

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.123 of 2015 & M.P.No. 1 of 2015

Elumalai

.. Appellant/Plaintiff

-Vs-

Raman

.. Respondent/Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 20.12.2012 passed in A.S.No.21 of 2012 on the file of the Subordinate Judge at Gingee, confirming the decree and judgment dated 03.11.2010 made in O.S.No.138/2004 on the file of the Principal District Munsif, Gingee.

For Appellant : Mr.R.Thanjan

For Respondent : Mr.T.Dhanasekaran
(Vakalat filed in SR stage)

J U D G M E N T

The plaintiff in O.S.No.138 of 2004 on the file of the learned Principal District Munsif, Gingee is the appellant herein and the respondent is the sole defendant in the suit. The said suit was filed for declaration that the sale deed dated 11.06.1987 executed by the plaintiff in favour of the defendant is null and void and for mandatory injunction to direct the defendant to hand over vacant possession of the suit property to the plaintiff. By decree and judgment dated 3.11.2010, the trial court dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.21 of 2012 before the learned Subordinate Judge, Gingee. The lower appellate court dismissed the said appeal by decree and judgment dated 20.12.2012 thereby confirming the decree and judgment of the trial court. Aggrieved over the same, the appellant is 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 appellant and I have also perused the records carefully.

3. The case of the plaintiff is that the suit property originally belonged to him. During the year 1987, he was in financial constraints. Therefore, he approached the defendant to mortgage the suit property for a sum of Rs.6,000/-. Accordingly, on 11.06.1987, the defendant took him to the Sub-Registrar's Office where he was made to sign in a document without disclosing the contents of the same and the same was registered on the same day. According to the plaintiff, when he signed the document and when the document was registered, he was under the honest intention that the said document was only a deed of mortgage. On 02.04.1998, when he returned to the village and made an attempt to redeem the property, he learnt that the document dated 11.06.1997 is not a simple mortgage deed, but a sale deed. Thus, according to the plaintiff, the said sale deed is void as it was not the intention of the plaintiff to sell the property to the defendant. The deed was obtained by the defendant by playing fraud upon the plaintiff. Therefore, according to the plaintiff, the document is liable to be declared as null and void and the defendant is liable to hand over the vacant possession of the property to the plaintiff.

4. In the written statement, the defendant disputed the above contentions of the plaintiff. According to him, on 11.06.1987 out of a honest negotiation, the plaintiff sold away the property to the defendant for valuable consideration and thus, the sale deed dated 11.06.1987 is perfectly valid. Similarly, according to the defendant, he has been in legal possession of the property based on his title which he acquired by means of the registered sale deed dated 11.06.1987. Therefore, he is not liable to hand over the vacant possession, it was contended.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and one Duraisamy Gounder was examined as P.W.2. As many as four documents were exhibited. On the side of the defendant, including the defendant, two witnesses were examined and as many as 14 documents were exhibited. Having considered all the above, the trial court found that the sale deed dated 11.06.1987 is true and genuine. The lower appellate court also held so.

6. In this Second Appeal, it is contended by the learned Counsel for the appellant that the oral evidence of P.W.1 and P.W.2 would go a long way to show that the transaction which took place on 11.06.1987 is only a mortgage, but, playing fraud upon the plaintiff, a deed was obtained from him and get registered as though it was a sale transaction.

7. In my considered opinion, in this appeal, there is no question of law much less a substantial question of law involved

warranting admission of this Second Appeal. The courts below have appreciated the oral evidence of P.W.1 and P.W.2 as well as the oral evidence of D.W.1 and D.W.2 and the documents and have given a factual finding that the sale deed dated 11.06.1987 is true. On the side of the plaintiff, no document has been produced to show that the sale deed dated 11.06.1987 is a void document. Ex.A.1 is the certified copy of the sale deed; Ex.A.2 is the copy of the legal notice; Ex.A.3 is the postal acknowledgment card and Ex.A.4 is the reply notice. Except these documents, the plaintiff has not produced any document in support of his claim. Thus, the plaintiff has relied only on the oral evidence of P.W.1 and P.W.2. The said evidence has been duly appreciated by the two courts below to hold that there is no truth in the allegations in the plaint. I do not find any reason to take a different view because as I have already narrated, there is no substantial question of law involved in this Second Appeal warranting admission. Thus, the Second Appeal deserves only to be dismissed.

8. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Gingee.
2. The Principal District Munsif, Gingee.

1 cc to Mr. M.R.Thanjan, Advocate, SR.No.13895

1 cc to Mr. T.Dhanassekaran, Advocate, SR.No.13654

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