IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2017

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

C.S.No.922 of 2009

Kural Vendhan Natchatra Mary @ K.N.Mary ... Plaintiff

Vs

1.Gunalan

2.Shobana Gunalan

3.The Sub Registrar,
Adyar,
Chennai-20. ... Defendants

Plaint filed under Order VI Rule 1 of Original Side Rules of Madras High Court and Order VII Rule 1 of C.P.C. praying for Judgment and decree in favour of the plaintiff against the defendants ;

[a] for cancellation of the Sale Deed dated 06.03.2009 bearing document No.380 of 2009 on the file of the Sub Registrar, Adyar executed by the plaintiff in favour of Shobana Gunalan, the 2nd defendant as null and void and not binding on the plaintiff;

[b] consequent permanent injunction restraining the 1st and 2nd defendants, their men, agents, servants and any other persons acting on their behalf from preventing the plaintiff or her representatives, relatives or her authorised persons from entering the suit property as joint owner thereof till the disposal of the suit;

[c] consequent mandatory injunction directing the 3rd defendant/The Sub Registrar, Adyar to cancel the said Sale Deed dated 06.03.2009 bearing document No.380 of 2009 on the file of the Sub Registrar, Adyar executed by the plaintiff in favour of Shobana Gunalan, the 2nd defendant ; and

[d] for costs of the suit.

For Plaintiff : Mr.Amizhdhu
For Defendants : Mr.C.Uma Shankar for D1, D2

J U D G M E N T

This suit has been filed seeking for a declaration that the Sale Deed dated 06.03.2009 as null and void and for consequential permanent injunction restraining the defendants 1 and 2 from making any improvement and also from preventing the plaintiff from entering the suit property as joint owner and also for mandatory injunction to the 3rd defendant to cancel the said Sale Deed.

2. The plaint averments are as follows:

The plaintiff got married to Kural Vendhan in the year 1973. Kural Vendhan has got three brothers, namely, Dr.Tamilarasu, Anbalan and Gunalan. Younger brother Gunalan is the 1st defendant and his daughter is the 2nd defendant. The suit property in Adyar was purchased under the Sale Deed dated 10.03.1982 in the name of the wives of the three brothers including the plaintiff. Therefore, the plaintiff is entitled to 1/3rd undivided share in the suit property. Plaintiff's husband Kural Vendhan passed away on 04.12.1997. The plaintiff is living separately in Trichy. She has been getting share in the rental income of the property through her elder brother-in-law Dr.Tamilarasu.

3. While so, in the month of February 2009, the 1st defendant and his wife Vasundhara Gunalan met the plaintiff in Trichy. The 1st defendant represented that the plaintiff's late husband had a Fixed Deposit for Rs.10,00,000/- in his name at Colombo and since the plaintiff is the sole legal heir, only she can claim the said amount. He further represented that in order to receive the amount, she has to give an unregistered Power of Attorney in his name. The plaintiff came to Chennai on 27.02.2009 to sign the unregistered Power of Attorney as requested by the 1st defendant. The 1st defendant got the signature of the plaintiff on a readily typed and prepared document, drafted in English, which is said to be the unregistered Power of Attorney. The plaintiff also signed the same, believing that the power deed is only for the purpose of claiming Rs.10,00,000/- Fixed Deposit.

4. In the first week of March 2009, the 1st defendant called the plaintiff and asked her to come to Chennai to give a new Power of Attorney in the name of his daughter and also to receive the available fund. The plaintiff came to Chennai and on her arrival, she was called to the Sub Registrar Office at Adyar on 06.03.2009. The 1st defendant handed over a sum of Rs.5,00,000/- to the

plaintiff. Esther Roche, who accompanied the plaintiff was asked to count the cash. While she was counting the cash, the signatures of the plaintiff was obtained in the documents and the plaintiff believing that the document is only power deed, signed on it. On 27.03.2009 at the instructions of the 1st defendant, the plaintiff came to Chennai and received a sum of Rs.2,00,000/- in cash and Rs.3,00,000/- through a bearer cheque.

5. In the meantime, through Dr.Tamilarasu, the elder brother of the 1st defendant, the plaintiff came to know that the 1st defendant and his family members have played a fraud on the plaintiff, taking advantage of her innocence and ignorance and betraying the trust she had on the 1st defendant's family members, the 1st and 2nd defendant and their family members cheated the plaintiff by getting her signature on the Sale Deed and getting it registered at the Sub Registrar Office, Adyar by fraudulent and deceitful means, without the consent of the plaintiff.

