

Sreekrishnan vs Rajakumar on 20 December, 2024

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Bench: V.Sivagnanam

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.12.2024

PRONOUNCED ON : 20.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

S.A.(MD)No.291 of 2006

Sreekrishnan

...Plaintiff/Appellant/Ap

-Vs-

Rajakumar

...Defendant/Respondent/R

Prayer : Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 06.09.2005 of the learned First Additional Sub Judge, Nagercoil, (in-charge of Camp, Padmanabhapuram) made in A.S.No.110 of 2004 on his file, confirming the judgment and decree dated 12.07.2004 of the learned Principal District Munsif of Padmanabhapuram and made in O.S.No.30 of 2000.

For Appellant : Mr.K.N.Thampi

For Respondent : Mr.V.Meenakshi Sundaram
for Mr.N.Mohamed Asif

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 06.09.2005 of the learned First Additional Sub Judge, Nagercoil, in-charge of <https://www.mhc.tn.gov.in/judis> Camp, Padmanabhapuram) made in A.S.No.110 of 2004 on his file, confirming the judgment and decree dated 12.07.2004 of the learned Principal District Munsif of Padmanabhapuram, and made in O.S.No.30 of 2000.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The plaintiff in the suit in O.S.No.30 of 2000 on the file of the Principal District Munsif, Padmanathapuram is the appellant herein. The respondent is the defendant.

4. The fact of the case is that the plaintiff is the son of late Kamatchi Nadachi and the defendant is the grandson of late Kamatchi Nadachi through her another son. The Kamatchi Nadachi is not having any right or title over the property in re-survey No.540/2. She died on 18.02.1999 at about 3 a.m. The alleged sale deed by the defendant, dated 18.02.1999 is a forged document. The plaintiff 'A' schedule property is in re-survey No.540/2 measuring 34 cents. The suit 'B' schedule property is part and parcel of the suit 'A' schedule. The plaintiff purchased the property by following sale deeds.

i) as per the sale deed, dated 01.04.1968 to an extent of 13 cents;

ii) as per the sale deed dated 11.04.1981 to an extent of 12.5 cents; and

iii) as per the sale deed, dated 21.10.1989 to an extent of 12.5 cents. <https://www.mhc.tn.gov.in/judis> Thus, totally 38 cents. Out of 38 cents, 4 cents are lying as a separate plot. The plaintiff is residing at a faraway place, the defendant encroached the portion of 'A' schedule and constructed a house in the month of June 1999 and such encroachment was described as suit 'B' schedule. He had knowledge about this encroachment only on 31.12.1999. Hence, he filed a suit for declaration, of title over the property and mandatory injunction to remove the construction made by the defendant besides recovery of the possession.

5. The defendant filed a written statement and contested the suit. The defendant specifically denied the case pleaded in the plaint and denied the title of the plaintiff over the suit schedule property and also contended that the description of the schedule property is wrong. He further contended that re-survey No.540/2, the old S.No.1048/6 re-survey No.540/2(old S.No.148/6) totally to an extent of 1 acre and 10 cents. It was partitioned by the vendor of plaintiff and defendant by way of registered partition sale deed, dated 30.06.1953 in which 'D' schedule property was allotted to one Bharathi Pillai to an extent of measuring 24 cents. He alienated the same in favour of one Kamalatchi Nadachi by way of sale deed dated 09.09.1953. After purchasing 24 cents by way of sale deed, the above said Kamalatchi Natachi sold it to the defendant to an extent of 6 cents in resurvey No.540/2. Thereafter, the defendant was enjoying 6 cents and constructed a house therein. <https://www.mhc.tn.gov.in/judis>

6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the trial Court for consideration: -

1.Whether the property in the suit 'B' was transferred to the plaintiff?

2.Whether the plaintiff is entitled to the relief of declaration as claimed in the suit?

3.Whether the plaintiff is entitled to the injunction as claimed in the suit?

