

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

Second Appeal No. 893 of 2015
and
M.P. No. 1 of 2015

Shanthi ..Appellant/Plaintiff in O.S/
Appellant

vs.

Subramaniyan ..Respondent/Defendant in O.S/
Respondent

PRAYER : This Second Appeal is filed under Section 100 C.P.C., against the Judgment and decree, dated 20.03.2015 made in A.S.No. 7 of 2014 on the file of Subordinate Judge, Kallakurichi, confirming the Judgment and Decree dated 21.01.2014 made in O.S.No.462/2008 on the file of the III Additional District Munsif Court, Kallakurichi.

For Appellant ... Mr. R. Thanjan

For Respondent ... Mr. K. Rajasekaran

J U D G M E N T

This Second Appeal arises out of the Judgment and decree dated 20.03.2015 made in A.S.No. 7 of 2014 on the file of Subordinate Judge, Kallakurichi, confirming the Judgment and Decree dated 21.01.2014 made in O.S.No.462/2008 on the file of the III Additional District Munsif Court, Kallakurichi.

2. Brief facts of the case is as follows :-

The appellant filed a suit in O.S. No.462 of 2008 before the III Additional District Munsif Court, Kallakurichi, for declaration of the sale deed registered as Document No.3347/2006 as null and void and for the consequential injunction. The suit schedule property is a joint family property, based on the partition on 04.02.1986, the plaintiff's husband Kasi acquired the suit property and who settled the same in favour of his wife, the plaintiff on 23.06.1985. According

to the plaintiff, on 14.04.2005, the defendant and one Nadusami, along with four others came to the house of plaintiff and threatened her to transfer the suit property in favour of the defendant and on 16.04.2005, at the police station, the plaintiff signed the stamp papers, under threat and coercion by the police and the defendant. The plaintiff was asked to come to the Sub Registrar Office on 18.04.2005. However, the plaintiff did not appear before the Sub Registrar, but came to Chennai and issued a legal notice on 20.04.2005. Since the plaintiff did not appear before the Sub Registrar, Kallakurichi, the sale deed was not registered on that date. Hence, the defendant filed an appeal before the District Registrar, Kallakurichi in Appeal No.1/2005. The Deputy Registrar passed an order on 06.12.2006, directing the Sub Registrar to register the documents under the provisions of Section 35(3)(a) and 73 of the Indian Registration Act. Consequently, the sale deed was registered on the file of the Sub Registrar, Kallakurichi as Document No. 3367/2007. According to the plaintiff, the suit was filed and the required court fee was paid, as per the Tamil Nadu Court Fee Act. Challenging the said registration, the plaintiff filed the suit stating that the District Registrar had permitted for registration, without giving any opportunity to the plaintiff and the sale deed has been registered without the presence of the plaintiff.

3. The defendant filed the written statement in the suit, denying the allegations of the plaintiff. It is stated that the plaintiff, after receiving the sale consideration of Rs.1,78,000/- on 14.04.2005, executed the sale deed in the presence of her husband Kasi and one Mr. Nadusamy. The plaintiff promised to register the sale deed on 18.04.2005 but she did not appear before the Sub Registrar on 18.04.2005, instead she issued legal notice on 20.04.2005. Since registration of the said documents was refused by the Sub Registrar, Kallakurichi, the defendant had to file an appeal before the District Registrar in Appeal No.1/2005. After hearing the parties concerned, the Deputy Registrar passed a detailed order on 06.12.2006, directing the Sub Registrar, to register the document under the provisions of the Act. Consequently, the said document was registered vide Document No. 3367 of 2006. According to the defendant, the plaintiff after having received the sale consideration refused to register the sale deed and so after getting suitable orders from the Deputy Registrar, the sale deed was registered. Hence, the defendant prayed for dismissal of the suit.

4. Initially, the trial Court framed certain issues based on the pleadings and later on 21.01.2014, the same were changed as follows, based on the case :-

1. வாதி செலுத்திய நீதிமன்ற கட்டணம் சரியானதா ?
2. வாதி கோரும் பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா ?
3. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன ?

5. During the course of trial, the plaintiff examined herself as P.W.1, along with 3 others as witnesses and marked Exs.A1 to A16. On the side of the defendants, the defendant examined himself as D.W.1, the witness Nadusamy as D.W.2 and marked documents as Exh.B1 to B6. It is the specific case of the plaintiff that her signature on the stamp papers were obtained at the police station, to execute the sale deed in favour of the defendant. It is the further contention of the plaintiff that the signature on the aforesaid document was obtained under pressure and coercion by the defendant. Considering the oral and documentary evidences, the trial court held that there is no evidence to show that the signature of the plaintiff was obtained under threat and coercion. Hence, the suit was decreed against the plaintiff. Challenging the judgement and decree, an appeal was filed in A.S.No. 7 of 2014 before the Subordinate Judge, Kallakurichi.

