

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.336/2018

Chinnammal

.. Appellant /
Plaintiff

Versus

P.Ramar

.. Respondent /
Defendant

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 16.06.2017 passed in AS.NO.20/2016 on the file of the learned Principal Subordinate Judge, Salem, confirming the judgment and decree dated 26.11.2015 passed in OS.No.588/2012 on the file of the learned I Additional District Munsif, Salem.

For Appellant : Mr.P.Mathivanan

JUDGMENT

The appellant is the plaintiff in OS.No.588/2012 on the file of the Court of the I Additional District Munsif, Salem and she filed the said suit for declaration of her title in the suit property admeasuring to an extent of 1080 sq.ft., in R.S.No.15/4, Thadampatti Village, Salem Taluk and District with a consequential decree for permanent injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the same and further to declare that the Sale Deed dated 28.08.1986 executed in favour of the defendant as null and void.

2 The Trial Court, after contest, has dismissed the suit with cost vide judgment and decree dated 26.11.2015. The plaintiff, aggrieved by the dismissal of the suit, filed an appeal in AS.No.20/2016, on the file of the Court of the Principal Subordinate Judge, Salem and vide impugned Judgment and Decree dated 16.06.2017, the Lower Appellate Court, has also dismissed the appeal with cost and challenging the legality of the same, the present Second Appeal is filed.

3 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] The parties are referred as per the array of parties adopted by the Trial Court.

[b] The plaintiff is the owner of the suit schedule property by way of a registered Sale Deed dated 11.07.1979 and according to her, the registration was kept pending on account of insufficient stamp duty and as such, she was not able to get the said document immediately after registration. Subsequently, the plaintiff received a notice from the office of the concerned Sub Registrar, for payment of stamp duty and since she happened to be an illiterate, she approached the defendant, who is none other than her junior father by showing the notice and the defendant told her that she has to pay the deficit stamp duty for releasing the document and asked her to pay a sum of Rs.300/- and at that time, he also got the Left Thumb Impression [LTI] of the plaintiff in a blank paper for getting the release of the document and believing the same, the plaintiff has given a sum of Rs.300/- to the defendant and also put her LTI on the blank paper. The plaintiff would further aver that subsequently on 26.09.2011, she received one more notice from the Special Deputy Collector [Stamps], directing her to pay a sum of Rs.475/- within seven days and she became aware of the fact that the earlier amount collected by the defendant, has not been paid and he also managed to create a Sale Deed in his name on 28.08.1986. According to her, taking advantage of the close relationship and that she happened to be an illiterate, the defendant managed to get her LTI in the blank sheet and utilising the same, has fabricated a Sale Deed in respect of the property owned by her and as such, the defendant cannot be considered as the true owner of the property and therefore, came forward to file the said suit.

[c] The defendant has filed the written statement refuting the allegations and took a stand that the plaintiff wantonly executed the Sale Deed dated 28.08.1986 for a valuable sale consideration and subsequent to the purchase, he had also got the revenue records mutated in his favour and continue to remain in possession and enjoyment of the same. The defendant would further aver that apprehending dispossession, he has also filed a suit in Os.No.533/2012 on the file of the Court of the Principal District Munsif, at Salem and on receipt of summons, the plaintiff has filed the present suit as a counter blast to the said suit and denied the allegation as to the fraudulent transaction and prayed for dismissal of the suit.

[d] The Trial Court on consideration of pleadings, has

framed the following issues:-

[1] Whether the plaintiff is entitled to a decree for permanent injunction? ;

[2] Whether the plaintiff is entitled to for the prayer sought for by the plaintiff to declare the Sale Deed dated 28.08.1986 as null and void? ;

[3] To what other relief the plaintiff is entitled to?

[e] During the course of trial, the plaintiff examined herself as P.W.1 and also examined one Kandasamy and Selvam as P.Ws.2 and 3 and marked Exs.P.1 to 7. The defendant examined himself as D.W.1 and examined one Manickam as D.W.2 and marked Exs.B.1 to B.10.

[f] The Trial Court, on consideration of the pleadings and oral and documentary evidences, found that with regard to the Agreement of Sale, marked as Ex.B.1 dated 10.04.1986, no pleading has been made and therefore, rejected the contention insofar as the said document is concerned and also found that the case projected by the plaintiff, merits dismissal and accordingly, dismissed the suit with cost, vide judgment and decree dated 26.11.2015. The plaintiff, aggrieved by the dismissal of the suit, filed an appeal in AS.No.20/2016 on the file of the Court of the Principal Subordinate Judge, Salem.

[g] The Lower Appellate Court, on consideration of the grounds of appeal, has formulated the following points for determination:-

[1] Whether the Sale Deed dated 28.08.1986 executed by the plaintiff in favour of the defendant is a true and valid one? ;

[2] Whether the appellant/plaintiff, as a true owner, is in possession and enjoyment of the suit property? ;

[3] Whether the Sale Deed dated 28.08.1986 is created fraudulently as pleaded by the appellant/plaintiff, is correct?;&

[4] Whether the judgment and decree passed by the Trial Court, is to be set aside?

