

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2016

PRONOUNCED ON : 17.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.658 of 2008

and

C.M.P.No.16910 of 2016

1.Angammal
2.Thangaraju
3.Pappathi

... Appellants/Plaintiffs

Vs

Chinnathambi ... Respondent/Defendant

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 24.08.2007 made in A.S.No.61 of 2005 on the file of the Subordinate Court, Namakkal confirming the judgment and decree dated 22.09.2004 made in O.S.No.50 of 2001 on the file of the District Munsif cum Judicial Magistrate, Paramathy.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.S.Parthasarathy, Senior Counsel
for Mr.C.Jagadish

JUDGMENT

This second appeal is directed against the concurrent finding of the courts below, dismissing the suit filed for declaration and permanent injunction.

2.Facts leading to the second appeal are as follows:-

The plaintiffs are the appellants. The suit in O.S.No.50 of 2001 was filed for declaration, to declare the suit property belongs to the plaintiffs absolutely and consequently, to restrain the defendant and his men from interfering or disturbing with their peaceful possession and enjoyment of the suit properties, by means of permanent injunction. The trial

Court, on appreciation of pleadings and evidence of the parties, held that, the plaintiffs have sold the suit properties to the defendant for consideration under the registered sale deed dated 30.12.1996 and had handed over the possession on the day of transfer itself. The cancellation of said sale deed, unilaterally, by the plaintiffs on 11-04-2001, is void in law.

3. Against the judgment of the trial Court, the plaintiffs preferred First Appeal before the Subordinate Court, Namakkal in A.S.No.61 of 2005. In the course of argument, before the First Appellate Court, the appellants/plaintiffs have sought leave to file additional documents to prove their possession. Though these documents were subsequent to suit, the First Appellate Court under Order 41 Rule 27 of C.P.C., has admitted the additional documents and discussed about its merits in its judgment. The First Appellate Court while confirming the dismissal of the suit, held that as per Ex.B-1, the defendant holds the title in respect of the suit properties and as per Ex.B-4, the possession is proved to be with the defendant.

4. Aggrieved by the concurrent judgments of both the courts below, the present second appeal is filed. In their grounds of appeal, the appellants/plaintiffs have drawn the following questions as substantial questions of law, for consideration.

"a) Whether the courts below erred in law in disbelieving the deed of cancellation of the sale deed dated 11.04.2001 (Ex.A.12) particularly, when the plaintiffs being the vendors have neither received the consideration nor handed over the possession to the respondent under the sale deed dated 30.12.1996 (Ex.B.1) ?

b) Whether the Courts below erred in law and misdirected themselves in dismissing the suit on the ground that the plaintiffs are not entitled to let in evidence to controvert the recitals in Ex.B.1, especially when the oral evidence in departure from the terms of a written deed is admissible to show that what is mentioned in Ex.B.1 was not the real transaction between the parties, but it was something different as per Sec. 92 of Indian Evidence Act.

c) Whether the First Appellate Court is correct in law for its failure to follow the mandate inbuilt under Order 41 Rules 27 & 28 C.P.C., before receiving the additional evidence in the appellate stage ?"

5. Before considering whether the case deserves merit to formulate any substantial question of law arises in this Second Appeal, the respondent/defendant was put to notice regarding admission, since, he has filed caveat petition. Pending consideration, the appellants/plaintiffs have taken out the application in C.M.P.No. 16910 of 2016 to receive certain documents as additional documents. The respondent herein has filed counter objecting the said miscellaneous petition, on the ground that the appellants have not shown reason why those documents were not produced before the trial court at the time of trial. Further, it is stated that the said documents are irrelevant to the facts pleaded in the plaint. By filing this miscellaneous petition, the appellants are trying to confuse the issue and under the guise of filing this miscellaneous petition, they are trying to plead a new case.

6. The appellants herein in their plaint, revealed neither about the sale deed dated 30.12.1996-Ex B-1 executed by them in favour of the defendant nor about the unilateral cancellation of the said sale deed after 4 ½ years on 11-04-2001. The averment in paragraph 4 of the plaint calls the defendant a total stranger, in respect of the suit properties and he has no right to interfere in the suit properties. Only after filing the written statement by the defendant, controverting the averments made in the plaint, the plaintiffs have admitted about the sale deed and their own reason for executing the sale deed and further cause for canceling it unilaterally. By way of reply, the plaintiffs had come out with new facts and events alleging that Mr. Palaniappan (husband of the first plaintiff), Mr. Chinnathambi (defendant) and Mr. Sengoda Gounder (father of the defendant) were having business relationship. They were carrying on business under the name and style of "Amman Transport". In the year 1993 the partnership was broken. As a result of compromise settlement arrived between the plaintiffs and the defendant, the suit properties were sold to the defendant by the plaintiffs without receiving any consideration. Since, the defendant failed to fulfill his part of obligation as per the compromise, the plaintiffs got furious and canceled the sale deed on 11.04.2001.