6. Having come to know that Power Deed has been obtained with respect to Triplicance property also, the plaintiff caused a letter dated 25.03.2009 to cancel the unregistered Power of Attorney dated 27.02.2009. The 1st defendant sent a reply dated 30.03.2009 with false allegations. The suit property is in prime location and the value of the property is in crores. However, the Sale

Deed was executed for a sum of Rs.26,00,000/-. The plaintiff appealed the 1st defendant to cancel the Sale Deed, but he never responded. Therefore, the present suit has been filed.

7. The averments in the written statement filed by the defendants 1 and 2 are as follows :

The suit is not maintainable both in law as well as on facts and there is no cause of action for the present suit. The plaintiff is put to strict proof that she has not received the entire sale consideration. Her elders wished if marriage is performed to Kural Vendhan, who did not have worldly knowledge, he may change and could know about the world knowledge. Therefore, Kural Vendhan got married to the plaintiff, who hailed from very poor family from Pudukottai District. Even after the marriage, there was no improvement in the health of Kural Vendhan. The plaintiff left the matrimonial home in 1990. After that, her husband Kural Vendhan was taken care of by the 1st defendant. Kural Vendhan got further depressed and finally he passed away in the year 1997. When the 1st defendant went to Trichy to attend a family function, he saw the plaintiff, who was not only dejected, but totally in a bad condition.

8. The defendants deny the allegation that the 1st defendant represented to the plaintiff that there was a Fixed Deposit of Rs.10,00,000/- in the name of

the plaintiff's husband. The Power of Attorney executed by the plaintiff to get the properties from Dr.Tamilarasu was also subsequently, cancelled and the said Power of Attorney was never acted upon. The entire story of the plaintiff that she was paid Rs.5,00,000/- by the 1st defendant from the alleged Fixed Deposit of Rs.10,00,000/- and the plaintiff signed the documents are all false. The plaintiff had executed the Sale Deed on 06.03.2009, after receiving the sale consideration along with her brother's daughter, who is a Law Officer in a Multi National Company. The present suit is nothing, but blackmailing these defendants to extract more money from the defendants. Entire sale consideration was paid by cash, except Rs.3,00,000/- by cheque. There is no fraud play on the plaintiff.

9. The plaintiff requested the 1st defendant to help her in retrieving the properties of her husband from Dr.Tamilarasu. The 1st defendant took pity on her, went to the house of his eldest brother to get the documents of Vallalar flats and also the rental income. Dr.Tamilarasu stated that the suit property is standing in the name of three persons and not only on the plaintiff and hence, he cannot part with the documents and further, tenant by name Adyar Cabs is occupying the said property. When this was intimated to the plaintiff, she executed an unregistered Power of Attorney on 27.02.2009. The 1st defendant had retrieved the documents of the flats to her from the hands of Dr.Tamilarasu.

The plaintiff insisted that she cannot fight with Dr.Tamilarasu and she cannot sell it to any person against his wish. Therefore, the plaintiff wanted to sell her 1/3rd share in the suit property to the 1st defendant. At that time, the 1st defendant did not wish to purchase the same, but to help the plaintiff and also not to let the suit property go into the hands of the strangers, he decided to purchase on his daughter's name, the 2nd defendant. The sale consideration was fixed at Rs.26,00,000/- after discussion, which is to be paid in cash. She did not have any trusted people to go to bank.

10. On 06.03.2009, the plaintiff executed a Sale Deed, after receipt of the sale consideration and her brother's daughter Esther Roche signed as a witness. Pursuant to the Sale Deed, the other co-owners had a detailed discussion and the 1st defendant was given permission to deal with the tenant, namely, Adyar Cabs and he had talks with them and they vacated the place. After this, all the co-owners including the 2nd defendant, sold the property to a third party to one M/s.Veerakumar and Gomathy. Therefore, the suit is liable to be dismissed.

11. Upon perusal of the pleadings and other materials on record, the following issues are framed for consideration :

i. Whether the plaintiff had executed and registered the Sale Deed dated 06.03.2009 in document No.380 of 2009 at SRO, Adyar after receiving the entire sale consideration ?

ii. Whether the defendants 1 & 2 had paid the entire sale consideration of Rs.26 lakhs to the plaintiff ?

iii. Whether the plaintiff can seek for cancellation of sale executed the same in a manner known to law ?

iv. Whether the suit as framed by the plaintiff is maintainable by law ?

v. To what relief the plaintiff is entitled to ?

12. On the side of the plaintiff, one witness has been examined and eight documents have been marked. On the side of the defendants, two witnesses have been examined and Exs.D1 to D7 were marked. Apart from this, the witness to the documents, Esther Roche has been examined as CW1.

