

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017

PRONOUNCED ON : 20.03.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.842 of 2011

and

M.P.No.1 of 2011

K.Vijayan ... Appellant /5th defendant

Vs.

1. Elred Kumar ... 1st Respondent/ Plaintiff

2.Stephen Selvaraj

3.Joy Joseph

4.Parimalam Pushparaj

5.Samuel Sukudan ... Respondent 2 to 5 Respondents/
Defendants 1 to 4

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.04.2011 made in A.S.No.32 of 2010 on the file of the Additional District Judge, Fast Track Court, Chengalpattu, confirming the judgment and decree dated 13.12.2007 made in O.S.No.105 of 2005 on the file of the Principal Sub-Judge, Chengalpattu.

For Appellant : Mr.V.Balasubramanian

For Respondents : Mr.V.Anand
for M/s.B.Ramesh Babu

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JUDGMENT

In this second appeal, the 5th defendant has impugned the judgment and decree dated 19.04.2011 made in A.S.No.32 of 2010 on the file of the Additional District Court (Fast Track), Chengalpattu, confirming the judgment and decree dated 13.12.2007 made in O.S.No.105 of 2005 on the file of the Principal Sub Court, Chengalpattu.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal:

"Whether the judgments and decrees of the Courts below in decreeing the suit laid by the plaintiff are based upon the perverse findings and conclusions and misdirected against the evidence on record and the principles of law pertaining to the case?"

3. The suit has been laid by the plaintiff for specific performance.

4. The specific performance is sought for by the plaintiff from the defendants on the basis of the sale agreement dated 02.02.2002, which has been marked as Ex.A5. It is found that Ex.A5 sale agreement has been entered into between the plaintiff and the first defendant in respect of the "A" schedule property for a sum of Rs.13,50,000/-.

5. It is not in dispute that the "A" schedule property originally belonged to Manickavasagam Pillai, father of the first defendant, by virtue of the sale deed dated 24.06.1950, marked as Ex.A1. It is also not in dispute that the "B" schedule property and the "C" schedule property form part of the "A" schedule property. It is the case of the plaintiff that the first defendant derived title to the "A" schedule property by virtue of the settlement deed dated 12.05.1980 marked as Ex.A2 executed by his father Manickavasagam Pillai. A perusal of Ex.A2 would go to show that under the same, Manickavasagam Pillai had retained the power of mortgaging the property to an extent of Rs.15,000/- for carrying out improvements in respect of the suit property and also retained the life interest to him and his wife and also, thereafter given the absolute interest in respect of the suit "A" schedule property in favour of the first defendant. It is also found that no power of revocation or alienation was retained by Manickavasagam Pillai under Ex.A2. It is also found that the recitals are incorporated in Ex.A2, as to why Manickavasagam Pillai had settled the "A" schedule property in favour of his son, namely, the first defendant excluding his daughters and another son. Now, according to the plaintiff, the first defendant had accepted the settlement deed Ex.A2 and after the demise of his parents, it is stated that the first defendant had acquired absolute right and owner ship over the "A" schedule property and accordingly, pursuant to the same, he had entered into Ex.A5 sale agreement with the plaintiff in respect of the "A" schedule property. It is also found and not disputed that on 08.02.2002, the first defendant had alienated the "B" schedule property forming part of the "A" schedule property in favour of the plaintiff, which has been

marked as Ex.A6. Therefore, it could be seen that the sale agreement marked as Ex.A5 has been put into action and according to the recitals in the sale deed, it could be seen that the first defendant had conveyed the "B" schedule property under Ex.A6 in favour of the plaintiff. According to the plaintiff, inasmuch as certain difficulties had been expressed by the first defendant in respect of the alienation of the entire "A" schedule property i.e. the "C" schedule property, the same got postponed and it is the further the case of the plaintiff that even after the above said promise, inasmuch as the defendants evaded the execution of the sale deed in full, in respect of the "A" schedule property, according to him, he has been necessitated to lay the suit for specific performance.

