

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.Nos.1061 & 1062 of 2015
and
M.P.Nos.1 & 2 of 2015

S.A.No.1061 of 2015

1.Ghen Syed
2.Mariam Bi

... Appellants/Defendants

Vs.

Smt.K.Jayalakshmi

... Respondent/Plaintiff

Prayer in S.A.No.1061 of 2015:-

This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 05.08.2014 and made in the appeal in A.S.No.8 of 2011 on the file of the Additional District Court, Chengalpet at Kancheepuram, confirming the judgment and decree dated 25.11.2010 and made in the suit in O.S.No.222 of 2007 on the file of the Principal Sub-Court, Chengalpet at Kancheepuram.

S.A.No.1062 of 2015

Mariam Bi

... Appellant/Plaintiff

Vs

1. K.Jayalakshmi
2. Vedagiri

... Respondents/Defendants

Prayer in S.A.No.1062 of 2015:-

This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 05.08.2014 and made in the appeal in A.S.No.9 of 2011 on the file of the Additional District Court, Chengalpet at Kancheepuram, confirming the judgment and decree dated 25.11.2010 and made in the suit in O.S.No.181 of 2007 on the file of the Principal Sub-Court, Chengalpet at Kancheepuram.

For Appellants(in both the appeals) : Mr.V.Biman
For Respondents(in both the appeals) : Mr.J.Hariharan for
Mr.V.Nicholas

COMMON JUDGMENT

These Memorandums of Second Appeals have been directed against the common judgment and decree dated 05.08.2014 and made in the appeals in A.S.Nos.8 & 9 of 2011 on the file of the learned Additional District Judge, Chengalpet at Kancheepuram confirming the common judgment and decree dated 25.11.2010 and made in the suits in O.S.Nos.181 & 222 of 2007 respectively on the file of the Principal Sub Judge, Chengalpet at Kancheepuram District.

2. The appellants in S.A.No.1061 of 2015 are the defendants in the suit in O.S.No.222 of 2007, whereas, the respondent is the plaintiff therein.

3. The appellant in S.A.No.1062 of 2015 is the plaintiff in the suit in O.S.No.181 of 2007 and the respondents 1 & 2 are the defendants therein.

4. For easy reference and for the sake of convenience, the respondent in S.A.No.1061 of 2015 may herein after be referred to as the plaintiff in the suit in O.S.No.222 of 2007, whereas, the appellants be referred to as the defendants, where ever the context so require.

5. With the issue involved in both the appeals is one and the same and the parties to the appeals are also one and the same, these two appeals have been consolidated together, heard jointly and disposed of in this common judgment.

6. Heard Mr.V.Bhiman, learned counsel appearing for the appellants in both the appeals and Mr.J.Hariharan, learned counsel representing for Mr.V.Nicholas for the respondents in both the appeals.

7. Mrs.Mariam Bi, who is the plaintiff in the suit in O.S.No.181 of 2007 has filed this suit against the defendants K.Jayalakshmi and her husband Vedagiri, seeking the relief of setting aside the sale deed bearing document No.1396 of 2002 dated 17.06.2002, said to have been executed by her in favour of the first defendant therein and for granting the consequential relief of permanent injunction.

8. The other suit in O.S.No.222 of 2007 seems to have been filed by Mrs.K.Jayalakshmi, who is the first defendant in the above said suit viz., O.S.No.181 of 2007 against one Ghen Syed as well as his wife Mariam Bi, seeking the relief of declaration declaring her title to the suit property described in 'A' schedule property and to direct the defendants to deliver vacant possession of the suit property contained in

'A' schedule to the plaint and for a mandatory injunction directing the defendants viz., Ghen Syed and Mariam Bi to remove the offending super structure described in 'B' schedule put up by her over 'A' schedule property within the time which may be specified by this Court.