13. Issue Nos.1 and 2 : There is no dispute that the plaintiff got married to one Kural Vendhan in 1973 and she left the matrimonial home in 1990. The said Kural Vendhan also passed away in 1997. He has got three brothers, namely, Dr.Tamilarasu, Anbalan and Gunalan-the 1st defendant. The suit property was purchased in the name of the wives of three brothers Tamilarasu, Kural Vendhan and Anbalan including the plaintiff, under the Sale Deed dated 10.03.1982. Therefore, the plaintiff along with Mangayarkarasi, W/o.Tamilarasu and Celine Sagaya Mary, W/o.Anbalan are the owners of the property and the plaintiff has got 1/3rd undivided share in the suit property.

14. This suit has been filed seeking to set aside the Sale Deed executed on 06.03.2009 alleging fraud and misrepresentation. The consistent case of the plaintiff is that D1 misrepresented, as if the husband of the plaintiff has got a Fixed Deposit of Rs.10,00,000/- in Colombo and to receive that amount, he got signature in a Power Deed already kept ready. Further contention is that the signature of the plaintiff was obtained in the Sub Registrar Office, Adyar saying that the document is a Power Deed in favour of the 2nd defendant, only to receive the Fixed Deposit amount.

15. The case of the defendants is that D1 got retrieved the documents from his eldest brother Dr.Tamilarasu, taking pity on the plaintiff. The plaintiff executed the Sale Deed in favour of D2, after receiving the entire sale consideration.

16. Learned counsel for the defendants brought to the notice of this Court, the Judgment of the Hon'ble Division Bench of this Court in *K.Kanakarathnam Vs A.Perumal and another* reported in *AIR 1994 MADRAS 247* and contended that necessary material facts should be pleaded as to the fraud and misrepresentation and the evidence, in the absence of pleadings should not be considered. In this ruling, it is held as follows :

> *"...Though the words "fraud", "illegality" and " void and unenforceable" are used in the above said extracted passage,*

absolutely no particulars thereof have been given at all in the written statement. Order 6, Rule 4 C.P.C., says.

" In all cases in which the party pleading relies on any misrepresentation, fraud breach of trust, wilful default, or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading".

It is settled law that as per this rule, necessary and material facts should be pleaded in support of the case set up and that in the absence of pleadings, evidence if any produced cannot be considered. The object of the rule is that in order to have a fair trial it is imperative that the party should state the essential material facts so that the other party may not be taken by surprise. No doubt, the learned counsel for the defendant argued that the pleadings should receive liberal construction and that if the parties knew the case and proceeded to trial on a certain issue by producing evidence, it would not be open to the other party to raise a question of absence of pleadings in appeal. But we do not think such a liberal construction is warranted in this case."

17. As per Order 6 Rule 4 of C.P.C., necessary material particulars with dates as to the fraud is necessarily to be pleaded and in support of the same, evidence should be adduced. Though the plaintiff avers that she gave Power Deed only to receive Rs.10,00,000/- which is in Fixed Deposit in her husband's

name, details of the deposits with dates has not been given in the pleadings. Even if the pleadings is taken as it is, there is absolutely no material to show that there was any fixed deposit in the name of Kural Vendhan. It is pertinent to note that in the letter issued by the plaintiff cancelling the unregistered Power Deed, which is marked as Ex.P4, the plaintiff has not whispered that the same was given only to receive the fixed deposit amount.

18. Ex.P4 is the letter issued by the plaintiff on 25.03.2009, cancelling the unregistered Power Deed executed by the plaintiff in favour of the 1st defendant dated 27.02.2009. After cancelling the Power Deed, the plaintiff herself admits that she received Rs.5,00,000/- viz., Rs.2,00,000/- by cash and Rs.3,00,000/- by way of cheque on 27.03.2009. Had the unregistered Power Deed dated 27.02.2009 been intended for receipt of fixed deposit Rs.10,00,000/-, what prompted the plaintiff to receive Rs.5,00,000/- within two days from the cancellation of the said Power Deed ? Therefore, the contention of the plaintiff that she executed the unregistered Power Deed on 27.02.2009 on the misrepresentation of D1 for receipt of the fixed deposit in her husband's name is not acceptable.

