

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
24.03.2026PRONOUNCED ON
08.07.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 504 of 2013

Sadhu A.N.Sircar Foundation
(regd No.1691 Of 1998) No.119, Sastri Nagar, 3rd
Street, Tondaripet, Chennai-81, Rep By Its
Managing Trustee

1. E.Nandakumar
2. Abraham Samarendiranath Sircar

..Appellant(s)

Vs

1. E.Govindaraj Advocate
No.23, Nainiappa Street, Kosapet, Vellore
Town-632 001.
2. M.Vijayalakshmi
3. V.Mahadevi@ Mahalakshmi

Both are Res At No.9, Vivekanantha Street,
Salavanpet, Vellore Town-632 001.

4. G.Bakyalakshmi
No.23, Nainappa Street, Kosapet, Vellore
Town-632001.
5. The Joint Sub Registrar
O/o. The Sub Registrar Of Assuarance, Katpadi,
Vellore District.

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed by the learned Principal District Court Vellore, dated 07.08.2013 made in O.S.No. 133 of 2008.



For Appellant(s):

Mr.K.R.Arun Shabari for A1
Mr.T.M.Hariharan for A2

For Respondent(s):

Mr.P.M.Subramaniam
Senior Counsel
Assisted by Mr.Kempraj for R1

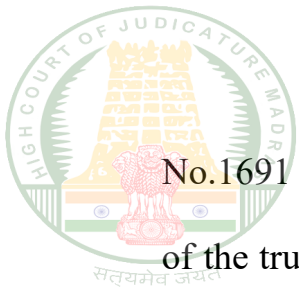
Mr.V.Raghavachari
Senior Counsel
Assisted by Mr.V.Srimathi for RR2 to 4

Mr.M.Murali for R5
Government Advocate

JUDGMENT

The present First Appeal has been filed challenging the judgment and decree passed by the learned Principal District Court Vellore, dated 07.08.2013 made in O.S.No. 133 of 2008.

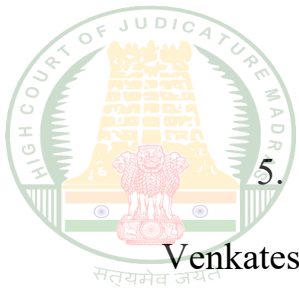
2. The suit was instituted by the plaintiffs primarily seeking declaration that the three registered sale deeds dated 14.12.2001 bearing Document Nos.5232/2001, 5233/2001 and 5234/2001 executed by late Sadhu A.N. Sircar in favour of defendants 2 and 4 and the deceased husband of the third defendant were sham, nominal, fraudulent, invalid and not binding upon the plaintiffs. The plaintiffs further sought consequential recovery of possession of the suit schedule properties from the defendants and permanent injunction restraining the defendants from alienating or encumbering the properties. The plaintiffs pleaded that the first plaintiff was a registered charitable public trust constituted under a registered Trust Deed dated 10.12.1998 bearing Document



No.1691 of 1998. According to the plaintiffs, late Sadhu A.N. Sircar, founder of the trust, had also executed a registered Will dated 30.06.2000 in favour of the trust under Document No.198 of 2000, whereby the suit schedule property was bequeathed to the trust.

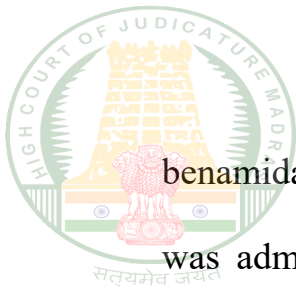
3. The plaintiffs further averred that after the death of Sadhu A.N. Sircar on 19.03.2002 at Catherine Booth Hospital, Nagercoil, the trust instituted O.P. No.94 of 2003 before the High Court of Madras for grant of Letters of Administration, which later became T.O.S. No.23 of 2003 upon contest by the second plaintiff. Subsequently, a compromise was entered into and Letters of Administration were granted in favour of the trust.

4. The plaintiffs specifically contended that the suit schedule property originally belonged to late Sadhu A.N. Sircar, who had purchased the same from the Katpadi Co-operative Township Limited under Sale Deed dated 23.07.1962 registered as Document No.1981 of 1962 before the Sub Registrar Office, Katpadi. The grievance of the plaintiffs centred around three sale deeds dated 14.12.2001 executed by late Sadhu A.N. Sircar in favour of defendants 2 and 4 and the husband of the third defendant, namely Venkatesan. These sale deeds were registered as Document Nos.5232/2001, 5233/2001 and 5234/2001 relating to Survey Nos.298/G, 298/F and 298/C respectively, each for a sale consideration of Rs.5,40,000/-.



