

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.02.2017

PRONOUNCED ON: 02.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.858 of 2010

Saifuddin

Plaintiff

Vs

1. A.M.A.Rawoof

2. John Raja

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC for the reliefs as stated therein.

For Plaintiff : Mr.G.Saravanan

For Defendants : Mr.P.Amarnath-D1
D2-Set exparte

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the Defendants:-

- (a) for declaration that the agreement dated 10.5.2008, entered into between the Plaintiff and the 1st Defendant, is null and void and not binding on the Plaintiff.
- (b) directing the Defendants to quit and deliver vacant possession of the suit property after the 1st Defendant receiving Rs.2,50,000/- from the Plaintiff.
- (c) directing each of the Defendants to pay damages at the rate of Rs.2500/- per month from the date of the plaint till the date of delivery of possession by the Defendants in favour of the

Plaintiff.

(d) for costs of the suit.

2. The Plaintiff is the owner of the property, bearing Door No.54/3, GNT Road, Erukkencherry, Chennai-118 to an extent of 836 sq.ft. In the year 1999, he had met with a major accident and borrowed a hand loan of Rs.1,00,000/- from the 1st Defendant for medical expenses and on request of the 1st Defendant, had handed over possession of the property. The 2nd Defendant, without the knowledge and consent of the Plaintiff, had inducted the 2nd Defendant as a tenant and had been collecting monthly rent from the 2nd Defendant. It had been stated in the plaint that the Plaintiff had made the amount ready, but the 1st Defendant was avoiding receipt of the amount and consequently, a lawyer's notice dated 11.4.2008 was issued to the Defendants and another tenant to vacate the property after receipt of Rs.1 lakh by the 1st Defendant or to attorn the tenancy in favour of the Plaintiff. The Defendants did not reply to the said notice. On 21.4.2008, the 1st Defendant had threatened the Plaintiff, leading to a police complaint against the 1st Defendant. On 10.5.2008, at the Police Station, the Plaintiff's signature was obtained in various papers written in Tamil. The Plaintiff has stated that he does not know to read or write Tamil. The Plaintiff subsequently came to know that in the paper it was written that the 1st Defendant would hand over possession after receiving Rs.2,50,000/- as against Rs.1 lakh borrowed by the Plaintiff with interest within five months.

3. It had been further stated that when the Plaintiff had approached the 1st Defendant in the first Week of October 2008 with the amount, the 1st Defendant had sought some more time to vacate the 2nd Defendant. However, the Defendants did not vacate the property. Thereafter, when the Plaintiff approached the Defendants, the 1st Defendant had informed the Plaintiff that he should pay a sum of Rs.18.50 lakhs for vacating the property. When enquired, the 1st Defendant showed a xerox copy of the agreement entered into between the 1st Defendant and the Plaintiff. It was only then that the Plaintiff came to know that it had been stated in the paper which he signed that the Plaintiff had agreed to sell the suit property for Rs.30 lakhs and had received an advance of Rs.21 lakhs and has to return Rs.18.50 lakhs to the 1st Defendant, if the transaction is not completed. The Plaintiff specifically had denied execution of such agreement and stated that he is willing to pay a sum of Rs.2,50,000/- towards the loan of Rs.1 lakhs borrowed by him. He thereafter issued another lawyer's notice dated 28.11.2008, for which the 1st Defendant had sent a reply on 24.12.2008. The 2nd Defendant did not receive the notice. However, he filed OS.No.12226 of 2009 on the file of the 11th Assistant Judge, City Civil Court, Chennai, seeking permanent injunction restraining the Plaintiff from evicting him except under due process of law. The suit was dismissed on 5.8.2010. The Plaintiff had, therefore, filed this suit for declaration that the agreement dated 10.5.2008 is null and void on the ground that it was obtained under threat and coercion and by playing fraud. Since the Defendants are in illegal occupation of the suit property, the Plaintiff has also sought damages for

use and occupation at the rate of Rs.2500/- per month and also for costs of the suit.

