

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.106 of 2015
and
M.P.No.1 of 2015

K.Kuppan

...Appellant/3rd Defendant

Vs.

Pandurangan

....Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 30.04.2008 passed by the learned Subordinate Judge, Cheyyar in A.S.No.4 of 2008 reversing the judgement and decree dated 28.04.2004 passed by the learned Additional District Munsif, Cheyyar in O.S.No.483 of 2000.

For Appellants : Mr.K.G.Senthilkumar

For Respondent : Mr.P.Mani

JUDGEMENT

The third defendant in O.S.No.483 of 2000 on the file of the learned Additional District Munsif, Cheyyar is the appellant herein. The respondent in this second appeal is the plaintiff in the suit. The said suit was filed for declaration of title and for permanent injunction to restrain the appellant herein from in any manner interfering with the peaceful possession and enjoyment of the respondent/plaintiff over the suit property. By decree and judgement dated 28.04.2004, the trial Court partly allowed the suit thereby declaring that the plaintiff is entitled for half share in the suit property and dismissed the suit in respect of the decree for permanent injunction. As against the same, the plaintiff filed an appeal in A.S.No.4 of 2008 on the file of the learned Subordinate Judge, Tiruvannamalai. By decree and judgement dated 30.04.2008, the First Appellate Court allowed the appeal thereby setting aside the decree and judgement of the trial Court and decreed the suit as prayed for. As against the same, the third defendant is before this Court with this second appeal.

2.On service of notice, the respondent has entered appearance though his learned counsel. I have heard the learned counsel for the appellant and the learned counsel for the first respondent/plaintiff and I have also perused the records carefully.

3.The case of the plaintiff is as follows:-

The suit properties are the landed properties measuring 0.14.0 ares in S.No.502/4B and 0.35 ares in S.No.502/3B at Kuthanur Village in Cheyyar Taluk. These two items of properties were originally owned by the first defendant and his brother Mr.Poongavana Gounder. Mr.Poongavana Gounder died intestate leaving behind the second defendant Mrs.Rani his wife as his sole legal heir. Thus, the suit properties were jointly owned and enjoyed by the defendants 1 and 2. The plaintiff purchased the suit properties from defendants 1 and 2 by means of a registered sale deed dated 09.03.1994 (Ex.A.4 is the xerox copy and Ex.A.5 is the original sale deed). From the date of purchase, the plaintiff has become the absolute owner of the suit property and he has been in possession and enjoyment of the same over which, according to the plaintiff, the defendant has got no right whatsoever. It is also further stated by the plaintiff that the third defendant claims to have purchased the suit properties from the first defendant and based on the same, he started questioning the title of the plaintiff and also started attempting to disturb the possession of the plaintiff. Therefore, the plaintiff was forced to file the present suit.

4.The defendants 1 and 2 remained exparte before the trial Court. The third defendant filed a written statement wherein, he disputed the title of the plaintiff. According to him, he has been enjoying the suit property for about 10 years. The first defendant was the absolute owner of the total extent of both the Items of the suit properties. The third defendant had entered into an unregistered sale agreement on 22.02.1991 (Ex.B.1) with the first defendant by which, the first defendant had agreed to sell the suit properties to the third defendant for a total consideration of Rs.7,500/-. A sum of Rs.500/- was paid towards part payment of the sale consideration. Subsequently, on 03.05.1991, a further sum of Rs.6,700/- was paid towards further sale consideration. As per sale agreement dated 22.02.1991 (Ex.B.1), the first defendant made an endorsement under Ex.B.2 dated 03.05.1991. Thereafter, the first defendant duly executed the sale deed dated 02.03.1994, thereby selling the entire extent of both the items of properties to the third defendant. The said document is Ex.B.3. But, it was presented for registration only on 23.06.1994 and accordingly, it was registered. According to the third defendant, since, the sale deed executed by the first defendant under Ex.B.2 had conveyed title on 02.03.1994 itself in favour of the third defendant, the sale deed executed by the defendants 1 and 2 on 09.03.1994 in favour of the plaintiff being a subsequent document

would not have conveyed any title to the plaintiff. Thus, according to the third defendant, the plaintiff has got no title for the suit properties. It is his further case that the plaintiff is also not in possession and enjoyment of the suit property.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and eight documents were marked. On the side of the defendants, two witnesses were examined and four documents were exhibited. Ex.B.4 is the legal notice issued by the third defendant to the plaintiff on 01.12.2000.

