

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.877 of 2016
and C.M.P.No.17699 of 2016

1.M.Shanmugam
2.M.Sundaram
3.M.Manokaran

..Appellants/Appellants/
Defendants 4 to 6

Vs

1.G.Azhagesan
2.M.Subramani
3.M.Vinayagam
4.M.Velu

..1st Respondent/Plaintiff

..Respondents 2 to 4/ Respondents
2 to 4 / Defendants 1 to 3

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 10.02.2016 passed in A.S.No.27 of 2009 on the file of the Principal Subordinate Judge, Chengalpattu, confirming the judgment and decree dated 29.01.2009 made in O.S.No.118 of 2004 on the file of the District Munsif, Thirukazhukundram.

For Appellants .. Mr.S.Parthasarathy

JUDGMENT

The unsuccessful defendants 4 to 6 are the appellants in the suit filed for specific performance based upon Ex.A1.

2.Ex.A1 is the agreement entered into between the plaintiff and the first defendant on his own behalf and on behalf of defendants 1 to 3 dated 17.07.2003. On the very same day, the registered power deed was executed in favour of the brother-in-law of the plaintiff under Ex.A2. A sum of Rs.15,000/-, out of the total sale consideration of Rs.45,000/-, was also paid by way of cheque. As defendants 1 to 3 have not come forward to execute the sale deed and in view of the subsequent alienation in favour of the appellants, being the subsequent purchasers, the suit has been laid for specific performance.

3.Before the trial Court, it was contended on behalf of the defendants that signatures have been obtained in blank papers. It was only the money transaction, which has been converted into an agreement for sale. Ex.A2 has been executed also virtually in favour of the brother-in-law of the plaintiff. It was thereafter cancelled, though not marked. Defendants 4 to 6 are the bonafide purchasers for valuable consideration. Defendants 1 to 3 on the one hand and defendants 4 to 6 on the other hand entered into an agreement under Ex.B1 dated 03.03.2003 for a sum of Rs.50,375/-. The agreement was given effect to by the subsequent sale deed dated 18.08.2003.

4.Before the trial Court, the plaintiff examined himself as P.W.1. P.W.2 is the attestor of Ex.A1. Defendants 1 and 4 examined themselves as D.Ws. 1 and 2.

5.The trial Court decreed the suit on the premise that the first defendant, having accepted the signature in Ex.A1, is duty bound to explain the circumstances under which it has been executed. The first defendant has not discharged his plea of loan transaction, resulting in creation of Ex.B1. The discrepancy between the evidence of D.Ws.1 and 2 have been taken note of to the effect that the stamp papers for creation of Ex.B1 have been obtained from Chennai. The 6th defendant also has not filed any written statement, though he is stated to be in possession of the original copy of the sale deed under Ex.B2. Ex.B2 also did not make any reference about Ex.B1. Thus the trial Court held that Ex.B1 has been created for the purpose of defeating the rights of the plaintiff and therefore, Ex.B2 being the subsequent document to Ex.A1, would not prevent the suit being decreed.

6.The lower appellate Court also concurred with the findings of the trial Court. Incidentally, it found that there was no explanation for the first defendant in not executing the sale deed in favour of the 6th defendant on 21.07.2003 after the execution of the agreement for sale on 03.03.2003. Challenging the concurrent finding rendered by the Courts below, the present appeal has been filed, by raising the following substantial questions of law:

1.Whether the Courts below are right in coming to the conclusion that, when the second respondent had signed in the blank papers, it is presumed that he had admitted the signature in the sale agreement?

2. Whether the Courts below are right in coming to the conclusion that the sale deed in favour of the appellants is not valid when there was no relief claimed for declaring the sale deed as null and void?

3. Whether the Courts below are right in coming to the conclusion that the sale agreement and sale deed in favour of the appellants is not valid and when the 1st defendant plead that there is a fraud played by the plaintiff?

4. Whether the Courts below are right in coming to the conclusion that the non-examination of the witness is not fatal to the case of the plaintiff?

5. Whether the Courts below are right in coming to the conclusion that when the 1st respondent had not disproved that the first agreement is not valid and cooked up for the purpose of the case?