4. In the written statement filed by the 1st Defendant, the ownership of the Plaintiff to the property bearing Door No.54/3, GNT Road, Erukkenchery, Chennai-118, has been accepted. However, the claim of the Plaintiff that he had borrowed a sum of Rs.1 lakhs during 1999 was denied. It had been stated that in 1999, the Plaintiff agreed to sell the suit property for a sum of Rs.9 lakhs and the 1st Defendant had paid the entire consideration and was put in possession. It had been stated that the 1st Defendant was residing in the first floor and was using the ground floor for business purposes. The Plaintiff did not come forward to execute the sale deed. It had been further stated that after a few years, the Plaintiff, stating that the real estate price had increased, had entered into a fresh agreement of sale on 10.5.2008 for a total sale consideration of Rs.30 lakhs. The 1st Defendant has paid a sum of Rs.21 lakhs, which included the amount already paid to him. The 1st Defendant had to pay balance of Rs.9 lakhs alone. The claim of the Plaintiff that the signature was forcibly obtained in various papers on 10.5.2008 in the presence of Inspector of Police, Madhavaram Police Station and the papers were used to prepare the agreement of sale had been denied by the 1st Defendant. The 1st Defendant had sent a letter dated 1.9.2008, expressing readiness and willingness to purchase the property. On the other hand, the Plaintiff had issued a notice dated 28.11.2008, denying knowledge of the agreement dated 10.5.2008. The 1st Defendant had sent a reply dated 24.12.2008. This Defendant denied that he demanded payment of

Rs.18.50 lakhs to opt out of the sale agreement. The Defendant had further stated that he had purchased the adjacent property belonging to the brother of the Plaintiff. It was the Plaintiff who has postponed the sale. This Defendant had stated that the Plaintiff should be dismissed.

5. The 2nd Defendant was set *exparte* on 5.7.2011 by this court for non filing of the written statement. On the basis of the pleadings of the parties, by order dated 12.08.2011, the following issues were framed:-

1. Whether the agreement dated 10.05.2008 was obtained by the 1st Defendant using threat and coercion and by playing fraud on the Plaintiff?
2. Whether the Plaintiff is entitled to a declaration that the agreement dated 10.05.2008 is null and void and not binding upon the Plaintiff?
3. Whether the Plaintiff is entitled to recover vacant possession of the suit property on payment of a sum of Rs.2,50,000/- to the 1st Defendant?
4. Whether the Plaintiff is entitled to recover damages from the Defendants for use and occupation at the rate of Rs.2500/- per month or at such other rates from the date of plaint till the date of delivery of possession?
5. To what relief the Plaintiff is entitled to?

6. It is also pointed out that the 1st Defendant had also filed a counter claim in A.No.1930 of 2012, seeking the relief of specific performance of the agreement of sale dated 10.5.2008. This court had heard the said application on merits and finally, by order dated 30.7.2014, had dismissed the said application.

7. During the trial, the Plaintiff examined himself as PW.1 and marked Ex.P1 to Ex.P6. Ex.P1 is the copy of the Document No.3346 of 1994,

by which the Plaintiff had obtained title to the suit property. Ex.P2 is the advocate notice dated 11.4.2008 issued on behalf of the Plaintiff. Ex.P3 dated 10.5.2008 is the xerox copy of the agreement of sale. Ex.P4 dated 28.11.2008 is the copy of the advocate notice and Ex.P5 is the returned cover of the notice issued to the 2nd Defendant. Ex.P6 is the reply given by the 1st Defendant dated 24.12.2008. The 1st Defendant had examined himself as DW.1 and one T.V.Balasubramanian as DW.1 since he was a witness to the agreement of sale dated 10.5.2008 and marked Ex.D1 to Ex.D4. Ex.D1 is the original of the agreement of sale dated 10.5.2008 and Ex.D2 dated 1.9.2008 is the copy of the letter sent by the 1st Defendant to the Plaintiff. Ex.D3 is the copy of the sale deed executed by the brother of the Plaintiff with respect to the adjacent property in favour of the 1st Defendant. Ex.D4 is the copy of the rent control proceedings in RCOP.No.2581 of 2009 on the file of the 12th Small Causes Court, Chennai filed by the 1st Defendant against the 2nd Defendant and another tenant for eviction.