5. The plaintiffs alleged that defendants 2 and 4 and deceased Venkatesan were merely benamidars of the first defendant, E. Govindaraj, Advocate, who allegedly engineered the transactions in the advanced age of late Sadhu A.N. Sircar. The plaintiffs further pleaded that no real sale consideration had passed under the impugned sale deeds and that the first defendant executed six promissory notes in favour of late Sadhu A.N. Sircar and trustee J. Thangaraj towards the unpaid consideration. The plaintiffs relied upon Exs.A9 to A14 promissory notes, Ex. A15 assurance letter and Ex. A16 memorandum of understanding to contend that the sale deeds were sham and nominal transactions liable to be declared null and void. The plaintiffs also alleged that the original trust deed and will were removed by the first defendant from the residence of late Sadhu A.N. Sircar at the time of the funeral ceremonies.

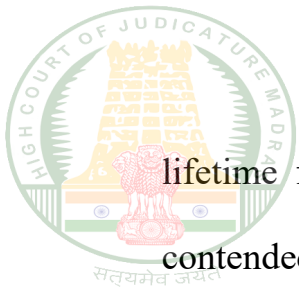
6. The first defendant filed a separate written statement, while defendant 2 filed written statement which was adopted by defendants 3 and 4. The defence was that the three sale deeds dated 14.12.2001 were genuine, valid and supported by full consideration. According to the defendants, the total consideration under the three sale deeds amounting to Rs.16,20,000/- had been fully paid to late Sadhu A.N. Sircar prior to registration, and possession of the properties had also been delivered to them. The defendants denied the allegation that defendants 2 and 4 and deceased Venkatesan were



benamidars of the first defendant. Though relationship between the parties was admitted, the allegation that the first defendant arranged the sales by exercising undue influence over late Sadhu A.N. Sircar was specifically denied. The defendants further contended that the plaintiffs themselves had admitted the alienations in earlier writ proceedings filed before the High Court and therefore could not subsequently challenge the same.

7. The defendants also disputed the very basis of the plaintiffs' title. They denied the validity and enforceability of the alleged trust deed dated 10.12.1998 and the Will dated 30.06.2000. They pointed out that the second plaintiff himself had earlier contested the probate proceedings in T.O.S. No.23 of 2003 and therefore the plaintiffs could not rely upon those documents without strict proof. The defendants further denied the allegations relating to theft of original documents from the residence of the deceased. With regard to Ex. A15 assurance letter and Ex. A16 memorandum of understanding, the defendants specifically pleaded that no such memorandum of understanding had ever been executed and that the same was a fabricated document subsequently created by the plaintiffs with the assistance of third parties.

8. The defendants contended that if such a memorandum truly existed, late Sadhu A.N. Sircar himself would have initiated proceedings during his

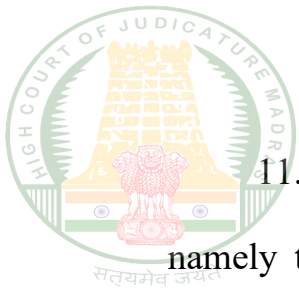


lifetime for recovery of the alleged balance sale consideration. They also contended that the suit was barred by limitation, particularly because the memorandum of understanding dated 14.12.2001 was sought to be enforced after more than three years. The defendants further raised objections regarding maintainability under Section 92 CPC, misjoinder of causes of action and misjoinder of reliefs. It was also contended that the Letters of Administration granted by the High Court of Madras were themselves legally questionable for want of territorial jurisdiction.

9. Based on the pleadings, the Trial Court framed issues relating to:

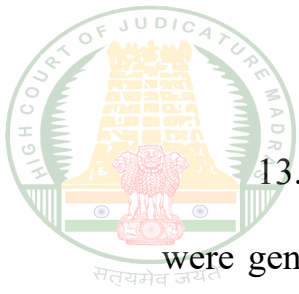
1. *Whether the plaintiffs were entitled to declaration that the sale deeds are true and valid?*
2. *Whether the plaintiffs are entitled for declaration as prayed for?*
3. *Whether the plaintiff are entitled for permanent injunction as prayed for*
4. *Whether the suit was barred by limitation?*
5. *To what other reliefs the parties were entitled.*

10. On the plaintiff's side, PW1 to PW 5 was examined and marked Ex. A1 to Ex. A36 on their side. On the Defendant side, DW1 was examined as sole witness and Ex.B.1 to Ex.B34 were marked.



