

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, DHARMAPURI.

Present: Thiru R. Selvakumar, B.A., M.L.,
Principal District Judge.

Tuesday, the 25th day of August 2015.

Original Suit No. 9/2010 and 50/2010

O.S.No.09/2010

K.Kamalakannan

.. Plaintiff

/Versus/

1. T.V.Krishnan

2. Andiappan

3. Tamizhagan

.. Defendants

O.S.No.50/2010 (O.S.No.156/2004 on the file of Sub Court, Dharmapuri)

T.V.Krishnan

... Plaintiff's

/versus/

1. K.Sundaram (Died)

2. Kamalakannan (D2 is impleaded as per order in I.A.No.156/2010 dated 16.9.2014 and amended as per order in I.A.No.202/2014 dated 8.12.2014)

These suits coming on 11.08.2015 for final hearing before me, in the presence of Thiruvalargal S.Umapathy and M.P.Arumugam, Advocates for the Plaintiff in O.S.No.9/2010 and defendants in O.S.No.50/2010 and of Thiru T.Nehru, Advocate for the 1st defendant in O.S.No.9/2010 and plaintiff in O.S.No.50/2010 and of Thiru K.R.Ramesh, Advocate for the 2nd and 3rd defendants in O.S.No.9/2010 and the defendants having been called absent and set exparte and upon perusal of the oral and documentary evidence of the plaintiffs in O.S 9/2010, this court pronounced the following:

COMMON JUDGMENT

The suit O.S.No.9/2010 has been filed for the relief of declaration and injunction and for costs of the suit.

2. The suit O.S.No.50/2010 has been filed for the relief of specific performance and for costs of the suit.

3. Issues in O.S.No.9/2010

1. Whether the plaintiff is entitled to declaration and permanent injunction?
2. Whether the plaintiff's vendor Sundaram on 8.10.2002 entered into an agreement of sale with 1st defendant and O.S.No.50/2010 is pending before this court for specific performance?
3. Whether the Sale deed dated 22.6.94 executed by Sundaram in favour of plaintiff is fraudulent and illegal?
4. Whether defendants No.2 and 3 are necessary parties to the suit?
5. What other relief the plaintiff is entitled to?

4. Issues in O.S.No.50/2010

1. வாதியிடம் ரூ.1,40,000./ முன் பணமாக பெற்றுக் கொண்டு 8.10.2002ல் பிரதிவாதி கிரய ஒப்பந்தம் எழுதிக் கொடுத்தது உண்மையா?
2. தாவா சொத்தின் சுவாதீனம் 1.4.2002 அன்று வாதியிடம் ஒப்படைப்பு செய்யப்பட்டதா?
3. 27.10.2003 அன்று பிரதிவாதி தங்கவேல் என்பவருக்கு பொது அதிகாரப்பத்திரம் எழுதிக் கொடுத்தது உண்மையா?
4. பொது அதிகார முகவர் என்ற முறையில் வழக்குச் சொத்து 24.11.2004ம் தேதியில் கிரயம் செய்து கொடுக்கப்பட்டதாக கூறுவது உண்மையா?
5. அவசியமான தரப்பினர்கள் சேர்க்கப்படாத காரணத்தினால் வழக்கு பாதிக்கப்பட்டுள்ளதா?
6. வழக்குச் சொத்து வாதியின் சுவாதீனத்தில் உள்ளதா?
7. வாதி கோரியபடி பரிகாரம் பெற தகுதி பெற்றவரா?

8. வாதிக்கு வேறு என்ன பரிகாரம் வழங்க வேண்டும்?

5. Issues 2 and 3 in O.S.No.9/2010:

The suit has been filed by the plaintiff Kamala Kannan for declaration of title and for permanent injunction. As per the plaint allegations, the property originally belongs to one Sundaram, having been purchased by him under a registered Sale deed dated 22.6.1994. The plaintiff negotiated with his agent to purchase the property for a sum of Rs.6,53,950/- and paid an advance of Rs.1,00,000/- and a registered sale agreement was also executed. After obtaining a loan from Syndicate Bank, the plaintiff purchased the property from his power agent on 24.11.2004. He also obtained necessary sanction from the Municipality and started constructions. That has objected by one Nambirajan and hence he filed a suit in O.S.No.47/2006 and obtained interim injunction for the relief of partition. Subsequently the suit was decreed. That being so, in 2010 March, when the plaintiff is about to get service connection, the defendants 2 and 3 obstructed the same contended that the 1st defendant had a document in his favour and subsequently this plaintiff came to know about O.S.No.156/2004 on receiving the notice copy in I.A.No.47/1020 in O.S.No.156/2004. Thus there was a dispute over the title and the defendants are trying to disturb possession which necessitated filing of this suit.

6. The suit in O.S.No.156/2004 pending on the file of Sub Court, Dharmapuri had been transferred to this court, subsequent filing of this suit as per the orders of Hon'ble High Court, both the cases were ordered to be disposed within six months, such direction was issued in the year 2010. Subsequently there are several I.As., and trial has not been began and finally this court has taken up the matter by posting both the suits on list on 6.4.2015. The plaintiff filed proof affidavit along with petition to receive documents. That I.A.No.81/2015 was allowed after enquiry. On 21.4.2015 documents A1 to 14 were marked. Subsequently on 23.6.2015 additional

proof affidavit was also filed incorporating the counter case, which is now pending before this court as O.S.50/2010. Subsequently from that date, the case has been adjourned for cross examining P.W.1. In spite of several adjournments, the defendant had not chosen to cross examine P.W.1 and at last on 31.7.2015, on petition by the defendants, the case was adjourned to 11.8.2015 on condition to pay a sum of Rs.1,000/- as costs. That cost has not been paid on 11.8.2015, the defendant not turned up and hence he has been set exparte. On this back ground, we have to approach the evidence adduced in this case.

