



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

S.A. (MD) No. 282 of 2016

and

C.M.P. (MD) No. 3572 of 2016

1. M. Pitchai
2. P. Jamunarani
3. P. Poonkodi
4. Ammaponnu

: Appellants/Defendants 1 to 3&5

Vs.

1. R. M. Iyyappan
2. Rajendran

: 1st Respondent/Plaintiff
: 2nd Respondent/4th Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 27.06.2008, passed in A.S.No.20 of 2008 on the file of learned First Additional Sub Judge, Madurai, confirming the judgment and decree dated 21.11.2007, made in O.S.No.3 of 2006, on the file of learned District Munsif, Madurai Taluk.

For Appellants : Mr. D. Malaichamy
For Respondent No.1 : Mrs. M. Dhanalakshmi

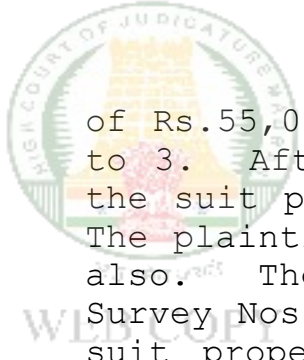
JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated 27.06.2008, made in A.S.No.20 of 2008, on the file of learned First Additional Sub Judge, Madurai, confirming the judgment and decree dated 21.11.2007, made in O.S.No.3 of 2006, on the file of learned District Munsif, Madurai Taluk.

2. For the sake of convenience, the parties are referred to in this judgment in accordance with their respective ranks in the suit.

3. The case of the plaintiff, as culled out from the plaint, for the purpose of disposal of the Second Appeal, is as follows:-

The suit property originally belonged to one Mayandi Moopar. The said Mayandi Moopar died long back leaving behind his wife Perumayee Ammal and his son one Pitchai, the first defendant. The defendants 2 and 3 are the daughters of first defendant. The defendants 4 and 5 are the relatives of the first defendant. After the death of Mayandi Moopar, his wife Perumayee Ammal and his son Pitchai succeeded his estate as his legal heir. The plaintiff has purchased the suit property, by a registered sale deed dated 25.04.1996 for valuable consideration



of Rs.55,000/- from the deceased Perumayee Ammal and defendants 1 to 3. After the said purchase, the plaintiff took possession of the suit property and till today, he is in continuous possession. The plaintiff changed his patta in his name and he is paying kist also. The defendants 1 to 3 were also having Nanja lands in Survey Nos.78/3 and 78/4 to an extent of 91 cents adjacent to the suit property and they along with the deceased Perumayee Ammal executed a registered general power of attorney in favour of the plaintiff on 24.12.1997. As per the terms of the General Power of Attorney, the plaintiff sold the property on 07.06.2001, by a registered sale deed to one Adaikappan and Muthuramalingam, the brothers of the plaintiff. After a long time, the defendants tried to take forcible possession of the suit property from the plaintiff. Because of increasing the market value of the suit property, the defendants 1 to 3 asked the plaintiff to pay some more amount towards the suit property, but, he refused to pay the same. Due to that, there arose enmity between them and the defendants 1 to 3 filed vexatious proceedings against the plaintiff and his brothers. While so, on 11.10.2005, when the plaintiff was ploughing the land with the help of Tractor, the defendants 1 to 3 tried to prevent the plaintiff from doing so and again, on 02.12.2005, when the plaintiff was removing the weeds in paddy field, again, they tried to disturb the plaintiff's possession. Hence, the suit is filed for permanent injunction.

4. The first defendant filed a Written Statement, which was adopted by the other defendants, stating that the plaintiff is a money lender. The first defendant and his mother Perumayee Ammal approached the plaintiff for arranging loan facilities along with the defendants 2 and 3 and they jointly borrowed a sum of Rs.2,00,000/- on 21.03.1996 and at that time, the plaintiff obtained a registered sale agreement with regard to the property described in the plaint schedule. They also borrowed another sum of Rs.50,000/- and at that time, the plaintiff fraudulently obtained a bogus sale deed on 25.04.1996. The said sale deed dated 25.04.1996 is a sham and nominal and it never bind the defendants. All along, they were in possession of the plaint schedule property. The defendants, again, borrowed a sum of Rs.1,00,000/-. Subsequently, the plaintiff forcibly obtained a power of attorney on 24.12.1997 from the defendants alleging that the security obtained earlier by him was insufficient. The defendants have repaid Rs.2,75,000/- towards principal along with interest at the rate of 24% p.a. to the plaintiff and they were liable to pay Rs.,75,000/- to the plaintiff with interest from July, 2001 onwards. There is no cause of action alleged in the suit and hence, the suit is liable to be dismissed.