9. Both the suits were clubbed together, tried jointly and a common judgment was pronounced on 25.11.2010, whereby, the suit in O.S.No.181 of 2007 filed by Mrs.Mariam Bi, who is the appellant in S.A.No.1062 of 2015 was dismissed and the suit in O.S.No.222 of 2007 filed by Mrs.K.Jayalakshmi, who is the first respondent in S.A.No.1062 of 2015 was decreed as prayed in respect of the prayer portions 1 to 3 and in respect of the prayer portion 4, the suit was dismissed.

10. Challenging the correctness of the judgment pronounced by the Trial Court in both the suits viz., O.S.Nos.181 & 222 of 2007, Mariam Bi as well as her husband had filed two appeals in AS.Nos.8 & 9 of 2011 on the file of the Additional District Court, Chengalpet. After hearing both sides, the 1st Appellate Court had proceeded to dismiss both the appeals on 05.08.2014, confirming the judgment and decree passed by the trial Court.

11. Having been aggrieved by the judgment of the Ist Appellate Court, the appellants herein (Mrs.Mariam Bi and her husband Ghen Syed) stand before this court with these Second Appeals.

12. For the disposal of these Second Appeals, the following common substantial questions law have been formulated:

(a)Whether the admission of the receipt of amount could be construed as admission of the nature of document in question?

(b)Whether the Courts below have committed an error in presuming that mere admission of the signature of an attesting witness would mean the admission of the contents of the document?

(c)Whether the Courts below have committed an error by not considering the principle that irrespective of invalidity of the document, the burden is upon the person, who claims that the document is genuine?

13. The suit property is a house site. Mrs.Mariam Bi and her husband by name Ghen Syed (who is the first defendant in the suit in O.S.No.222 of 2007) had borrowed a sum of Rs.75,000/- from one Rasu Ammal. The said Rasu Ammal had filed a suit in O.S.No.24 of 2002 as against the plaintiff and her husband on the file of the Sub-Court, Madhuranthakam for recovery of money. Mrs.Mariam Bi had approached the defendants and requested them to settle the said amount. They had also agreed but demanded the plaintiff to execute a

mortgage deed in respect of a portion of the suit property. Mrs. Mariam Bi had also executed a mortgage deed in favour of the first defendant in respect of a portion of the house sight.

14. According to plaintiff she had not received any amount from the defendants intending to sell her property and she had never executed any sale agreement in favour of the defendants. That at the end of December 2002, the first defendant alongwith her husband, who is the second defendant and some other persons came to suit property and threatened her and her family members to vacate immediately declaring that they had purchased the suit property from the plaintiff and her husband. Again on 10.03.2003, the defendants alongwith some rowdy elements came to suit property and threatened the plaintiff and her family members claiming that they would dispossess them.

15. Under these circumstances, the plaintiff was constrained to file the above suit in O.S.No.181 of 2007 to set aside the sale deed bearing document No.1396 of 2002 dated 17.06.2002, executed by her in favour of the first defendant and also for the consequential relief of permanent injunction.

16. The first defendant Mrs.K.Jayalakshmi is the plaintiff in the suit in O.S.No.222 of 2007. The second defendant in the suit in O.S.No.181 of 2007 is her husband. They have categorically contended that the suit property is not a residential house. They have admitted that the suit property and the other properties were originally purchased by the plaintiff under two registered sale deeds dated 28.06.1984 and 02.03.1989 respectively. During Grama Natham Survey and settlement, the properties purchased by the plaintiff was assigned New S.No.607/13 measuring an extent of 70 sq. metres and New S.No.607/14 measuring to extent of 150 sq.metres.

17. They have also contended that they had nothing to do with the debts of the plaintiff said to have been borrowed from one Rasu Ammal and equally they had also nothing to do with the suit in O.S.No.24 of 2002 on the file of the Sub court, Madurantakam. Their specific case is that the plaintiff on 10.06.2002 had offered to sell a portion of S.Nos.607/13 & 607/14, which is a vacant site lying on the western side of their properties for sale. Thereafter, the sale was negotiated between them in respect of the said property and the sale consideration was fixed at Rs.1,32,200/-. The said property was agreed to be sold by the plaintiff including the drinking water tap connection No.908. The entire sale consideration of Rs.1,32,200/- was paid to the plaintiff before the Sub Registrar for the discharge of her previous debts. After receiving the said amount, the plaintiff and her husband had jointly executed a sale deed

dated 17.06.2002 and the same was duly attested by the witnesses. The defendants have also contended that the plaintiffs 1 & 2 had not executed any mortgage deed, but they had really executed a registered sale deed in favour of the first defendant after receiving the entire sale consideration of Rs.1,32,200/-.

