

## LAW PAPER II

Case No : 1

### Gist of the Complaint:

Suit for i) declaring the settlement cancellation deed executed by the 2nd defendant bearing Doc.No.1115 of 2007 on the file of the Sub-Registrar's Office, Mylapore, Chennai, as illegal, invalid and void; ii) for a mandatory injunction directing the defendants to hand over the original documents pertaining to the suit property to the respondent; iii) for a permanent injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit property; iv) for permanent injunction restraining the defendants from alienating or encumbering the suit property and for costs.

The suit property is a house and plot measuring an extent of 1200 sq. ft. The plaintiff is the daughter of 1<sup>st</sup> defendant through his first wife. The 2<sup>nd</sup> defendant is the second wife of 1<sup>st</sup> defendant. It is the case of plaintiff that her mother died soon after her birth and the 1<sup>st</sup> defendant married the 2<sup>nd</sup> defendant. The suit property was purchased in her name/plaintiff and 2<sup>nd</sup> defendant name under a sale deed, dated 02.09.1985. The 2<sup>nd</sup> defendant executed a settlement deed in favour of the 1<sup>st</sup> defendant on 20.12.1989. Later, the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant together executed a release deed in the year 1989 relinquishing their undivided half share in the suit property in favour of plaintiff. The plaintiff admits that the defendants leased out the suit property and enjoyed the rental benefits up to the year 2015. It is stated in the plaint that the plaintiff used to visit the suit property and used to clean and maintain the house regularly. It is also the plaintiff's case that, after the demise of her mother, she was taken care of by the parents of her mother and that the property itself was purchased only for her benefit from out of her grandparents fund.

In the plaint, it is stated that the 1<sup>st</sup> defendant evicted the tenants in the month of December, 2015 and the plaintiff got the key from the defendant. The dispute arose when the defendants refused to hand over the original documents relating to the suit property and informed the plaintiff that the 2<sup>nd</sup> defendant retains her half share in the suit property. Thereafter, she came to know that in the year 2007 the defendants had executed a deed of cancellation, the settlement deed executed by them in her favour during the year 1989.

The cause of action for the suit arose when in the month of June, 2016, when the plaintiff was living in the suit property, some unknown persons visited the property under the pretext that they are going to purchase the property from the defendants.

Gist of written statement filed by the 1<sup>st</sup> Defendant and adopted by the 2<sup>nd</sup> Defendant:

The 1<sup>st</sup> defendant admits that he is the father of the plaintiff. On the death of plaintiff's mother, he married the second defendant. Due to the pressure and influence from his father-in-law, he agreed to purchase the suit property jointly in the name of the plaintiff and in the name of his second wife, the second defendant. At the time of purchase the plaintiff was just three years old. It is the case of 1<sup>st</sup> defendant that the entire consideration for the property was paid by him. Though it is admitted that the 2<sup>nd</sup> defendant, executed a settlement deed in his favour under document, dated 20.12.1989, conveying her undivided half share in the suit property, it is contended that, due to threat and coercion, the release deed dated 18.02.1992 in favour of plaintiff was executed by defendants. It is stated, the settlement deed and the release deed were not acted upon. Stating that the 2<sup>nd</sup> defendant executed a cancellation deed, dated 02.05.2007, in order to bring back the ownership of the 2<sup>nd</sup> defendant in respect of the undivided half share in the suit property, the suit resisted on the ground that the plaintiff cannot claim exclusive ownership over the property. The 1<sup>st</sup> defendant also contend that the plaintiff, who never claimed ownership or possession for more than 30 years. She is not entitled to claim right over the property. The 1<sup>st</sup> defendant further contended that the possession of the suit property is always with him and never been with the possession of the plaintiff as claimed in the plaint. The averments in the plaint to the effect that the plaintiff was visiting the property for cleaning and maintaining the same, are specifically denied. The suit is undervalued and that the plaintiff cannot maintain a suit without a prayer for declaration of her title and recovery of possession.

*Documents referred are duly registered documents and marked by consent of both parties.*

*Plaintiff as PW-1 and the first defendant as DW-1 had given oral evidence reiterating their respective pleadings. No other witness on either side.*

## Case No : 2

### Gist of the Plaint:

The plaintiff is a partnership firm represented by its partner. The property described as A schedule owned by the Firm. The property described as B schedule property is the passage through which the plaintiff have the access to its property. Plaintiff has every right to access the Plaintiff 'A' schedule property through the passage described as Plaintiff 'B' schedule property. The defendants being the neighbouring land owners, try to deny the right of access to A schedule property through B schedule property. Hence suit for Declaration **and** for permanent injunction restraining the defendants their men, their agents and servants from anyway interfering with the plaintiff peaceful possession and enjoyment of 'A' schedule property by accessing through Plaintiff 'B' scheduled property.