11. The Trial Court, while considering the validity of Exs.A21 to A23, namely the three registered sale deeds dated 14.12.2001 executed by late Sadhu A.N. Sircar in favour of defendants 2 and 4 and the deceased husband of the third defendant, undertook a detailed analysis of the pleadings, oral evidence and documentary evidence. The plaintiffs contended that the transactions were sham, nominal and unsupported by consideration and that the purchasers were merely benamidars of the first defendant, E. Govindaraj. In support of the said contention, the plaintiffs relied upon Exs.A9 to A14 pronotes, Ex.A15 assurance letter and Ex.A16 memorandum of understanding and also upon the oral evidence of PW1 Abraham Samarendiranath Sircar, PW2 E. Nandakumar and PW3 N. Gandhi. PW2 and PW3 deposed that defendants 2 and 4 and the deceased Venkatesan had no financial means to purchase the properties and that the first defendant had arranged the transactions.

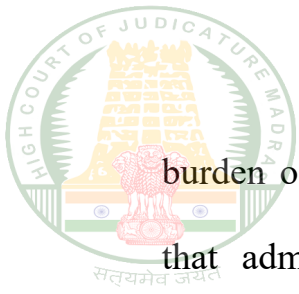
12. The plaintiffs further alleged that the original trust deed and Will were removed from the residence of late Sadhu A.N. Sircar by the first defendant during the funeral ceremonies and therefore certified copies were produced as Exs.A7 and A8. The plaintiffs also relied upon Exs.A17 legal notice, Ex.A18 reply notice and Ex.A19 rejoinder notice and contended that the defendants themselves admitted non-payment of consideration.



13. The defendants, on the other hand, contended that Exs.A21 to A23 were genuine registered sale deeds executed voluntarily by late Sadhu A.N. Sircar after receipt of full consideration. DW1 to DW3 deposed that the documents were executed before the Sub Registrar, Katpadi, after being read over and explained to the executant and that possession was delivered immediately to the purchasers. The defendants further contended that the executant had also signed patta transfer forms, electricity service connection transfer forms and connected records. The defendants relied upon Exs.B series to establish possession and enjoyment pursuant to the sale deeds.

14. The Trial Court accepted the defendants' case and held that Exs.A21 to A23, being registered documents, carried a presumption of validity under Section 114(c) of the Indian Evidence Act and Sections 58 and 60 of the Registration Act. The Court observed that the endorsements of the registering authority constituted strong evidence regarding due execution and receipt of consideration.

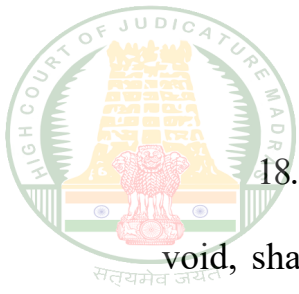
15. The Court further held that the plaintiffs had failed to establish fraud, coercion or undue influence by acceptable evidence. Referring to the judgments reported in *2009-4 L.W.357*, *2008-1-L.W.950*, *2007 (5) MLJ 1273 (SC)*, *2000 (2) MLJ 111* and *2000 (1) SCC 434*, the Court reiterated that the



burden of proving fraud and undue influence rested upon the plaintiffs and that admissions contained in registered documents constituted the best evidence. The Court also relied upon the principle that oral evidence cannot ordinarily override recitals contained in registered documents unless strong contrary evidence is produced.

16. The Trial Court further considered the plea of benami transaction and extracted Section 4 of the Benami Transactions (Prohibition) Act, 1988. Relying upon the judgment of the Supreme Court in ***R. Rajagopal Reddy v. Padmini Chandrasekaran*** reported in ***1995-1-L.W.427***, the Court held that no suit to enforce rights in respect of benami property was maintainable after the enactment of the Benami Act. The Court found that the plaintiffs failed to establish any exception under Section 4(3).

17. The Court further referred to the judgment reported in ***2011-1-DWJ 1002*** and held that once the defendants established execution of the registered sale deeds, the burden shifted to the plaintiffs to prove that the documents were not intended to be acted upon. Since the plaintiffs relied mainly upon oral allegations unsupported by convincing evidence, the Court concluded that Exs.A21 to A23 were true, valid and binding sale deeds executed for valid consideration and accordingly answered the issue in favour of the defendants.



18. The plaintiffs sought declaration that Exs.A21 to A23 were null, void, sham, nominal and not binding upon the plaintiffs and further sought declaration of their own rights over the suit properties on the basis of Ex. A7 trust deed dated 10.12.1998 and Ex. A8 registered Will dated 30.06.2000 executed by late Sadhu A.N. Sircar. The plaintiffs contended that the suit properties had been bequeathed in favour of the first plaintiff trust and that the second plaintiff, being the son and legal heir of late Sadhu A.N. Sircar, was also entitled to challenge the alienations. Reliance was also placed upon Ex. A 20 Letters of Administration granted in T.O.S. No.23 of 2003.

