

Reserved on : 20.11.2017

Delivered on : 29.11.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.3104 of 2017 and
C.M.P.No.18907 of 2017

1.P.S.Dharmaraj
2.D.Malarkodi
3.D.Dinesh Chakaravarthi
4.D.Bhvan Chakaravarthi ... Appellants/Defendants

v.

Abishake ... Respondent/Plaintiff

Civil Miscellaneous Appeal filed under Order 43 Rule 1(a) of CPC against the fair and decreetal order dated 11.10.2017 passed in I.A.No.400 of 2017 in O.S.No.51 of 2017 on the file of II Additional District and Sessions Judge at Tiruppur.

For Appellants : Mr.M.S.Krishnan, Senior Counsel
for Mr.K.Myilsamy

For Respondent : Mr.N.Jothi, Senior Counsel
for Mr.N.Manokaran

J U D G M E N T

Challenging the fair and final order passed in I.A.No.400 of 2017 in O.S.No.51 of 2017 on the file of II Additional District and Session Judge at Tiruppur., the defendants have filed the above Civil Miscellaneous Appeal.

2. The plaintiff filed the suit in O.S.No.51 of 2017 for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. The 1st defendant is the husband of the 2nd defendant and the defendants 3 and 4 are the sons of the defendants 1 and 2.

4. In the said suit, the plaintiff filed an application in I.A.No.400 of 2017 seeking for interim injunction restraining the defendants from interfering with his peaceful

possession and enjoyment of the suit property till the disposal of the suit. The defendants filed their counter and contested the application.

5 . The brief case of the respondent/plaintiff is as follows:

(i) According to the plaintiff, the suit property originally belonged to one S.Venkatesan by means of a registered settlement deed dated 08.05.2003 and the registered release deed dated 23.11.2006. The said S.Venkatesan sold the suit property by means of four independent sale deeds dated 31.01.2007 in favour of the defendants 1 to 4 separately. The suit property was purchased in a piecemeal manner by way of the said four independent sale deeds by the defendants. Subsequently, the defendants 2 to 4 jointly settled the properties purchased by them under the registered sale deeds dated 31.01.2007 in favour of the 1st defendant by way of registered settlement deed dated 10.09.2007. As such, by virtue of sale deed dated 31.01.2007 and the settlement deed dated 10.09.2007, the 1st defendant has become absolute and exclusive owner of the suit property.

(ii) The 1st defendant offered to sell the suit property for a total sale consideration of Rs.1,18,20,000/-. The 1st defendant executed four independent sale deeds in favour of plaintiff's mother and his grand parents on 07.10.2016. As per the sale deeds, each of the purchaser is entitled to 1/4th share in the suit property. The 1st defendant also handed over the parent documents to the purchasers on 09.02.2017. The purchasers executed a settlement deed in favour of the plaintiff in respect of the suit property. Since then, the plaintiff is in possession and enjoyment of the same.

(iii) According to the plaintiff, the defendants have not produced the original of the memorandum of understanding, which itself would establish that the case of the defendants is false one. By the four sale deeds executed by the 1st defendant, the purchasers have become the absolute owner, in turn, by virtue of the sale deed executed by them on 09.02.2017, the plaintiff is the absolute owner of the property and the alleged memorandum of understanding is false. Since the defendants tried to interfere with the possession and enjoyment of the suit property, the plaintiff has filed the suit and the application praying for interim injunction.

6 The brief case of the defendants is as follows:-

(i) According to the defendants, the 1st defendant is the absolute owner of the suit property. The plaintiff has no right or title over the suit property and he is not in possession of the same. The defendants are in possession and enjoyment of the property. The defendants filed the suit in O.S.No.390 of 2016 on the file of District Munsif Court, Tiruppur to declare the memorandum of understanding dated 13.08.2016 as null and void, in which, the plaintiff is also

a party. The sale deeds executed by the 1st defendant were made only for obtaining a loan from the plaintiff. The defendants are in possession of the original sale deeds. The sale deed executed in favour of the plaintiff are not valid. The defendants have been paying the property tax and electricity charges in respect of the suit property.

