

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4723 OF 2002

Arumaraj Devadhas

... Appellant

Vs.

K.Sundaram Nadar (D) by LRs. & Ors.

... Respondents

ORDER

This appeal by special leave is filed by the third defendant in a suit for declaration of title and possession, and consequential permanent injunction (OS No.110/1979 on the file of Additional District Munsiff, Kuzhithurai) filed by the first respondent herein (of whom respondents 2 to 11 herein are the LRs.). Defendants 1,2,4 and 5 in the said suit are respectively respondent Nos.12,13,14 and 15 herein. Respondents 3,12,13 and 15 have been subsequently deleted by the appellant at his own risk. For convenience, we will refer to the parties by their ranks in the suit.

2. The first defendant (Karunakaran Nadar) sold the suit property (an extent of 14 cents in Survey No.1817 from out of several properties allotted to him at a family partition) to the second defendant (Solomon Nadar) under a registered Sale Deed dated 1.8.1946. The second defendant executed a Deed of Possessory Mortgage dated 16.1.1947 in favour of one Syeed Kannu. Plaintiff alleged that the said mortgage was not redeemed and Syeed Kannu became the absolute owner thereof, and on his death the suit land was inherited by his son Mohammed Ali. The said Mohammed Ali sold the suit property to the plaintiff (Sundaram Nadar) under registered Sale Deed dated 23.12.1978. Plaintiff, thus, claims to be the owner in possession of the suit property. As the defendants were attempting to interfere with his possession and raise a cloud over his title, he filed the said suit.

3. Defendants 1 and 4 remained exparte. Defendant No.2 claimed that he was not a necessary party to the suit. He however confirmed that he had purchased the suit property from first defendant on 1.8.1946 and he had mortgaged the said land with possession in favour of Syeed Kannu. The third defendant (the appellant herein) contested the suit. He contended that the sale by the first defendant in

favour of the second defendant on 1.8.1946 was sham and nominal. According to him, first defendant sold 10 cents out of the said 14 cents in Survey No.1817 in favour of one Dasan Nadar under registered Sale Deed dated 22.5.1953. Before such sale, the first defendant also mortgaged the very same 14 cents of land in favour of one Mohammed Haneefa on 16.2.1953. The said Muhammed Haneefa assigned the mortgage in favour of the second defendant on 27.4.1964. The second defendant executed a Release Deed in favour of Dasan Nadar in regard to 10 cents purchased by him, under Deed of Release dated 1.8.1966 and thus Dasan Nadar became absolute owner of 10 cents. Dasan Nadar had also purchased another 2 cents in Survey No.1817 under Sale Deed dated 1.8.1966 executed by first defendant and his wife Ammukutty. The said two cents of land comprised a residential house where first defendant and Ammukutty were staying and Dasan Nadar filed an eviction suit against them and obtained possession of the said house under decree dated 21.9.1974. The said Dasan Nadar thus became the owner in possession of 12 cents of land in Sy.No.1817 and he executed a Deed of Sale dated 22.8.1977 in favour of the third defendant and thus the third defendant became the absolute owner in possession of 12 cents of land. The

third defendant contended that as the Sale Deed dated 1.8.1946 in favour of second defendant being sham and nominal was void, the mortgage by second defendant in favour of Syeed Kannu and sale by Syeed Kannu's son in favour of plaintiff were also void and invalid. The third defendant therefore sought dismissal of the suit.

4. The trial Court, by its judgment dated 23.8.1982 held that once first defendant had sold the 14 cents of land in favour of second defendant under Sale Deed dated 1.8.1946, the first defendant had no right, title or other interest in the suit property and consequently the several subsequent transactions relating to suit property by first defendant, that is the mortgage dated 16.2.1953 in favour of Muhammed Haneefa, the sale dated 22.5.1953 in favour of Dasan Nadar as also another Sale dated 9.7.1955 in favour of one Gopalakrishna Pillai were all ineffective and invalid. The Trial Court held that plaintiff has established his title with reference to the said sale dated 1.8.1946 in favour of second defendant, and thereafter second defendant to Syeed Kannu and Syeed Kannu's son to plaintiff. It, therefore, decreed the suit as prayed. Feeling aggrieved, the third defendant filed an appeal. The first appellate court allowed the appeal by judgment dated 14.3.1984. It accepted the contention of the third

defendant that the Sale Deed dated 1.8.1946 was sham and nominal for three reasons which we will refer to a little later. As a consequence of its finding that the Sale Deed dated 1.8.1946 by Karunakaran Nadar (first defendant) in favour of Solomon (second defendant) was sham and nominal, it held that the subsequent transfers from second defendant to Syeed Kannu and Syeed Kannu's son to plaintiff were invalid. The first appellate court also held that the third defendant had made out his title on the basis of the Sale Deed dated 22.5.1953 executed by first defendant in favour of Dasan Nadar in regard to 10 cents of land, and the Sale Deed dated 1.8.1966 executed by first defendant and his wife in favour of Dasan Nadar in regard to two cents and the consequential sale by Dasan Nadar in his favour on 22.8.1977. It, therefore, reversed the decree of the trial court and dismissed the suit.

5. Feeling aggrieved, the plaintiff filed a second appeal. The High Court allowed the second appeal. It found that the three reasons given by the first appellate court to hold that the Sale Deed dated 1.8.1946 was sham and nominal were erroneous and the Sale Deed dated 1.8.1946 was valid and binding; and if so, the title of the plaintiff was made out and the third defendant could not claim any title on the basis

of documents executed by first defendant subsequent to the sale dated 1.8.1946. The Second Appeal was, therefore, allowed and the judgment of the trial court was restored. The said judgment is under challenge in this appeal.