6. The Appellate Court after formulating necessary points for determination, discussed in detail, considered the contention of both the parties and perused the records. The allegations of the plaintiff/ appellant that the defendant/ respondent has forcibly obtained the signature was rejected by the lower Appellate Court and dismissed the appeal suit. Aggrieved by the judgment and decree issued in favour of the defendant/ respondent, the plaintiff/ appellant has filed the present Second Appeal.

7. Based on the following substantial question of law, the Second Appeal was admitted:

" Whether the Courts below erred in law in dismissing the suit by totally shifting the burden on the plaintiff alone in disproving the subject matter sale deed when admittedly she was not present before the Registering Authority at the time of presenting the document for registration and as to whether such conduct of the plaintiff amounting to denial of execution will shift the burden on the defendant to prove the execution and also the passing of consideration thereunder ?

8. According to the appellant, the defendant/ respondent, along with Nadusamy and muscle-men forcibly got the signature and the District Registrar without properly conducting an enquiry, had directed the Sub Registrar to register the sale

deed. The learned counsel for the defendant/ respondent would submit that in the oral testimony of PW.1, she has stated that DW-2 Nadusamy is a retired teacher and there is no enmity between them. But, in Ex.A4 Lawyer's notice dated 20.04.2005, it is stated that the defendant/ respondent along with Nadusamy had forcibly got the signature. However, in the said notice there is no mention about the incident allegedly happened on 16.04.2005. Therefore, the statement of the plaintiff/ appellant is contradictory in the averment, in the plaint as well as in the notice. In Ex.B1, the original sale deed dated 16.04.2005 marked on the side of the defendant/ respondent, it is admitted that the signatures were obtained in the documents, were fully typed and in the last page, value of the properties were shown. The plaintiff/ appellant also admitted that there is no complaint nor any court proceedings that the alleged sale deed was executed by coercive and under pressure. On perusal of the order passed by the District Registrar, Kallakurichi, marked as Ex.B3, it is clear that opportunities were given to the plaintiff/ appellant, then he had passed a detail order, directing the Sub Registrar to register the sale deed in favour of the defendant/ respondent. In the said order, the contention of the plaintiff/ appellant has been negatived by the Deputy Registrar. Thereafter, the plaintiff/ appellant has filed the suit in O.S. No. 462/2008 seeking to declare the sale deed as null and void, in the year 2008.

9. According to the learned counsel for the appellant/ plaintiff, the burden of proof is only on the side of the defendant/ respondent. Both the courts have held that the plaintiff/ appellant has not proved the allegations made against the defendant/ respondent. The learned counsel for the defendant/ respondent would submit that in the appeal filed by the defendant before the Deputy Registrar, the plaintiff/ appellant has appeared through counsel before the Deputy Registrar and produced all the materials. After considering the contention of both the parties, the Deputy Registrar had passed the detail order and the same has been marked as Ex.B3. The plaintiff/ appellant nowhere had stated in the suit, the above order has been modified or reversed subsequently, by the appellate authority. In the absence of any material, the said order has become final. Therefore, without challenging the said order, the plaintiff/ appellant has made an allegation that without her appearance before the Sub Registrar, the sale deed has been executed, which itself would clearly prove that both the courts have rightly dismissed the suit. Both the courts below have considered the documentary evidences and held that the Ex.B1 was executed on the basis of the payment of total consideration amount to the plaintiff/ appellant. The defendant/ respondent also filed Ex.B6 which shows that the total consideration amount has been paid to the appellant. The

other allegation made by the plaintiff/ appellant, the said document has been executed at a coercive and threatening pressure, but the same has not been established by any oral or documentary evidences, before the courts below. Therefore, the contention of the plaintiff/ appellant was rejected by the trial court as well as the lower Appellate court. Hence, there is no error or illegality in the judgment and decree passed by both the courts. There is no question of law involved in the Second Appeal. Hence, the Second Appeal is liable to be dismissed.

10. Therefore, the Second Appeal fails and the same is dismissed. Consequently, the connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

avr

To

1. The Subordinate Judge,
Kallakurichi.
2. The III Additional District
Munsif Court, Kallakurichi.
3. The Section Officer,
VR Section, High Court,
Madras (2 Copies)

+1cc to Mr.R.Thanjan, Advocate, S.R.No.65218

+1cc to Mr.K.Rajasekaran, Advocate, S.R.No.65256

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and

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