8. This court heard the rival submissions advanced by the learned counsel on either side and also perused the materials placed on record.

9. Issues (1) and (2):- It is the case of the Plaintiff that he is the absolute owner of the property, bearing Door No.54/3, GNT Road, Erukkenchery, Chennai-118, in RS.No.95/2, measuring about 836 sq.ft. The certified copy of the sale deed, which gives title to the Plaintiff, was marked as Ex.P1. It is the case of the Plaintiff that in the year 1999, he had suffered an accident and borrowed a sum of Rs.1 lakh from the 1st Defendant for medical

expenses. It is further stated that on the request of the 1st Defendant, the Plaintiff had handed over possession of the suit property. The 1st Defendant gave an assurance that he would use the property for his own purpose. However, it is stated by the Plaintiff that the 1st Defendant had inducted the 2nd Defendant as a tenant in the suit property. The fact that the 2nd Defendant is the tenant in the suit property is established by the document filed by the Defendants in Ex.D4. It is a copy of the rent control petition in RCOP.No.2581 of 2009 filed by the 1st Defendant against one JLA.Pandian and the 2nd Defendant herein. In the said rent control proceedings, the 1st Defendant had claimed that the 2nd Defendant was the tenant and sought eviction on the ground of wilful default in payment of rent and act of waste and nuisance. It is, thus, seen that the 2nd Defendant is in occupation as a tenant under the 1st Defendant. It is also stated in the written statement that the 1st Defendant is in use and occupation of the first floor and is using the ground floor for business purposes. From the above, it is seen that the suit property is in possession of the 1st Defendant effectively.

10. It is the case of the Plaintiff that he was always ready to return back the said borrowal of Rs.1 lakh, but the 2nd Defendant was avoiding receipt of the said amount. At the earliest point of time, the Plaintiff had sent a lawyers' notice dated 11.4.2008, which was marked as Ex.P2. In Ex.P2, the Plaintiff had stated that he had suffered an accident in the year 1999 and had received a sum of Rs.1 lakhs from the 1st Defendant and whenever he tried to return back the said amount, the 1st Defendant was avoiding receipt of the same. It had

been further stated that the 1st Defendant and other persons mentioned in the notice including the 2nd Defendant should vacate and hand over possession to the Plaintiff herein. In the said notice, the Plaintiff also sought the bank account details of the 1st Defendant to pay the sum of Rs.1 lakhs. It is seen that to that extent the pleadings of the Plaintiff that the 1st Defendant was put in possession when he lent a sum of Rs.1 lakh is substantiated by documentary evidence in Ex.P2. During the cross examination of DW.1, he had stated as follows:-

“I know that the Plaintiff met with accident and during that time I was carrying on this Lorry commission agent occupation in at No.8, Elephant gate, Chennai 600079.”

It is, thus, seen that the statement of the Plaintiff that he met with an accident is further strengthened by the evidence of DW.1 himself.

11. It is the further case of the Plaintiff that subsequently on 21.4.2008, the 1st Defendant had threatened the Plaintiff and in respect of the same, the Plaintiff had filed a police complaint. The fact that both the Plaintiff and the 1st Defendant had appeared before the Madhavarm Police Station is also evidenced during the cross examination of DW.1. In fact, with respect to the statement of the occurrence in the year 1999, PW.1 during the cross examination, had stated as follows:-

“Three years after 1999, I made an attempt to repay the amount to the 1st Defendant and he asked for some time. Thereafter, after discharge of bank loans, when I attempted to repay the loan to the 1st Defendant, there was no proper reply from the 1st Defendant. So I caused a legal notice to be issued to the 1st Defendant in 2008.”

This again strengthens the case of the Plaintiff that he had received a sum of

Rs.1 lakh from the 1st Defendant and admitted to repay the same.

