IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2015

CORAM:

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A. No.1273 of 2012

and

M.P.Nos. 1 and 2 of 2012

Govindan .. Appellant/Defendant

Vs.

Sankar .. Respondent/Plaintiff

Second Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 24.09.2012 made in A.S. No.74 of 2012 on the file of the II Additional Subordinate Judge at Salem, reversing the judgment and decree, dated 11.01.2011 made in O.S. No.918 of 2009 on the file of the I Additional District Munsif, Salem.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.R.Ezhilarasan

JUDGMENT

The unsuccessful defendant is the appellant in this Second Appeal.

2. The suit is filed by the respondent / plaintiff for cancellation of sale deed dated 17.10.1996 executed in favour of the appellant / defendant.

3. The brief facts of the case are as follows:-

The suit property was purchased by the plaintiff on 12.03.1996 for a sum of Rs.63,480/-. From the date of purchase, he has been in possession of the suit property. The defendant, who is a relative of the plaintiff, is a money-lendor. For the purpose of repair works, the plaintiff borrowed a sum of Rs.10,000/- from the defendant and as a security, he had executed a mortgage deed on 17.10.1996. By taking advantage of illiteracy of the plaintiff, the defendant had fraudulently executed the same as a sale deed in his favour in respect of the suit property and the same was registered. When the plaintiff was ready to discharge his loan and take back the property, the defendant was evading the same. When the plaintiff verified with the Registrar office, he was shocked to know that the defendant executed sale deed in his favour. As the plaintiff was an illiterate person, he was made to believe by the defendant that he was only signing in a mortgage deed and not in a sale deed. Hence, the suit is filed by the respondent / plaintiff for cancellation of the sale deed dated 17.10.1996.

4. The defendant had disputed the averments of the plaint filed by the plaintiff and contended that the sale deed dated 17.10.1996 was only for a valid sale consideration and he has been in possession of the property from the date of purchase. As the defendant is in possession of the property in the capacity of owner, he prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one more witness was examined as P.W2 and Exs.A1 to A3 were marked. On the side of the defendant, the defendant examined himself as D.W.1 and one more witness was examined as D.W2 and Exs.B1 to B5 were marked.

6. On a consideration of the pleadings and oral and documentary evidence, the trial Court dismissed the suit and on First Appeal by the plaintiff, the suit was decreed, against which, the defendant has filed the above Second Appeal.

7. At the time of admission, the following substantial question of law was framed for consideration:-

Whether the suit filed by the plaintiff is not barred by limitation?.

8. Heard Mr.D.Shivakumaran, learned counsel for the appellant/defendant and Mr.R.Ezhilarasan, learned counsel for the respondent/plaintiff and perused the records.

9. The plaintiff seems to have purchased the property on 12.03.1996 under Ex.A3 from one Saraswathi Ammal and had been in possession and enjoyment of the same since then. While so, on 17.10.1996, the plaintiff borrowed a sum of Rs.10,000/- from the defendant, for which, the defendant obtained signatures purported to be a mortgage deed, but had allegedly created a sale deed in his favour. When the plaintiff offered to pay the borrowed sum and asked for return of the document, it was brought to the knowledge of the plaintiff that the defendant was living there in the capacity of owner, as even on the date of borrowal, the sale deed was executed.

10. The plaintiff's vendor Saraswathi Ammal had sold the suit property on 12.03.1996 to the plaintiff and put him in possession of the property and the plaintiff had been enjoying the same since then. Thereafter, on 17.10.1996, a mortgage deed was alleged to have been executed in favour of the defendant, which is actually made as a sale deed in his favour. The execution of the sale deed is admitted by the plaintiff, as the same has been registered on 17.10.1996 in the Sub Registrar Office, Suramangalam. Though the plaintiff alleged that he had been paying interest for the sum,

treating it as a loan, the same has not been established by acceptable evidence. The plaintiff specifically alleged that the document was intended to be executed only as a mortgage deed and the same was executed as a sale deed by deceit. The said sale deed had been attested by two witnesses. If really the case of the plaintiff is true, he could have summoned those witnesses to establish the fraud played by the defendant. But the plaintiff has not examined the witnesses to those document. However, the defendant examined one of the attestors, namely, Murugesan on his side as D.W2, who categorically deposed that the suit property was sold for a sum of Rs.1,95,000/- on 17.10.1996. As there was only an old house in the property, it was not mentioned. If the actual sum, for which the property was sold, is mentioned in the document, it would involve a higher stamp duty. Hence, the actual value for which the property has been sold, was not mentioned in the document. D.W2 also stated that he had counted the money and handed over the same to the plaintiff. To rebut the same, the plaintiff has examined P.W2, who is his wife. Though she has spoken that her husband was cheated, excepting her own testimony, there is no other evidence to prove the said allegations.

11. On the other hand, the defendant filed Ex.B2, which is the order with respect to name transfer. Further, the property tax receipts and electricity consumption receipts are marked as Exs.B3 and B4, in respect of the suit property. From the evidence of P.W1, it is clear that even after the purchase from the said Saraswathi Ammal, though the plaintiff had been owning it for more than seven months before he transferred the same in favour of the defendant, he has not taken any steps to transfer the patta in his name. Hence, it is also presumed that the possession of the suit property vested only with the defendant from the date of his purchase.

12. With respect to the question of law that has been formulated at the time of admission of this Second Appeal with regard to the limitation for filing the suit, the contention of the appellant / defendant is that the suit ought to have been filed within three years from the date of execution of the document sought to be cancelled. Article 59 of Limitation Act prescribes, three years to cancel or set aside the instrument or decree or for recession of the contract. In this case, the document itself is executed by the plaintiff in favour of the defendant only on 17.10.1996. Therefore, he had knowledge about the execution of the document and when he specifically alleges that the same was obtained by fraud, the same should not only be pleaded, but also be proved by the plaintiff with acceptable oral and documentary evidence. Having executed the document by himself, which is also registered, the plaintiff cannot plead ignorance that he did not know the contents of the document. Therefore, suit being filed on 14.10.2009 for cancellation of the sale deed on 17.10.1996, is clearly barred by limitation. The plaintiff

had not even examined the witnesses to the document to prove his case, whereas, the defendant had clearly and categorically proved his case that it was only for a valid sale consideration and that the suit filed to set aside the sale deed after 13 years, is clearly barred by limitation.

13. The lower appellate Court without even framing issue with respect to the question of limitation, decided the appeal and decreed the suit, and the judgment and decree of the lower appellate Court are liable to be set aside.

14. In the result, the Second Appeal stands allowed setting aside the judgment and decree of the appellate Court and the judgment and decree of the trial Court, dismissing the suit as time-barred are restored. However in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srn

To

1. The II Additional Subordinate Judge at Salem
2. The I Additional District Munsif, Salem.
3. The Record Keeper, V.R.Section,
   High Court, Madras

+1cc to Mr.R.Ezhilarasan, Advocate Sr.56203[23/11/2015]

S.A. No.1273 of 2012

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