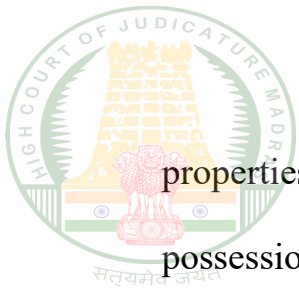
19. The Trial Court examined the maintainability of the suit and the plaintiffs' entitlement to declaratory relief. The defendants contended that the first plaintiff was admittedly a public charitable trust registered under the Tamil Nadu Societies Registration Act and that the suit relating to trust property could not be maintained without obtaining leave under Section 92 CPC. The Court extracted Section 92 CPC and noted that the plaintiffs themselves admitted in the plaint that the trust was a public charitable trust. The defendants further contended that no documents had been produced to establish annual renewal of the trust or maintenance of accounts after 1998.



20. The Trial Court accepted the objections raised by the defendants and observed that admittedly no leave had been obtained under Section 92 CPC prior to institution of the suit. The Court further observed that the suit property originally belonged to late Sadhu A.N. Sircar personally under Ex.A1 sale deed and that Ex.A8 Will would come into operation only after his death on 19.03.2002. Since Exs.A21 to A23 had already been executed on 14.12.2001 during the lifetime of the executant himself, the Court held that the trust acquired no vested right over the properties prior to the alienations.

21. The Court further held that the compromise between the plaintiffs in the testamentary proceedings would not invalidate the earlier alienations. The Trial Court also referred to the decisions relied upon by the parties including *2008 (4) SCC 115 and 1971 STPL (LE) 5770* relating to public trust litigation and declaratory reliefs. The Court held that the plaintiffs failed to establish subsisting title or legal right over the suit properties after execution of Exs.A21 to A23. Since the sale deeds were held to be valid and binding, the plaintiffs were not entitled to declaration as prayed for and the issue was accordingly answered against the plaintiffs.

22. The plaintiffs sought permanent injunction restraining the defendants from alienating, encumbering or interfering with the suit



properties by contending that the plaintiffs continued to be in lawful possession and that the defendants were attempting to create encumbrances on the basis of invalid sale deeds. PW2 deposed that the first plaintiff trust alone continued in possession and that the sale transactions had never been acted upon.

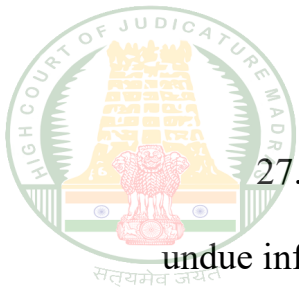
23. The Trial Court rejected the said contention after examining the recitals contained in Exs.A21 to A23 and the documentary evidence produced by the defendants under Exs. B series. The Court accepted the evidence of DW1 to DW3 that possession had been delivered to the purchasers immediately after execution of the sale deeds and that patta transfer forms, electricity service connection transfer forms and other connected documents had been signed by late Sadhu A.N. Sircar himself. The Court also observed that the defendants had produced revenue records, tax receipts and connected documents showing enjoyment of the properties after 14.12.2001.

24. The Trial Court held that once the sale deeds were upheld as genuine and valid transactions, the plaintiffs could not seek injunction against the lawful purchasers. The Court further observed that the plaintiffs failed to establish either lawful possession or subsisting title after execution of Exs.A21 to A23. Accordingly, the relief of permanent injunction was refused.



25. The defendants contended that the suit instituted in the year 2008 challenging Exs.A21 to A23 executed on 14.12.2001 was hopelessly barred by limitation. The plaintiffs attempted to explain the delay by alleging concealment and fraudulent conduct on the part of the first defendant and by contending that the original trust documents and Will had been removed from the residence of late Sadhu A.N. Sircar. The Trial Court rejected the explanation offered by the plaintiffs and held that the cause of action arose on the date of execution and registration of Exs.A21 to A23. The Court observed that the plaintiffs were closely connected with late Sadhu A.N. Sircar and had knowledge regarding the transactions much earlier. The Court further noted that the plaintiffs had participated in proceedings relating to the estate and administration of the trust and therefore could not claim ignorance of the alienations.