(ii) According to the defendants, the sale deed was executed by the 1st defendant only as security for the loan transaction. The value of the property was more than 7,50,00,000/- The 1st defendant borrowed a sum of Rs.1,50,00,000/- on 06.01.2014. In the sale agreement executed on 06.01.2014, the total value of the property was mentioned as 3,00,00,000/-, whereas, for the same property, in the sale deed dated 06.10.2016, the value of the property was mentioned as Rs.1,18,20,000/-. In these circumstances, the defendants prayed for dismissal of the application.

7. Before the Trial Court, on the side of the respondent-plaintiff, 26 documents, viz., Exs.P1 to P26 were marked and on the side of the appellants-defendants, 34 documents, viz., Exs.R1 to R34 were marked. However, there was no oral evidence on either side.

8. The Trial Court, after taking into consideration the case of both the parties, allowed the application and granted an order of interim injunction.

9. . Aggrieved over the fair and decreetal order passed in I.A. No. 400 of 2017, the defendants have filed the above appeal.

10. Heard Mr..M.S.Krishnan learned Senior Counsel appearing for the appellants and Mr.S.Jothi, learned Senior Counsel appearing for the respondent.

11. Mr.M.S.Krishnan learned Senior Counsel appearing for the appellants-defendants submitted that the four sale deeds executed by the 1st defendant in favour of the plaintiff's mother and his grand parents are only for the security for the loan transaction between the parties and that they were not intended for selling the property to the respondent-plaintiff. Further, the learned Senior Counsel admitted that the defendants have not produced the memorandum of understanding dated 15.08.2016 before the Trial Court and also submitted that the defendants have not filed the suit to set aside the sale deeds executed by the 1st defendant in favour of Malathy, Rukmani, Janaki and Kesavan. Further, the learned Senior Counsel submitted that the memorandum of understanding dated 15.08.2016 would clearly establish that the sale deeds were executed by the 1st defendant only for security purpose.

12. Countering the submissions made by the learned Senior Counsel appearing for the appellants, Mr.S.Jothi, learned Senior Counsel appearing for the respondent submitted that the 1st defendant having executed the sale deeds in favour of Malathy and three others separately, he cannot now take a stand that they were executed only for security purpose for the loan transaction. Further, the learned Senior Counsel submitted that the 1st defendant has not taken any steps to set aside the sale deeds executed by them in favour of Malathy and 3 others. Therefore, the sale deeds executed by the 1st defendant are valid documents conveying right and title in favour of the purchasers. Further, the learned Senior Counsel submitted that pursuant to the settlement deed executed by Malathy and three others, the plaintiff also leased out the portions of the suit property separately to 8 tenants and he has also produced the lease deeds before the Trial court. Further the learned Senior Counsel submitted that in the absence of any evidence produced by the appellants-defendants to establish that the sale deeds were executed on 07.10.2016 only as security purpose, the Trial Court rightly granted an order of interim injunction. That apart, the learned Senior Counsel also submitted that the non-production of the alleged memorandum of understanding by the appellants-defendants is fatal to their case. In support of his contentions, the learned Senior Counsel for the respondent-plaintiff relied upon the following judgments:

(i) 1994 (1) SCC I [S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs and others] wherein, the Apex Court, in paragraph No.6 held as follows:-

" 6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of

deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that

the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(ii) 2011 (6) CTC 887 [R.Selvaraj v. V.P.Periasamy] wherein, in paragraph No.22, I have held as follows:-

" 22. It is settled law that 'possession follows title'. There is no dispute with regard to the legal propositions laid down in the judgments relied upon by the learned senior counsel appearing for the appellant and the learned counsel for the respondent. The trial court while dismissing the suit found that the non examination of the Power Agent namely, P.Sundaram is fatal to the case of the plaintiff. It is true that adverse inference can be drawn for non examination of the Power Agent P.Sundaram, if the contention raised by the respondent/defendant that the said Power Agent is a stranger to him and that he never seen him before. The said contention was falsified by the respondent/defendant himself in his evidence by stating that he knew the Power Agent P.Sundaram. In such circumstances, Ex.A-3 Power of Attorney Deed executed in favour of the said Power Agent by the respondent/defendant cannot be questioned. The respondent/defendant would have gone to the Registrar's office for registering the Power of Attorney deed and also known about the contents of the Power of attorney Deed. In Ex.A-3 Power of Attorney deed, the power agent was given power to alienate the suit properties. Based on that, he executed Ex.A-4 sale agreement in favour of the appellant/plaintiff and thereafter, executed Ex.A-5 sale deed in favour of the appellant/plaintiff. Therefore, by virtue of Ex.A-5 sale deed, it is clear that the appellant/plaintiff is the absolute owner of the suit property and entitled for possession in the suit properties. Having sold the suit properties to the appellant/plaintiff, the possession of the respondent/ defendant can only be construed as that of a trespasser. Ex.A-3 Power of Attorney Deed dated 31.8.1998 and Ex.A-5 sale deed dated 31.1.2001 are true and valid and binding on the respondent/defendant."

