



S.A.No.178 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.178 of 2010

and

M.P.No.1 of 2010

1.A.Panneerselvam

2.Santha Kumar

... Appellants

Vs.

Shabeer Ahamad Sahib

...
Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 30.10.2009 made in A.S.No.17 of 2007 on the file of the Subordinate Judges Court, Vellore reversing the Judgment and Decree dated 20.10.2006 made in O.S.No.39 of 2001 on the file of the Additional District Munsif Court, Vellore.

For Appellants : Mr.S.Mukunth, Senior Counsel
for Mr.R.Vasudevan

For Respondent : Mr.S.Gunaseelan



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J U D G M E N T

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The appellants herein are the plaintiffs before the Court below. The respondent herein is the defendant before the Court below.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The *plaint in brief*:-

According to the plaintiffs, the suit property were originally belonged to one Boopathy ammal. She purchased the schedule mentioned property as a vacant site under the registered Sale Deed dated 04.02.1982 from one Subramaniya Mudaliar for a sum of Rs.1,400/-. She has mortgaged the schedule mentioned property with Pallikonda Adi-Dravida Co-Operative Buildings Society Limited, Pallikonda in the year 1983-1984 and constructed a house in the schedule mentioned property. During her lifetime, the said Boopathy ammal, W/o. Late Masilamani executed a registered Will in favour of the plaintiffs by virtue of Will dated 22.05.1996, in sound disposing state of mind. Subsequently, she died on 24.12.1999 and the Will dated 22.05.1996 came into operation. Thereby, the plaintiffs became the absolute



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owners of the scheduled mentioned property. The plaintiffs further submit that they have been in actual physical possession and enjoyment of the schedule mentioned property, by paying house tax, water tax, electricity consumption charges. Since the defendant attempted to interfere with the possession of the suit property, they have come forward with the present Suit for the relief of declaration and permanent injunction.

4. Written Statement in brief:-

This defendant disputes the plaint averments. According to this defendant, the said Boopathy ammal had romantic relationship outside of her marriage with one Abdulla Basha, who is the father of the defendant. The said Boopathy ammal through her marriage with one Masilamani delivered a male child by name Mr.Madhiashagan. When Boopathy ammal was in romantic relationship outside of her marriage with Mr.Abdulla Basha, the schedule mentioned property was purchased in the year 1982 with the money provided by Mr.Abdulla Basha. After that, since Boopathy ammal has no source of income, she offered to sell the portion of the property and sold the same to the defendant for the sale consideration of Rs.25,000/-, by virtue of Sale Deed dated 08.08.1990. This defendant submits that the plaintiffs have



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no manner of rights, title or interest in the property. This defendant also dispute the possession of the plaintiffs over the schedule mentioned property.

This defendant submits that, since the Boopathy ammal interfered with the property sold to the defendant, with the connivance of the plaintiffs and other relatives, he was constrained to file a Suit in O.S.No.385 of 1988. During the pendency of the said Suit, Boopathy ammal died on 24.12.1999, without leaving any legal heir except the defendant herein. This defendant disputes the very execution of the Will by the Boopathy ammal in favour of the plaintiffs. Hence, the defendant prayed to dismiss this Suit.

5. Evidence & Documents & findings of the both the Court below:-

a) Before the Trial Court, on behalf of the plaintiffs 4 witnesses were examined as P.W-1 to P.W-4, and on behalf of the defendants, 6 witnesses were examined as D.W-1 to D.W-6. On behalf of the plaintiffs, 32 documents have been marked as Ex. A1 to A32, and on behalf of the defendants, 13 documents were marked as Ex.B1 to B13.

b) The Trial Court, after hearing either side and after considering the documents, oral and documentary evidence and material on records, has ultimately decreed the Suit in favour of the plaintiffs believing the due



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execution Will dated 22.05.1996 stands in the name of the plaintiffs. Besides the Trial Court has disbelieved the Sale Deed dated 08.08.1990, which stands in the name of the first defendant. The Trial Court, taking into consideration the defence put forth by the Boopathy ammal in the earlier Suit in O.S.No.385 of 1998, has held that the sale is in favour of this defendant is void *ab initio*. To arrive at such conclusion the Trial Court has relied upon the provisions under Section 58(1)(c) of the Registration Act. Against the decree of the Trial Court, when the defendant preferred an appeal, the First Appellate Court has reversed the findings by disbelieving the Will propounded by the plaintiffs. Aggrieved with the said findings, the plaintiffs are before this Court as Appellants.

6. **Substantial question of law:-**

At the time of admission, the following substantial questions of law are framed:-

“ 1. *When the Will Ex.A13 is proved in the manner known to law, is the learned Appellate Court justified in discrediting the Will just because the appellants beneficiaries are present during its execution?*

2. *When the Trial Court was found that Ex.B1 is a*



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void document applying the principles of Doctrine of non-est factum, is the learned Appellate Court is reversing the judgment even without setting aside the findings of the Trial Court?”

7.Submissions of either side counsels:-

The learned Senior Counsel, Mr.S.Mukunth would submit that though in the Ex.B1-Sale Deed a sum of Rs.10,000/- said to have been paid in front of the Sub-Registrar, no endorsement was made by the Sub-Registrar as mandated under the provisions of Section 58(1)(c) of the Registration Act. Therefore, he would further contend that such payment has not been proved in a manner known to law. According to plaintiffs, Ex.B1-Sale Deed is not supported by consideration. It is the further submission of the learned Senior Counsel that, though Boopathy ammal purchased the suit property under Ex.A1-Sale Deed in the year 1982 as a vacant land, the very recitals in the defendant's Sale Deed, about the reference of 60 years old terrace building, would exemplify the falsity over the defendant's case. The learned Senior Counsel would also invite the attention of this Court in respect of the written statement filed by the Boopathy ammal in the earlier Suit instituted by the defendant herein, in O.S.No.385 of 1998, which has been marked as Ex.A32.