4. Whether the plaintiff is entitled to the relief of injunctive relief as claimed in the suit?

5. What is the relief that the plaintiff is entitled to?

7. Before the Trial Court, on the side of the plaintiff, the plaintiff himself examined as P.W.1 and 7 documents have been marked as Ex.A1 to Ex.A7. On the side of defendant, the defendant examined himself as DW1 and one Mr.Doss examined as DW2 and 19 documents have been marked as Ex.B1 to Ex.B.19. The Advocate Commissioner was appointed and he inspected the property and filed a report marked as Ex.C1 to Ex.C3.

8. The trial Court after considering the evidence on record found that 'B' schedule property is not proved as a part of 'A' schedule property owned by the plaintiff. The alleged sale deed in favour of the defendant is proved by the evidence and thus dismissed the suit by its judgement and decree dated 12.07.2004 without cost. Aggrieved over the same, the plaintiff preferred an <https://www.mhc.tn.gov.in/judis> appeal in A.S.No.110 of 2004 under Section 96 of C.P.C. on the file of the first Additional Subordinate Court, Nagercoil. The first appellate Court by its Judgment and Decree, dated 06.09.2005, confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved over the dismissal order, the plaintiff has preferred the Second Appeal before this Court.

9. This Court while admitting the Second Appeal has framed the following substantial questions of law:-

(1) Whether the judgments and decrees of the Courts below are correct and sustainable, inter alia, in view of the respondent's case that Kamalatchy died on 19.02.1999 after Executing Ext.8.9 sale deed, inter alia, in the face of the legal presumption for the correctness and truthfulness of Ext.A7 death certificate proving the appellant's case that Kamalatchy died at 3 a.m. 18.02.1999 and the respondent's evidence as DW1 in this regard? On

(ii) Whether the judgments and decrees of the Courts below are correct and sustainable in view of the legal presumption for the correctness and truthfulness of the rejection of the respondent's case for alteration of the date of death of Kamalatchy by authorities?"

<https://www.mhc.tn.gov.in/judis>

10. The learned Counsel for the appellant submits that the judgment and the decree of the Courts below are against law and facts and failed to appreciate in proper perspectives all materials on record and resulted in grave miscarriage of justice. The learned Counsel for the appellant further submits that a) Ext.A7 death certificate of Kamalatchi unequivocally states that she died on 18.2.1999. The defendant as D.W.1 has deposed to the effect that his side had made complaint against the date of death of Kamalatchi given in Ext.A7 as 18.2.1999, and that after enquiry the

authorities refused to interfere in the matter. The defendant has not further pursued the matter, challenging the decision of the authorities that Kamalatchi had died on 18.2.1999. Thus the defendant has accepted the date of Kamalatchi's death as 18.2.1999. The statutory presumption under section 114(e) of the then Indian Evidence Act (the present section 119(e) of the Bharatiya Sakshya Adhiniyam, 2023) comes into play in the matter.

b) The case of D.W.1 is that Kamalatchi died at 6.30 A.M., which is prior to the registration of Ext.B9 from 10 a.m. Now the question is whether Kamalatchi died on 18.02.1999 or 19.02.1999. D.W.2, who is an attester to Ext.B9 and the only other witness for the defendant, categorically states that Kamalatchi died on a Thursday. It is 18.02.1999 that is a Thursday, and not 19.02.1999, as is seen from the calendar (already produced by the appellant). Hence, it is very clear that Kamalatchi died on 18.2.1999, which is in sync with Ext.A7 Death certificate.