[h] The Lower Appellate Court, after hearing the rival submissions and on going through the materials, found that the plaintiff was the owner the suit property and with regard to the payment of Rs.300/- to the defendant for the purpose of getting release of the document, a specific pleading has been put forth. The Lower Appellate Court, also noted that what was produced before the Trial Court, was only the certified copy of the registered Sale Deed dated 11.07.1979 and the appellant/plaintiff did not produce the original Sale Deed dated 11.07.1979. The Lower Appellate Court also found that the plaintiff went to the office of the Sub Registrar, and put her

LTI for the purpose of registering the Sale Deed in favour of the defendant and though the Sale Deed in favor of the defendant came to be registered as early as on 28.08.1986, kept quite till filing of the suit up to March 2012 and found that the case projected by the appellant/plaintiff lacks merit and accordingly, dismissed the appeal vide impugned judgment and decree dated 16.06.2017. The present Second Appeal is preferred against the said impugned judgment and decree passed by the Lower Appellate Court.

4 In the Grounds of Second Appeal, the following substantial questions of law are raised:-

[1] Whether the Lower Appellate Court is correct in allowing the appeal without considering the important and relevant evidence and ignored the same while arriving a finding in favour of the respondents. Further when the respondents have failed to discharge their onus as pr the Indian Evidence Act? ; and

[2] Whether the suit is barred by limitation?

5 Mr.P.Mathivanan, learned counsel appearing for the appellant/plaintiff has invited the attention of this Court to the impugned Judgment and decree passed by the Lower Appellate Court and would submit that admittedly, the defendant happened to be the close relative of the plaintiff, i.e., junior father and since the Sale Deed, which came to be registered on 11.07.1979, has not been handed over to her on account of deficit stamp duty and she received a communication and she being an illiterate, has approached her close relative, namely, the defendant and also paid Rs.300/- and the defendant made a representation that for the purpose of getting the Sale Deed, her LTI is required and accordingly, managed to get her LTI in a blank paper and utilising the same, created the registered Sale Deed dated 28.08.1986 and thereby, the case projected by the appellant/plaintiff is highly probable. It is the further submission of the learned counsel that though the defendant has marked Ex.B1-Sale Agreement, the Trial Court has rejected the same on the ground that no pleadings has been made to that effect and also sought to produce the original Sale Deed dated 11.07.1979 before this Court, at the time of advancing arguments in the Second Appeal. It is also pointed out by the learned counsel for the appellant that D.W.1 has clearly admitted that the plaintiff is an illiterate lady and the attesor examined as P.W.2 also admitted that no amount has been given to the appellant and the Sale Deed was not handed over to anybody and as such, the case projected by the plaintiff ought to have been accepted by the Courts below and prays for admission of the Second Appeal.

6 The Court paid its best attention to the submissions made by the learned counsel for the appellant/plaintiff and also perused the impugned judgments passed by the Courts below.

7 The Sale Deed in favour of the plaintiff came to be registered as early as on 11.07.1979 and according to the appellant/plaintiff, it was not handed over to her on account of the deficit stamp duty and on an earlier occasion, she received the communication for payment of Rs.300/- and when she approached her close relative, the defendant herein, he promised to do the needful and got her LTI in a blank paper and subsequently, another communication was received by her from the Special Deputy Collector [Stamps] under Ex.A3 dated 26.09.2011 and then only, she became aware of the fact about the fraud played by the defendant by managing to get a registered Sale Deed under Ex.B2 dated 28.08.1986 and after collecting the documents, has filed the civil suit in the year 2012.

8 The Lower Appellate Court has recorded the findings with regard to the first communication from the concerned Sub Registrar, that no document has been produced and the plaintiff in the course of her evidence had stated that she went to the office of the Sub Registrar and affixed her LTI, which resulted in the registration of the Sale Deed under Ex.B2 dated 28.08.1986 in favour of the defendant / respondent and subsequently, the defendant also mutated the revenue records in his favour. The Lower Appellate Court also noted that though the Sale Deed in favour of the defendant came to be registered in the year 1986, till the year 2012, the plaintiff did not take any steps to challenge the same and the case projected by her that she believed the representation of the defendant and put her LTI in the blank paper, cannot be believed by it. The Lower Appellate Court further found that the appellant/plaintiff having went to the office of the Sub Registrar and executed the registered Sale Deed in favour of the defendant, cannot turn around and say that the said document is a fabricated one. The Lower Appellate Court also noted that though the Sale Deed under Ex.P.1 came to be registered in favour of the plaintiff as early as on 11.07.1979, she did not take any steps to mutate the revenue records in her favour and found that the judgment and decree passed by the Trial Court warrants no interference. In the considered opinion of the Court, the Lower Appellate Court has independently applied its mind to all the material aspects. It is also to be pointed out at this juncture that now only an attempt to file the original Sale Deed before this Court at the time of advancing the arguments in the Second Appeal and the same is impermissible. The conduct of the appellant/plaintiff would also disclose that she has voluntarily executed Ex.B.1 - Sale Deed dated 28.08.1986 in favour of the defendant and had

belatedly woken up and approached the Court for the relief. In the considered opinion of this Court, the Courts below, on proper consideration of pleadings and appreciation of the oral and documentary evidences, had rightly reached the conclusion in negating the claim of the appellant/plaintiff.

9 There are no questions of law arise for consideration, leave alone the substantial questions of law and hence, the Second Appeal deserves dismissal. Accordingly, the Second Appeal is dismissed at the admission stage itself, confirming the judgment and decree dated 16.06.2017 made in AS.No.20/2016 by the learned Principal Subordinate Judge, Salem. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The I Additional District Munsif
Salem District.
- 2.The Principal Subordinate Judge, Salem.

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