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The learned Senior Counsel would vehemently contend that in the said written statement, the Boopathy ammal has categorically pleaded that under the guise of obtaining signature in a Mortgage Deed, the defendant has obtained a Sale Deed and therefore, by applying the doctrine of *non est factum*, the Ex.B1 Sale Deed is liable to be ignored. It is the further submission of the learned Senior Counsel that the Ex.A12=Ex.A13-Will, has been proved in due compliance with Sections 63 of the Indian Succession Act, and 68 of the Indian Evidence Act.

8. *Per contra*, learned counsel of the respondent / defendant would submit that, Ex.B1 Sale Deed has been proved in a manner known to law, and that the reference of the Trial Court in respect of Section 58(1)(c) of the Registration Act is irrelevant, as there is a recitals in the very Sale Deed itself in respect of receipt of Rs.10,000/- before the Sub-Registrar. The learned counsel for the respondent/defendant would also submit that, though in the written statement Ex.A32, Boopathy ammal has taken a defence that the Ex.B1-Sale Deed was not executed by her, the said Boopathy ammal did not file any Suit to set aside the Sale Deed. Therefore, Ex.B1-Sale Deed is valid and binding. The learned counsel for the respondent/defendant would further



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submit that the son of the Boopathy ammal viz., Mathiazhagan has also executed a Sale Deed in respect of the remaining portion of the property, in favour of the defendant. Therefore, would submit that the Sale Deed executed by the Boopathy ammal is valid and proper. Thus, the learned counsel for the respondent prayed to dismiss the Second Appeal.

9. I have given my anxious consideration to either side submissions.

10. The entire case revolves around the validity of the Ex.B1-Sale Deed. If the Ex.B1-Sale Deed is valid and binding, naturally the Boopathy ammal has no right to execute any Will in favour of the plaintiffs. Further, even if she executed any Will, no right would enure upon the plaintiffs, in view of absence of title with Boopathy ammal. The main challenge upon Ex.B1-Sale Deed is the absence of endorsement as contemplated under Section 58(1)(c) of the Registration Act.

11. For ready reference, this Court deems it appropriate to extract Section 58(1)(c) of the Registration Act:-



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“ 58. Particulars to be endorsed on documents admitted to registration:-

(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:—

(a)

(b)

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.”

12. From the above provision, the learned Senior Counsel would submit that it is the case of the defendant that he paid a sum of Rs.10,000/- before the Sub-Registrar. However there is no endorsement in respect of such payment by the Sub-Registrar and therefore, there was no consideration passed for the Ex.B1-Sale Deed. Apart from that it is the submission of the learned Senior Counsel that the very execution of the Ex.B1-Sale Deed was denied by Boopathy ammal. Therefore, in view of the above aspect the Ex.B.1-Sale Deed is liable to be ignored. However, this Court is respectfully disagreeing with the submissions made by the learned Senior Counsel.



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13. In the earlier written statement in Ex.A32, Boopathy ammal contended that by misrepresentation she was induced to sign in the Sale Deed under the pretext of signing the mortgage deed. However, though she filed such written statement Ex.A32 in the earlier Suit, she did not think fit to file any Suit to set aside the Sale Deed. It is relevant to mention here that, the case put forth by said Boopathy ammal against the Ex.B1-Sale Deed is a misrepresentation, which would come under Section 19 of the Indian Contract Act qua voidable agreement. Such voidable agreement will become void only if the party to the document challenge the same within the period of limitation. Here, absolutely no such attempt was made by the Boopathy ammal.

14. However, by referring Section 25 of the Indian Contract Act, it was contended that no sale consideration was paid to Boopathy ammal and therefore, the Ex.B1-Sale Deed is void. To substantiate the said contention, the plaintiffs relied upon Section 58(1)(c) of the Registration Act. However, the reading of the Ex.B.1-Sale Deed would fortify the payment of Rs.15,000/- as an advance and another sum of Rs.10,000/- before the Sub-Registrar. Therefore, by virtue of section 92 of the Indian Evidence Act, the recitals



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cannot be contradicted except upon the reason stated in the proviso to that Section. Whereas the said Boopathy ammal though set up a defence of misrepresentation, as stated supra she did not think fit to file any Suit to declare the said Sale Deed to become void. It is pertinent to mention here that even the son of the Boopathy ammal, Mr.Mathiazhagan did not challenge the Ex.B1-Sale Deed. Therefore, this Court is of the firm view that the Ex.B1-Sale Deed is valid and binding between the parties.

15. At this juncture, the learned Senior Counsel would draw the attention of this Court in respect of the reference of “60 years old building” in the Ex.B1-Sale Deed and raised suspicion towards the execution of the Ex.B1-Sale Deed. But this Court is not persuaded with the submissions made by the learned Senior Counsel, in view of the fact that, even according to the Ex.A12=A13-Will, there is a reference, in respect of existence of a building.

16. In view of the above discussion, this Court is of the firm view that there are no substantial question of law exists in this case. Thus, the substantial question of law framed are answered in favour of the respondent.



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17. In the result, the second appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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