Suit 'A' Schedule property measuring 2 acres was purchased by in the name of the plaintiff firm on 22/11/1979. At the time of purchase, there was no passage to access the 'A' schedule property. Hence the Plaintiff approached the neighboring landowner 'P' and got lease of land measuring 7 cents (150 feet length and 25 feet width) under registered deed dated 23/11/1979 for a consideration of Rs. 600/- per year. The said land is the "B" schedule property. 'P' died on 13/10/1983. The first and 4<sup>th</sup> defendants who are her legal heirs, sold away the property on 17/11/1986 excluding the 7 cents of land given lease to the plaintiff, Describing the said land as cart track. Though, the first defendant and his brother have no right in the 'B' schedule property, With the intention to grab the land, claiming right over the passage and disturbing the plaintiffs Ingress and egress to the plaintiff 'A' Schedule property. Hence the suit for declaration and permanent injunction.

### **Gist of the written statement:**

'Tmt. P' was the original owner of 'B' schedule property. 1<sup>st</sup> and 4<sup>th</sup> defendants are her sons. The lease in respect of 'B' scheduled property was for a period of 10 years. On the expiry of the lease in the year 1989, the plaintiff stopped using the 'B' schedule property. They have alternate access to their 'A' schedule property. The enjoyment of 'B' schedule property by the plaintiff was not by easement by prescription or by necessity. Neither it is a common cart track as claimed by the plaintiff. The plaint filed in the name of a partnership firm not through its partner but by a third party hence suit is not maintainable.

### **Plaintiff side evidence:**

The representative of the plaintiff firm examined as PW-1.

Exhibit A1: Sale deed dated 22/11/1979, in favour of the plaintiff for 'A' schedule property.

Exhibit A2: Lease deed dated 21/11/1979. In favor of plaintiff for 'B' schedule property.

Exhibit A3: Sale deed dated 17/11/1986 executed by 1<sup>st</sup> and 4<sup>th</sup> defendant describing 'B' schedule property as Cart track.

### **Defendant side evidence.**

DW 1. First defendant.

DW2. Second defendant.(purchaser of the property from first and 4<sup>th</sup> defendant)

Exhibit B1: Chitta Adangal for 'B' schedule property in the name of defendants.

Exhibit B2: Patta for 'B' schedule property in the name of defendants.

Exhibit P3. Rough sketch of A and B schedule property.

### Case No : 3

The case of the plaintiff is that he entered into an agreement of sale with the defendant on 27.08.1999, marked as Ex.A.1. As per the sale agreement, the total sale consideration was fixed at Rs.5,00,000/- and the plaintiff paid a sum of Rs.1,00,000/- towards advance. A time limit of 11 months was also fixed under the agreement. Insofar as the obligation that was fixed on the defendant is concerned, he was expected to give the encumbrance certificate for a particular period, pay and settle all the taxes and dues and measure and fix the boundary stones in the property. The 11 month period expired on 26.07.2000. The agreement was extended on 26.06.2000 for a further period of 11 months and a further advance of Rs. 1,00,000/- was paid by the plaintiff to the defendant. The receipt for the payment is evident from Ex.A.2. The 11 months period that was fixed on 26.06.2000 came to an end on 25.05.2001. However, the second extension took place on 25.04.2001 and the time was extended upto 31.12.2001 and a further advance of Rs. 2,00,000/- was paid by the plaintiff to the defendant. The receipt for the payment is Ex.A.3. There was one more extension that took place on 15.12.2001 and this was the third extension, whereby the period of agreement was extended for one year and the plaintiff paid a further sum of Rs.75,000/- to the defendant. The receipt is A.4. By the time, the agreement was extended on the third occasion, the plaintiff had paid a sum of Rs.4,75,000/- out of the total sale consideration of Rs. 5,00,000/-.

The agreement once again came to be extended for the fourth time on 10.12.2004 for a period of two years. The receipt is Ex.A.5. The two years period also expired on 09.12.2006. The case of the plaintiff is that after receiving substantial amount towards sale consideration, the defendant did not come forward to execute the sale deed receiving the balance amount of Rs.25,000/-. The plaintiff issued a legal notice on 10.08.2007, (Ex.A.8) and called upon the

defendant to execute the sale deed and also expressed his willingness to pay the balance sale consideration of Rs. 25,000/-. A reply Ex A-10 was given by the defendant to the said legal notice on 20.08.2007. Left with no other option, the suit seeking for the relief of specific performance or in the alternative to repay back the advance amount of Rs.4,75,000/- with interest.

The defendant case as found in the written statement is that, the suit sale agreement dated 27.08.1999 is not a genuine document. According to the defendant, he had taken a loan from a Cooperative Agricultural Bank and in order to repay back the same, he availed a loan from one Gopinath in the year 1998. Since Gopinath was pressuring for the repayment of the loan, the defendant approached the plaintiff who was a money lender and a loan was arranged. According to the defendant, on the plaintiff demand, the as a security, the sale agreement was executed and the defendant never had the intention to sell the property to the plaintiff. The further case of the defendant is that he was not able to repay back the loan with interest and hence the extension of the period was made on the reverse side of the sale agreement. Insofar as the extensions that took place in the year 2001 and 2004 claimed by the plaintiff, the defendant deny the same. The entries on the back of the sale agreement are forged and fabricated. About the receipt of a legal notice dated 21.11.2002 from the plaintiff, the case of the defendant is no notice served on him. The long lapse of eight years from the date of sale agreement and the date of filing of the suit itself sufficient to dismiss the suit for specific performance a relief granted on equity.