<https://www.mhc.tn.gov.in/judis>

c) It is very strange that such a document Ext.B9 is attested by none other than the father and brother-in-law of the defendant and, there is no witness other than D.W.2, who is admittedly defendant's brother-in-law for the case of the defendant especially to prove Ext. B9, especially in the peculiar circumstances under which the same is shrouded.

d) The old survey Number given in Exhibit B9 for the property covered thereby is 148/3, whereas the correct survey Number of the property which the defendant claims to have purchased from Kamalatchi is 148/B. Further even the wrong survey number is in manuscript (written with hand) in Ext.B9, whereas the said document is a typewritten document. Thus it is very clear that Ext.B9 was brought into existence in great hurry and in a hushed-up way, which strengthens suspicion against it.

e) The specific case of the defendant is that he purchased 'B' schedule property under Ext.B9. Ext.B9 also states that the alleged vendor, Kamalatchi, had received the sale consideration in cash. But, in its cross-examination as DW1, the defendant spills the beans, saying that no consideration was paid for Ext.B9. Ext.B9 is an alleged sale deed, which is an alleged contract. According to section 25 of the Indian Contract Act, 1872, a contract without consideration is void, unless it comes within any of the exception-provisions therein which ofcourse are not applicable to Ext.B9, which is an alleged outright sale. It is respectfully submitted that this also adds to the invalidity of Ext.B9. It is worth mentioning at this juncture that the appellant is giving up his case that Ext.B9 is <https://www.mhc.tn.gov.in/judis> forgery, but it is that, even if the same is not forgery, it is void under section 25 of the Indian Contract Act, 1872, and no right or interest is passed thereunder. The law that there is a charge over the property for the unpaid purchase money is inapplicable to the present case, because there is no sale of property under Ext.B9.

f) Another circumstance immersing Ext.B9 in the ocean of untrustworthiness is the following. While it is the case of D.W.1 that Kamalatchi, who was aged about 90 years, gave the details for drafting Ext.B9, it is the case of his only other witness, D.W.2, his own brother-in-law, that D.W.1's father, Gopalan, who was the alleged other attester to Ext.B9, gave the details for drafting Ext.B9. Both

D.W.1 and D.W.2 contradict, demolish and destruct each other's evidence.

g)Yet another circumstance against Ext.B9 is that it seems to have been prepared by typewriting the usual portions except for specific ones, which are written with hand, pointing an accusing finger to that it was prepared post-haste and in great hurry bury which are unnecessary if the same was prepared normally.

11. The learned Counsel for the appellant further submits that the preponderance of circumstances, that is the criterion in a civil suit, unlike in a criminal prosecution, is far greater in favour of the plaintiff. He further submitted that in a case of the present nature, technicalities paly into <https://www.mhc.tn.gov.in/judis> insignificance, and justice and fair play have to be taken into account. Foul play deserves to be shut out. The defendant who has undoubtedly played fraud is disentitled to have any fruit of the fraud, irrespective of hyper technicalities, as otherwise it will amount to placing a premium on fraud and foul play. If any further identification of the property is necessary in the case, the case can be remanded to the trial court for doing the same and disposing of the case.

12. The learned Counsel appearing for the respondents supported the judgment and decree of the Courts below and contended that the appellant herein as plaintiff is having the burden to prove his title as pleaded in the plaint. Defects in the case pleaded by the defendant will not ennure any benefit to the Plaintiff/Appellant herein. According to the plaint pleadings with reply statement, the Plaintiff traces his title only through Ex.A1 to Ex.A3. Further, the vendors in Ex.A1 to Ex.A3 traces their title only to Ex.B6. In the above said factual background, it is just and necessary to analyse the tracing of title and interpretation of recitals in Ex.B6 dated 30.06.1953 and the title deeds of the plaintiff in Ex.A1 to Ex.A3.

The interpretation of recitals in Ex.B6.

	Ex.B6			
	30-June-1953			ghfgr;jj;jpuk;
rptrq;fugps;is	->	1	->	'A' gl;bif
fq;fhjud; gps;is				
https://www.mhc.tn.gov.in/judis	->	2	->	'B' gl;bif
rNuh[pdp @ yl;Rkp gps;is	->	3	->	'C' gl;bif
ghujp gps;is	->	4	->	'D' gl;bif
=jud; gps;is	->	5	->	'E' gl;bif

jgrpy; tpguk;

24	'D'	ghujp gps;is
Cents	Schedule	
21 $\frac{1}{2}$	'C'	rNuh[pdp
Cents	Schedule	
21 $\frac{1}{2}$	'E'	=jud; gps;is
Cents	Schedule	
21 $\frac{1}{2}$	'B'	fq;fhjud; gps;is
Cents	Schedule	
21 $\frac{1}{2}$	'A'	rprrq;fugps;is
Cents	Schedule	

This diagram is as per the schedule described in Ex.B6.