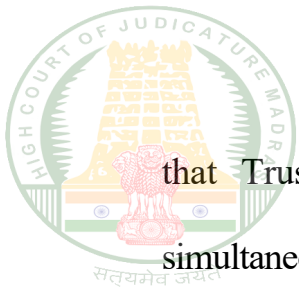
26. Applying Article 58 of the Limitation Act, the Court held that a suit seeking declaration against registered sale deeds ought to have been instituted within the prescribed limitation period from the date when the right to sue first accrued. Since the plaintiffs approached the Court nearly seven years after execution of Exs.A21 to A23, the Trial Court held that the suit was clearly barred by limitation and answered the issue against the plaintiffs.



27. The Trial Court concluded that the plaintiffs failed to prove fraud, undue influence, benami nature of transactions, non-payment of consideration or invalidity of Exs.A21 to A23. The Court further held that the first plaintiff trust had not established a legally enforceable right over the suit properties and that the suit itself suffered from maintainability defects under Section 92 CPC and limitation under Article 58 of the Limitation Act. The Court accepted the defendants' evidence regarding possession and enjoyment of the properties pursuant to the registered sale deeds and consequently held that the plaintiffs were not entitled to declaration, permanent injunction or any consequential relief. Accordingly, the suit in O.S. No.133 of 2008 was dismissed in entirety with costs.

28. Heard Mr. K.R. Arun Shabari and Mr. T.M. Hariharan are the learned counsels appearing for the appellants, Mr. Subramaniam learned senior counsel for R1, Mr. Ragavachari, learned senior counsel for R2 to R4 and Mr. M. Murali, learned Government Advocate for R5.

29. The learned counsel for the 1st appellant submitted that the suit property, "Swathi Nilayam," was the absolute property of the late A.N. Sircar, who had created the 1st appellant Trust by a registered deed dated 10.12.1998 and thereafter executed a registered Will on 30.06.2000 bequeathing the property to



that Trust. It was submitted that on 14.12.2001, three sale deeds were simultaneously registered conveying the property to defendants 2 and 4 and the husband of the 3rd defendant for a stated consideration of Rs. 16,20,000/-, and that barely three months later, the 2nd trustee Thangaraj died on 07.03.2002, followed by the Testator's own death on 19.03.2002, a compressed sequence which counsel urged was itself suggestive of a transaction that had been engineered rather than genuine, particularly since the 1st respondent, an advocate by profession, was alleged to have misappropriated the original Trust Deed and Will on the very date of the Testator's funeral.

30. The learned counsel contended that the sale deeds were self-destructive on their own recitals, since each one recorded that the original title deed had been retained by the vendor conduct, it was asserted, that no vendor in a completed sale would undertake, and which therefore amounted to a solemn admission on the face of the registered documents that consideration had not been paid and the sale was incomplete. Reliance was placed on *Kewal Krishan v. Rajesh Kumar, (2022) 18 SCC 489*, for the proposition that payment of price is an essential ingredient of a sale under Section 54 of the Transfer of Property Act, and that a sale deed executed without payment of price, and without provision for payment at a future date, is no sale at all in the eyes of law, is of no legal effect, and is void.



31. It was further submitted that on the very same day the sale deeds were registered, six promissory notes totalling Rs. 21,00,000/- a sum exceeding the entire stated sale consideration were executed by the 1st respondent, one of them in favour of Thangaraj himself, and that this was an express admission that no cash consideration had actually passed on that date. The learned counsel relied on a resolution dated 21.07.2002 recording that Thangaraj was unable to repay debts taken for the Trust at the time of his death, barely three months after the sale deeds, to contend that this circumstance ruled out any possibility that the promissory notes were ever honoured or that any consideration had reached the Trust.

32. The learned counsel further contended that the burden of proving payment and financial capacity shifts to the vendee once consideration is disputed, and that the respondents had filed no document to show that any of the three purchasers, two of whom were housewives with no independent income, and the third being a relative of the 1st respondent possessed funds equivalent to Rs. 16,20,000/- or had made any bank transaction towards the price, a deficiency which the learned counsel submitted was fatal in light of the Supreme Court's caution in Kewal Krishan against treating consideration as merely "within reach" without evidentiary basis. It was also submitted that the sale deeds disclosed deficit stamp duty paid at the time of registration, and that the respondents had failed to collect the original registered deeds for nearly seven years, until 2008 which is

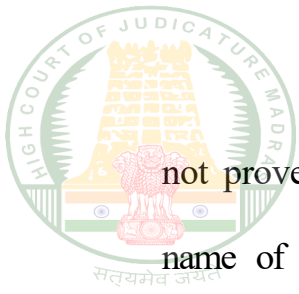


described as further badges of fraud and fictitious consideration.

