

In the High Court of Judicature at Madras

Dated : 04.11.2016

Coram

The Honourable Mr. Justice K.RAVICHANDRABAABU

Second Appeal No.242 OF 2015

1.M.Sankar

2.S.Tanikachalam

...1&2 Defendant/I&2 Appellants
/ 3&2nd Appellants

...vs...

1.N.C.Venkatesan

..Plaintiff/1st Respondent/ 1st
Respondent

2.Sub Registrar

Sub Registration Office,

Redhills, Chennai-600 052.

...3rd Defendant/2nd Respondent/
2nd Respondent

This Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.11.2013 made in A.S.No.62 of 2011 on the file of the learned Subordinate Judge, Ponneri, confirming the Judgment and Decree dated 28.03.2011 made in O.S.No.356 of 2007 on the file of the District Munsif Court, Thiruvottriyur.

For Appellants : Mr.S.Rajendrakumar

For Respondent : Mr.N.R.Anantha Ramakrishnan
for R1

R2 : No Appearance

J U D G M E N T

This appeal is filed as against the judgment and decree dated 05.11.2013 made in A.S.No.62 of 2011 on the file of the learned Subordinate Judge, Ponneri, confirming the Judgment and Decree dated 28.03.2011 made in O.S.No.356 of 2007 on the file of the District Munsif Court, Thiruvottriyur.

2. The defendants 1 and 2 are the appellants. They lost before both the Courts below in the suit filed by the first respondent herein for declaration to declare the unilateral cancellation deed executed by the defendants on 31.07.2007 registered as document Nos.11267 and 11268 of 2007 as null and void and for permanent injunction restraining the defendants 1 and 2 from from in any manner alienating or encumbering the suit property to 3rd parties by registering any document presented

for registration by or on behalf of defendants 1 and 2 in respect of the suit properties.

3. The case of the plaintiff in short is as follows:-

The defendants 1 and 2 were the owners of the suit properties and they, after receiving valid consideration, conveyed the same to the plaintiff by way of two sale deeds dated 17.05.2006. Having executed the sale deed, the defendants 1 and 2 latter unilaterally executed the cancellation deed on 31.07.2007 cancelling those two sale deeds executed in favour of the plaintiff. Therefore, such unilateral action of the defendants is illegal and the same is to be declared as null and void.

4. The defendants 1 and 2 contested the suit. It is their case that, apart from the amount referred to in the sale deed as total sale consideration, the plaintiff agreed to pay some more amount and accordingly a memorandum was executed between the parties for payment of such money and such terms and conditions were not honoured by the plaintiff. Therefore, it is contended by the defendants 1 and 2 that a sum of Rs.10 Lakhs is due and liable to be paid by the plaintiff as part of sale consideration and when the same was not paid, they have rightly cancelled the sale deed by executing the impugned cancellation deeds.

5. Before the trial Court, the plaintiff examined himself as P.W.1 and examined one S.Rajkumar as P.W.2. He marked Exs.A1 to A28 in support of his case. The second defendant was examined as D.W.1 and Exs.B1 to B11 were marked on the side of the defendants 1 and 2. The trial Court, upon consideration of the rival pleadings of the parties and the evidence let in by them, found that the unilateral cancellation of the sale deed is not valid and that the amount claimed by the defendants is in respect of the common passage not related to the property conveyed under sale. The Lower Appellate Court confirmed the judgment and decree of the trial Court thereby rejecting the contention of the defendants 1 and 2. Both the Courts below in support of their conclusion, apart from relying on various other judgments, followed the Full Bench decision of this court made in W.A.No.592 of 2009 (M/s.Latif Estate Line India Ltd Vs. Hadeeja Ammal and 2 others) and W.A.No938 of 2009 (Habib Abdul Latif and others Vs. Syed Aamina Raheem and another) reported in 2011(1) reported in 2011(I) LW 673. Challenging the concurrent findings rendered by the Courts below, the present second appeal is filed before this Court.

6. At the time of admitting the Second Appeal, the following substantial questions of law were raised.

a) Whether the Courts below are correct in law in interpreting the recitals in Ex.B4 that

Rs.10,00,000/- is for the formation of the road when the recitals in B4 clearly states that "for the sale deeds, I have to give you the balance Rs.10,00,000/-"?

b) When the inadequacy of sale consideration has been pointed out on the side of the defendants/appellants, should the burden be shifted to the plaintiff's side for proving full consideration?

c) When the first respondent has not explained as to how he got possession of two cheques Ex.A27 and A28, can the burden be shifted on the appellants?

7. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the first respondent and perused the materials placed before this Court.

8. The learned counsel appearing for the appellants heavily relied on the memorandum of understanding said to have been entered between the parties to justify the execution of the cancellation deed. According to the learned counsel, a sum of Rs.10 Lakhs was agreed to be paid by the plaintiff in the memorandum of understanding over and above the sale consideration.

9. On the other hand, the learned counsel appearing for the first respondent invited the attention of this Court to the admission made by the appellants themselves as defendants in another suit in O.S.No.7262 of 2006 to the effect that the said sum of Rs.10 Lakhs was in respect of common passage which has nothing to do with the property conveyed under the sale deed.

10. First of all, it is to be seen as to whether the appellants are entitled to execute the unilateral cancellation deed of the sale deeds already executed by them on 17.05.2006. Such question has already been considered and decided by the Full Bench of this Court as referred supra. In the said decision the Hon'ble Full Bench observed at Para 58 as follows:

58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed

by him as such an act of the vendor is opposed to public policy.

11. Therefore, the above issue is no longer res-integra. Consequently, the unilateral cancellation deed executed by the vendor, namely, the appellants herein are not valid and both the Courts below have rightly set aside such unilateral cancellation deed and granted the relief of declaration as prayed for by the plaintiff. Hence, I find no ground to interfere with such concurrent findings rendered by the both the Courts below. Even though a feeble attempt was made by the learned counsel appearing for the appellants to contend that there was an amount due from the plaintiff as part of sale consideration, it is seen from the very admission made by the appellants, as defendants in another suit, that the said amount of Rs.10,00,000/- was in respect of a common passage and not in respect of the property conveyed under the two sale deeds. Therefore, I am of the view that such contention of the appellants cannot be sustained as all these factual aspects have been rightly found by the both the Courts below against the appellants. Therefore, I find that the appeal does not deserve merit and accordingly, the questions of law raised in this appeal are answered against the appellants and in favour of the respondents.

12. In the result, the Second Appeal is dismissed and the Judgment and decree passed by both the Courts below are hereby confirmed. There is no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Subordinate Judge,
Ponneri.

2.The District Munsif,
Thiruvottriyur.

+1 cc to Mr.N.R.Anantha Ramakrishnan,advocate,sr.63133

+1 cc to mr.S.Rajendrakumar,advocate,sr.63197.

pvs (co)
krd 25/1

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