X-----X-----X The interpretation of recitals in Ex.A1, Ex.A2, Ex.A3 Ex.-A1 Sale Deed dated 01.04.1968 Sridharan Pillai to Srikrishnan (Plaintiff) Specifically having recitals that Vendor Sridharan Pillai traces title to 'E' Schedule in Ex.B6 partition.

Schedule fq;fhjud; gps;isAila fz;lj;Jf;F njw;F x _____ x <https://www.mhc.tn.gov.in/judis> EX.-A2 Sale Deed dated 11.04.1981 Gangadharan Pillai to Srikrishnan (Plaintiff) Specifically having recitals that Vendor Gangadharan Pillai traces title to 'B' Schedule in Ex.B6 partition.

Schedule vOjp thq;Fk; fl;rp tiff;F njf;FkhFk;.

x _____ x EX.-A3 Sale Deed dated 21.10.1989 Sarojini to Srikrishnan (Plaintiff) No recitals how (or) what portion Vendor Sarojini traces title in Ex.B6.

Schedule vOjp thq;Fgth; tif nrhj;Jf;F tlf;Fk; njw;Fkhf vy;if.

x _____ x • From the above said analysis of recitals is the partition deed marked as EXB6 and EXA1 to EXA3, the property purchased by the plaintiff from Sarojini under EXA3 is a void document with illusory description of property and the vendor Sarojini had not properly traced her title to the parent document EX B6. She was allotted with "C" schedule in EXB6 measuring 21 $\frac{1}{2}$ cents and <https://www.mhc.tn.gov.in/judis> it is lying next south to "D" schedule described in EXB6. The "D" schedule in EX B6 was allotted to Bharathi Pillai who is the predecessor in title for the defendant. When the vendor in EXA3 have not properly traced her title to EXB6, the property conveyed under EXA3 to the plaintiff will not confer any better title or in other words, it conveys no title to the plaintiff.

• The boundary recitals in Ex.A3 more particularly while describing 12 $\frac{1}{2}$ cents (Subject matter) it is described as:-

Schedule vOjp thq;Fgtu; tif nrhj;Jf;F tlf;Fk; njw;Fkhf vy;if.

- This description will clearly establish EXA3 is an invalid documents.
- On this sole ground, the appellant herein plaintiff has to fail in this suit.
- Apart from this, the plaintiff failed to prove how the lane was converted into a road and which portion was acquired for laying down the road, who received the compensation for such acquisition. How the suit "A" schedule description is correct and how it tallies with traces of title in EXA1 to EXA3 read with EXB6. All these aspects were not explained and no amount of evidence was produced by the plaintiff on these aspects.
- As far as this defendant is concerned, he purchased 6 cents from Kamalatchi Nadathi under EX B9 dated 18.02.1999 with specific boundaries.

The details of the schedule in EXB9 is extracted hereunder:-

<https://www.mhc.tn.gov.in/judis> "nrhj;J tptuk;"

fd;dpahFkup khtl;lk; khu;j;jhz;lk; gjpT khtl;lk; fy;Fsk; jhYfh Ntu;fpsk;gp gjpT cg khtl;lk; tPad;D}u; tpy;Ny[; fd;dd;Du; Njr; uPru;Nt (540/2-y;) IE}w;wp ehw;gJ nyl;lu; ,uz;by; 13.5 Vu; nfhz;l nrhj;jpy; 2 Vu; 43 rJ} kPw;wUf;F rkkhdJk;> Rg;gpukzpad;> ghyfpU\;zd; tif kidr; nrhj;Jf;F njf;Fk;> godp tif kidr; nrhj;Jf;F tlf;Fk;> Nuhl;Lf;F Nkf;Fk;> rhdYf;F fpof;Fkhf vy;if nfhz;L fplg;Gs;s (6 nrd;W)MW nrd;Y kidr; nrhj;J i\ahu;f;F tpiy MFk;. i\;f;F gioa ru;Nt 148/3y; jFk;."

