

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.122 of 2015 and M.P.No.1 of 2015

1. Maheswari
2. T.Padmavathi
3. T.Prabhavathy
4. T.Umashnakar

... Appellants/Plaintiff

-Vs-

1. M.Gopal
2. M.Venkatachalam

... Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 04.03.2008 in A.S.No.177 of 2007 and the Cross Objection on the file of the Principal Subordinate Judge, Salem, confirming the judgment and decree dated 21.11.2006 in O.S.No.540 of 2005 on the file of the I Additional District Munsif, Salem, in so far as the relief of declaration is concerned and granting a decree for injunction which was refused by the trial court by allowing the Cross Objection filed by the 2nd defendant.

For Appellants : Mr.S.Kalayanaraman

For Respondents : Mr.N.Manokaran

J U D G M E N T

The legal heirs of the plaintiff Dhanakodi in O.S.No.540 of 2005 on the file of the learned I Additional District Munsif, Salem, are the appellants herein. The respondents are the defendants in the suit. The said suit was filed for specific performance of Contract of Sale dated 25.02.1995. By decree and judgment dated 21.11.2006, the trial court dismissed the suit, however, the decree for permanent injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff in the suit property was granted. Before the expiry of the appeal time for filing appeal, the sole plaintiff R.Dhanakodi died. Therefore, his legal representatives, who are the appellants herein, filed an appeal in A.S.No.177 of 2007 on the file of the learned Principal Subordinate Judge, Salem. The 2nd defendant M.Venkatachalam filed a Cross Objection. Both were heard and disposed of by the learned

Principal Subordinate Judge, Salem, by decree and judgment dated 04.03.2008 by which the lower appellate court dismissed the appeal, but allowed the Cross-objection, thereby setting aside the decree for injunction granted by the trial court. As against 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 the learned Counsel for the respondents and I have also perused the records carefully.

3. The case of the plaintiff is that the suit property absolutely belongs to the 1st defendant. The plaintiff entered into a sale agreement with the 1st defendant on 25.02.1995 by which the 1st defendant agreed to sell the suit property to the plaintiff for a valuable consideration of Rs.53,000/-. The plaintiff paid the entire sale consideration to the 1st defendant. Incorporating the terms and conditions, a written agreement was also executed on the same day. It is also stated that the plaintiff was also put in possession of the suit property on the same day in terms of the sale agreement. Thereafter, the 1st defendant did not come forward to execute the sale deed in favour of the plaintiff. In the meanwhile, the 1st defendant filed a suit before the learned District Munsif, Salem in O.S.No.505 of 2000 for redemption of mortgage and for delivery of possession of the suit property on the ground that he had borrowed a sum of Rs.18,000/- from the plaintiff on 11.05.1989 by executing a registered Mortgage Deed. In that suit, the plaintiff herein, in his written statement, took a plea that he was in possession of the suit property in terms of the sale agreement dated 25.02.1995. But the 1st defendant herein disputed the said claim of execution of the sale agreement. The said suit was dismissed on 25.04.2003. According to the plaintiff, even after the dismissal of the said suit, the 1st defendant did not come forward to execute the sale deed in favour of the plaintiff. Later, the plaintiff came to understand that the 1st defendant has executed a sale deed in favour of the 2nd defendant on 03.03.2005. According to the plaintiff, the execution of the said sale deed is only to defeat the right of the plaintiff to get the sale deed executed in his favour. With these allegations, the plaintiff filed the suit for specific performance and also for permanent injunction to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property.

4. In the written statement, the defendants stated that there was no such sale agreement intentionally executed on 25.02.1995. It is true that the document bears the signature of the 1st defendant. But, there was no such understanding or agreement entered into between the plaintiff and the 1st defendant to sell the suit property by the 1st defendant in favour of the plaintiff. It was also stated that the 1st defendant never agreed to sell the property and

therefore, he is not liable to execute any sale deed in favour of the plaintiff. It was also contended that the sale made by the 1st defendant in favour of the 2nd defendant is valid and thus, the 2nd defendant has become the absolute owner of the suit property and he is in possession and enjoyment of the same.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 3 witnesses were examined and as many as 18 documents were exhibited. On the side of the defendants, 2 witnesses were examined and as many as 6 documents were exhibited. Having considered all the above, the trial court partly dismissed the suit so far as it relates to the relief of specific performance and granted a decree for permanent injunction in favour of the plaintiff. However, the lower appellate court set aside that part of the decree also. Thus, as of now, the entire suit has been dismissed.

