



Second Appeal No.974 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.974 of 2013

1.Lakshmi
2.Elumalai
3.Selvi

.... Appellants

-Vs-

1.Saradhammal
2.Thilagam
3.Devendran
4.Rajendran

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 28.03.2013 made in A.S.No.177 of 2003 on the file of the learned II Additional Subordinate Judge, Villupuram confirming the judgment and decree dated 31.07.2001 made in O.S.No.92 of 1997 on the file of the learned Additional District Munsif, Tirukoilur.

For Appellants	:	Mr.T.S.Baskaran
For Respondents	:	Mr.K.Venkatasubban for M/s.Sarvabhauman Associates

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Court of the II Additional Subordinate Judge at Villupuram in A.S.No.177 of 2003 dated 28.03.2013 in reversing the judgment and decree of the Court of the II Additional District Munsif, Tirukoilur in O.S.No.92 of 2007 dated 31.07.2011.



Second Appeal No.974 of 2013

WEB COPY

2. The appellant before me is the plaintiff in the suit. For the sake of convenience, the parties are referred to as per their ranks in the suit.

3. The plaintiff presented O.S.No.92 of 1997 seeking for the relief of declaration and for injunction. Pending the suit, the original plaintiff Angamuthu Gounder passed away leaving behind him, his wife Ellammal, daughters Lakshmi, and Selvi, and son Elumalai. Pending the suit, Ellammal passed away and since the legal representatives were already on record, plaintiffs 3 to 5 were recorded as the legal representatives of the deceased second plaintiff.

4. The case of the plaintiff is that the properties belong to one Iyyakannu Gounder. He executed a sale deed on 06.02.1978. As the registration was not possible that day, it was postponed and registered on 01.03.1978. The cause of action for the suit is that, the original defendant Subramanya Gounder claimed that he had purchased the property on 20.02.1978 from Iyyakannu Gounder and his brother Chinnathambi Gounder and since they did not register the document despite having received the consideration of Rs.2000/-, he went in for a compulsory registration of the sale deed. As he attempted to interfere with the possession of the plaintiff on the basis of this document, the plaintiff was constrained to file the suit.



Second Appeal No.974 of 2013

WEB COPY

5. The case of the defendant is rather straight forward. Iyyakannu Gounder and Chinnathambi Gounder had executed a sale deed in his favour on 20.02.1978. As they refused to register the sale deed, he gave a petition under Section 73 of the Indian Registration Act for compulsory registration of the sale deed. The Sub-Registrar at Anniyur, the jurisdictional Sub-Registrar refused to register the document compulsorily and therefore the defendant preferred to file an appeal to the District Registrar. As his appeal before the District Registrar failed, he filed a statutory suit before the District Munsif Court at Villupuram in O.S.No.1259 of 1978. The said suit was dismissed on 20.08.1983. Feeling aggrieved over the said judgment and decree, he preferred an appeal in A.S.No.70 of 1984 to the Subordinate Judge at Villupuram. The said appeal was allowed. On the basis of the judgment and decree of the Subordinate Judge at Villupuram, Subramanya Gounder went ahead and got his sale deed registered. It is his case that the plaintiff is the close relative of Iyyakannu Gounder, both are colluded and have ante-dated the sale deed and have had it registered after his sale deed on 20.02.1978.

6. On the basis of these pleadings, the following issues were framed by the trial Court.

1. 06.02.1978ல் வாதி தாவா சொத்தை கிரயம் பெற்றது



Second Appeal No.974 of 2013

உண்மையா ?

2. தாவா சொத்து வாதியின் சுவாதீனத்திலும், அனுபவத்திலும் தான் உள்ளதா ?

3. 20.02.1978ல் பிரதிவாதி தாவா சொத்தை கிரயம் பெற்றதாக கூறுவது உண்மையா ?

4. வாதியின் கிரையம் முன் தேதியிட்டு, பின்னிட்டு தயாரிக்கப்பட்ட ஆவணம் என்பது சரியா ?

5. வாதி அடையக்கத்தக்க பரிகாரம் யாது ?

6. எதிரனுபோக உரிமை மூலம் தாவா சொத்து யாருக்கு பாத்தியப்பட்டது ?

7. On the side of the plaintiff, two witnesses were examined. Since the original plaintiff was already dead, the fourth plaintiff viz., Elumalai entered the witness box and examined himself as P.W.1. On the side of the plaintiff, Exs.A1 to A37 were marked. The defendant examined himself as D.W.1 and one Murugesan Gounder as D.W.2. He marked Exs.B1 to B10.

8. The learned trial Judge, on the appreciation of evidence, oral and documentary let in before him, came to the conclusion that Ex.A1 sale deed takes precedence over Ex.B1 sale deed. In order to arrive at this conclusion, he applied Section 47 of the Registration Act and held that, though the execution of



Second Appeal No.974 of 2013

Ex.B1 sale deed was on 20.02.1978, since the execution of Ex.A1 was on 06.02.1978, it takes precedence over Ex.B1 by virtue of its registration on 01.03.1978 and held that the plaintiff has proved his case.

