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A.S.No.199 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.199 of 2023

1.P.Savithiri

2.G.Anbumozhi

... Appellants

Versus

M.Paulraj

... Respondent

Appeal Suit filed Under Section 96 r/w of XLI Rule 1 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 27.04.2022 made in O.S.No.5 of 2019 on the file of the Principal District and Sessions Court, Ariyalur.

For Appellant : Mr. S.Sudhakar

For Respondent : Ms.Usha Raman

ORDER

The appellant has filed this appeal to set aside the Judgement and decree in O.S.No.5 of 2019 on the file of the Principal District and Sessions Court, Ariyalur, dated 27.04.2022.



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Heard Mr. S.Sudhakar, learned counsel for the appellants and Ms.Usha Raman, learned Counsel for the respondent and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellant herein is the defendant 1 and 2 in the suit in O.S.No.5 of 2019 on the file of the Principal District and Sessions Court, Ariyalur, filed by the respondent/plaintiff for a relief of declaration and other consequential reliefs in respect of the suit property.

5. Before the trial court, both parties adduced oral and documentary evidence. According to the plaintiff/respondent, the suit property was originally purchased by him in the name of his wife. Thereafter, he obtained a loan, constructed a house, and started residing there with his wife and others who are the defendants herein. However, under ill advice, the 1st defendant fully embraced Christianity and attempted to claim the entire suit property as if it belonged solely to her. The 2nd respondent, his daughter, also colluded



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with her mother and acted against him. Hence, he filed the present suit to declare that the suit property absolutely belongs to him.

6. The 1st defendant contested the suit, stating that she purchased the property herself by selling her Sreethana jewels given by her parents. Thereafter, she borrowed a loan from a third party and constructed the house. However, the plaintiff used to harass her, causing all sorts of disturbances and failing to maintain her and their daughter. In fact, the 1st defendant has been a Christian since birth and obtained a divorce from the plaintiff in IDOP.No.3 of 2011. Subsequently, she enjoyed the property absolutely and, out of love and affection, transferred the property through a settlement deed in favor of the 2nd defendant. Therefore, both defendants claim rights over the property and deny the plaintiff's title.

7. Before the trial court, both parties presented oral and documentary evidence. On the plaintiff's side, Ex.P.1 to Ex.P.23 documents were marked, and the plaintiff was examined as P.W.1. On the defendants' side, P.W.1 and P.W.2 were examined, and Ex.B.1 to Ex.B6 documents were adduced.



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8. Upon considering both the oral and documentary evidence, the learned trial judge framed four issues and ultimately held that the 1st defendant is merely a name lender. The entire property was purchased by the plaintiff out of his own earnings, and the house was constructed by borrowing a loan from private finance. This was proven by the plaintiff with material evidence, thereby granting the relief of declaration in favor of the plaintiff and rejecting the defendants' claims. Thus, the suit was decreed in favor of the plaintiff. Aggrieved by the order, the defendants have preferred this appeal.

9. The brief facts of the case are as follows: The plaintiff joined as Mazdor in Tamil Nadu Cement Corporation, Alangulam, in 1972 and married the 1st defendant, his maternal uncle's daughter, at the instance of their parents, who were Hindus. Although their marriage was organized by Christian rites, the plaintiff tied the Thali to D1, and the full Christian rituals were not followed.

10. The plaintiff, with his hard savings and without owning any house, purchased a vacant site in his wife's name to construct a house. This was because the finance department of TANCEM advised that if the property were purchased in the plaintiff's name and its value exceeded the statutory limit, he would need prior permission from the corporation, violating the Company



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Regulation Act. Therefore, the property was purchased in his wife's name through a registered sale deed dated 12.11.2003 for a valuable consideration of Rs.20,000/-, which was entirely paid by him.