6. In this case, it is only the 5th defendant, who claim to be a bonafide purchaser of the "C" schedule property, who is contesting the claim of the plaintiff. It is found that the other defendants have remained ex parte. The 5th defendant is resisting the case of the plaintiff on the footing that he had purchased the "C" schedule property from the daughters of Manickavasagam Pillai under Exs.A10 to 12. It is the further the case of the 5th defendant that the daughters of Manickavasagam Pillai had purchased the "C" schedule property under the three sale deeds, the copy of which, have been marked as Exs.A7 to A9. Thus, according to the 5th defendant, the settlement deed marked as Ex.A2 had been accepted by the first defendant only, as regards the "B" schedule property and as regards the "C" schedule property. it is his case that the same had been conveyed by Manickavasagam Pillai in favour of his daughters under Exs.A7 to 9. However, as adverted to earlier, the reasons have been given by Manickavasagam Pillai, as to why he had not settled the "A" schedule property in favour of his daughters and another son and settled only in favour of the first defendant. To obviate the legal hurdle projected under Ex.A2, it is contended by the 5th defendant that Ex.A2 is not a settlement deed, but it is only a Will executed by Manickavasagam Pillai and as such by the conveyance of the "C" schedule property in favour of his daughters under Exs.A7 to A9 Manickavasagam Pillai had canceled the settlement deed i.e. the Will as regards the "C" schedule property and therefore, it is stated that he had become the owner of the "C" schedule property by virtue of the sale deeds under A10 to A12.

7. The Courts below have, on the appreciation of the evidence adduced in the matter has rightly found that Ex.A2 settlement deed is irrevocable one and the same had been accepted in its entirety by the first defendant and therefore, Manickavasagam Pillai had not retained the power of alienation or the power of revocation in respect of the same and having settled the entire "A" schedule property in favour of the first

defendant, Manickavasagam Pillai had no right to cancel the same unilaterally and in such view of the matter, the Courts below have found that even assuming that Manickavasagam Pillai had conveyed the "C" schedule property to his daughters under Exs.A7 to A9, the same would not convey a valid title in favour of his daughters in respect of the "C" schedule property as at that point of time, Manickavasagam Pillai had no legal right to convey the same in favour of his daughters.

8. The reasons and conclusions of the Courts below in not accepting Exs.A7 to Ex.A9 cannot be fault with in any manner. That apart, it is also noted that the original of Exs.A7 to A9 have not been produced. No reason has been given by the defendants for the same. When the plaintiff is contesting the authenticity of Exs.A7 to A9, it is incumbent upon the 5th defendant to establish the genuineness of Exs.A7 to 9, either by producing the original sale deeds or by examining the attestors to the same or at least by examining his vendors. However, not moving his little finger with reference to the same, it is found that the 5th defendant has not endeavored to prove the genuineness of Exs.A7 to A9, which, as rightly found by the Courts below, create a doubt in the genuineness of Exs.A7 to A9. Ex.A2 settlement deed is a registered document. That apart, it is also found that the 5th defendant was a tenant under Manickavasagam Pillai. In such view of the matter, the 5th defendant cannot feign ignorance about the settlement deed under Ex.A2. In such view of the matter, when Manickavasagam Pillai has not been established to be owing any legal right over the "C" schedule property on the date of Exs.A7 to A9 and further, when the authenticity of Exs.A7 to A9 have also not been established by the 5th defendant and when it is found that the 5th defendant would have been aware of the settlement deed Ex.A2 and further, when it has not been established by the 5th defendant that the daughters of Manickavasagam Pillai had the legal right to convey the "C" schedule property in favour of the 5th defendant under Exs.A10 to 12, it could be seen that the claim of the 5th defendant that he is a bonafide purchaser of the "C" schedule property as such cannot be accepted in any manner. The findings and conclusions of the Courts below with reference to the same do not call for any interference in any manner.

9. In support of his defence, it is found that the 5th defendant has relied upon the decree copy passed in O.S.No.15443/96 marked as Ex.B2 and the plaint copy in O.S.No.578/97 marked as Ex.B3 and the certified copy of the written statement in O.S.No.581/1997 marked as Ex.B10. With reference to the same, it is found that the Courts below have rightly rejected the above said documents and found that they have not reflected the true picture about the genuineness of the

defence version. The Courts below have rightly noted that the 5th defendant has failed to establish as to on what basis, he had laid the suit in the City Civil Court with reference to the property situated at Tambaram in O.S.No.15443/96. Further, it is also found by the Courts below that the 5th defendant has even not established that the defendant in the above said suit had been duly served. Further, as regards Exs.B3 and B10, the Courts below have noted that the particulars of the children of Manickavasagam pillai are given wrongly and in such view of the matter, rightly disbelieved Exs.B3 and 10 filed in support of the defence version. Nothing has been projected to take a contrary view to the findings and conclusion of the Courts below as regards Exs.B2, B3 and B10.

10. The 5th defendant has also taken the plea of limitation. However, as rightly found by the Courts below, considering the payment of the sale consideration by the plaintiff and also the last payment of Rs.50,000/- on 10.06.2002, in the light of the Article 54 of the Indian Limitation Act, 1963, it is found that the plaintiff has laid the suit well within the period of limitation. Accordingly, it is seen that the Courts below have rightly found that the suit is not barred by limitation. No exception could be taken to the findings of the Courts below as regards the question of limitation put forth by the 5th defendant.