9. Aggrieved by the same, a regular appeal was preferred before the learned II Additional Subordinate Judge at Villupuram in A.S.No.177 of 2003. The learned Subordinate Judge held that, though the aspect of registrations is accepted by both sides, since the plaintiff has not proved the execution of Ex.A1 on 06.02.1978 as true and genuine and not being ante-dated, she allowed the appeal. Against the said reversing judgment and decree, the plaintiff is before me.

10. The Second Appeal was admitted on 08.10.2013 on the following substantial questions of law:

- (1) Whether the learned appellate Judge was right in not applying the principles relating to relation back as set out in Section 47 of the Registration Act ?
- (2) Whether the learned appellate Judge was right in granting a decree for declaration and recovery of possession in favour of the defendants in the absence of a counter claim by the defendants ?
- (3) Whether the learned appellate Judge was right in holding that Ex.A1 was ante-dated in the absence of any evidence in that



regard ?

(4) Whether the learned appellate Judge failed to apply the principles of law applicable to a suit for specific performance to the facts of the present case ?

11. I heard Mr.T.S.Baskaran for the appellants and Mr.K.Venkatasubban for M/s.Sarvabhauman Associates for the respondents.

12. Before I step into the other questions of law that are framed in this Court to answer, I will deal with the second substantial question of law. I have to point out that the learned first appellate Judge in her exuberance in allowing the appeal, has not only set aside the judgment and decree of the Court of the II Additional District Munsif, Tirukoilur, but has gone further and declared that the defendants are the owners of the property and has also granted a decree for recovery of possession.

13. I put it to Mr.Venkatasubban as to how he is supporting Clause (3) and (4) of the decree, especially when there is no counter claim filed by the defendants. It is settled proposition of law that a Court cannot grant a decree that has not been sought by a party unless and until it is within the power of the Court. The admitted case is that the defendant had not sought for recovery of possession. Unless and until such a counter claim had been filed before the



Second Appeal No.974 of 2013

Court, it is bewildering why the Court has granted such a decree. Therefore, the question of law No.(2) is answered in favour of the appellants and that portion of the decree granted in Clause Nos.(3) and (4) of the decree is set aside.

14. Now I turn to the prime issue in this case as to whether Ex.A1 will prevail or it is Ex.B1. The narration of the aforesaid facts makes it clear that there was a dispute between the defendant and the vendors Iyyakannu Gounder and Chinnathambi Gounder. This constrained them to litigate before the Sub-Registrar as well as the District Registrar and finally it went up into a litigation before the Civil Court in O.S.No.1259 of 1978. The said suit went against the original defendant. Thereafter, in an appeal filed before the Subordinate Judge, the defendant was successful in persuading the Court and obtained a decree under Ex.B3. Consequently, there are two sale deeds in this appeal, one sale deed voluntarily executed by Iyyakannu Gounder in favour of the plaintiff and one under compulsory registration executed by the Court for and on behalf of Iyyakannu Gounder and Chinnathambi Gounder in favour of the defendant.

15. Under Section 47 of the Registration Act, a registered document does not operate from the date of its registration, but from the date of its execution. Therefore, if a party wants to rely upon his document to show that though the registration was later, the execution was prior, the burden is on that party to



Second Appeal No.974 of 2013

prove that the document had in fact been executed on the date on which it was alleged to have been executed.

16. In the facts of this particular case, I pointed out to the learned counsel for the appellant that there are six major discrepancies.

- (1) Though the property is situated in Anniyur in Villupuram District, the stamp papers for the purpose of registration have been purchased in Tiruvannamalai.
- (2) The value of the property under Ex.B1 is Rs.2,000/-, whereas the alienation in favour of the plaintiff is for a paltry sum of Rs.1,000/-
- (3) Though the execution is said to have taken place on 06.02.1978, the registration was done much later ie., on 01.03.1978. The gap of nearly 22 days has not been explained.
- (4) Though the property is situated within the SRO of Anniyur, the registration took place in Villupuram District before the District Registrar at Villupuram.
- (5) The execution is said to have been taken place on 06.02.1978, but on the date of voluntary sale that was executed by Iyyakannu Gounder in favour of the plaintiff, the original title deeds had not been handed over, and last but not the least,



Second Appeal No.974 of 2013

WEB COPY

(6) Out of the three attesting witnesses, who have attested the document dated 06.02.1978, only one attesting witness has been examined.

17. Mr.T.S.Baskaran would submit that the appellants' father had gone over to Tiruvannamalai to visit his mother and therefore he has purchased the stamp papers at Tiruvannamalai. He would further state that the value of the property as given in Ex.B1 has not been proved. Regarding the gap from 06.02.1978 to 01.03.1978, his explanation for this and the later doubt that has been raised by me are one and the same. He would state that, since Iyyakannu Gounder fell sick, he went to Villuputam for treatment. Therefore, his father went to Villupuram and therefore the sale was registered at Villupuram.