13.1 On a careful consideration of the materials available on record, submissions made by the learned Senior Counsel on either side and the judgments relied upon by the learned Senior Counsel appearing for the respondent, it could be seen that the plaintiff had filed the suit for bare injunction based on the four sale deeds executed by the 1st defendant in favour of Malathy, Rukmani, Janaki and Kesavan under four separate sale deeds dated 07.10.2016 marked as Exs.P6 to P9. The defendants contended that those four sale deeds were executed by the 1st defendant only for security purpose for the loan transaction and they were not intended for conveying the property to the purchasers. The defendants relied upon the memorandum of understanding dated 15.08.2016, copy of which was marked as Ex.B10. Admittedly, the defendants have not produced the original of the alleged memorandum of understanding dated 15.08.2016 before the Trial Court.

13.2 The plaintiff denied the execution of the memorandum of understanding dated 15.08.2016. As per the alleged memorandum of understanding, the sale deeds, viz., Exs.P6 to P9 were executed by the 1st defendant for the security purpose and the documents should be returned to the 1st defendant after repayment of the loan amount. Further, there is a recital in the memorandum of understanding that the original of memorandum of understanding would be in the custody of the defendants. In spite of the recital to the effect that the original would be with the defendants, the defendants did not produce the memorandum of understanding before the Trial Court. That apart, the 1st defendant has not given any reason for the non production of the memorandum of understanding also. Apart from this, the defendants have also filed a suit in O.S.No.390 of 2016 on the file of District Munsif Court, Tiruppur to declare the memorandum of understanding dated 15.08.2016 as true, valid and binding on the defendants 1 to 7 therein. The said suit has been filed by the 1st defendant even without producing the original documents.

13.3 When the suit has been filed by the 1st defendant for declaration in respect of the alleged memorandum of understanding dated 15.08.2016, he should have produced the original document. But, for the reasons best known to the 1st defendant, he has not produced the original document either in the suit in O.S.No.390 of 2016 or in the present suit in O.S.No.51 of 2017. When the plaintiff has specifically stated that the defendants have not produced the alleged original of the memorandum of understanding dated 15.08.2016, in their reply affidavit, the defendants have produced the original before the Trial Court. Even without producing the original document, that too, without giving any reason for not producing the original document, the defendants cannot rely upon the said document. When the defendants are contending that the sale deeds, viz., Exs. P6 to P9 were executed for

security purpose and not intended for conveying the property to the purchasers, when the plaintiff had made his intention clear that it was meant only for conveying the property to the purchasers, in such circumstances, the 1st defendant should have filed a suit to declare the sale deed as null and void. Instead, the 1st defendant choose to file a suit to declare the alleged memorandum of understanding dated 15.08.2016 as true and valid, that too, without producing the original document. When Malathy and 3 others have purchased the property from the 1st defendant under Exs.P6 to P9 sale deeds, unless the said documents are set aside by a competent Civil Court, the same are valid and binding on the parties.

13.4 That apart, the recitals in Exs.P6 to P9 sale deeds would establish that they are pucca sale deeds executed in favour of Malathy and 3 others without mentioning a single word about the alleged memorandum of understanding dated 15.08.2016 and the alleged loan transaction mentioned in the plaint and affidavit. To establish that the property was settled in favour of the plaintiff, he has also produced Ex.P10, settlement deed dated 09.02.2017, executed by Malathy and 3 others in favour of the plaintiff. He has also produced Ex.P11, Chitta and also other revenue records to establish that he is in possession and enjoyment of the property. As per Exs.P6 to P9 settlement deeds, the possession of the suit property was handed over to the purchasers on the date of the sale deeds itself, i.e., 07.10.2016. Therefore, the defendants cannot set up a case contrary to the recitals found in Exs.P6 to P9 sale deeds.