12. It is the further case of the Plaintiff that Ex.P3/D1, which are the xerox copy and original of the agreement dated 10.5.2008, were obtained under threat at the Madhavaram Police Station. A comparison of both the documents shows that in Ex.P3, which is the xerox copy, the signature of the witnesses is not found. However, signature of the witness is found in Ex.D1, which is the original. This assumes much importance because one of the witnesses was examined as DW.2. The evidence of DW.2 is very crucial since the Plaintiff has denied knowledge of the contents of the agreement. He had admitted his signature, but he has stated that the signature was obtained under threat and coercion. DW.2 was examined on subpoena from the court. During his chief examination, he had stated as follows:-

“I received subpoena from this court to depose before this court. I know the dispute between the Plaintiff and the 1st Defendant regarding the suit property. The Plaintiff Saifuddin is acquainted to me. I do not know the 1st Defendant A.M.A.Rawoof. I do not know about the sale agreement between the Plaintiff and the 1st Defendant. The signature found in page 4 of Ex.D1 is my signature. The 1st Defendant approached me to sign in Ex.D1 document. The 1st Defendant informed me that he compromised the dispute with the Plaintiff and requested me to sign in the document to evidence the compromise entered between the Plaintiff and the 1st Defendant. Since I was in an urgent mood to leave to my native place in lieu of Pongal Holidays, without going through the contents of the document I signed in the document Ex.D1. Before signing Ex.D1, the Plaintiff introduced the 1st Defendant and requested me to settle the dispute between the Plaintiff and the 1st Defendant. By this introduction, I came to know the 1st Defendant. My signature was obtained during Pongal 2009.”

It is, thus, seen that the witness, who appeared on summons from the court, has

given an entirely different version, regarding the circumstances surrounding the execution of Ex.P3/D1. In fact, the above statement, which was given during the chief examination, is consistent with the stand of Plaintiff. It has been the stand of the Plaintiff that there was a compromise effected and he was forced to sign several papers in the Police Station. He never knew that the said document was actually an agreement of sale. During the cross examination, DW.2 had deposed as follows:-

“Ex.D1 is dated 10.5.2008. I did not sign Ex.D1 on that date. The Plaintiff and the 1st Defendant did not sign in Ex.D1 in my presence. In Ex.D1, after my signature, my name T.V.Balasubramaniam was written by me but the address was not written by me and it is not in my handwriting. In Ex.D1, it is mentioned that one Muthusamy has signed as 2nd witness, but I do not know who is Muthusamy. The said Muthusamy did not sign Ex.D1 in my presence.

Once again, it is seen that the entire execution of the document dated 10.5.2008 is shrouded with suspicions. In this connection, DW.1 had given a totally contradictory statement with respect to the advance amount paid under the said agreement. During the cross examination, he had stated as follows:-

“Q: Whether you paid a sum of Rs.21 lakhs to the Plaintiff on 10.05.2008?

A: I have paid a sum of Rs.7.5 lakhs to the Plaintiff after August in the year 1999 and on 10.05.2008 I paid a sum of Rs.13.50 lakhs to the Plaintiff. ”

This statement of DW.1, during the cross examination, is totally contradictory to his written statement, in which he had stated that he had paid a sum of Rs.21 lakhs, including the amount already paid on the date of the agreement of sale,

namely, 10.5.2008. A further analysis of the pleadings and evidence reveals that the Plaintiff has claimed that he does not know to read and write Tamil. Ex.P3/D1 is written entirely in Tamil. Even though this statement has been given by the Plaintiff, during the cross examination, DW.1 had himself stated as follows:-

“It is correct to state that the Plaintiff and I do not know to read or write Tamil language”

This admission by the 1st Defendant clinches the case in favour of the Plaintiff as both the Plaintiff and the 1st Defendant had signed the agreement which was entirely in Tamil and they both do not know to read and write Tamil. Naturally, they both not known the contents of the agreement. Further DW.1 has also admitted as follows:-

“It is correct to state that in Ex.D1, the signatures of the two witnesses are found and in Ex.P3, that is the copy of Ex.D1, the signatures of the two witnesses are not found. ”

13. A comprehensive reading of the evidence and the pleadings lead to the following conclusions:-

- i. The Plaintiff had suffered an accident in the year 1999.
- ii. The 1st Defendant was put in possession of the suit property in the year 1999.
- iii. The 2nd Defendant became a tenant under the 1st Defendant by a lease agreement, Ex.D4 in the suit property.
- iv. At the earliest point of time, the Plaintiff mentioned that he had met with an accident and borrowed Rs.1 lakh from the 1st Defendant and put the 1st Defendant in possession (Ex.P2).
- v. The 1st Defendant had not denied the same since he had not replied to the said notice.

vi. The Plaintiff and the 1st Defendant do not know to read and write Tamil (cross examination of DW.1)

vii. The Plaintiff and the 1st Defendant had gone to Madhavaram Police Station.

viii. Ex.P3/D1 was held out to be a compromise agreement and the signature of DW.2 was obtained on a different date (evidence in chief and cross of DW.2).