7. New facts not originally pleaded but, was introduced by the plaintiffs by way of reply statement belatedly. Those pleadings are contrary to the written documents, which under law inadmissible under Sections 91 and 92 of the Indian Evidence Act, except it is proved and fall under any one of the proviso's to Section 92 of the Indian Evidence Act. The plaintiffs have not specifically pleaded on this point. Neither they could establish through material evidence about the deviation to the written terms of contract. Therefore, the plea that there was a

departure to the terms of written sale deed and therefore oral evidence is admissible under Section 92 of the Indian Evidence Act, is nothing but total misconception of the said provision.

8. Even according to the plaintiffs, the sale deed, Ex.B-1 executed on 30.12.1996 was canceled under Ex.A-12 dated 11.04.2001 for non passing of consideration. No other reason or facts are found in the recital of Ex.A-12. When the case of the plaintiffs, no way fall under any of the provisions enumerated in Section 92 of Indian Evidence Act, there is no error in rejecting the oral evidence let in by the plaintiffs which is contrary to the terms of the contract, as found in the written documents (Exs.B-1 and A-12).

9. After losing the case before the trial Court, in First Appeal stage, the appellants/plaintiffs have marked Exs.A-18 to A-31 as additional documents, to show that the suit properties are in their possession. The First Appellate Court has held that they are all subsequent to the suit and emerged out due to the delay in releasing the sale document for deficit stamp duty. The order to issue patta in favour of the defendant and latter cancellation of the order, in view of the pendency of the appeal, are all dealt with by the First Appellate Court to arrive at the concurrent finding. Passing of consideration has been admitted by the plaintiffs during the cross examination and the fact regarding possession has been found in favour of the defendants. These are being question of fact, the second appellate Court need not interfere in that finding.

10. After loosing before both the courts below, the appellants/ plaintiffs have brought out C.M.P.No. 16910 of 2016, to receive additional documents which they did not chose to file before the trial Court or before the First Appellate Court. This petition under Order 41 Rule 27 C.P.C., is filed after 15 years from the date of filing of the suit and 8 years from the date of filing of the Second Appeal, without assigning any reason for not filing it, at the earliest point of time. Already the First Appellate Court has shown indulgence to receive additional documents viz., Exs.A-18 to A-31 under Order 41 Rule 27 C.P.C. Again at the second appellate stage, the appellants/plaintiffs want to file documents connected to the facts referred in their reply to the written statement. They are revenue documents created pending second appeal and plaint copy in subsequent suits. However, the reasons stated for the belated introduction of these documents does not fulfill the essential ingredients as enumerated in Order 41 Rule 27 of C.P.C.

11. It is very clear from the conduct of the appellants/plaintiffs that they are trying to improve their case stage by stage. Initially, they have started with

suppression of fact. After the written statement filed by the defendant, the appellants/plaintiffs filed a reply with new facts totally in deviation of their plaint averments. Before the First Appellate Court introduced 14 documents to fill the lacuna. Now, at the second appellate stage, several new documents which are subsequent to the filing of suit and unconnected to the pleadings are sought to be introduced as additional documents by the appellants/ plaintiffs.

12. At the first instance, the plaintiffs have suppressed the facts and made a false averment that the defendant is a total stranger to the suit properties. Later, the appellants/plaintiffs have admitted the facts such as execution of a sale deed and the receipt of sale consideration of rupees one lakh. The handing over the possession to the defendant is proved through evidence. While so, the sale deed marked as Ex.B-1 duly executed and acted upon cannot be canceled after 4 ½ years that too unilaterally. There itself the case of the appellants/plaintiffs fails. Any amount of attempt to improve the case by way of reply or additional documents are all of no use since, the sale deed duly registered cannot be canceled, unilaterally, without the knowledge and consent of the other party. If it could not be done by consent, the aggrieved party ought to resort to legal remedy.

13. In this regard, it is relevant to cite the following observations of the Hon'ble Supreme Court with the illustration made in Thota Ganga laxmi -vs Govt. Of A.P case reported in (2010) 15 SCC 207.

" 4. In our opinion, there is no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination , can a cancellation deed be executed or registered. This is unheard of in law." (emphasis added).

(Emphasis applied)

The above dictum squarely applies to the case on hand. The Courts below have rightly dismissed the suit. This Court finds no substantial question of law could be formulated in the above facts and circumstances of the case. Hence, the Second Appeal is liable to be dismissed.

14. In the result, the Second Appeal is dismissed and as pointed earlier, in this judgment, the petition in C.M.P.No.16910 of 2016 does not fall in conformity with the essential ingredients of Order 41 rule 27 C.P.C. Hence C.M.P.No.16910 of 2016 is also dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Subordinate Court,
Namakkal.
2. The District Munsif cum
Judicial Magistrate,
Paramathy.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.67033

+1cc to Mr.C.Jagadish, Advocate, S.R.No.66811

Second Appeal No.658 of 2008

AK(CO)
CA(16/12/2016)