11. Thereafter, he applied for a loan to construct the house through his employer under a third-party agreement with Weizmann Homes Ltd., Trichy, on 10.03.2004, a loan of Rs.4,30,000/- was sanctioned, to be repaid in 180 monthly installments of Rs.4,644/-. According to the engineer's estimate, the construction cost was around Rs.5,30,000/-, for which he entered into a construction agreement with the contractor Balasubramaniam. The entire amount was paid through cheques from SBI, Ariyalur Branch.

12. For all these purposes, his wife/D1 executed a Power of Attorney in favor of the plaintiff on 19.11.2003, wherein she admitted that she was only a name lender and that the vacant site was purchased by her husband. The plaintiff repaid the entire loan through his salary by 30.09.2005 and received the original documents. They finally moved into the newly constructed house in 2006.

13. The plaintiff retired in 2010, using his retirement benefits to extend



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his house. He then worked as a Liaison Officer at Birla Cements, arranged the marriage of his daughter (D2), and secured a job for her at Kalashetra. He also arranged the marriages of his three sons. Unfortunately, he was later diagnosed with cancer. From 2011 onwards, his wife converted to Christianity and abandoned family life. Influenced by the head of her religious group and their daughter D1, she filed for divorce in O.P.No.3 of 2021, sending a notice to a false address and obtaining an ex-parte decree in 2013. Despite her conversion, the plaintiff remained a Hindu, but the divorce was processed under the Indian Divorce Act because of her Christian faith. The children's marriages were performed according to Hindu rites. Without any rightful claim, the first defendant executed a settlement deed in favor of the second defendant on 28.11.2012, leading to various police complaints and RDO petitions. Supported by her Christian friends, the second defendant forcibly evicted the plaintiff from the suit property. Now living in a rental house in Ariyalur, he filed the present suit to declare himself the absolute owner of the property and requested the delivery of possession.

14. The second defendant filed a written statement, adopted by the first defendant, admitting the relationship between the plaintiff and the defendant but denying other facts. D1 contends that her parents provided 50 sovereigns



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of gold jewels at the time of marriage, and by selling this jewels, the vacant site was purchased. She claims the plaintiff did not construct the house or obtain a loan. Instead, she borrowed a loan and paid it off herself, covering house expenses and taxes for 20 years. Due to misunderstandings, she and the plaintiff lived separately. D1 states that the plaintiff was cruel from the beginning, leading to her obtaining a divorce in IDOP.3 of 2011. She asserts that she settled the property in favor of the second defendant out of love and affection. Therefore, she requested the dismissal of the suit.

15. The suit property is described in the plaint schedule as S.No.118/4, with an extent of 2,031 $\frac{3}{4}$ sq. ft., including an RCC house with Door No.3/867, Ariyalur Taluk.

16. The learned trial judge failed to consider the cash bills produced by her, which the 1st defendant used to establish that she purchased the building materials and also repaid the loan amount with the help of her daughters' earnings. Additionally, she paid the electricity bills and house tax, with receipts standing in her name. Although it was submitted that she possessed cash bills regarding the loan repayment and purchase of building materials, as well as house tax receipts, these documents were not produced by her



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counsel, and she was ready to present the originals. However, the learned trial judge failed to appreciate the fact that she purchased the property by selling her jewels. Even then, the property standing in her name is sufficient, so she need not prove how she acquired it by relying on the Benami Transactions Prohibition Act.

17. For this, he relied on the judgement, ***reported in CDJ 2002 MHC 913, Kannammal vs. Balaraman and another.*** The learned trial judge erroneously appreciated the documents relied upon by the plaintiff, which is totally illegal. Many of the documents that were in his name were relied upon by the plaintiff. Furthermore, the learned trial judge erroneously accepted the forged power of attorney and failed to appreciate other circumstances, such as the police complaint and other petitions submitted to the revenue authorities. The learned trial judge failed to appreciate that the document relied upon by the plaintiff did not support the facts of the case, yet the learned trial judge decreed the suit in his favor. Therefore, he prayed for the appeal to be allowed by setting aside the findings of the learned trial judge.