6. Having considered all the above materials, the trial Court has held that the first defendant had only half share in the suit properties and it remained undivided in the suit properties. Therefore, since, under Ex.B.3, the first defendant had conveyed his undivided share to the third defendant, the plaintiff is entitled for declaration only in respect of half share conveyed by the second defendant by means of sale deed dated 09.03.1994 (Ex.A.5). But, the First Appellate Court has correctly found that the sale deed dated 02.03.1994 (Ex.B.3) said to have been executed by the first defendant in favour of the third defendant is not true and it is a document created subsequent to 09.03.1994 and registered on 23.06.1994. Thus, according to the First Appellate Court, as on 09.03.1994, the defendants 1 and 2 had absolute title for both the items of suit properties and they had duly conveyed the same by means of Ex.A.5 to the plaintiff. Thus, according to the First Appellate Court, the plaintiff is the absolute owner of the entire extent of both the Items of suit properties and the First Appellate Court has also found that the plaintiff is in possession and enjoyment of the suit properties.

7. In this second appeal, it is contended by the appellant that since, the sale deed dated 02.03.1994 (Ex.B.3) was the former one, the sale deed dated 09.03.1994 (Ex.A.4) which was a later one, is not valid. In the appeal memorandum, the appellant has raised the following substantial questions of law which according to him are substantial:-

"a) Whether the appellate Judge is right in not appreciating the evidence of D.w.2 Perumal, attesting witness of Ex.B.1 ?

b) Whether the Appellate Judge is correct in allowing the appeal, ignoring the Ex.B.3 a registered sale deed in favour of the defendant, without assigning any finding to that effect ?

c) Whether the Appellate Judge has properly appreciated the oral evidences ?

d)Whether the Appellate Judge is right in holding that Ex.B.1 is not proved in the manner known to law, when the attesting witness to the agreement was examined ?”

8.But, I do not find any substantial question of law at all involved in this second appeal so as to admit the same. The First Appellate Court has appreciated the oral as well as documentary evidences in their proper perspective and has come to the conclusion that the sale deed under Ex.B.3 is a concocted document only with a view to defeat the interest of the plaintiff in the suit which he had acquired by means of the sale deed dated 09.03.1994 (Ex.A.5). This finding is essentially a finding, on facts, in which, I do not find any legal question at all.

9.Though, it is contended by the learned counsel for the appellant that this finding of the First Appellate Court is perverse, I do not find any material even to remotely come to the conclusion that the said finding is perverse.

10.The suit properties were originally owned by the first defendant and the husband of the second defendant. Admittedly, there was no partition between them. Admittedly, on the demise of her husband, the second defendant had inherited the same from her husband. Therefore, after the demise of the husband of the second defendant, the first defendant and the second defendant were jointly owning the suit properties and they were enjoying the same also. To this extent, there is no dispute at all on facts.

11.Now, according to the plaintiff, on 22.02.1991, a sale agreement was entered into between the first defendant and the third defendant by which the first defendant agreed to sell both the Items of the suit properties for a sum of Rs.7,500/- to the third defendant/appellant. This is an unregistered document. This document has been disbelieved by the First Appellate Court. The First Appellate Court has given sound reasons for the same. Similarly, on 03.05.1991, it is alleged that a sum of Rs.6,700/- was paid towards part satisfaction of the sale consideration. This was also been found to be false by the First Appellate Court. The First Appellate Court has given sound reasons for that also. I do not find any reason to take a different conclusion on that.

