

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2015

CORAM:

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.647 of 2003

Karuppasamy @ Veerapathiran

... Appellant/IIIrd Defendant

Vs

1.Kaliamurthy

2.Pachiappan

(R2- Given Up vide Court
order dated 22.07.2003)

... 1st Respondents/Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 10.01.2003 made in A.S.No.54 of 2001 on the file of the Principal District Court, Villupuram confirming the Judgment and Decree dated 12.12.2000 made in O.S.No.12 of 1996 on the file of the Additional Sub Court, Villupuram.

For Appellant : M/s.R.Subramanian.

For Respondents : M/s.V.Raghavachari for R1.

J U D G M E N T

The third defendant is the appellant herein. The suit is filed by the first respondent herein by name Kaliamurthy for specific performance of Ex.A2 suit sale agreement dated 02.06.1995 against the owners of the properties as well as the third defendant in whose favour Ex.B3 sale deed dated 15.05.1995 came to be executed and registered on 21.08.1995.

2.According to the plaintiff, Ex.A2-sale agreement dated 02.06.1995 is true and genuine and the defendants 1 and 2 failed to execute the same and Ex.B3 sale deed though purported to be executed on 15.05.1995, came into existence only much after the suit agreement to defeat the right of the plaintiff/agreement holder. According to the contesting third defendant/purchaser Ex.B3 sale deed dated 15.05.1995 came to be executed much before Ex.A2-sale agreement dated 02.06.1995 and what was done is only registration after the suit sale agreement, as such, the suit property was deemed to have been sold to the third defendant much

prior to Ex.A2 sale agreement and no property was available on the date of the sale agreement for being conveyed to the plaintiff/agreement holder.

3.The defendants 1 and 2, who were the owners of the property and parties to both Ex.A2 sale agreement and Ex.B3 sale deed, did not choose to come and contest the suit proceedings and remained exparte. Both the courts below, on the basis of the oral and documentary evidence adduced before the same, negatived the plea raised on the side of the third defendant that Ex.B3 sale deed is earlier in point of time and disbelieved the genuineness of Ex.B3 sale deed and uphold the truth, validity and genuineness of Ex.A2 sale agreement, both the courts below rendered such findings on the failure of the third defendant to explain the non-possession of the original title deed of the suit property within him and to explain the circumstances under which the registration of the sale deed was delayed by three months.

4.The findings of the courts below to that extent are sought to be questioned herein by the 3rd defendant on the ground that the genuineness of Ex.A2 sale agreement is not duly proved by the plaintiff and the evidence of the plaintiff's father as the only attesor, being the interested witness ought not to have been relied on by the Courts below.

5.The second appeal is admitted on the following substantial questions of law:-

1. Whether in law the courts below are right in upholding the validity of Ex.A.2, unregistered agreement, when the only attesor is examined by the plaintiff, is his father, who is a very very interested witness?
2. Whether in law the courts below are right in over looking that it is for the plaintiff to prove his case and that the defendants could take even contrary stands?
3. Whether in law the courts below are not wrong in granting an equitable relief on a document not proved as required?
4. Whether in law the courts below are right in omitting to see that the sale deed - Ex.B3 being prior to Ex.A2, its genuineness ought to have been upheld?

6.This Court is not inclined to accept such argument advanced on the side of the appellant herein. Both the Courts below have after considering the evidence of the attesor of Ex.A2 sale agreement and after due analysis of the entire circumstances under which Ex.A2 and Ex.B3 came to be executed found that Ex.A2 came to be truly executed on the date mentioned in the document, whereas Ex.B3 sale deed came into existence much thereafter.

7.The learned counsel for the appellant is unable to question the correctness and validity of the findings rendered by the Courts below on any other legal premises. On the other hand, the

plaintiff has duly established the genuineness and due execution of the document on the date so mentioned and the third defendant, having failed to establish his case the courts below are right in rejecting the defendants theory and in believing the plaintiff's case and the same warrants no interference. The substantial questions of law are hence accordingly answered in favour of the plaintiff.

8.In the result, the second appeal stands dismissed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge,
Villupuram.
- 2.The Additional Sub Judge,
Villupuram.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.R.Subramanian, Advocate, S.R.No.490
+1cc to M/s.V.Raghavachari, Advocate, S.R.No.316

S.A.No.647 of 2003

MP (CO)
CA(30/06/2015)

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