

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.189 of 2009

and

M.P.No.1 of 2009

1.Natarajan
2.Parasuraman
3.Mayakannan
4.Pichakkaran

...Appellants

Vs.

Venkataraman

...Respondent

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 04.12.2006 made in A.S.No.105 of 2004 on the file of the Sub Court, Kallakurichi, reversing the judgment and decree dated 13.11.2002 made in O.S.No.407 of 1998 on the file of the III Additional District Munsif, Kallakurichi.

For Appellants : Mr.S.Sounthar

For Respondent : Mr.P.Valliappan

J U D G M E N T

The defendants in O.S.No.407 of 1998 on the file of the III Additional District Munsif Court, Kallakurichi are the appellants herein.

2. The suit was filed for declaration of title and for permanent injunction. The plaintiff had claimed right over the suit property under Ex.A.1 dated 23.02.1998, having purchased the same from the fourth defendant. The defendants 1 to 3 also claimed title to the same property having purchased from the same vendor, namely, the fourth defendant on 15.02.1998, which was registered subsequently on 20.03.1998. The plaintiff and the defendants 1 to 3, having

purchased the same property from the same vendor on two different dates are at loggerheads before the Courts.

3. The lower appellate Court has found that Ex.A.1 produced by the plaintiff is prior in point of time and decreed the suit. The learned counsel for the appellants contended that though Ex.B.2 was registered on 20.03.1998, but the same was executed as early as on 15.02.1998 and there was a delay on the part of the parties to register the sale deed. However, it was denied by the plaintiff contending that the fourth defendant executed a registered sale deed in favour of the plaintiff even as early as on 23.02.1998. Having parted with this property by a registered instrument, the fourth defendant ceased to have any right on the date, when Ex.B.2 was executed. No doubt, though the sale under Ex.B.2 was registered on 20.03.1998, it would be the date of execution, however, in this case it was not sure because the first defendant himself has deposed in his evidence that Ex.B.2 was written on 20.03.1998 and registered within two hours on the same day. However, on a cursory glance of Ex.B.2, it can be seen that the document was executed on 15.02.1998 and not as contended by the first defendant. Hence, the lower appellate Court disbelieved the fact that Ex.B.2 was true and genuine document. After executing the document in favour of the plaintiff, the fourth defendant ceased to have any right over the same. Hence, he could not have executed Ex.B.2 in favour of the defendants 1 to 3.

4. It is admitted that the plaintiff is the third party and the defendants 1 to 3 are the brother's children of the fourth defendant. Therefore, the fourth defendant having parted with the property earlier in favour of the plaintiff, on a second thought sold the same in favour of the defendants 1 to 3. Therefore, the defendants have purchased the stamp papers anti-dated and they got executed in Ex.B.2.

5. The plaintiff as well as the appellants herein, having purchased the same from the fourth defendant, ought to have examined the common vendor. But, from the facts, it is clear that the fourth defendant had joined hands with the defendants 1 to 3 to defraud the bona fide purchaser, namely, the plaintiff. The lower appellate Court also had adverse inference for not examining the fourth defendant. Though the defendants in the written statement have contended that Ex.A.1 was created for the purpose of the suit and that it was forgery, the same could not be established. The other contention raised by the learned counsel for the appellants is that the fourth defendant is in the habit of affixing

signature as found in Exs.B1 and B2, which are the sale deeds and also vakalath and suit summons, however, Ex.A.1 sale deed bears only thumb impression and there was no explanation for the same and hence, the contents in Ex.A.1 cannot be relied on. The Vakalath and Summons were the documents executed after filing the suit and therefore, the same cannot be looked into. Even, otherwise, it is not disputed that the thumb impression as found in Ex.A1 is not that of the fourth defendant. In such circumstances, Ex.A1 seems to be a valid document conveying title to the plaintiff. The defendants 1 to 3, with an intention to deceive the plaintiff, have fraudulently joined the fourth defendant and created Exs.B1 and B2, which are rightly rejected by the lower appellate Court. In the above factual matrix, there is no question of law arises for consideration in the above Second Appeal.

6. In the result, the Second Appeal is dismissed and the judgment and decree of the lower appellate Court are confirmed, declaring the title of the plaintiff. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

srn

To

1.The Subordinate Judge,
Kallakurichi.

2.The III Additional District Munsif,
Kallakurichi.

3.The Record Keeper,
V.R.Section, High Court, Madras.

1 CC to Mr.S.Sounthar, Advocate SR.No. 47702

1 CC to Mr.P.Valliappan, Advocate SR.No. 47936

S.A.No.189 of 2009
and M.P.No.1 of 2009

RSK (CO)
PSI (28.10.2015)