- The vendor in EX B9 namely Kamalatchi Nadathi traces her title to EX B8, dated 09.09.1953 which is a sale deed executed by Bharathi Pillai in favour of Kamalatchi Nadathi. The property conveyed under EX.B8 is northern most part of 1 acre 10 cents in 148B measuring 24 cents:-

2htJ fz;lk; cs;gl xNuf;fu; gj;J nrz;Lk; nfhz;L xd;whf fplg;G nrhj;ij Kd; \$wpd ghfg;gj;jpug;gb 5 fz;lkhf jpupj;jpUg;gjp;gb tlf;fUF fpoNkyhf 24 nrz;Ls;s fz;lk; xd;Wk; kd;dlq;f kuklq;fahFk;."

- The vendor in EXB8 as already narrated above allotted with northern most plot measuring 24 cents out of 1 acre 10 cents in S.No.1488/3 (vendor name is Bharathi Pillai). The recitals in EXB6 as narrated above is in conformity <https://www.mhc.tn.gov.in/judis> with the description of property in EXB8.
- When Bharathi Pillai who is the northern most plot owner in EX B6 alienated his property to Kamalatchi Nadathi by way of EX.B8, dated 09.09.1953, in EXA3 of the year 1989. The plaintiff cannot have a recital that he owned a property north of Sarojini.

- Even though, there is no document explaining the title of northern side owner and southern side owner in EXB9, this will not ennure any benefit to the plaintiff, simply for the reason that EXB6 and EX B8 completely tallies as far as Bharathi Pillai portion conveyed to Kamalatchi Nadathi, but EX.A3 never tallies with EX.B6 as far as title of Sarojini. Hence as a defendant/this respondent proved more probable case regarding tracing of title than the plaintiff.
- Ex A7 is the death certificate dated 10.12.1999 produced by the plaintiff to prove the date of death of Kamalatchi Nadathi in 18.02.1999(Except this evidence, there is no other evidence on the side of the plaintiff).
- On the side of the defendant/respondent, EX B1, EX B3 along with EX B14 to B19 are produced to establish the date of death of Kamalatchi Nadathi is only on 19.12.1999.
- The statutory presumption of the official Act and presumption of entries in EX A7 as per the provisions of registration of birth and death Act, is contravent or diluted by the above said EX B1, EX B3 and EX B14 to EX B19 documentary evidence.

<https://www.mhc.tn.gov.in/judis> • Furthermore, the observations in the advocate commissioner's report regarding date of death entry in the tomb in the graveyard also denotes the date of death of Kamalatchi Nadathi is only 19.2.1999 and not 18.02.1999 as projected by the Plaintiff. The statutory presumption of ExA7 (death certificate extract) is having only a rebuttable presumption. Those entries made under a particular statute can be admissible as an evidence to prove the relevant fact of the date of death of a person is only when there is no rebuttable evidence on record to doubt such presumption. In the present case there is rebuttable evidence on record and as such it is humbly submitted that ExA7 cannot be accepted as a sole evidence to accept the date of death of Kamalatchi Nadathi was 18.02.1999. The rebuttable evidence in ExB1, ExB3, ExB14 to ExB19 and the oral evidence of Dw1 and Dw2 along with observation of advocate commissioner's report, the date of death of Kamalatchi Nadathi is only 19.12.1999. Hence, in view of the above said submissions on the side of the respondents, it is prayed that this Hon'ble Court, may be pleased to reject the contention of the Appellant/Plaintiff on this issue.