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33. The learned counsel submitted that the only document relied upon by the respondents to prove payment, a purported receipt dated 14.12.2001 (Ex. B-19), was itself manufactured, as demonstrated by the mutually contradictory depositions of DW-2 and DW-4, one stating the receipt was typed by Thangaraj, the other stating it was typed by the Testator himself which is a contradiction going to the very authorship of the document and rendering it unreliable. On this basis, it was contended that the sale deeds were void and non est, that no declaration was even required to be specifically claimed in respect of void deeds since such a plea could be raised in collateral proceedings, and that, following the judgement in *Kewal Krishan*, the question of limitation does not arise at all in respect of void sale deeds and that, in any event, the time spent by the 1st appellant in the earlier suit, from which it had sought to withdraw before filing the present suit, ought to be excluded from any computation of limitation. The learned counsel also met the anticipated objection that the suit required leave under Section 92 CPC by submitting, relying on *Ghat Talab Kaulan Wala v. Gopal Dass*, that the said provision applies only to suits against a trust and has no application where, as here, the suit was filed by the Trust itself to protect its own property.

34. Finally, learned counsel argued that mere payment of property tax did



not prove possession, and that DW-3's admission that the patta still stood in the name of A.N. Sircar showed that the respondents were never placed in actual possession, with the consequence that, the sale deeds being void, the Testator's title never extinguished and the property passed to the 1st appellant Trust under the registered Will upon his death, vesting absolutely in the Trust.

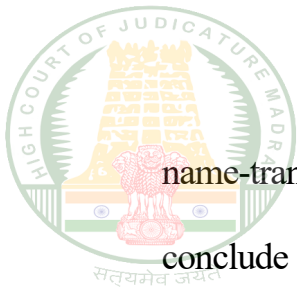
35. *Per contra*, learned senior counsel for the 1st respondent raised, as a threshold objection, that the 1st appellant's Trust was legally incompetent to maintain the suit. It was submitted that, on the appellants' own pleading at paragraph 15 of the plaint, the Trust consisted of only three trustees, A.N. Sircar, who died on 19.03.2002; Thangaraj, who died even earlier, on 08.03.2002; and Gandhi, who had resigned with effect from 24.02.2002 with the result that the Trust had no trustee whatsoever to represent it after that date and had become defunct. The learned senior counsel contended that the subsequent registered deed (Ex. A6), by which Gandhi purportedly appointed the 1st appellant as a new trustee on 24.04.2002, was executed by a person who had already ceased to hold office two months earlier, rendering Ex. A6 invalid in law and the 1st appellant incompetent to represent the Trust.

36. The learned senior counsel further submitted that the suit had been filed only on 24.11.2008, nearly seven years after execution of the sale deeds and



six-and-a-half years after the Testator's death, and pointed to the appellant's own admission in the probate petition that, at paragraph 11, the suit property had been excluded from the affidavit of assets precisely because it had already been sold during the Testator's lifetime, and that what was claimed was only the unpaid consideration an admission, it was contended, that the factum of sale was never disputed by the appellants themselves at that stage. A separate probate proceeding, T.O.S. No. 36/2006, relating to a different Will and a different property, was submitted to be of no relevance. Relying extensively on the findings of the trial court in O.S. No. 133/2008, learned senior counsel submitted that the appellants had themselves admitted, at paragraph 10 of the judgment, that the sale deeds were executed for valuable sale consideration received by Sircar on that date, and that PW-1 and PW-2 had both deposed they had no direct knowledge of the transaction, having learnt of it only through PW-3 (Gandhi); indeed PW-2 admitted he had not even read the sale deeds and did not know whether consideration had been received.

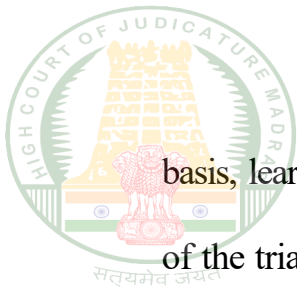
37. The learned senior counsel contended that the trial court had found PW-3's version of events at the Sub-Registrar's office to be suspicious and contradicted by the timing recorded in the sale deeds themselves, but that the court had nonetheless relied on the evidence of DW-4, the attesting witness, who categorically deposed to having personally witnessed the physical handover of the full sale consideration before execution, as well as the cancellation that same morning of an earlier power of attorney, and to Sircar having additionally signed the connected



name-transfer forms, EB records, and patta documents, leading the trial court to conclude that payment of consideration stood proved.

