

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2018

Pronounced on : 16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

A.S.No.419 of 2017
and C.M.P.No.14606 of 2017

B.Dharmichand .. Appellant / Plaintiff

Vs.

Rajalakshmi .. Respondent / Defendant

Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of the Code of Civil Procedure, to set aside the Judgment and Decree, dated 05.06.2017 passed in O.S.No.1 of 2014 on the file of the III Additional District and Sessions Court, Coimbatore and consequently pass a Judgment and Decree as prayed for in the above suit.

For Appellant : Mr.V.Jayaprakash
For Respondent : Mr.S.Raveendran

JUDGMENT

(Judgment of the Court was delivered by P.KALAIYARASAN, J)

This Appeal Suit has been filed by the plaintiff against the Judgment and Decree of the III Additional District and Sessions Court, Coimbatore, dated 05.06.2017, partly decreeing the suit directing the defendant to refund to the plaintiff a sum of Rs.2,50,000/- together with interest at the rate of 12% p.a., from the date of the suit and 6% p.a., from the date of decree till the date of realisation with costs and dismissing the suit with respect to the relief of specific performance of the sale agreement.

2. The plaint averments are as follows :

The defendant is the absolute owner of the suit property. The plaintiff and defendant entered into a sale agreement on 11.06.2012 whereby the defendant agreed to sell her suit property to the plaintiff for a sale consideration of Rs.15,00,000/- by paying the advance of Rs.6,40,000/- and also agreed to get sale deed executed within 18 months from the date of agreement by paying the balance sale consideration. On the date of sale agreement, original title deeds were also handed over to the plaintiff. The plaintiff was always ready and willing to perform his part of the contract and in spite

of the same, the defendant evaded to execute the sale deed with malafide intention. The plaintiff issued a legal notice, dated 23.11.2013 asking the defendant to come to Sub-Registrar on 05.12.2013 to execute the sale deed. Though the plaintiff was waiting with the balance sale consideration and the Demand Draft towards registration charges and stamp duty, the defendant had not turned up. The defendant sent a reply, dated 11.12.2013 with false allegations, for which the plaintiff sent a rejoinder on 13.12.2013.

3. The defendant in her written statement denied the execution of sale agreement and receipt of advance amount as false. The plaintiff's close relative Mr. Bhawarlal is running a money lending business in a portion of the ground floor of the suit property whereas the defendant is residing in the upstairs. The defendant is an illiterate. She approached the said Bhawarlal seeking finance assistance to build an upstairs portion. In order to provide loan the said Bhawarlal sought mortgage of the suit property. Hence the defendant went to the Sub-Registrar Officer to register only a mortgage deed in favour of the said Bhawarlal. But it is now understood that a sale agreement was entered into by her and the plaintiff. The defendant at no point of time wanted the suit property to be sold to anyone. The alleged agreement of sale is the fraud played upon by the defendant and hence the sale agreement is null and void in the eye of law. The defendant received Rs.2,50,000/- through two cheques and she is liable to pay that amount to the plaintiff. The defendant has been paying interest for the said loan amount and the said Bhawarlal does not issue any receipt for the same. The alleged sale agreement is an invalid document that was executed by no intention to act upon it. Therefore, the plaintiff cannot seek the discretionary relief.

4. The trial Court framed necessary issues and after analysing both the oral and documentary evidence of both sides, partly decreed the suit, directing the defendant to pay Rs.2,50,000/- with interest and dismissed the suit with regard to the relief of specific performance. Aggrieved by the same, the plaintiff has come forward with this Appeal Suit.

5. The learned counsel appearing for the appellant argued that the trial Court is not correct in going against the contents of the document and relying upon the oral evidence. It is further argued that in the absence of any document, the trial Court should not have considered the contention of the defendant that the suit land assigned to the defendant under the scheme for SC & ST cannot be transferred.

6. The learned counsel appearing for the respondent / defendant inter alia argued that the trial Court after analysing both the oral and documentary evidence of both sides in threadbare manner has rightly decreed the suit partly and the same does not require any interference by this Court.

7. There is no dispute that the suit property belongs to the respondent / defendant absolutely. Signature of the defendant in the sale agreement is also admitted. The suit sale agreement, dated 11.06.2012 is a registered document. The respondent / defendant took a stand that the suit land assigned under the scheme for SC and ST is not transferable. The above stand is not sustainable as there is absolutely no document to substantiate that the land was originally assigned under the said scheme.

8. The main contention of the respondent / defendant is that she was taken to the Registrar Office for executing a mortgage deed for the loan she obtained from one Bhawarlal and without informing the contents of the document, her signature was obtained in the alleged sale agreement, as if it was a mortgage deed. Thus according to the defendant, she got only Rs.2,50,000/- as loan amount and the alleged sale agreement was obtained by playing fraud upon the defendant and the defendant had no intention to act upon it. Since the signature in the sale agreement, Ex.A.1 is admitted by the defendant, it is for her to prove the circumstances under which she signed the document.

9. Since Ex.A.1 is a registered document it has got its own sanctity. No doubt the defendant has categorically deposed that she took a loan from one Bhawarlal and only for executing the mortgage deed for that loan amount she was taken to the Sub-Registrar's Office and signature was obtained from her.