- The endorsement in Ex.B9 by a registering authority which is known as Certificate of Registration.
- Under Section 114(e) of the Evidence Act, the official act of registration of Ex.B9 attracts Prima Facie presumption. Further, as per Section 60 read with Section 34 of the Registration Act, 1908, it is clearly established that there is an enquiry by the registering authority regarding the identity of persons executing <https://www.mhc.tn.gov.in/judis> the document is perfectly made before the official act of registration which is at the time of presentation of the document. Hence it is humbly submitted that the appellant herein/plaintiff have not proved his burden of proof regarding title of suit "B" schedule and hence the main second appeal is liable to be dismissed.

13. To support his argument, the learned Counsel appearing for the respondent has relied upon the following judgments:-

1) Union of India and others Vs. Vasavi Co-operative Housing Society Limited and others reported in 2014 2 SCC 269;

2) The Melur Co-operative Marketing Society Vs. Salia Maniam and others reported in AIR 1974 Madras 30;

3) Irudayam Ammal and others Vs. Salayath Mary reported in AIR 1973 Madras 421.

14. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records.

15. On perusal of the records, the following facts are admitted by both the parties and not disputed:-

i) the plaintiff is the son of Late Kamatchi Natachi.

ii) the defendant is the grandson of Late Kamatchi Nadachi through her another son.

<https://www.mhc.tn.gov.in/judis>

iii) the plaintiff and the defendant trace their title from the registered partition sale deed dated 30.06.1953. It is evidenced as Ex.B6.

iv) the plaintiff's schedule is part and parcel of 'A' schedule property. The plaintiff purchased 'A' schedule by way of following three sale deed:-

a) by sale deed dated 01.04.1968 to an extent of 13 cents from Velayutham Pillai as Ex.A1;

b) by sale deed dated 11.04.1981 to an extent of 12.5 cents from Gangadharan Pillai as Ex.A2; and

c) by sale deed dated 21.10.1989 to an extent of 12.65 cents from Sarojiniammal as Ex.A3.

v) The defendant's vendor Kamatchi Natachi has purchased the property in re-survey No.540/2 to an extent of 24 cents from Bharathi Pillai by the sale deed dated 09.09.1953 evidenced by Ex.B7 and Ex.B8.

vi) The plaintiff's vendor, namely, Velayutha Pillai, Gangadharan Pillai and Sarojini Pillai and the defendant's vendor Bharathi Pillai are parties to the registered partition deed, dated 30.06.1953 evidenced by Ex.B6.

vii) In the partition deed, dated 30.06.1953 as Ex.B6. The following schedules are allotted to the respective persons. Sivasankara Pillai 'A' schedule property, Gangadharan Pillai 'B' schedule

property, Sarojini @ Lakshmi Pillai 'C' schedule property, Bharathi Pillai 'D' schedule property, Sridharan Pillai 'E' schedule property.

<https://www.mhc.tn.gov.in/judis>

16. The plaintiff has purchased the property from Velayutham Pillai. He is the power agent to Sridharan Pillai. He is the party to partition deed as Ex.B6. In the partition deed, Sridharan Pillai was allotted 'E' schedule.

The Gangadharan Pillai (Ex.A2) was allotted 'B' schedule in the partition deed as Ex.B6, Sarojini was allotted 'C' schedule in the partition deed as Ex.B6.

Bharathi Pillai's vendor of Kamatchi Natachi was allotted 'D' schedule in the partition deed Ex.B6. Thus, the above facts are admitted by both the parties and not disputed.

17. I have gone through the recitals in the partition deed evidence as Ex.B6 and other sale deeds, namely, Ex.A1 to Ex.A3 evidence by the plaintiff and Ex.B7 to Ex.B9 evidence by the defendant.

18. On perusal of these documents expose the fact that in old S.No.148/6 and re-survey No.540/2 to an total extent of 1 acre and 10 cents by way of registered partition deed, dated 30.06.1953 (Ex.B6) extreme north property was allotted to Bharathi Pillai to an extent of 24 cents as 'D' schedule property. On the southern side as 'D' schedule property, Sarojiniammal @ Lakshmi Pillai was given 21.5 cents as 'C' schedule property. South to the 'C' schedule property Sridharan Pillai was given 21.5 cents. South to East schedule property, Gangadharan Pillai was given 21.5 cents as 'B' schedule property. South side to "B" schedule property Sivasankara Pillai was given 21.5 cents as 'A' schedule property.