14. All the above factors would go to show that the agreement dated 10.5.2008, a copy of which was marked as Ex.P3 and the original as Ex.D1, is shrouded with suspicions and cannot be upheld in any court of law. Consequently, the stand of the Plaintiff that he was forced to sign Ex.P3/D1 is true on the basis of the probability. The further fact to strengthen this conclusion is that the 1st Defendant did not file any suit seeking specific performance. On the other hand, he attempted to seek the said relief by way of a counter claim, which was rejected by this court by order dated 30.7.2014 in A.No.1930 of 2012. I, therefore, hold with respect to the issues (1) and (2) that the agreement dated 10.5.2008 was obtained by playing fraud on the Plaintiff and that the Plaintiff is entitled for a declaration that it is null and void and not binding on him. Accordingly, these issues (1) and (2) are answered in favour of the Plaintiff.

15. **Issue (3):-** The Plaintiff had stated that he had borrowed a sum of Rs.1 lakh from the 1st Defendant in the year 1999 when he had suffered an accident. DW.1, during his cross examination, had admitted that he knew that the Plaintiff had suffered an accident in 1999. This also strengthened by the advocate notice Ex.P2, dated 11.4.2008, in which the Plaintiff had very

categorically stated that he had borrowed a sum of Rs.1 lakh and was ready and willing to return the same and in fact also sought the details of the bank account for depositing the amount. Since it has been held that the agreement dated 10.5.2008 is not binding on the Plaintiff and since it is also seen that the Defendants are in possession and since the Plaintiff himself has admitted to liability to a sum of Rs.2,50,000/-, I hold that the Defendants are not entitled for any interest on the same since they had been asked to furnish the details of the bank account to enable the Plaintiff to return the amount by Ex.P2 dated 11.4.2008. It is the fault of the 1st Defendant in not complying with the demand in Ex.P2. I consequently hold that the Plaintiff is entitled for recovery of possession of the suit property on payment of Rs.2,50,000/- to the 1st Defendant. The Plaintiff has to deposit a sum of Rs.2,50,000/- within three months. On such deposit, the Plaintiff is entitled to seek recovery of vacant possession. Accordingly, the issue (3) is answered in favour of the Plaintiff.

16. **Issue (4):-** It is also admitted that the Defendants are in use and occupation of the suit property. However, it is the stand of the Plaintiff that he had put the 1st Defendant in possession in the year 1999. He had come to the court in the year 2010. During his evidence, the value of the property or the rental income from the property has not been denied. A communication is given in Ex.P4, which is the rent control proceedings initiated by the 1st Defendant against the 2nd Defendant and another tenant, in which the 1st Defendant had claimed rent at the rate of Rs.3,000/- p.m. However, the Plaintiff has sought a sum of Rs.2500/- alone as the rate of damages per month. Taking

a conservative view, I hold that each of the Defendants are liable to pay damages at the rate of Rs.1000/- each per month from the date of the suit, namely, 24.9.2010 till the date of judgement and decree and thereafter, till the date of handing over possession of the suit property. Accordingly, issue (4) is answered in favour of the Plaintiff.

17. In the result, this civil suit is decreed as follows, with costs:-

- (a) The Plaintiff is entitled for recovery of vacant possession of the suit property on payment of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) to the 1st Defendant within a period of three months.
- (b) The Plaintiff is also entitled for recovery of damages for use and occupation at the rate of Rs.1000/- each p.m. from each of the Defendants 1 and 2 from the date of the plaint till the date of handing over possession of the suit property.

02.03.2017

Index:Yes/No
Web:Yes/No
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.858 of 2010

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