6. The question that arises for our consideration is whether the High Court was justified in reversing the finding of fact that the Sale Deed dated 1.8.1946 executed by first defendant in favour of second defendant was sham and nominal. This requires a brief examination of the three reasons given by the first appellate court to hold the sale deed dated 1.8.1946 to be sham and nominal.

Reason (i): The first defendant had executed a Sale Deed dated 9.7.1955 in regard to the very same land in favour of one Gopalakrishna Pillai. That sale was challenged by first defendant's minor son represented by his mother Ammukutty in O.S.No.701/1955. In that suit Solomon Nadar (the second defendant) was arrayed as the fourth defendant as he had been described as a mortgagee in the sale deed dated 9.7.1955. The said suit was decreed ex-parte and in execution of the said ex-parte decree possession of the property was given to Ammukutty representing her minor son through a delivery receipt. Therefore, it has to be inferred that second defendant was never in possession in pursuance of the sale deed dated 1.8.1946.

The High Court has rightly explained how this finding is without any basis and contrary to the facts. Firstly, in O.S.No.701/1955, possession was not sought from second defendant. Possession was

sought from Gopalakrishna Pillai. After the sale of the schedule property and delivery of possession to second defendant under deed dated 1.8.1946, obviously the question of Gopalakrishna Pillai having possession of the said land did not arise. Further, even second defendant did not continue to have possession, as he had mortgaged the suit property with possession in favour of Syeed Kannu on 16.1.1946. Syeed Kannu was not a party to the said suit against Gopalakrishna Pillai. The said defendant did not contest the suit. Therefore, if paper possession was shown to have been taken from Gopalakrishna Pillai in pursuance of an ex parte decree against him, that cannot be said to be proof of second defendant not being put in possession of the suit property under Sale Deed dated 1.8.1946. Therefore, neither the suit filed by first defendant's minor son against Gopalakrishna Pillai, nor the delivery receipt executed therein would in any way affect the title or possession of second defendant or his transferee Syeed Kannu or the plaintiff who was the transferee from Syeed Kannu's son.

Reason (ii) : After execution of the Sale Deed dated 1.8.1946 in favour of second defendant, first defendant had mortgaged the very same land in favour of Muhammed Haneefa. Second defendant had taken an assignment of the said mortgage from Muhammed Haneefa under the Assignment Deed dated 27.4.1964. If the second defendant

was already the owner in pursuance of the Sale Deed dated 1.8.1946, there was no need for him to take the assignment of a subsequent mortgage. Therefore it has to be inferred that the earlier Sale Deed dated 1.8.1946 in favour of second defendant was treated by second defendant as being sham and nominal and in view of it, the second defendant took an assignment of the said mortgage on 27.4.1964.

But what was lost sight of by the first appellate court was the fact that the Sale Deed dated 1.8.1946 in favour of second defendant related to 10 cents in Survey No.1865, 17 cents in Survey No.1817 and 12 cents in Survey No.2142 and 10 cents in Survey No.1869. The Assignment of Mortgage dated 27.4.1964, on the other hand, relates to as many as sixteen properties. It is possible that second defendant was interested in taking the assignment because of the mortgage was in respect of several other properties. It is also possible that while mortgaging the properties in favour of Muhammed Haneefa, first defendant had inadvertently included the properties which were already sold under deed dated 1.8.1946. It is also possible that second defendant did not want any dispute or litigation with Muhammed Haneefa and therefore took an assignment. What is relevant for our purpose is that the mere fact that second defendant had taken an Assignment of the mortgage from Haneefa, cannot be considered as a circumstance to hold that the

Sale Deed dated 1.8.1946 in favour of second defendant was sham and nominal.

Reason (iii) : The first defendant and his wife Ammukutty sold two cents in Sy.No.1817 in favour of Dasan Nadar. He thereafter filed an eviction suit against first defendant and Ammukutty and took possession from them. This showed that first defendant did not deliver possession to second defendant when he executed the sale deed dated 1.8.1946.

It is evident from the decree in O.S.No.251/1970 (Eviction Suit) that the suit related to a house which was situated in two cents of land. On the other hand, the suit property, that is 14 cents in Survey No.1817, did not relate to any house property at all, but vacant land. Sy.No.1817 was a large extent of land and what was sold by the first defendant to second defendant under sale deed dated 1.8.1946 was only a small portion of 14 cents. It was quite possible that first defendant had continued to own and possess a house in some portion of Survey No.1817 which was not the subject matter of the Sale Deed dated 1.8.1946. Therefore, it is not possible to link the house sold in favour of Dasan Nadar, with the land sold under the sale deed dated 1.8.1946.

7. At all events, the fact that after executing the Sale Deed dated 1.8.1946 in favour of second defendant, first defendant went on executing different Deeds namely a Mortgage Deed dated 16.2.1953, Sale Deed dated 22.5.1953 and Sale Deed dated 9.7.1955 are not indications that the first Sale Deed was sham and nominal, but were indications that first defendant was an unreliable and unscrupulous person. Further the fact that the second defendant had mortgaged the suit property (purchased by him on 1.8.1946) with possession to Syeed Kannu on 16.1.1947 shows that the deed dated 1.8.1946 was not sham and nominal, but real and acted upon. The said sale has not been declared as sham and nominal in any proceedings. In this background, the inference that sale in favour of second defendant under deed dated 1.8.1946 was sham and nominal, was unwarranted.

8. The High Court has focussed on the crucial issue and concluded that the findings of the first appellate court that the Deed dated 1.8.1946 is sham and nominal, was an unwarranted inference without any basis. Consequently, it rightly interfered with the said finding.

We, therefore, find no reason to interfere with the judgment of the High Court. Appeal is dismissed.

.....J.
(R V Raveendran)

New Delhi;
April 16, 2009.

.....J.
(H.L.Dattu)