<https://www.mhc.tn.gov.in/judis>

19. Therefore, it is clear that the plaintiff's vendor namely Sridharan Pillai(he sold the property through his power agent of Velayutha Pillai). Gangadharan Pillai, Sarojiniammal @ Lakshmi Pillai and Sridharan Pillai were allotted only 'B', 'C' and 'E' schedule property respectively. These 'B', 'C' and 'E' schedule properties are not northern side of the property in re-survey No.540/2. Only Bharathi Pillai was allotted the property on the northern side as 'D' schedule. He sold the northern side of the property to Kamalatchi Natachi under sale deeds as Ex.B7 and B8, dated 09.09.1953. From Kamalatchi Natachi. This defendant purchased to an extent of 6 cents by way of sale deed dated . 18.02.1999 as Ex.B9. It is challenged by the plaintiff as a forged one.

20. The plaintiff filed a suit for declaration of his title over 'B' schedule property and claims as it is a part and parcel of 'A' schedule property purchased as Ex.A1 to Ex.A3. From the above said analysis, it is very clear that the plaintiff's vendor was not having any title over the properties on the northern side in re-survey No.540/2. Only the defendant vendor's vendor alone had property on the northern side in re-survey No.540/2.

21. A perusal of the Advocate Commissioner's report Ex.C1 to Ex.C3, it is seen that the disputed 'B' schedule property is in between 'A' schedule property. When the defendant's vendor's vendor had the property on the <https://www.mhc.tn.gov.in/judis> northern side of the property in resurvey No.540/2, in the absence of any evidence to show that the plaintiff's vendor has any property in the northern side of the property in resurvey No.540/2. Having 'B' schedule property in between the plaintiff 'A' schedule property is wrong description in the plaint schedule.

22. The plaintiff's did not dispute the fact that Kamalatchi Natachi has purchased the property to an extent of 24 cents in re-survey.No.540/2 from Bharathi Pillai by way of sale deed Ex.B7 and Ex.B8, dated 09.09.1953. The plaintiff disputed the purchase made by the defendant from Kamalatchi Natachi in re-survey No.540/2 to an extent of 6 cents. It is shown as 'B' schedule.

23. The plaintiff has challenged the sale deed Ex.B9, dated 18.02.1999 on the ground that Kamalatchi Nadathi died on 18.02.1999 at about 3 a.m. To support his arguments, he relied upon the death certificate Ex.A7, dated 10.12.1999. Apart from this death certificate, there is no evidence on the side of the appellant/plaintiff to show that she died on 18.02.1999 at about 3 a.m. The disputed sale deed is registered by the Sub Registrar on 18.02.1999 between 10 a.m. and 11 a.m. It is seen from the registration endorsement in Ex.B9.

24. The learned Counsel Mr.V.Meenakshi Sundaram contended that statutory presumption of the official Act and presumption of entries in Ex.A7 death certificate, as per the provision of the Registration of Births and Deaths <https://www.mhc.tn.gov.in/judis> Act is contravent or diluted by the documents Ex.B1 and Ex.B3 and Ex.B4 to Ex.B19. He further contended that the Advocate Commissioner's report Ex.C1 to Ex.C3 regarding date of death entry in the tomb in the graveyard also denotes the date of the death of Kamalatchi Nadachi is only on 19.02.1999 and not on 18.02.1999 as stated by the plaintiff.

