

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1004 of 2015

1. Mohamudha Bi
2. Rafiqullah
3. Abisullah

.. Appellants/Defendants

-Vs-

Nizar
Rep.by Power Agent
B.Natarajan

.. Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 14.09.2015 made in A.S.No.7 of 2014 on the file of the Principal District Judge, Krishnagiri, dismissing the appeal and confirming the judgment and decree dated 06.11.2013 made in O.S.No.120 of 2010 on the file of the Principal Subordinate Judge, Krishnagiri.

For Appellants : Mr.N.A.Nissar Ahmed

For Respondent : ...

J U D G M E N T

The defendants in O.S.No.120 of 2010 on the file of the learned Principal Subordinate Judge, Krishnagiri are the appellants. The respondent is the plaintiff in the suit. The said suit was filed for declaration of title and for recovery of possession. The trial court by decree and judgment dated 06.11.2013 decreed the suit as prayed for. As against the same, the appellants filed an appeal in A.S.No.7 of 2014 before the learned Principal District Judge, Krishnagiri. By decree and judgment dated 14.09.2015, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same the appellants are before this Court with this Second Appeal.

2.This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and I have also perused the records carefully.

3. The case of the plaintiff is as follows:

The defendants originally owned the suit property by means of a sale deed dated 23.07.2004 for a valuable consideration. The defendants sold away the suit property to the plaintiff. But the defendants requested the plaintiff to permit them to continue to occupy the property for three months. Accordingly, the plaintiff permitted them. Even after the expiry of the said period of three months, the defendants did not vacate. Therefore, the plaintiff issued legal notice and since it revoked no response, finally, he filed the said suit for declaration of title and for recovery of possession.

4. In the written statement, it was contended that the sale deed dated 23.07.2004 is void. According to the defendants, the wife of the plaintiff is none other than the sister of the 1st defendant. The plaintiff is a moneylender. The defendants frequently secured loan for various purposes at different points of time. Accordingly, a sum of Rs.90,000/- was due from the defendants. Thereafter, there arose some dispute between the 3rd defendant and the plaintiff in respect of the marriage proposal for the daughter of the plaintiff. After the above dispute, according to the defendants, for the above said sum of Rs.90,000/-, the plaintiff demanded a total sum of Rs.1,50,000/- including interest. Thereafter, on 23.07.2004, the plaintiff with the help of rowdy elements took the defendants to the Registrar's Office and got the sale deed dated 23.07.2004 registered in his name. Thus, according to him, there was no consideration passed. In view of the same, according to the 1st defendant, the sale deed is void and therefore, the plaintiff is not entitled for declaration of title. So far as the relief of recovery of possession is concerned, the defendants have been continuously in possession of the suit property and not the plaintiff.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, the Power Agent of the plaintiff B.Natarajan was examined as P.W.1 and as many as 7 documents have been exhibited. On the side of the defendants, the 1st defendant was examined as D.W.1 and as many as 6 documents have been exhibited as Ex.B.1 to Ex.B.6. Having considered the same, the trial court decreed the suit which was confirmed by the lower appellate court. That is how, the appellants/defendants are before this Court with this Second Appeal.

6. At the outset, I could only say that in this Second Appeal, I do not find any question of law much less a substantial question of law warranting admission of the same. Whether the Sale Deed dated 23.07.2004 was executed for consideration or it was obtained by coercion is fundamentally a question of fact. The trial court has considered the evidence of P.W.1 as well as D.W.1 and has come to the conclusion that the sale was true. The defendants have not let in any evidence to prove that the defendants were taken to the Registrar's Office and the document was obtained by force. At any rate, the finding that the sale deed was validly executed by the defendants

cannot be interfered with as it is essentially a question of fact. The lower appellate court concurred with the findings of the trial court. Apart from that, there is no other issue involved in the Second Appeal. In view of the same, since I do not find any substantial question of law, I am unable to admit this Second Appeal.

7. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court confirming the decree and judgment of the trial court is hereby confirmed. No costs.
tsi

Sd/-

Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

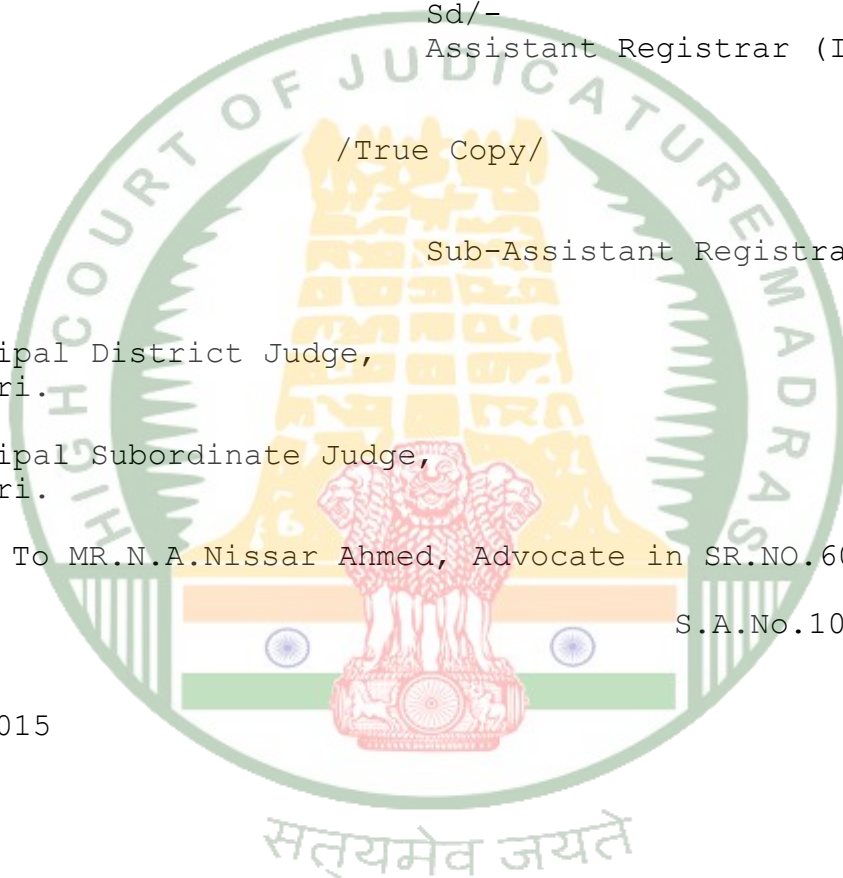
1. The Principal District Judge,
Krishnagiri.
2. The Principal Subordinate Judge,
Krishnagiri.

+1 C.C. To MR.N.A.Nissar Ahmed, Advocate in SR.NO.60958

S.A.No.1004 OF 2015

SKV (CO)

sd : 27/11/2015



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