

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.2002 of 1999

Meiyazhagan

... Appellant/Appellant/Defendant

Vs.

Mythili

... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 29.08.1997 passed in A.S.No.51 of 1997 by the Additional Subordinate Judge, Nagapattinam, confirming the judgment and decree of the District Munsif Court, Nagapattinam, dated 13.09.1996 in O.S.No.214 of 1996.

For Appellant : Mr.R.Santhanam

For Respondent : Mr.U.Karunakaran,
for M/s.G.M.Mani Associates

J U D G M E N T

The unsuccessful defendant before both the Courts below is the appellant herein. Aggrieved by the judgment and decree dated 29.08.1997 passed in A.S.No.51 of 1997 by the Additional Subordinate Judge, Nagapattinam, confirming the judgment and decree of the District Munsif Court, Nagapattinam, dated 13.09.1996 in O.S.No.214 of 1996, the defendant has come up with the present Second Appeal.

2. The respondent/plaintiff is the wife of the appellant/defendant. They have two children, one male and one female. According to the respondent/plaintiff, she gave 120 grams of gold jewellery to the appellant/defendant in the presence of one Kunjithapadham, who is the family friend of the appellant/defendant and without her knowledge, the appellant/defendant sold the gold jewellery and purchased the suit property in his name and also constructed a house therein.

3. The case of the respondent/plaintiff is that when she asked her husband, i.e. the appellant/defendant to return the jewels, the defendant poured kerosene on her and attempted to

set fire on her. In this regard, the respondent/plaintiff lodged a complaint in Vellipalayam Police Station and after enquiry by the Police, the defendant promised the plaintiff that he will return her jewels and also transfer the suit property in her name. To that effect, he also signed an Agreement dated 05.01.1992 to the plaintiff in the presence of the said Kunjithapadham and one Balasubramanian. Since the defendant failed to act as per the said Agreement, the plaintiff caused a legal notice to the defendant on 01.02.1992, to which, the defendant sent a reply notice on 05.02.1992. Hence, having no other alternative, the plaintiff filed a suit in O.S.No.214 of 1996, seeking to decree the suit for a sum of Rs.30,000/-, which is the value of the gold jewellery, with a charge on the suit property.

4. Denying the plaint averments, the defendant filed a Written Statement before the Trial Court, stating that he purchased the suit property out of his income and by raising loan and constructed a house therein. According to the defendant, he is working as a Clerk in the Municipality and that he signed the so called Sale Agreement dated 05.01.1992 in favour of the plaintiff in a blank paper, only at the instigation of the plaintiff in the presence of the Sub-Inspector of Police, Vellipalayam Police Station. It is his further case that since the plaintiff caused a legal notice on 01.02.1992, he sent a proper reply notice on 05.02.1992.

5. The Trial Court, on a consideration of the entire oral and documentary evidence, by a judgment and decree dated 13.09.1996 in O.S.No.214 of 1996 decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendant went on appeal before the Additional Subordinate Judge, Nagapattinam in A.S.No.51 of 1997 and the First Appellate Court by a judgment and decree dated 29.08.1997, dismissed the appeal, thereby confirming the judgment and decree of the Trial Court.

6. Learned counsel for the appellant contended that the Courts below, having accepted the contention of the appellant that the Agreement dated 05.01.1992 was obtained by coercion, should not have granted the alternative prayer sought by the respondent/plaintiff. Further, it is his contention that the Courts below erred in coming to a conclusion that the appellant ought to have established that the suit property was purchased out of his own and borrowed funds.

7. On the other hand, learned counsel appearing for the respondent drew the attention of this Court to the evidence of D.W.1 before the Trial Court, wherein, he has stated that at the time of his marriage, he was dependent on the income of his father and thereafter, he could run his family only based on the

income of his father and the income earned by him by working as a Clerk in the Municipality. Hence, according to the learned counsel, the appellant/defendant had no sufficient means to purchase the suit property even by partially utilizing his own funds and it is only by selling the jewels of his wife, i.e. the respondent/plaintiff, he could purchase the suit property. Thus, he submitted that both the Courts below were right in decreeing the suit in favour of the respondent/plaintiff.

8. Heard the learned counsel on either side, gave careful consideration to the same and perused the material documents available on record.