12.Now, the crucial question which arises for consideration is that, had it been true that the sale deed dated 02.03.1994 (Ex.B.3) why it was not presented for registration either on 02.03.1994 or even few days thereafter. For a moment, it may not be misconstrued that this Court is of the view that the sale deed cannot be presented within four months from the date of execution. It is the law that a sale deed can be presented within four months from the date of

execution. But, in the instant case, failure to explain as to why the document was not presented for registration either on 02.03.1994 or within few days thereafter, creates great suspicion in the very execution of the document on 02.03.1994. The First Appellate Court has come to the conclusion that the sale deed dated 02.03.1994 Ex.B.3 would not have been executed on 02.03.1994 at all. I fully agree with the said finding of the First Appellate Court.

13.Since, the plaintiff has purchased the suit properties from the defendants 1 and 3 on 09.03.1994, it is quite obvious that Ex.B.3 has been anti dated as 02.03.1994 as though the properties had already been conveyed on 02.03.1994 itself to the third defendant. Therefore, I agree with the finding of the First Appellate Court that Ex.B.3 has been anti dated as 02.03.1994 and presented for registration on 23.06.1994.

14.Apart from that, the first defendant had no title to convey on or after 09.03.1994. Thus Ex.B.3 would not have conveyed any title to the third defendant. Thus, the First Appellate Court was right in holding that under Ex.A.4, the plaintiff has purchased the suit properties rightly from the defendants 1 and 2 and the plaintiff has become absolute owner of the properties and he is in possession and enjoyment of the same. In this finding, there is no perversity and therefore, I am inclined to confirm the decree and judgement of the First Appellate Court.

15.Having concluded so, I am of the view that in the instant case, this Court has got reasons to believe, prima facie, that the third defendant/appellant has used Exs.B.1 to B.3 in evidence though, these documents are forged documents. It is not as though the appellant was not aware of the fact that these documents were forged documents. Though, these documents have been executed by the first defendant and his signature is also accepted, still, the creation of these documents would prima facie amount to offence of forgery as defined in Section 463 I.P.C.

16.For having used the said documents before this Court, prima facie I find that the third defendant/appellant herein has committed offence punishable under Section 195 I.P.C., by using these fabricated and false documents in evidence. In this suit, the third defendant has virtually wasted the time of the trial Court, First Appellate Court as well as this Court. As I have already observed, in a different case, forging of documents, fabricating false evidence and using the same in Civil Courts is rampant. This is because of the fact that the civil Courts, after having held that evidence is a fabricated one or the document is a forged document, do not in general, initiate proceedings under Section 340 Cr.P.C. In appropriate cases, the Civil Courts do not even direct the parties to make complaint to the police in respect of the forgery. The Civil Courts, in general, keep their hands tied and close their eyes

without taking further action. In my view, in order to curtail the menace of fabricating false evidence and forging documents to use the same in Civil Courts, it is absolutely necessary for the Civil Courts to use their power diligently by initiating proceeding under Section 340 Cr.P.C., or to direct the parties concerned to approach the police with an appropriate complaint. In this case, in view of the above materials available, I am inclined to initiate a proceeding under Section 340 Cr.P.C., against the third defendant/appellant and to hold primary enquiry accordingly. Therefore, suo motu proceeding is initiated and the Registry shall number the same as a miscellaneous petition.

17.The learned counsel for the appellant has taken notice of this proceeding and therefore, the appellant is directed to be present before this Court in the said proceeding which is independent, on 15.04.2015.

18.In the result, the second appeal is dismissed and the decree and judgement of the First Appellate Court in A.S.No.4 of 2008 dated 30.04.2008 is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

19.Registry shall number the suo motu proceeding under Section 340 Cr.P.C., against the third defendant/appellant and list the same separately before this Court on 15.04.2015. Registry shall also issue notice to the third defendant/appellant returnable by 15.04.2015. On the appointed date, the appellant is directed to be present before this Court.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Cheyyar.

2.The Additional District Munsif,
Cheyyar.

WEB COPY

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

1 CC to Mr.K.G.Senthilkumar, Advocate SR.No. 18316

1 CC to Mr.P.Mani, Advocate SR.No. 18115

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UG (CO)
PSI (10.04.2015)



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