7. The case of the plaintiff is that he entered into a registered sale agreement in respect of the property on 2.9.2004. The sale was concluded on 24.11.2004. The copy of the sale agreement and sale deed have been marked as Ex.A.2 and A.4. The date of agreement and date of sale not in dispute, both are registered documents. The defendant Krishnan in the suit filed by him O.S.No.156/2004 alleged that he entered in a registered sale agreement on 8.10.2002 agreeing to purchase the property for Rs.1,90,000/- and paid Rs.1,40,000/- on the same day as advance and on 1.4.2003 another sum of Rs.40,000/- was paid and the possession was handed over to him. He has to get the Sale deed after paying the balance sale consideration of Rs.10,000/-. However for concluding the sale, 35 months' time was stipulated as per the plaint in O.S.No.156/2004 now O.S.No.50/2010 on this court's file. So the alleged unregistered agreement in favour of the 1st defendant is much before the registered Sale agreement in favour of the plaintiff. The Sale deed and Sale agreement in favour of the plaintiff was executed by Sundaram's power agent. The sale agreement in favour of T.V.Krishnan was executed by the Sundaram himself. The said Sundaram alone has been impleaded as defendant in O.S.No.59/2010. It was filed on 22.12.2004, subsequent to the sale in favour of the present plaintiff. Comparing both the contents, the time

stipulated for completion of sale and the sale consideration fixed would creates some mischief at the hands of T.V.Krishnan. As evidenced by registered document, the plaintiff had purchased the property from lawful owner by a registered document. The defendant T.V.Krishnan claims that he was in possession of the property in pursuance of the sale agreement. Meanwhile, in the year 2006, the plaintiff Kamala Kannan filed a suit against one Nambi Rajan in respect of the suit property seeking injunction. If really, T.V.krishnan was in possession of the property, absolutely there is no necessity for the present plaintiff to file a suit for injunction against Nambi Rajan in I.A.No.186/2006 in O.S.No.47/2006. The copy of the decretal order in I.A.186/2006 and Copy of decree in O.S.No.47/2006 have been marked as Ex.A.7 and A.8. Ex.A7 and A.8 would go to show the plaintiff's exercise of right over the property even in the year 2006. Anyhow, the allegation made in the affidavit and the documents filed by the plaintiff have not been disputed by cross examination. Further Ex.A.13 would go to show the approval obtained by the plaintiff in the year 2005 itself in respect of the suit property. Further on the basis of the sale agreement executed by Sundaram's Power agent, the plaintiff obtained loan from Syndicate Bank, then only he had completed the sale transaction. All would go to show that the plaintiff's allegations are probable, than that of defendants and thus this court finds from the documents filed by the plaintiff and undisputed testimony of P.W.1, the plaintiff has proved his title as well as the possession and answered these two issues in favour of the plaintiff.

7. Issues 1 to 8 in O.S.No.50/2010

The suit was taken up for trial along with O.S.No.9/2010. The plaintiff in O.S.No.9/2010 was examined as P.W.1. Ex.A.1 to A.14 were marked. The plaintiff in O.S.No.50/2010 is the defendant in O.S.No.9/2010 had not chosen to cross examine the P.W.1. He also failed to adduce evidence on his side. Under such circumstances, this

court finds, the plaintiff in O.S.No.59/2010 miserably failed to establish his case and thus all the issues are answered against the plaintiff.

8. Issues 1, 4 and 5 in O.S.No.9/2010

In view of the above discussions, this court finds that the plaintiff is entitled to the relief of declaration and permanent injunction and thus these issues are answered in favour of the plaintiff.

9. In the result, the suit O.S.No.9/2010 is decreed as prayed for with costs.

10. In the result, the suit in O.S.No.50/2010 is dismissed with costs.

Dictated to the steno-typist, transcribed by her, corrected and pronounced by me in open court, this the 25th day of August 2015.

Exhibit list

List of witnesses on the side of plaintiffs

P.W.1 : Thiru Kamala Kannan.

List of exhibits marked on the side of plaintiff.

Ex.A.1/22.06.2009 : Certified copy of sale deed executed by one Dass in favour of Sundaram.

Ex.A.2/02.09.2004 : Certified copy of sale agreement entered between Kamalakannan and Sundaram.

Ex.A.3/27.10.2003 : Copy of power of attorney agent deed executed by Sundaram in favour of Thangavel.

Ex.A.4/24.11.2004 : Copy of sale deed executed by Sundaram in favour of Kamalakannan.

Ex.A.5/24.11.2004 : Copy of Sanction order from Syndicate Bank.

Ex.A.6/27.04.2005 : Approval given by the Municipality to the plaintiff.

Ex.A.7/27.03.2007 : Copy of fair and decretal order in I.A.No.186/2006 in O.S.No.47/2006 of District Munsif Court, Dharmapuri.

Ex.A.8/01.04.2008 : Copy of decree in O.S.No.47/2006 of District Munsif Court, Dharmapuri.

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Ex.A.9/10.03.2010 : Police receipt.

Ex.A.10/11.03.2010: FMB plan and Adangal given by the Dharmapuri Municipality.

Ex.A.11/ - : E.B.card.

Ex.A.12/20.10.2009: Copy of plaint in O.A.187/2009 of District Munsif Court,
Dharmapuri

Ex.A.13/ - : Approval given by the Dharmapuri Municipality to the plaintiff.

Ex.A.14/10.01.2005: Patta in favour of plaintiff.

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Dharmapuri.

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