7. Learned counsel appearing for the appellants submits that the appellants are the bonafide purchasers for valuable consideration. The power deed has been entered into on the very same day under Ex.B2 in favour of the brother-in-law of the plaintiff, which lends credence to the case of the defendants. Ex.B1 is earlier to Ex.A1. Merely because the second respondent signed in the blank papers, it cannot be presumed that he had admitted the signature in the sale agreement under Ex.A1. The sale deed executed in favour of one of the appellants has not been challenged specifically. The non-examination of the witnesses could not be fatal to the case of the appellants.

8. Admittedly, the present appeal has been filed only by defendants 4 to 6. Added to that, curiously, the 6th defendant neither gone into the box nor made a statement. The Courts below have concurrently found that the discrepancy in the evidence of D.Ws.1 and 2 would go to the root of the matter. The stamp papers have been obtained from Chennai for execution of Ex.B1. The sale deed under Ex.B2 does not make any reference about Ex.B1, which is the agreement for sale. Ex.A2 is the registered document. We are not concerned with the cancellation of Ex.A2. Though such a contention is made, it is not supported by marking of the relevant document. P.W.2 has spoken in tune with Ex.A1. D.W.1 has admitted his signature as found by the Courts below under Ex.A1.

9.In such view of the matter, this Court does not find any question of law much less substantial question of law, warranting reversal of the concurrent finding on facts rendered by the Courts below. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

To

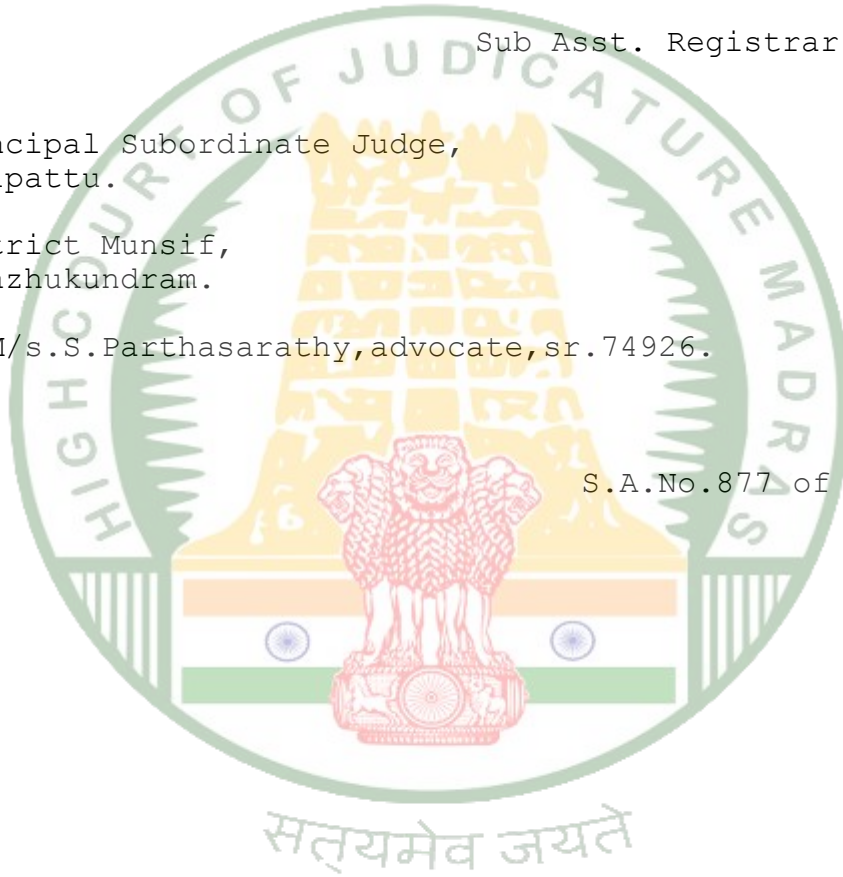
1.The Principal Subordinate Judge,
Chengalpattu.

2.The District Munsif,
Thirukazhukundram.

+1 cc to M/s.S.Parthasarathy, advocate, sr.74926.

kj (co)
krd 14/2

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