19. The case of the plaintiff is that she signed the sale deed in the Sub Registrar Office, Adyar, believing the representation of D1 that it is only a Power

Deed in favour of D2 to receive the fixed deposit amount in Colombo, is also not acceptable for the following reasons :

i. The plaintiff sent a letter dated 25.03.2009 to D1, cancelling the unregistered Power Deed executed by her on 27.02.2009. The plaintiff also admits in her evidence that Ex.P4 was prepared only on her instructions.

ii. Immediately on 30.03.2009, the 1st defendant sent a reply to the plaintiff which is marked as Ex.P5. It has been stated that unregistered Power Deed has never been acted upon and as per the Sale Deed executed by her on 06.03.2009, she conveyed her 1/3rd share in the suit property to the 2nd defendant. It is also stated that the original Power of Attorney duly cancelled has also been enclosed. After the said reply, the plaintiff wrote a letter dated 15.04.2009 to one Rajendran, who is the father-in-law of the 2nd defendant. The same is marked as Ex.D3 without any objection on the other side. In this letter, she has categorically stated that Sale Deed dated 06.03.2009 was executed by giving only Rs.10,00,000/- as advance and the balance sale consideration of Rs.1Crore is yet to be paid. Thus, after execution of the Sale Deed on 06.03.2009, the plaintiff made more than one communication and she has not whispered that the document executed on 06.03.2009 was intended only to receive the fixed deposit amount in her husband's name.

iii. Ex.D6 Series are affidavits and receipt executed by the plaintiff on 27.03.2009. The affidavits are signed by the plaintiff relinquishing the plaintiff's claim in the suit property by recognising the rights of other co-sharers, namely, Mangayarkarasi and Celine Sagaya Mary. The receipt has been given by the plaintiff for having received the Sale Deed in document No.1534 of 1986 from Dr.Tamilarasu. The above affidavits and receipt establish that document has been received from Dr.Tamilarasu and after execution of the Sale Deed, the plaintiff also relinquished her right by giving affidavits to other sharers of the property.

iv. In the Sale Deed dated 06.03.2009, which is marked as Ex.P3 and in the above mentioned affidavits Ex.D6 Series, one Esther Roche signed as a witness. She is admittedly related to the plaintiff. The above said Esther Roche was examined as C.W.1. She deposed in her evidence that she signed as a witness in the Sale Deed and Ex.D6 Series affidavits. She is admittedly a law graduate and working as Operation Officer in Bank of Baroda, Chennai. So, in the presence of the plaintiff's relative, who is also a law graduate, Sale Deed got executed.

v. No doubt material particulars as to the date relating misrepresentation, fraud and connected particulars have also not been furnished in the pleadings as per the settled proportion of law already mentioned.

20. Another contention of the plaintiff is that the entire sale consideration has not been paid and only Rs.10,00,000/- was paid. In the Sale Deed Ex.P3, there is recital to the effect that entire sale consideration was received. The oral evidence contrary to the recitals in the document is not acceptable. Even if there is any arrear in the sale consideration, as rightly pointed by the learned counsel for the defendants 1 and 2, the plaintiff has to get redressal by way of filing a separate suit for recovery of the balance sale consideration.

21. Learned counsel for the defendants 1 and 2 cited the judgment of this Court in *Raveendran Nair Vs Thankam* reported in *1999-3-Law Weekly 162*. In this judgment, it has been held as follows :

> *"We cannot ignore the fact that the sale deed clearly recited that the consideration had been paid. It is settled law that payment of the price is not necessarily a* sine qua non *to the completion of the sale. This follows from the words of Sec.54 of the Transfer of Property Act. If the price is not paid, the seller on that account cannot repudiate the sale and his only remedy is to sue for the price or the balance of the price unpaid. Even if consideration under the registered sale deed is not paid, still the purchaser gets title. Only remedy of the vendor is to claim consideration, and of course, he will have a right of lien over the property sold for the sale consideration or the balance of sale consideration as the case may be."*

22. Therefore, the plaintiff cannot claim to set aside the Sale Deed on the ground that consideration has not been passed. The 1st defendant examined as D.W.1 has categorically deposed that the plaintiff executed the Sale Deed on 06.03.2009. The plaintiff as P.W.1 admits her signature in the Sale Deed. C.W.1-the witness to the document has also deposed that she saw the plaintiff signing in the Sale Deed. Thus, execution of the Sale Deed has been proved. As per the recital of the Sale Deed, payment of sale consideration of Rs.26,00,000/- has been proved.

23. For the aforesaid reasons, Issue Nos.1 and 2 are answered in favour of the defendants 1 and 2.

24. Issue No.3 : In the light of the decision for Issue Nos.1 and 2, this Court holds that the plaintiff is not entitled to seek for cancellation of Sale Deed dated 06.03.2009 and Issue No.3 is answered accordingly.

25. Issue No.4 : This Court does not find any error in framing of the suit by the plaintiff on the basis of the allegations made in the plaint. Therefore, Issue No.4 is answered accordingly.

25. Issue No.5 : In the result, the suit is dismissed. No costs.

22.03.2017

Index : Yes/No
Speaking/Non-speaking order
gya

P.KALAIYARASAN, J.

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