18. The first defendant Mrs.K.Jayalakshmi had filed another suit in O.S.No.222 of 2007 against the plaintiff and her husband as defendants 2 and 1 respectively, to declare her title to the property described in 'A' schedule and to direct the defendants to deliver vacant possession of the property described in 'A' schedule and also for the relief of mandatory injunction to direct the defendants to remove the offending super structure put up over 'A' schedule property which is described in 'B' schedule in the plaint within the time, which may be fixed by this Court and to direct the defendants to pay a sum of Rs.1500/- per month as damages from the date of plaint. This suit was also resisted by the plaintiff and her husband by filing their written statement denying all the allegations made in the plaint.

19. The Trial Court based on the pleadings of the parties to the suits had formulated the following issues in both the suits:

O.S.No.181 of 2007:

(a)Whether the plaintiff is entitled for the declaration that the sale deed dated 17.06.2002 executed by the plaintiff in favour of the first defendant is null and void?

(b)Whether the plaintiff is entitled for the relief of permanent injunction?

(c)To what relief is the plaintiff entitled?

O.S.No.222 of 2007:

(a)Whether the sale deed dated 17.06.2002 in respect of the suit property is true and valid?

(b)Whether the defendants, subsequent to the sale deed dated 17.06.2002 had trespassed into the suit property?

(c)Whether the plaintiff is entitled for declaration, possession and mandatory injunction as prayed for?

(d)Whether the plaintiff is entitled for damages at Rs.1500/- for the use and occupation of suit 'A' schedule property by the defendants?

(f)Whether the plaint is correctly valued and Court fee is paid accordingly?

(g)For what relief the plaintiff is entitled?

20. As afore stated, the above suits viz., O.S.Nos.181 & 222 of 2007 were consolidated together and the evidence in common was recorded in the suit in O.S.No.181 of 2007. On the side of the plaintiff, Mrs.Mariam Bi had examined as PW1. Besides her, two more witnesses were examined. During the course of their examination, Ex.A1 to A12 were marked. On the other hand Mrs.K.Jayalakshmi, who is the first defendant in the suit in O.S.No.181 of 2007 and the plaintiff in the suit

in O.S.No.222 of 2007 had examined herself as DW1. Besides her, two more witnesses were examined as DW2 & DW3 and Ex.B1 to B5 were marked. Apart from this, the Commissioner's report as well as the sketch were marked as Ex.C1 and C2 respectively.

21. On appreciation of the evidences, both oral and documentary, the learned Principal Subordinate Judge, Chengalpet had proceeded to dismiss the suit in O.S.No.181 of 2007 without cost and decreed the suit in O.S.No.222 of 2007 as prayed for in respect of prayer portions 1 to 3 and dismissed the suit in respect of prayer portion No.4 without cost. For surrendering vacant possession, two months time was granted to the defendants therein. The Ist Appellate Court had dismissed the appeals filed by the appellants.

22. Mr.V.Bhiman, learned counsel appearing for the appellants in both the appeals has submitted that the Courts below had not appreciated the evidences both oral and documentary with proper perspective and they had also not considered the Commissioner's report and sketch viz., Ex.C1 and C2 respectively, alongwith the Advocate Commissioner's evidence, and therefore they had gone on the wrong side and taken a wrong decision which resulted in the dismissal of the suit as well as the appeals filed the appellants.

23. On the other hand Mr.J.Hariharan, learned counsel appearing for Mr.V.Nicholas, who is on record for the respondents has contended that in fact the appellants in S.A.No.1061 of 2015, who are the defendants in the suit in O.S.No.222 of 2015 had miserably failed to establish their case. He has also maintained that the second appellant Mrs.Mariam Bi (S.A.No.1061 of 2015), who is the sole appellant in S.A.No.1062 of 2015 had filed the suit in O.S.No.181 of 2007, to set aside the sale deed dated 17.06.2002 bearing document No.1396 of 2002 and also for the consequential relief of permanent injunction.