10. The plaintiff examined as P.W.1 during his cross-examination has deposed that the Sub-Registrar had not asked about the nature of the document and he only asked about the consent for the registration of the given document. His evidence is as follows :

"சார் பதிவாளர் நாங்கள் இந்த ஆவணத்தை அவரிடம் பதிவு, எசய்வதற்காக கொடுக்கும் போது இந்த ஆவணம் என்ன ஆவணம் எனச் சொல்லி எங்களிடம் அது குறித்து கேட்டாரா என்றால் கேட்கவில்லை. இதனை பதிவு, செய்வதற்கு சம்மதமா என்று கேட்டார்."

11. No doubt once the document is signed and sealed as "Registered" by the Registering Officer, the document is deemed to have been duly registered in manner provided by the Registration Act, 1908. Section 34 (3) of the Registration Act, 1908 reads thus :

"34. Enquiry before registration by registering officer : -
(1)...

....

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed.

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document or they are claiming under the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

As per the above provision, the Registering Officer has to enquire though not rovingly, the executants as to whether such document was executed or not and also satisfy himself as to the identity of the persons.

12. When the plaintiff himself admits that the Sub-Registrar has asked only as to the consent for registering the document and nothing else, this Court has no hesitation to construe that the Sub-Registrar had not enquired as per Section 34(3) of the Registration Act before registration, in the light of rebuttal of the defendant as to the certificate of Registration.

13. Considering the admission made by the plaintiff as to the registration of the document, oral evidence of the defendant that she obtained only loan of Rs.2,50,000/- and she was taken to the Sub-Registrar's Office and took her signature in a document purported to be mortgage deed is acceptable. Thus the defendant established the circumstances under which she put her signature in the document.

14. It is everlasting principle that agreement holder should always be ready and willing to perform his part of contract throughout the period of agreement. But the bank account of the plaintiff marked as Ex.A.13 does not reflect that the plaintiff had been with sufficient fund to perform his part of contract throughout the period of the agreement. The plaintiff has not filed any other document to show that he was having source to pay the balance sale consideration. Therefore, this Court is of the view that the trial Court has rightly dismissed the suit with respect to the relief of specific performance and partly decreed the suit directing the defendant to pay Rs.2,50,000/- with interest. This Court does not see any valid reason to interfere with the judgment and decree of the trial Court and accordingly, this Appeal Suit is liable to be dismissed.

In fine, this Appeal Suit is dismissed, confirming the judgment and decree, dated 05.06.2017 passed in O.S.No.1 of 2014 on the file of the III Additional District and Sessions Court, Coimbatore. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/--

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

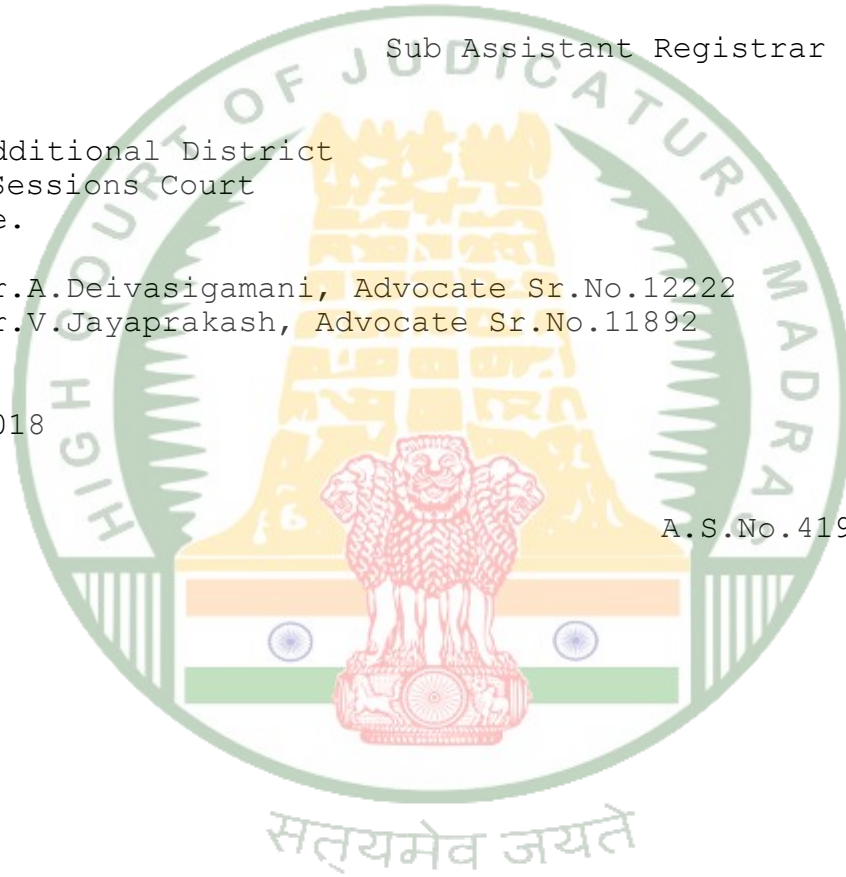
To

The III Additional District
and Sessions Court
Coimbatore.

+1cc to Mr.A.Deivasigamani, Advocate Sr.No.12222
+2cc to Mr.V.Jayaprakash, Advocate Sr.No.11892

VSN(CO)
sm:12.4.2018

A.S.No.419 of 2017



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