



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02 - 06 - 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 60 of 2009

Amala

.. Appellant/defendant

vs.

Rajeshwari

.. Respondent/Plaintiff

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.08.2007 in A.S. No. 53 of 2006 on the file of the Subordinate Judge, Madhuranthagam, reversing the judgment and decree dated 24.02.2006 made in O.S. No. 340 of 2004 on the file of the District Munsif, Madhuranthagam.

For Appellant : Mr. K. Govi Ganesan

For Respondent : Mr. V. Bhiman

for M/s Sampathkumar Associates

JUDGMENT

The challenge by the defendant, by means of this Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC), is to the impugned judgment and decree dated 21.08.2007 passed by the Lower Appellate Court viz., Subordinate Judge, Madhuranthagam, in A.S. No. 53 of 2006 reversing the judgment and decree of the trial Court, viz., District Munsif, Madhuranthagam, dated 24.02.2006 in O.S. No. 340 of 2004, allowing the First Appeal at the instance of the plaintiff thereby decreeing the suit as prayed for.

2. The plaintiff / respondent herein filed suit O.S. No. 340 of 2004 for declaration of title to the suit property and for permanent injunction restraining the defendant / appellant herein from in any way interfering with her peaceful possession and enjoyment of the suit property.

3. The plaintiff claims to have been in possession and enjoyment of the suit property from date of purchase from one Siluvappa Reddiar by virtue of sale deed dated 07.08.2004. According to the plaintiff, since the defendant, who is the daughter of the said Siluvappa Reddiar, questioned the sale and attempted to trespass into the suit property aggrieved of the purchase by her, she filed the suit for declaration and injunction.



4. The suit was resisted by the defendant on the ground that her father Siluvappa Reddiar had earlier, on 12.08.2003, entered into an agreement of sale with one Arokiasamy in respect of the suit property. It is averred that her father never intended to sell the suit property to the plaintiff and that she is in possession of the suit property by cultivating the same. As such, according to the defendant, the alleged sale is not true and valid and cannot be acted upon and sought for dismissal of the suit.

5. The learned District Munsif, Madhuranthagam, on the basis of the above pleadings, proceeded with the trial of the suit. In order to strengthen the case, the plaintiff besides examining herself as P.W.1, examined three more witnesses as P.W.2 to P.W.4 and marked Exs. A.1 to A.4. To nullify the evidence adduced on behalf of the plaintiff, the defendant examined himself as D.W.1 and examined one Etti @ Ettiyappan as D.W.2 but no document was marked.

6. The learned trial Judge, on consideration of the materials available thereon, finding that the plaintiff has not produced any records to show her possession, dismissed the suit. On appeal, the Lower Appellate Court, after appreciating the facts, marked documents Exs. A.5 to A.7 filed by the plaintiff and reversed the finding of the trial Court decreeing the suit. Feeling aggrieved, the defendant has projected the instant Second Appeal.

7. At the time of admission of this Second Appeal, this Court formulated the following substantial questions of law for consideration:-

- (i) Whether the Lower Appellate Court is correct in decreeing the suit picking holes in the defendant case when the settled proposition of law is that the plaintiff has to plead and prove to succeed his case especially in a suit for declaration?
- (ii) Whether the lower appellate Court is correct in granting the relief of injunction when admittedly the possession of the suit properties is with the defendant and the documents marked by the plaintiff viz., Exs. A.3, A.5 to A.7 are post suit documents.

8. Heard Mr. K. Govi Ganesan, learned counsel appearing for the appellant / defendant and Mr. V. Bhiman, learned counsel for the respondent / plaintiff and perused the records.

9. Learned counsel appearing for the appellant / defendant contended that the vendor of the plaintiff was abducted and the sale under Ex. A.1 was executed by him under threat and coercion. He further contended that the consideration passed in Ex. A.1 sale deed does not reflect the actual market value. According to the learned counsel, the plaintiff has to establish her case by producing relevant documents and she cannot pick holes in the defendant's case.



10. Admittedly, the suit property belonged to Siluvappa Reddiar by virtue of sale deed dated 17.5.1972 and thereafter, the plaintiff had purchased the same under Ex.A1 sale deed dated 07.08.2004 based on which she has filed the suit for declaration and injunction. It is also not disputed that the suit property was the self-earned property of Siluvappa Reddiar.

11. Insofar as the first contention of the learned counsel for the appellant that Ex. A.1 was executed under threat and coercion is concerned, this Court is of the opinion that the same is to be rejected at the threshold for the simple reason that the burden of proving the same has not been discharged by the appellant. The appellant / defendant being the daughter of the vendor himself, could have examined her father, who would be the best person to speak about the same. If really the contention of the appellant is true, she would have taken steps to set aside the sale after the death of her father or could have filed the suit along with her father who is the vendor. When the execution of sale is admitted by the defendant, the burden on the plaintiff is discharged.

