illegally and thereby the above said Sheshan created a sale deed infavour of 1st defendant Gandhamaniyammal who had no title over the suit property to create any sale deed. Hence the plaintiff has filed a suit before District Munsif Court, Madurantakam in O.S.No. 16/09 against the 1st defendant, above said Ganthamaniyammal and Sheshan for declaration and for permanent injunction. Thereafter the matter was settled before Lok – Adalth between the Respondent/plaintiff temple and the above said persons on. 30.03.2011. In that compromise the petitioner/1st defendant above said Ganthamaniyammal and Sheshan had admitted the title of Respondent/plaintiffs temple over the suit property. Therefore the plaintiff temple is the absolute owner of the suit property and the Respondent/plaintiff temple is in possession and enjoyment of the suit property till today.

3.3. The petitioner/ 2nd defendant and 2nd Respondent/1st defendant have no right over the schedule mentioned property. On 10.08.2016 the Respondent/plaintiff temple came to know that the 2nd Respondent/1st defendant created illegal sale deed infavour of the petitioner/2nd defendant with respect to the suit property. The 2nd Respondent/1st defendant have no right over the suit property to execute the alleged sale deed infavour of 2nd defendant. Further it is stated that the alleged sale deed

registered infavour of 2nd defendant by the 1st defendant is not valid in law and the same will not bind this Respondent/plaintiff's temple. The petitioner/1st defendant having admitted the Respondent/plaintiff's title over the suit property in O.S.No.16/2009 now she is stopped from claiming any right over the suit property through the above said illegal sale deed dt.10.08.2016 the petitioner 2nd defendant cannot claim any right over the suit property. Hence this respondent/plaintiff have filed the suit against the defendants 1 and 2 before this court for permanent injunction and to declare the sale deed infavour of 2nd defendant as null and void before District Munsif of Madurantakam.

3.4. This respondent/plaintiff suit summons was served on the 2nd defendant and she also appeared before District Munsif Court Madurantakam through her counsel Mr.Sureshbabu. Inspite of several adjournments the peitioner/2nd defendant have not filed her written statement. Hence District Munsif Court Madurantakam was pleased to grant exparte decree against the defendants by granting permanent injunction against the defendant and also by setting aside the sale deed dt.10.08.2016 infavour of petitioner/2nd defendants null and void before Sub-Registrar, Acharapakkam. The certified copy of decree of this court was also registered before sub-registrar, Acharapakkam on 15.11.2017 under document No.18/2017. The petitioner/2nd defendant also very well known about the exparte decree and registration of decree before sub-registrar, Acharapakkam

3.5. It is further submitted that, the petitioner/2nd defendant has filed the exparte decree petition along with section 5 petition in I.A.No.472/2019 before

District Munsif of Madurantakam. Hence the petitioner/2nd defendant very well known about the exparte decree and registration of decree with Sub-Registrar, Acharapakkam at that time itself.

3.6. It is further submitted that there is neither any provision in C.P.C nor in Registration Act to remove the encumbrance as claimed by the petitioner/ 2nd defendant. Further, it is submitted that if encumbrance is removed the petitioner /2nd defendant may alienate the temple property illegally. Since, there is no provision under law the present petition is not maintainable and has to be dismissed in limini. Only with an intention to drag the proceedings the present petition is filed by the petitioner/2nd defendant with false allegations. Therefore, there is absolutely no merits in the petition.

4. POINT FOR CONSIDERATION:

Whether this petition under Section 151 CPC seeking to direct the Sub Registrar, Acharapakkam to remove the encumbrance dt.15.11.2017 bearing document no.18 of 2017 created by the 1st respondent/plaintiff as against the petitioner has to be allowed or not?

5. DISCUSSION AND FINDINGS:

5.1. Heard both sides. On perusal of records, it is the contention of the petitioner/2nd Defendant, that the suit property was owned and possessed by one Gandhamani ammal w/o Vedachalam and Patta also stood in her name. She then had executed a general power of attorney to her son R.V.Seshan under a registered Power of Attorney deed dt.16.07.2007 under document no.5540 of 2007. Therefore, as per

the general power of attorney deed the power agent R.V.Seshan sold the suit property to the 2nd respondent Shalini w/o Rohini Kumar under the registered sale deed dated 08.08.2007 bearing document no.4007 of 2007 for a valid consideration and was in possession and enjoyment of the suit property. She also obtained patta. On 10.08.2016, the above said Shalini w/o Rohini Kumar sold the suit property to the petitioner under a registered sale deed under document no.3452 of 2016 and is in possession and enjoyment.

5.2. As the petitioner/2nd defendant failed to file the written statement she was set set exparte and exparte decree was passed against her due to which an entry of encumbrance was made for the suit property under the name and style of court orders dt.15.11.2017 bearing document no.18 of 2017.

At this juncture, it is pertinent to note that the 1st respondent/plaintiff alleges that one Gandhamani ammal w/o Vedachalam had fraudulently obtained patta in her name during the UDR scheme. Therefore, her subsequent transactions with regard to the suit property by way of General Power of attorney to her son R.V.Seshan and he inturn selling the suit property to one Shalini w/o Rohini Kumar was raised in the year 2009 before the District Munsif Court, Madurantakam in O.S.No.16/09 and the same was settled in Lok Adalat that Gandhamani ammal and her son R.V.Seshan admitting the title of the suit property infavour of 1st respondent/plaintiff.

5.3. Things being so, on perusal of the records on 10.08.2016 the 2nd respondent/1st defendant had executed a sale deed infavour of the petitioner/2nd defendant for the suit property which the 1st respondent/plaintiff alleges to be

illegal. Therefore, it is alleged by the 1st respondent/plaintiff that the petitioner/ 2nd defendant ought not to claim any right over the suit property under the sale deed dt.10.08.2016 .

5.4. Upon considering the facts and stage of this case, this court considers that it is the duty of this court to proceed in accordance with law by examining the witnesses before coming to conclusion and it cannot base its finding purely on the allegations put forth by the petitioner/ 2nd defendant and the averments laid down by the 1st respondent/plaintiff. Hence, this court does not find any reason to base its findings on the available documents at this stage. On the other hand, this court finds that it is justified in proceeding with the case according to law.

6. RESULT:

In the result, this petition is dismissed. No Costs.

Dictated to Steno-typist, typed by her in the Computer directly, printed, corrected and Pronounced by me in open court on this the 21st day of July 2022.

Sd/- Tmt. N. Preethi.,
**District Munsif – Cum -Judicial Magistrate,
Cheyyur.**

List of Witness for the Petitioner : - NIL -
List of Documents for the Petitioner : - NIL –
List of Witnesses for the Respondent : - NIL –
List of Documents for the Respondent : - NIL –

Sd/- Tmt. N. Preethi.,
**District Munsif-Cum-Judicial Magistrate,
Cheyyur.**