18. On the aspect of the original sale deed, he would state that he has produced the original before the Court and therefore it matters not whether the original sale deed was handed over on 06.02.1978 or not. For the last query on the attesting witnesses, Mr.T.S.Baskaran would submit that, as the other attesting witnesses are close relatives, he examined the independent witness as P.W.2 and this satisfies all suspicions that have been raised by me.



Second Appeal No.974 of 2013

19. The law on the aspect of Section 47 of the Registration Act has been settled by the judgment of a learned Judge of this Court in **Krishnan -vs- Sivalinga Gounder and another [1996 (1) L.W.622]**. The learned Judge who dealt with the issue, after referring to the authorities, had held that a party can rely upon Section 47 of the Registration Act if and only if he is able to prove the execution on that date. Once that evidence is lacking, the learned Judge held that, he cannot rely on that Section and claim priority over the subsequently executed document.

20. Answering the question of law, the learned Judge held as follows:

*" An explanation is necessary by the purchaser to show why the registration was not effected on the date of execution of the document since the contention raised by the plaintiff is that it is ante-dated. The presentation of a document for registration within four months as provided under Section 23 of the Indian Registration Act **will not absolve** a person from proving the date of execution. In cases where the date of execution of the document is challenged, it is the bounden duty of the purchaser to prove by the best evidence that the document was executed on the date it bears."*

21. This position having been laid down, I have to see whether in this case, the plaintiff has proved that the document was executed on 06.02.1978. It



Second Appeal No.974 of 2013

seems highly artificial that a person will travel from one district to another for the purpose of buying stamp papers especially when he is on a casual visit to see his mother. Even more artificial is the explanation that though the vendor was sick and taking treatment in Villupuram, he had reached out to the vendor at the place where he was taking treatment and got the document registered.

22. Above all, what makes me to hold against the appellants is that, the original title deed had not been taken possession by the appellants' father when he got the sale deed executed on 06.02.1978. I place great emphasis on this aspect because, this case arises from a tiny hamlet in Villupuram. Therefore, news travels fast. Had the original title been taken possession by the original plaintiff, then the possibility of the defendant approaching Iyyakannu Gounder for selling the very same property would not have arisen at all. The fact that the original sale deed had been produced before the Court does not improve the case of the plaintiff for the simple reason that, as there exists evidence before the Court in the form of voters list, the deceased vendor Iyyakannu Gounder and the plaintiffs were residing in one and the same property.

23. The explanation that has been given for the non-examination of the other attesting witnesses is also not satisfactory. Devaraj examined as P.W.2 is unable to state any details that are necessary for the purpose of proving that on



Second Appeal No.974 of 2013

06.02.1978 the sale deed had been executed. Perhaps, if the other witnesses had been examined they might have substantiated this case, but unfortunately for the plaintiff he has not done so. This also leads me to take adverse inference against the plaintiff because, it is not his case that the attesting witnesses are dead. They were available, still not examined. In other words, the best evidence that was available was not produced before the Court. As held in the precedent referred to above, it is the duty of the plaintiff to produce the best available evidence in order to substantiate his case. That not having been done, I necessarily had to draw an adverse inference against the plaintiff that, had he examined the other two witnesses to the document, they would not have supported the case, but unfortunately he has not done so.

24. I should also point out that in the aforesaid precedent, **S.S.Subramani, J.** has held, the presumption raised under Section 47 is a weak one and certainly not to be pressed against a third party. Therefore, heavy burden lay on the appellant to prove that the document was executed on 06.02.1978. He having not discharged that burden, the appeal necessarily has to fail.

25. The suspicious circumstances surrounding the execution of the document dated 06.02.1978 not having been satisfactorily explained, I am left



Second Appeal No.974 of 2013

with no other option than to confirm the judgment and decree of the learned II Additional Subordinate Judge at Villupuram in A.S.No.177 of 2003 dated 28.03.2013. In fine, the substantial questions of law (1), (3) and (4) are answered against the appellants and in favour of the respondents.

26. The result of the above discussion is as follows:

- Second Appeal No.974 of 2013 is partly allowed.
- Clause (3) and (4) of the decree of the Court of the II Additional Subordinate Judge, Villupuram in A.S.No.177 of 2003 dated 28.03.2013 are set aside.
- In all other respects, the decree of the first appellate Court is confirmed.
- Since the parties have debated an interesting question of law, I am not inclined to impose any costs.

05.03.2024

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

KST

To

1. II Additional Subordinate Judge, Villupuram.
2. Additional District Munsif, Tirukoilur.



WEB COPY



Second Appeal No.974 of 2013

V.LAKSHMINARAYANAN, J.

KST

S.A.No.974 of 2013

05.03.2024