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38. The learned senior counsel submitted that the pronotes relied upon by the appellants did not assist their suit, since the trial court had found that PW-2 had no personal knowledge of them, that no action had been taken on them for nearly eight years, that they nowhere stated they were towards sale consideration but instead recorded "family expenses," that one was inexplicably in favour of Thangaraj himself, that the handwriting in that pronote differed from the others, and that no suit for recovery had ever been filed. It was further submitted that the letter of assurance and the memorandum of understanding (Ex. A15 and A16) had been found by the trial court to be unproved, with PW-3 himself admitting he was not a witness to these English-language documents and did not know their contents, and that Ex. A16 was demonstrably fabricated since it purported to have been made on the same date as the sale deeds yet already carried their registration document numbers, which seems to be an impossibility and PW-3's own account of its timing directly contradicted the registration time recorded in the sale deeds themselves. The learned counsel also pointed to three earlier suits filed by the appellant's side that had each been dismissed for want of appearance, as reflecting on the appellant's diligence and bonafides, and submitted that possession of the suit property had, on the evidence, remained throughout with defendants 2 to 4. On this cumulative



basis, learned senior counsel prayed that the appeal be dismissed and the judgment of the trial court be upheld.

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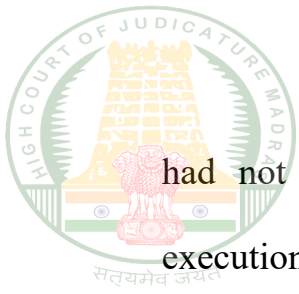
39. The following issues are framed:-

(a) Whether the Court below was right in concluding that the suit is barred by limitation?

(b) whether the Court below was right in holding that the appellants were not entitled for the relief of declaration of permanent injunction as prayed for?

Issue (a):-

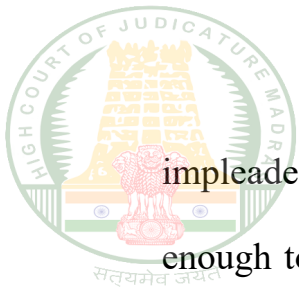
40. A suit for declaratory reliefs that the sale deeds registered on 14.12.2001 to be null and void with a consequential direction to the Registering Authorities to cancel the above Sale Deed and issue a certificate to that effect together with a prayer for permanent injunction restraining the defendants 1 to 4 from interfering with the peaceful possession and enjoyment of the suit schedule property which are covered under the said Sale Deeds were sought for with further prayers to handover the original Sale Deeds by the declaratory relief had been sought for and also for handing over of the original registered Trust deed, original registered Will and other documents made as against the first defendant. The document that were sought to be declared as null and void had been executed in the year 2001. The claim made by the plaintiffs was that under the said documents is that the considerations



had not been passed which according to them could be evidenced by execution of the Memorandum of Understanding even dated together with the assurance letter and the pro-notes executed by the first defendant even dated.

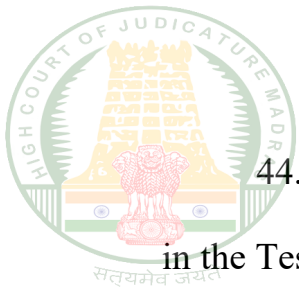
41. A primordial contention had been raised that the suit was well within the period of limitation is on the contention that the second plaintiff had earlier instituted a suit for the very same relief as early as in the year 2002 in which the first plaintiff had taken steps to transpose himself as plaintiff, but the same came to be dismissed as not-pressed by the judgment and decree of the District Munsif Court, Katpadi on 21.12.2009 and in that context, the present suit which had been instituted prior to the said date is well within the period of limitation.

42. That apart, a contention had been raised that the documents that are sought to be declared as null and void, it had come to their knowledge that no consideration had been paid under the document as *void ab inito* document and therefore, seeking a relief of declaration on that ground would not be governed by any law of limitation and could be filed at any point of time. On the other hand, it is the contention of the respondent that the second plaintiff had earlier initiated a suit as early as in the year 1996 seeking for partition of the suit schedule properties that are covered under the documents that were to be declared as null and void and thereafter, by way of amendment he had



impleaded the purchasers of the property which itself would be sufficient enough to show that the second plaintiff had acquiesced with the sale of the property in favour of the respondents.

43. That apart, he would submit that even if the case of the plaintiffs that the earlier suit filed by the second defendant, where the first plaintiff had sought to be transposed himself was pending at that point of time, he would submit that it is to be noted that the said suit was filed for a bare injunction and had been dismissed as not-pressed without liberty to maintain the present suit. He would further submit that the first plaintiff had initiated a testamentary proceedings before this court in O.P.No.94 of 2003 where the second plaintiff was shown as the sole respondent and in the said testamentary O.P., the first plaintiff had specifically pleaded that even during the lifetime of the testator, he had sold the property and hence, the same had not been included in the affidavit of assets and liabilities, but is claiming the unpaid consideration for the said sale made from the respective purchasers. The said O.P. was contested by the second plaintiff and hence, was converted into a testamentary Original Suit in which on the compromise arrived at between the parties, Letters of Administration was issued to initiate the proceedings in respect of the properties covered under the suit schedule properties, which came to be disposed in the year 2007.