11. The counsel for the 5th defendant also put forth the contention that the plaintiff has not established his readiness and willingness to complete the sale transaction. However, as seen from the evidence adduced in the matter, it is found that the plaintiff has always been ready and willing to perform his part of the contract and also parted with major part of the sale consideration. That apart, as adverted to earlier, in continuation of the sale agreement, the sale in respect of the "B" schedule property has been completed and only the completion of the sale deed remains as regards the "C" schedule property. It is also found that the plaintiff has paid the amount towards the sale consideration and also, as found by the Courts below, when the parties to the sale agreement had not questioned the readiness and willingness on the part of the plaintiff in completing sale transaction, the 5th defendant, who has not even established himself to be a bona fide purchaser, as rightly found by the Courts below, is has disentitled to raise the said plea. In any event, as rightly found by the Courts below, the plaintiff has established his readiness and willingness to complete the sale transaction right from the inception and the conclusion of the Courts below with reference to the same do not call for any interference.

12. The counsel for the 5th defendant also put forth the contention that the suit laid by the plaintiff for relief of

specific performance without seeking the relief of the cancellation of the sale deed in his favour is not maintainable. However, as seen from the above discussions, it has not been established by the 5th defendant that he is a bona fide purchaser as regards "C" schedule property. It is also found that the 5th defendant is aware of the settlement deed marked as Ex.A2. Though the 5th defendant has claimed to have verified the encumbrance certificate, for the reason best known to him, he had not produced the encumbrance certificate seen by him. Further, as adverted to earlier, the 5th defendant has been a tenant under Manickavasagam Pillai. Therefore, it is found that he would have been aware of the family affairs of Manickavasagam Pillai as determined by the Courts below. That apart, it has not been established by the 5th defendant that he had purchased the "C" schedule property from the lawful owners. In such view of the matter, it is not necessary and incumbent upon the plaintiff to seek the cancellation of the sale deed in favour of the 5th defendant for claiming the relief of specific performance.

13. In the light of the above discussions, it is found that the Courts below have properly appreciated the evidence on record in the correct manner and also applying the correct principles of law pertaining to the case and also giving proper conclusions and findings, rejected the defence put forth by the 5th defendant and accordingly, decreed the suit in favour of the plaintiff. In such view of the matter, the substantial question of law formulated for consideration in this second appeal is answered in favour of the plaintiff and against the 5th defendant/appellant.

14. In support of his case, the appellant's counsel relied upon the decisions reported in 2011 (4) CTC 640 (Saradamani Kandappan V. S.Rajalakshmi & Ors), (1996) 8 Supreme Court Cases 365 (D.S.Thimmappa V. Siddaramakka), (2007) 15 Supreme Court Cases 174 (Janardhanam Prasad V.Ramdas), 1999 (1) MLJ 726 (Susila V. Rajagopala Pathar (died) and others), AIR 1997 Supreme Court 772 (T.L.Muddukrishna and another V.Smt.Lalitha Ramchandra Rao), 2007 (1) CTC 449 (Jayalakshmi Ammal and 8 others V.Chinnasamy Gounder), 2001 (1) CTC 520 (P.S.Deivaprasad @ P.S.Veerabadran V. Dr.P.D.Balaji and eleven others), (2002) 3 Supreme Court Cases 316 (V.Muthusami (dead) by Lrs. V. Angammal and others), (2015) 2 MLJ 698 (Sellayi (deceased) and others V.Valliammal @ Pappu and others), 90-L.W.430 (Ramaswami Naidu and another V.Gopalakrishna Naidu and others), (2001) M.L.J (Supp.) 675 (P.Retnasamy V.A.Raja Venkata Subramanian), (2008) 3 MLJ 796 (P.Sampoornam and others V.L.T.Somasundaram and others Vs. L.T.Somasundaram and others) & 1959 (11) MLJ 225 (Muppudathi Pillai V.Krishnaswami Pillai and others) and in support of his contentions, the respondents' counsel relied upon the decisions

reported in 2004-3-L.W.346 (K.Balakrishnan Vs. K.Kamalam & Ors), 2015-2-L.W.163 (B.K.Rangachari & others V. L.V.Mohan) and the judgment of the Hon'ble Supreme Court dated 15.03.2010 passed in Civil Appeal No.6412 of 2002. The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

In conclusion, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Additional District Court, (Fast Track)
Chengalpattu.
2. The Principal Sub Court,
Chengalpattu.

+1cc to Mr.V.Balasubramanian, Advocate SR.No.16966

+2cc to Mr.B.Ramesh Babu, Advocate SR.No.17136

S. A.No.842 of 2011
and
M.P.No.1 of 2011

KS (CO)
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