24. He has also added that the Trial Court, after traversing the evidences in deep had found that the appellants had miserably failed to prove their case that they never intended to sell their property and equally they never executed any sale deed in favour of the first respondent at any point of time particularly, on 17.06.2002. He has also argued that the appellants had virtually failed to substantiate their case by adducing legal and acceptable oral and documentary evidences to say that they had executed a mortgage deed and not a sale deed on 17.06.2002 in respect of a portion of the suit property.

25. He has also maintained that the respondents had satisfactorily proved their case before the Trial court, which was accepted by the first Appellate Court and since the appellants had lost their case in both the Courts below, he

has urged to dismiss the Appeals as the concurrent findings of the Courts below need not be interfered with.

26. It is a settled proposition of law that this Court being the second Appellate Court must be very slow and conscious enough to interfere with the concurrent findings of the Courts below.

27. As argued by Mr.J.Hariharan, learned counsel appearing for the respondents, the case of the plaintiff viz., (Mariam Bi) is that she and her husband had signed the alleged sale deed dated 17.06.2002 before the sub Registrar, Thirukazhukundram under the impression that they had executed a mortgage deed. On the other hand that the defendants, who are the respondents in both the appeals had contended that on 10.06.2002, the plaintiff and her husband had offered to sell a portion of the property comprised in S.Nos.607/13 & 607/14, which is a vacant site lying on the west of their properties for sale and the sale price was determined at Rs.1,32,200/-. That on 17.06.2002, after receiving the entire amount of sale consideration, they had executed a registered sale deed in favour of the first respondent in respect of the suit property which was duly attested by the son and daughter of the said Mariam Bi (appellant in S.A.No.1062 of 2015).

28. In this connection, Mr.J.Hariharan, learned counsel has drawn the attention of this Court to the evidence of PW1 viz., Mariam Bi, wherein, she had admitted the execution of Ex.B1, Sale Deed dated 17.06.2002, and that her son and daughter had signed as witnesses. She had also admitted that she had received the entire sale consideration to the extent of Rs.1,32,200/-. Apart from her son and daughter P.W.2 & 4 being third parties had also signed as witnesses in the said document. The learned counsel has also invited the attention of this Court to Ex.B2 to 4 as well as Ex.B5 to substantiate the fact that after purchase of the property they got entered their names in the revenue records. In consequence there of, the Patta under Ex.B2 & 3 were issued in their favour and their names had also been mutated in the records of Thirukazhukundram Town Panchayat.

29. The Trial court after appreciation of evidences adduced on behalf of both sides had proceeded to conclude that the suit filed by Mariam Bi was liable to be dismissed and that the suit filed by the first respondent K.Jayalakshmi in O.S.No.222 of 2007 was liable to be decreed in respect of the prayer portion Nos. 1 to 3, and liable to be dismissed in respect of prayer portion No.4.

30. This court on considering the submissions made on behalf of both the sides and on perusing the grounds of the appeals alongwith the judgments of the Courts below has concluded that the concurrent findings of the Court below do not require any interference of this court. Keeping in view of

the above fact, both the substantial questions of law are answered against the appellants.

31. In the result, both the Second Appeals are dismissed, granting one month time to the appellants to deliver vacant possession of the suit property in favour of the respondents from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dn
To

1.The Additional District Judge,
Chengalpet at Kancheepuram.

2.The Principal Subordinate Judge,
Chengalpet at Kancheepuram

+2ccs to M/s. V. Nicholas, Advocate, S.R.No.13276 & 13277
+2cc to M/s. K Ramakrishnan, Advocate, S.R.No.13783

UG(CO)
EU(30/06/2016)

S.A.Nos.1061 & 1062 of 2015
and
M.P.Nos.1 & 2 of 2015

सत्यमेव जयते

WEB COPY