18. Their marriage was performed in the Church, which is sufficient to prove that she practiced Christianity and there was no ill-advice as claimed by



the plaintiff in the church.

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19. In response, the learned counsel for the respondents submitted that the plaintiff produced nearly 25 documents proving that the property was purchased as a vacant site out of his own earnings. Thereafter, he obtained a loan and constructed the building, and this was rightly appreciated by the learned trial judge, which needs no interference. Therefore, he prays to dismiss the appeal as it lacks merit.

20. Points are to be decided as follows:

- i. Whether the suit property was purchased by the plaintiff in the name of his wife?*
- ii. Whether he constructed the house by obtaining a loan?*
- iii. Whether the property absolutely belongs to the first defendant, who claims she purchased it by her own means?*

21. Before the trial court, a certified copy of the sale deed dated 12.11.2003 was marked as Ex.A1. The original sale deed was produced by the defendant was marked as Ex.P1. The plaintiff contends that, as an employee in the basic services of Tamil Nadu Cement Factory (TANCEM), he purchased the property in the name of his wife based on the advice of the financial department. The plaintiff's counsel argues that his wife is merely a



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name lender for the property purchase. It is an admitted fact that he was employed at TANCEM at the time of the property's purchase.

22. But the first defendant claims that she purchased the property by selling 15 sovereigns of gold jewels given to her by her father. However, there is no proof provided by the first defendant to support that she sold her jewels to purchase the property. Additionally, there are no independent witnesses to corroborate this claim. On the other hand, the plaintiff asserts that he purchased the property out of his self-earnings in 2003, having been employed at TANCEM since 1974. Thus, the plaintiff had sufficient means to purchase the property in 2003. The plaintiff's reasoning is also justifiable because purchasing property in his own name would have required compliance with numerous government formalities. Therefore, it is acceptable that he purchased the property in his wife's name when there is no evidence from the first defendant to prove she bought the property by selling her jewels. This lack of evidence supports the plaintiff's claim that his wife is merely a name lender for the property purchase through the 2003 sale deed.

23. Subsequent events also indicate that the plaintiff put up construction on the property by borrowing a loan from a private finance



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company. To facilitate this, the first defendant executed a General Power of Attorney in favor of the plaintiff, marked as Ex.A2, dated 19.11.2003. This Power of Attorney was executed within one week from the date of the property purchase. The Power of Attorney includes a recital, which reads as follows:

"தங்களை என்னுடைய பொது அதிகார முகவராக நியமித்து கீழ்க்கண்ட அதிகாரங்களை வழங்கி இந்த பொது அதிகார பத்திரம் எழுதி கொடுத்துள்ளேன். என்னவென்றால் தாங்கள் என்னுடைய கணவர் ஆவீர், தாங்கள் தங்களுடைய சுயசம்பாத்தியத்தில் என்னுடைய பெயரில் 12.11.2003ல் கிரையத்திற்கு சொத்து வாங்கி அது பத்திரம் அரியலூர் 1 இணைச்சார் பதிவகத்தில் 1367/2003ம் ஆவண எண்ணாக பதிவாகியுள்ளது" அமைந்துள்ளது. வழக்கு சொத்து குறித்த பொது அதிகார பத்திரத்தில் அதனை எழுதிக் கொடுத்துள்ளவரான முதல்பிரதிவாதி வழக்கு சொத்து வாதியின் சுயசம்பாத்தியத்தில் முதல்பிரதிவாதி பெயரில் கிரையம் செய்யப்பட்டுள்ளது என்ற விபரம் ஒப்புக்கொள்ளப்படுகின்றது. மேலும் வா.சா.ஆ.2 விபரங்கள் பிரதிவாதிகள் தரப்பில் ஆட்சேபிக்கப்படவில்லை. இதன் மூலம் வாதியால் அவர் வருமானத்தைக் கொண்டு வழக்கு சொத்து முதல் பிரதிவாதி பெயரில் கிரையம் செய்யப்பட்டுள்ளது என்பதும் முதல் பிரதிவாதி வழக்கு சொத்தினை பொறுத்தமட்டில் பெயரை இரவல் அளித்தவர் "Name Lender" என்பதும் தெளிவாகின்றது."