44. The aforesaid facts would indicate, particularly the averments made in the Testamentary O.P. filed by the first plaintiff as early as in the year 2003 that there has been a transfer of the suit schedule properties without payment of consideration. As regards to the second plaintiff, he had the knowledge of transfer of the suit schedule properties in favour of the defendants 2 to 4 when he had impleaded them as party-defendants in a suit filed for partition of the suit schedule properties in which he had also impleaded the purchasers of the suit schedule properties and amended the plaint accordingly, including the averments relating to the purchase by them and had sought for half share in the property. However, having knowledge of the transfer of the property in their favour, the suit had not been initiated for the declaratory relief within the period of three years as provided under Article 58 of the schedule to the Limitation Act. Article 58 reads thus under;

Description of suit	Period of limitation	Time from which period begins to run
58. To obtain any other declaration	Three years	When the right to sue first accrues.

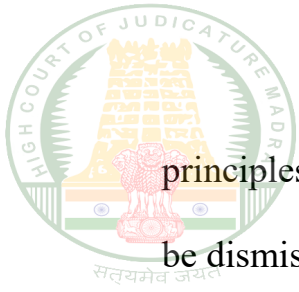
49. It may be true that a right to sue for declaratory relief by a void document could be filed at any point of time but, it should be noted that such a relief should be made when the right to sue as such accrues. The right first accrues could only be interpreted to mean the knowledge of such a right in the *lis*. Analysing the right of the parties, in the present case arises with regard to



the first plaintiff when he had knowledge that the sale deed was not supported by consideration. Therefore the pleadings in the Testamentary O.P. filed by the first plaintiff and the pleadings in the plaint in the partition suit filed by the second plaintiff would itself be suffice to hold that the right to sue had accrued independently to both the plaintiffs much before three (3) years of the institution of the present suit

50. As regards the first plaintiff when it had pleaded so in his testamentary O.P. before this Court as early as in the year 2003, the right to sue for such declaratory relief in respect of first plaintiff had occurred and at the latest, it ought to have filed a suit in the year 2006 and admittedly the present suit had been only filed in the year 2008. Similarly, for the second plaintiff, it is to be noted that the second plaintiff had earlier filed a suit for partition in the year 1996 that is prior to the sale of the property by his father and thereafter, taken steps to amend the plaint to bring on record the purchasers of the property wherein the pleadings have also been amended indicating the sale of the property.

51. Firstly, in the said suit, he had only sought for a partition also adding the subsequent purchasers but, had not sought for a relief of declaration that the sale deed is null and void as executed by his father who was the first defendant in the suit. Therefore, not only the claim of the second plaintiff in the present suit is hit by law of limitation but also is hit by



principles of Order II Rule 2. In that context, he had allowed the said suit to be dismissed for non-prosecution.

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52. For the aforesaid reasons, this Court do not find any reasons to interfere with the findings or issue of limitation as held by the Trial Court even though, this Court had come to a conclusion on different reasonings. Hence, this issue is answered against the appellants and this Court holds that the present suit is barred by law of limitation.

ISSUE (b):-

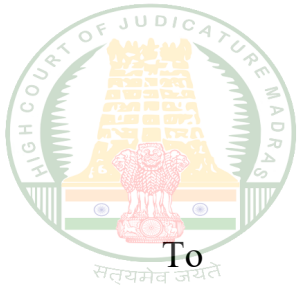
53. In view of the findings that the suit is barred by limitation, this Court is of the view that it is unnecessary to dwell upon the said issue for rendering a findings on the same.

54. For the aforesaid reasons, the Appeal suit fails and is accordingly, dismissed. However, there shall be no order as to costs.

08-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GBA



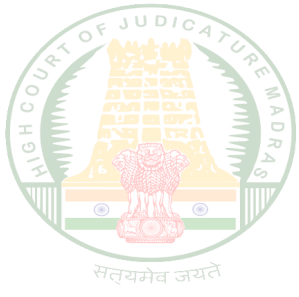
AS No. 504 of 2011



To

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1. The Section Officer,
VR Section, Madras High Court,
Chennai.
2. The Principal District Court, Vellore



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AS No. 504 of 2013



K.KUMARESH BABU, J.

GBA

A Pre-delivery judgement made in
AS No. 504 of 2013

08.07.2026