The sale agreement, the endorsements made on the back of it for receiving money on the dates mentioned and the copy of the notice sent by the plaintiff are the documents marked. The disputed signatures not sent for expert opinion, however as a judge, you have examined the disputed signatures through naked eyes.)

## Case No: 4

### The case of the plaintiff

The suit property originally belonged to one Thiru.late.N.Kannayiram Pillai, who had purchased the same through a registered sale deed dated 15.07.1981. During his lifetime, Thiru.late.Kannayiram Pillai had adopted the first defendant on 01.01.1983, who is Thiru.late.Kannayiram Pillai wife's brother's son. Apart from the first defendant, Thiru.late.Kannayiram Pillai had also adopted the plaintiff as their daughter in the year 1959, as per Hindu Rites and Customs. The plaintiff's marriage was conducted by Thiru.late.Kannayiram Pillai by referring to her as his "Abimaana Puthalvi" in the marriage invitation. The wife of Thiru.late.Kannayiram Pillai, predeceased her husband. Thiru.late.Kannayiram Pillai, subsequently expired, issueless. The plaintiff continued to live in the suit property.

The defendants 2, 4 and 5 are the blood brothers of the plaintiff, the third defendant is her blood sister. By way of a family arrangement, the plaintiff and the defendants 1 to 5 and a predeceased brother of the plaintiff, had entered into a family arrangement on 09.05.1996, whereby they had agreed that the plaintiff and the first defendant would be entitled to equal share, which they are willing to forego in favour of the other defendants and that the suit property would be sold in open auction and the sale proceeds shall be divided equally among the plaintiff and the defendants 1 to 5, as well as her predeceased brother. In view of the death of the plaintiff's brother, the plaintiff and the defendants 1 to 5 are entitled to 1/6<sup>th</sup> share each in the suit property.

The first defendant in the written statement, while denying the adoption of the plaintiff, he claims that he was adopted by Thiru.late.Kannayiram Pillai and had brought him up as his own son. Further claims that Thiru.late.Kannayiram Pillai had also executed a Will, dated 11.12.1988, bequeathing the suit property in his favour. The defendants 7 to 10 had purchased the suit property from him through a registered sale deed for a valid sale consideration and hence, they are the real owners of the suit property.

The claim of the plaintiff that the suit property was sold by her through her Power Agent is sham and nominal deeds and not binding upon the first defendant. The alleged deed of Power of Attorney was not acted upon and had not come into operation at all and hence is a fraudulent document.

The defendants 2 and 4 in their written statement have denied the adoption of the plaintiff, as well as the first defendant, and claim that the first defendant had no legal right to alienate the suit property in favour of the defendants 7 to 10. These defendants claim 1/6<sup>th</sup> share each in the suit property in view of a family arrangement between the plaintiff and the defendants 1 to 5.

The third defendant in her written statement claims that the plaintiff and the defendants 1 to 5 were all adopted by late. Kannayiram Pillai and therefore, they are also entitled for 1/6<sup>th</sup> share.

The fifth defendant in his written statement claim 1/6<sup>th</sup> share as per the family arrangement arrived at between the plaintiff and the defendants 1 to 5.

The written statement filed by the seventh defendant was adopted by defendants 8 to 10, wherein it is stated that the first defendant is the only adopted son of late. Thiru.Kannayiram Pillai and therefore, he is the absolute owner of the suit property. Even otherwise, the suit property was bequeathed to the first defendant by Thiru.late.Kannayiram Pillai through a Will, dated 11.12.1988. It is further stated that after conducting due diligence on the title of the first defendant over the suit property and after effecting a publication in the newspapers about the proposal to purchase the same, the sale deed was executed in their favour and hence they are the absolute owners of the suit property.

The defendants 7 to 10 had denied the plaintiff's claim of being the adopted daughter of late.Kannayiram Pillai and her right over the suit property.

The written statement filed by the 12<sup>th</sup> defendant adopted by defendants 11 and 13, says, he purchased an extent of 3000 sq. ft. in the suit property along with defendants 11 and 13 through an acceptance deed, dated 02.10.2006 confirming the sale deed, dated 27.06.2006, in their favour.

The 14<sup>th</sup> defendant in his written statement states that based on the registered deed of Power of Attorney, dated 05.05.2000, he sold an extent of 3000 sq. ft. of the suit property in favour of the defendants 11 to 13.

PLAINTIFF AND 2 VILLAGERS EXAMINED AS PW-1 to PW-3. in support of THE PLAINTIFF. NO DOCUMENT MARKED.

FIRST DEFENDANT EXAMINED AS DW-1. Original Will, dated 11.12.1988 of Kannayiram Pillai marked as Ex A-1. Attestors to the will not examined since, both the attesting witnesses died.

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