6. In this Second Appeal, referring to the grounds of appeal, the learned Counsel for the appellants would submit that the 1st defendant has virtually admitted the execution of the sale agreement in the written statement. He would further submit that there is enormous evidence to show that the plaintiff was all along ready and willing to perform his part of contract. He would also submit that having received the entire amount towards full satisfaction of the sale consideration, the 1st defendant is not justified in declining to perform his part of contract. The learned Counsel for the appellants would further submit that the sale made by the 1st defendant in favour of the 2nd defendant is not valid and the same has been executed only with a view to defeat the rightful claim of the plaintiff i.e. the sale in his favour. The learned Counsel would also submit that assuming that the sale made in favour of the 2nd defendant by the 1st defendant is valid, since the 2nd defendant is not an innocent purchaser for value, without notice of the sale agreement, he is also liable to execute the sale deed in favour of the plaintiff jointly along with the 1st defendant. Thus, according to the learned Counsel for the appellants, the courts below ought to have decreed the suit in its entirety.

7. The learned Counsel for the respondents would refute all these submissions. According to him, the entire argument advanced by the learned Counsel for the appellants would relate only to the factual aspects of the matter and there is no law involved at all. According to him, since there is no question of law involved in this appeal, the appeal deserves only to be dismissed. He would further submit that in the written statement, though the signature of the 1st defendant has been admitted in the disputed document, very tacitly, the 1st defendant has stated that he never intended to sell the property and there was no such agreement at all entered into between the parties by which the 1st defendant had agreed to sell the suit property to the plaintiff. He would also submit that assuming that

the sale agreement is true, even then, the present suit is barred by limitation. According to him, even in the suit in O.S.No.505 of 2000, the 1st defendant had disputed the sale agreement thereby refusing to execute any sale deed. Since such refusal happened in the year 2000, the suit should have been filed within 3 years thereafter i.e., from the date of refusal. But the present suit was filed only in the year 2005 which is far beyond the period of limitation. Thus, according to the learned Counsel for the respondents, the suit is also barred by limitation.

8. I have considered the above submissions.

9. In this Second Appeal, the following substantial questions of law have arisen for consideration:

1. Whether the suit is barred by limitation? and
2. Whether the courts below were right in holding that there was no intention on the part of the 1st defendant to execute any sale deed in favour of the plaintiff as stated in the sale agreement (disputed document)?

10. For the sake of convenience, let me first take up the question as to whether the suit is barred by limitation.

11. Admittedly, the suit in O.S.No.505 of 2000 was filed by the 1st defendant on the file of the learned District Munsif, Salem in respect of the suit property. That was a suit filed for redemption of mortgage. In that suit, the plaintiff herein, being the sole defendant, in his written statement pleaded that his possession was on account of the sale agreement dated 25.02.1995, but the 1st defendant disputed the very existence of the sale agreement and he also thereby refused his liability to execute a sale deed in favour of the plaintiff herein. Thus, the 1st defendant had refused to perform his part of contract even in the year 2000. As per Article 54 of the Limitation Act, the period of limitation for filing a suit for specific performance is either 3 years from the date fixed in the document or within 3 years from the date of refusal. Here in this case, there is no such date mentioned. But the date of refusal was in the year 2000. Therefore, the period of limitation expired in the year 2005 itself. Thus, in my considered opinion, the suit is clearly barred by limitation.

12. Now turning to the second substantial question of law as to whether there was no intention on the part of the 1st defendant to execute the sale deed, this is not a pure question of law alone as it is a mixed question of law and facts. Factually, the courts below have found that the sale agreement is not true and valid. If once the said finding cannot be assailed on any ground, I have to necessarily answer the second substantial question of law only in favour of the defendants.

13. The learned Counsel for the respondents is not in a position to place any material so as to assail the findings of the courts below that the sale agreement is not true. In my considered opinion, mere admission of the signature in the disputed document would not amount to admission of execution of the transaction itself. Execution of a document essentially requires the intention to do a particular intended act. In this case, the intended act must be to sell the property to the plaintiff by the 1st defendant. If, while making the signature, there was such intention on the part of the 1st defendant and there was also equal intention on the part of the plaintiff to treat the transaction as sale agreement, then only, the signature of the document would amount to execution.

14. Here in this case, on facts, the courts below have held that the document was not executed and signature alone was made. In this finding, I do not find any infirmity warranting interference at the hands of this Court. Thus, I concur with the findings of the courts below that the disputed document was not duly executed in accordance with law so as to enforce the same as a sale agreement. In my considered opinion, for the foregoing reasons, I do not find any merit at all in the Second Appeal. The Second Appeal must fail.

15. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

tsi

-s/d-

Assistant Registrar

Dt:7/4/2015

True Copy

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge, Salem.

2. The District Munsif, Salem.

+ 1 cc to Mr.S.Kalayanaraman, Advocate SR 15536

mg(co)

prk8/4

S.A.No.122 OF 2015
& M.P. No. 1 of 2015