12. Secondly, even though the defendant contended that her father Siluvappa Reddiar entered into a sale agreement with one Arokiasamy even prior to Ex. A.1, the said agreement has not been marked as Exhibit by the defendant before the Courts below nor has she chosen to examine the said Arokiasamy. At this juncture, it is relevant to point out that the said Arokiasamy also has not preferred to file any suit for specific performance against the vendor of the plaintiff. Therefore, the allegation of the defendant that her father executed a sale agreement in favour of Arokiasamy was not rightly believed by the Lower Appellate Court. However, from the said allegation, it is clear that Siluvappa Reddiar, the vendor of the plaintiff, had the intention of selling the property. It is pertinent to note that admittedly the suit property is the self-earned property of Siluvappa Reddiar and he had absolute right over the same to dispose it at his own will and pleasure. As such, the first question is answered against the appellant / defendant.

13. The other argument advanced by the learned counsel for the appellant regarding sale consideration, cannot be sustained. Curiously this was not made mention in the written statement. From a perusal of the averments in the written statement, it is seen that in paragraph 2, the defendant has stated that the plaintiff has obtained the sale deed in her favour only to cheat Siluvappa Reddiar and the agreement holder. However, she has not stated anything with regard to the consideration. Furthermore, the necessity for such purchase by the plaintiff and insufficient sale consideration as well as coercion were all not pleaded. Even presuming that they were proved, though not proved in this case, the same cannot be



accepted without sufficient pleadings to that effect. In this regard, it is to be pointed out that the Hon'ble Apex Court as well as this Court in a catena of decisions, have time and again held that no amount of evidence could be let in by a party without there being a pleading to that effect.

14. Insofar as the second question is concerned, from the materials available on record, it is seen that the respondent / plaintiff has produced Exs. A.5 to A.7, viz., adangal extract, house tax receipt and electricity card respectively, before the Lower Appellate Court. Though it was contended by the appellant that they were all post-suit documents, this Court is of the considered view that the Lower Appellate Court was correct in admitting the same. It is not in dispute that the sale in question was on 07.08.04 and the cause of action arose on 20.08.2004 when the defendant disturbed the possession of the plaintiff. The suit was filed on 30.8.2004. In such circumstance, the plaintiff could have possibly produced only those documents that were available with him after his purchase. Hence, the said objection of the appellant / defendant also cannot be sustained. The argument made by the learned counsel for the appellant / defendant though looked impressive at the first instance, yet a closer scrutiny of the same reflects the cracks within. Therefore, the second question of law is also answered against the appellant.

15. As a rule, the High Court has no jurisdiction to entertain the Second Appeal on the ground of an erroneous finding on fact, however, gross or inexcusable the error may appear to be or as a rule, in Second Appeal, finding of fact should not be disturbed. However, if they are based on no evidence or in disregard of evidence or on inadmissible evidence or against the basic principles of law or on the face of it, there appears an error of law or procedure or when there is a vast divergence between the pleadings and proof, such findings can be interfered with, as opined by this Court.

16. In view of the aforesaid reasons and taking note of the fact that the appellant / defendant has not established to the satisfaction of this Court that she has been in enjoyment of the suit property and also, it appears that the plaintiff / respondent has purchased the suit property from the original owner and taking an over all assessment of the facts and circumstances of the present case, this Court holds that the Lower Appellate Court has rightly rendered a pure finding of fact and consequently, decreed the suit in Appeal in a proper way and looking at from any point of view, since the judgment and decree of the Lower Appellate Court are based on pure finding of fact, they do not require any interference in the hands of this Court because of the fact they do not suffer from any material irregularity or patent illegality. Viewed in that perspective, the substantial questions of law are answered against the appellant and find favour with the respondent / plaintiff.



In the result, the Second Appeal fails and the same is dismissed leaving the parties to bear their own costs. Consequently, the judgement and decree dated 21.08.2007 passed by the learned Subordinate Judge, Madhuranthagam, in A.S. No. 53 of 2006 are confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gri

To

1. Subordinate Judge
Madhuranthagam
2. District Munsif
Madhuranthagam
3. The Record Keeper
V.R. Section
High Court
Madras.

+1cc to Mr.K. Govi Ganesan, Advocate, S.R.No.26171

TEJ(CO)
EU(07/07/2015)

S.A. No. 60 of 2009