24. The recitals of the Power of Attorney clearly reveal that the 1st defendant accepted that the plaintiff alone purchased the property out of his



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own earnings and also gave the entire power to the plaintiff to deal with the said property. The 1st defendant, however, claims that this Power of Attorney is an unregistered forged document created by the plaintiff. To support this allegation of forgery, the 1st defendant has provided no evidence. If the Power of Attorney was indeed fabricated by the plaintiff for unlawful gain, the 1st defendant should have produced evidence to prove the forgery. In the absence of such evidence, the Power of Attorney cannot be deemed a forged document. Furthermore, until the filing of the present suit, the 1st defendant took no steps to cancel the said Power of Attorney nor filed any suit to declare the document invalid. Therefore, the 1st defendant's claim that the Power of Attorney is an unregistered forged document is not acceptable as there is no evidence to support this assertion. It is a settled proposition that pleadings must be supported by evidence.

25. Furthermore, based on the Power of Attorney, the plaintiff availed a loan from Weizmann Homes Limited for a sum of Rs.4,30,000/- and entered into a construction agreement with an engineer. Both the construction agreement and the loan amount paid through cheques were proved by the plaintiff through exhibits A4 and A5. Exhibit A3 is the estimate given by the engineer regarding the cost of construction. The plaintiff also produced bills



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for the purchase of materials for the construction, marked as Exhibit P8, and seven receipts to establish that he repaid the loan. Additionally, he paid the EB charges, marked as Exhibit A21. With the help of these documents, the plaintiff was able to establish that the 1st defendant was merely a name lender and that he purchased the vacant site out of his own earnings, subsequently obtained a loan, and entered into a construction agreement with a contractor to construct the house.

26. Although the 1st defendant contended that she paid the entire loan amount, she produced no documents to prove this claim before the lower court or the appellate court. She further contended that she borrowed a loan and repaid it, but again, no evidence was provided to support this claim. The plaintiff was able to establish that he borrowed the loan from private finance based on his salary and subsequently repaid the loan to retrieve the original documents.

27. Hence, the authority relied upon by the defendant under the Benami Transactions (Prohibition) Act does not apply to the facts of the present case. To avoid financial complications while the plaintiff was in service, he purchased the vacant site in the name of his wife, subsequently availed a loan, and entered into a construction agreement with a third party to construct the



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house, as proved by the documents.

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28. On the other hand, the 1st defendant failed to establish with material evidence that she purchased the property or contributed to the construction. Therefore, the learned trial judge rightly held that she was merely a name lender and had no role in the purchase of the property, as she accepted that she did not contribute anything to the purchase. Moreover, the cost of construction was sent to the contractor, Balasubramani, through cheque, for which the plaintiff also furnished the cheque details. Therefore, the plaintiff is the absolute owner of the property.

29. Consequently, the 1st defendant, having converted to Christianity, caused all sort of problem, but the plaintiff has clearly proved his ownership. Therefore, the plaintiff is declared as absolute owner of the property, including both the land and the superstructure, and is entitled to the relief of declaration as prayed for. Accordingly points 1 to 3 answered.

30. Furthermore, the plaintiff is entitled to delivery of possession, and



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both reliefs were rightly granted by the trial judge, which requires no interference by this court. The 1st defendant is ordered to surrender possession within a period of two months from the date of receipt of a copy of this order.

31. Accordingly, this appeal suit is dismissed as devoid of merit. No costs.

04.06.2024

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

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To

1. The Principal District and Sessions Court, Ariyalur.
- 2.The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.



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