

2HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Second Appeal No.419 of 2017

JUDGMENT:

Challenging the concurrent judgments directing the eviction of the appellants, they have come up before this Court in this second appeal.

2. Heard Mr. P.S.P. Suresh Kumar, learned counsel for the appellants. M/s. Pilix Law Firm takes notice for the respondent.

3. The respondent filed a suit for eviction on the basis of Ex.A.1 dated 29-01-2007, which is a registered Sale deed executed by the appellants in favour of the respondent. In the written statement, the appellants took a stand that Ex.A.1 was a sham and nominal document, not intended to be acted upon and that the sale deed was executed only by way of security.

4. Both the Courts below **rejected** the contention and held that after having sold the property, the appellant cannot retain possession. It is true that the claim for arrears of rent was rejected by the trial Court on the ground that there was no jural relationship of landlord and tenant. But nevertheless the Courts below held that a person, who had sold a property under a registered sale deed, cannot retain the property.

5. The learned counsel for the appellants raised two substantial questions of law in this second appeal. They are:

i) Whether the Courts below could have given any credence to Ex.A.1 Sale deed, when the plaintiff did not choose to go the witness box and ii) whether the finding that there was no jural relationship of

landlord and tenant, which has attained finality, can be reconciled with a decree of eviction?

6. I have carefully considered the above questions. It is true that a person who is a party to a registered document and who files a suit on the basis of such a document should go to the witness box. The respondent-plaintiff did not go to the witness box. But her husband was examined as PW.1.

7. In the case on hand, there was no necessity for the respondents to prove the truth and genuineness of Ex.A.1, since it is the admitted case of the appellants that they executed Ex.A.1. All that the appellants contended was that the sale deed was not intended for the purpose for which it is stated to have been executed. Therefore, the burden of proof actually shifted upon the appellants to destroy Ex.A.1. Both the Courts below have found that the burden was not discharged. Therefore, the appellant cannot turn around and say that the plaintiff did not go to the witness box. Hence, the first question of law is answered against the appellants.

8. In so far as the second question of law is concerned, the finding that there was no jural relationship of landlord and tenant, has nothing to do with the liability of the seller of a property to handover possession and get out. Therefore, the second question of law does not arise for consideration.

Accordingly, the second appeal is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 28-04-2017
Ksn