25. He further contended that statutory presumption of Ex.A7(death certificate extract) is having only a rebuttal presumption. Those entries made under a particular statute can be admissible as an evidence to prove the relevant fact of date of the death of a person is only when there is no rebuttable evidence on record to doubt and presumption. In the present case, there is rebuttable evidence on record and as such, Ex.A7 cannot be accepted as sole evidence to accept the date of death of Kamatchi Nadachi, dated 18.02.1999. It will not nullify the sale deed executed by the executor Kamatchi Nadachi. Further submitted that the contention of the sale deed Ex.B9 is not supported by consideration, so it is a void document is not acceptable, for the reason of defendant's cross examined the evidence.

26. On perusal of the sale deed Ex.B9 and endorsement made by the registering authority, under Section 114(e) of the Evidence Act, the official act of registration of Ex.B9 attracts prima facie presumption. Further, in view of Section 60 r/w Section 34 of the Registration Act, 1908 there is an enquiry by <https://www.mhc.tn.gov.in/judis> the registering authority regarding the identity of persons executing the document. He had discharged his duty in his official capacity before registration at the time of presentation of the document. Sections 34 and 60 of the Registration Act of 1908 is reproduced/extracted as follows for better appreciation:-

Section 34:-(Enquiry before registration by registering officer)

1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

PROVIDED that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the person by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.

<https://www.mhc.tn.gov.in/judis> (4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders." Section 60:-(Certificate of registration) (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered " together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned."

27. In view of the above legal presumption, the answer given by D.W.1 during the cross examination cannot be taken as sole evidence to reject Ex.B9 sale deed in favour of the defendant. In a suit for

declaration, the legal position is declared by the Hon'ble Supreme Court in Union of India and others Vs. Vasavi Cooperative Housing Society Limited and Others reported in 2014 (2) SCC 269. It is elaborately discussed. Paragraph Nos.15 to 19 are extracted for better appreciation:-

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15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by the defendants in support of their case probabilises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in Moran Mar Basselios Catholicos v. Thukalan Paulo Avira observed that: (AIR p. 37, para 20) "20.... in a suit [for declaration] if the plaintiffs are to succeed they must do so on the strength of their own title."

18. In Nagar Palika, Jind v. Jagat Singh³ this Court held as under: (SCC P. 427c) "The onus to prove title to the property in question was on the plaintiff-respondent. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.)

28. Further, I have considered the argument of the learned Counsel appearing for the appellant in the respect of sale deed not supported by consideration. This position is well considered by this Court in the case reported in AIR 1974 MADRAS 30 and observed as follows:-

The principle deducible from the foregoing decisions is that payment of the price is not necessarily a sine qua non to the completion of the sale. If the intention is that the property should pass on registration, the sale is complete as soon as the deed is registered, whether the price has been paid or not. Then the purchaser is entitled to sue for possession, although he has not paid the price. This would follow from the words of Section 54 “price paid or promised or part paid or part-promised.” If the price is not paid, the seller on that account cannot <https://www.mhc.tn.gov.in/judis> repudiate the sale and his only remedy is to sue for the price or the balance of the price unpaid.

29. In view of the above legal position, the arguments placed by the learned Counsel for the appellant/plaintiff has no merit.

30. The trial Court as well the first appellate Court on appreciation of evidence on record found that the plaintiff has failed to prove his title over the plaint 'B' schedule property and non-suited the plaintiff based on material evidence on record. There is no perversity and there is no misconception or misreading evidence on record. There is no ground to interfere with the concurrent findings of the Courts below and the substantial questions of law are answered accordingly and this Court finds no merits in the second appeal and the Second Appeal is liable to be dismissed.

31. In the result, this Second Appeal fails and the same is dismissed. No costs.

20.12.2024 NCC : Yes/No Index : Yes/No Internet: Yes/No RJR <https://www.mhc.tn.gov.in/judis>
V.SIVAGNANAM . J, RJR To

1.The First Additional Sub Judge, Nagercoil, (in-charge of Camp, Padmanabhapuram)

2.The learned Principal District Munsif, Padmanabhapuram.

3.The Section Officer, V.R.Section, Madurai Bench of Madras High Court, Madurai.

Pre-delivery judgment made in 20.12.2024 <https://www.mhc.tn.gov.in/judis>