9. This Court admitted the Second Appeal on 02.09.2002 on the following substantial questions of law:

"(i) Whether an alternative relief can be granted in the absence of the specific mention of the date in the cause of action ?

(ii) Whether the Courts below are right and legal in granting the alternative relief when the same is barred by limitation?

(iii) Whether the Courts below are justified in granting the alternative relief while admitting the fact that a document was obtained by coercion and rejecting the main relief on that ground?

(iv) Whether the Courts below are justified in shifting the burden of proof from the plaintiff to the defendant in respect of the payment for purchase of the property?

(v) Whether the decree granted by the Courts below with a charge on the suit property is legal, when the document under which the main relief claimed was held to be obtained by coercion?

10. After due notice to the parties on the substantial questions of law framed, the Second Appeal is taken up for disposal. Admittedly, the appellant/defendant and the respondent/plaintiff are husband and wife and they have got two children. It is the contention of the respondent/plaintiff that she handed over 120 grams of her gold jewellery to her husband, i.e. the appellant/defendant to enable him purchase a property in her name. But, the appellant/defendant has purchased the

suit property in his name. Now, the dispute is with regard to the Agreement dated 05.01.1992 signed by the appellant/defendant in favour of the respondent/plaintiff. According to the appellant/defendant, the said Agreement was obtained from him by coercion, that too in the Police Station. It is seen that the respondent/plaintiff, who was examined as P.W.1 has admitted that the said Agreement was entered into between her and the appellant/defendant only in the Police Station. The Trial Court as also the First Appellate Court have concurrently held that Ex.A1 - Agreement entered into between the plaintiff and the defendant in the Police Station cannot be accepted, as it has been obtained from the defendant by means of coercion.

11. Even though the learned counsel for the appellant/defendant vehemently contended that the Courts below ought to have accepted the contention of the appellant/defendant that he purchased the suit property out of his own funds and by raising loan, it is seen that he has not produced any evidence before the Court to that effect. Had he really borrowed loan from others, he would have filed the pronote as a piece of evidence. It has also been categorically observed by the Courts below that even though two different kinds of loan are said to have been obtained by the defendant, there was no such pleading before the Trial Court in the Written Statement. It has also been observed that there is no proof that the defendant has obtained loan from L.I.C. for constructing a house in the suit property and no evidence was produced before the Court below with regard to the same.

12. The First Appellate Court, after taking note of the evidence of the parties, came to a categorical conclusion that it is a finding of fact by the Trial Court and accordingly, upheld the finding of the Trial Court in granting the alternative relief of payment of Rs.30,000/- to the plaintiff, which is said to have been obtained by the appellant/defendant out of the sale proceeds of the jewels handed over by the respondent/plaintiff to him. It is also stated that apart from other issues, this is also one of the issues for which the parties have landed up before the Family Court and divorce has also been granted to them, against which, an appeal is pending before this Court.

13. Since the finding of fact is that there is no evidence to the effect that the appellant/defendant has borrowed loan from outsiders and that not even an iota of evidence has been let in by the appellant, accepting the plea of the respondent/plaintiff, the Trial Court, based on the evidence of P.W.2 - Kunjithapadham, has stated that the appellant has no means to purchase the suit property out of his own funds and that he could have certainly purchased the suit property only

out of the proceeds of the sale of the plaintiff's jewellery. Also, the genuineness of P.W.2 cannot be questioned as the appellant/defendant has stated in his evidence that he has no enmity with P.W.2 and there is no need for P.W.2 to act against his interest.

14. In view of the above, as the conclusion of the Trial Court is a finding of fact and that alternative relief has been granted to the respondent/plaintiff, the judgment and decree of the First Appellate Court, confirming the same, does not require any interference by this Court. The substantial questions of law are answered accordingly.

15. Before parting with, this Court observes that if money is the consideration for any relationship, certainly it is bound to break and it is very unfortunate in the case on hand that the relationship between the appellant/husband and the respondent/wife has been strained on account of monetary issues.

In fine, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional Subordinate Judge,
Nagapattinam.
2. The District Munsif,
Nagapattinam.

+1cc to Mr.P.K.Sabapathi, Advocate Sr.25816

+1cc to M/S.G.M.Mani Associates, Advocate Sr.24907

S.A.No.2002 of 1999

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srg 21/06/2017