14. The ratio laid down in the judgments relied upon by the learned senior counsel appearing for the respondent squarely applies to the facts and circumstances of the present case.

15. It is settled position that "possession follows title" and in the case on hand, when the property was sold by the 1st defendant in favour of Malathy and 3 others by four different sale deeds and also there is a recital in the sale deeds to the effect that the possession was handed over by the 1st defendant in favour of the purchasers, on the date of execution of the sale deeds itself, the defendants now cannot take a stand that the plaintiff is not in possession of the property. The respondent-plaintiff had clearly established his title and possession of the suit property. Taking into consideration all these aspects the Trial Court has rightly granted an order of interim injunction.

16. In these circumstances, I do not find any ground to interfere with the fair and decretal order passed by the Trial Court. The Civil Miscellaneous Appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. The II Additional District and Session Judge at Tiruppur is directed to dispose of the suit in O.S.No.51 of

2017, on merits and in accordance with law, within a period of nine months, from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

Rj

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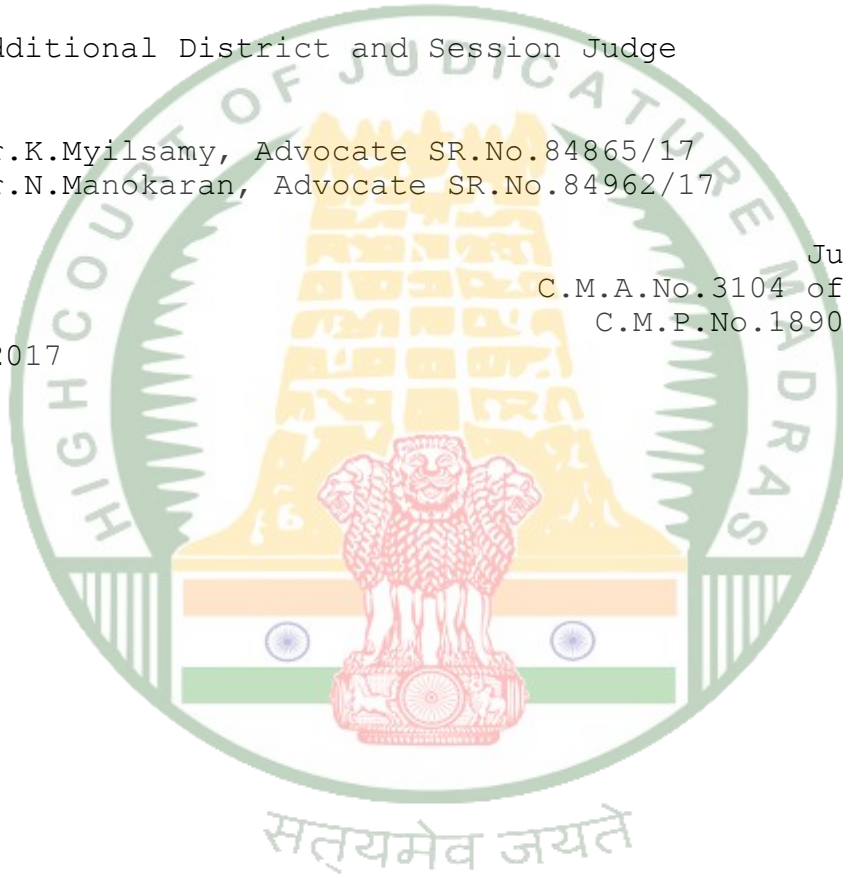
The II Additional District and Session Judge
Tiruppur

+lcc to Mr.K.Myilsamy, Advocate SR.No.84865/17

+lcc to Mr.N.Manokaran, Advocate SR.No.84962/17

Judgment in
C.M.A.No.3104 of 2017 and
C.M.P.No.18907 of 2017

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