5. Based on the above facts, the Trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and as many as 14 documents were marked as EX-A1 to EX-A14. On the side of the defendants, four witnesses were examined as DW-1 to DW-4 and 6 documents were marked as EX-B1 to EX-B6.



6. Having considered all the above, the Trial Court, by Decree and Judgment dated 21.11.2007, decreed the suit as prayed for. Questioning the validity of the Decree and Judgment passed by the Trial Court, the defendants filed an appeal in A.S.No.20 of 2008, whereby and whereunder, the first Appellate Court dismissed the appeal preferred by the defendants, by confirming the judgment and decree of the Trial Court, by Decree and Judgment dated 27.06.2008. Aggrieved over the same, the appellants, who are the defendants 1 to 3 and 5 in the suit, are now before this Court with this Second Appeal.

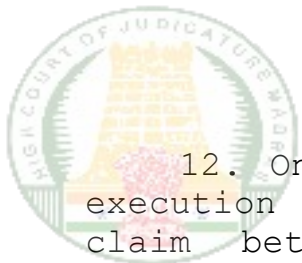
7. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the first respondent and I have also gone through the materials available on record carefully, including the Judgments rendered by the Courts below.

8. The first and foremost contention raised by the learned counsel appearing for the appellants is that the Trial Court, without considering the fact that Ex.A.1 is only sham and nominal and the possession of the defendants has not been disturbed even after execution of the sale deed-Ex.A.1 and the same was executed only as a security for the loan obtained from the plaintiff, decreed the suit in favour of the plaintiff, which was also confirmed by the first appellate Court and, therefore, the Judgment and Decree passed by both the Courts below need to be interfered with by this Court.

9. The learned counsel for the first respondent supported the judgment and decree of the Courts below and according to the learned counsel, both the Courts below concurrently held that the first respondent/plaintiff has proved his title and possession over the suit property and such finding, being purely on facts, is not liable to be interfered in an appeal under Section 100 of the Code of Civil Procedure.

10. I have considered the above submissions.

11. The Trial Court, on considering the oral and documentary evidence, came to the conclusion that the defendants have admitted the execution of the general power of attorney in favour of the plaintiff and the property involved in the general power of attorney is not related to the suit property and it relates to some other property. With regard to the suit property, the Trial Court came to the conclusion that the plaintiff has clinchingly proved his title and possession in respect of the suit property and after the execution of sale deed Ex.A.1 in favour of the plaintiff, the defendants have no iota of right over the suit property and the possession was also parted with the plaintiff and, therefore, decreed the suit as prayed for.



12. On appeal, the first appellate Court held that after the execution of sale deed-Ex.A.1 on 25.04.1996, there was a rival claim between the plaintiff and the first defendant. The possession of the plaintiff was also proved by the plaintiff by way of producing documents Exs.A.1 to A.14, but, the witnesses examined and documents adduced on the side of the defendants were not enough to disprove the claim of the plaintiff and, therefore, holding that the plaintiff has proved his title and possession over the suit property, the first appellate Court confirmed the judgment and decree of the Trial Court and dismissed the appeal.

13. In my considered view, the judgment of the trial Court as well as the first appellate Court is found to be perfectly correct and the findings cannot be termed to be perverse either in law or on facts requiring interference in second appeal. As such, I do not find any merit in the contention of the appellants and the appeal is nothing but a futile exercise and no question of law much less substantial question of law arises in the present appeal and as such, the appeal is liable to be dismissed.

14. In the result, the Second Appeal fails and the same is, accordingly, dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub-Assistant Registrar

To

1.The First Additional Subordinate Judge,
Madurai.

2.The District Munsif,
Madurai Taluk.

SML

RL/3C/4P/SK/SKN/SARII/3/6/2016

JUDGMENT MADE IN
S.A. (MD) No.282 of 2016 and
C.M.P. (MD) No.3572 of 2016

13.04.2016