

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.09.2018

DELIVERED ON: 03.10.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA
S.A.No.2193 of 2002

Murugesan ... Appellant/ Plaintiff

Vs.

Arunachalam ... Respondent /Defendent

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 27.03.2002 passed by the Principal District Judge, Villupuram in A.S.No.204 of 2001 upholding the decree and judgment dated 19.07.2001 passed by the Principal District Munsif, Tirukoilur in O.S.No. 32 of 1987.

For Appellant : Mr.T.S.Baskaran

Respondent : Mr.T.Dhanyakumar

JUDGMENT

This second appeal is filed by the plaintiff in O.S.No.32/1987 on the file of the Principal District Munsif, Tirukoilur against the decree and judgment passed in O.S.No.32 of 1987 dated 19.07.2001 and the decree and judgment in A.S.No.204 of 2001 dated 27.03.2002 on the file of the Principal District Judge, Villupuram.

2. The plaintiff in O.S.No.32 of 1987 is the appellant herein. He had filed the suit for declaration of his title to the suit properties, which are agricultural lands in Kolaparai Village of Thirukoilur and for permanent injunction restraining the defendant and his servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties and for mesne profits and also sought as an alternative prayer for recovery of possession.

3. The case of the plaintiff is briefly as follows. The suit properties originally belonged to one Parvathy Ammal, the wife of the defendant. She had agreed to sell the properties to the plaintiff for a sum of Rs.3,500/- executing a sale agreement dated 10.04.1981 (Ex.A1) acknowledging the receipt of Rs.3,000/- and allowing 6 months time for payment of the balance consideration of Rs.500/-. The defendant had

attested the said sale agreement dated 10.04.1981 (Ex.A1). Parvathy Ammal died subsequently before the expiry of 6 months period and the plaintiff had to issue notice (Ex.A2) dated 14.07.1981 to the defendant to complete the process. The defendant admitted the sale agreement in his reply (Ex.A3) dated 27.07.1981 and finally executed the sale deed on 24.08.1981 (Ex.A4) in favour of the plaintiff, after receiving the balance consideration.

4. In the meanwhile, one Chinammal, who had filed a money suit in O.S.No.618 of 1979 against the defendant in District Munsif Court, Thirukoilur had obtained a decree and also attached the suit properties in E.P.No.533 of 1982. The plaintiff's attempt to raise the attachment went futile both in E.A.No.1522 of 1982 on the file of the District Munsif Court, Thirukoilur (Ex.A10) and also the appeal in C.M.A.No.4 of 1985 (Ex.A11) on the file of Sub Court, Villupuram. The properties were brought to auction (Ex.B4) by the said Chinammal. According to the plaintiff, at his request, the defendant discharged the decree amount on 30.09.1986. However, subsequently, the defendant issued a notice (Ex.A5) dated 30.09.1986 to the plaintiff stating that the sale deed dated 24.08.1981 was sham and nominal as a result of which, the plaintiff had no right over the suit properties. Hence, the plaintiff replied to it on 16.10.1986 (Ex.A6) denying the allegations and therefore, the suit was filed by the plaintiff.

5. The defendant on his side contended that the sale deed dated 24.08.1981 is sham and nominal, as no right was intended to be conveyed to the plaintiff and was only to avoid the auction of the suit properties. Further, the defendant confirmed that he discharged the decree amount on his own and that his wife Parvathy Ammal had purchased the suit properties on 22.02.1974 (Ex.B1) from one Chinammal for Rs.2,000/- and a pronote dated 28.02.1974 was executed by Parvathy Ammal towards the sale consideration balance of Rs.1,500/-. Parvathy Ammal died during the pendency of E.P.No.533 of 1982 and therefore, the defendant and his children, who were impleaded as legal heirs, took the help of the plaintiff to execute the sale deed without any consideration and even in the order in E.A.No.1522 of 1982, the sale deed dated 24.08.1981, was termed as sham and nominal. With no appeal preferred against order in C.M.A.No.4 of 1985, the plaintiff has no right in the suit properties and the non-impleading of the defendants sons and daughter, who are also the legal heirs of the late Parvathy Ammal, is itself, is fatal to the plaintiff's suit and hence liable to be dismissed.

6. In the trial court, the plaintiff marked Ex.A1 to Ex.A13 and examined Pw1 and Pw2, while the defendant marked Ex.B1 to Ex.B18 and examined Dw1 to Dw3. The trial court in the O.S.No.32 of 1987, framed as many as 7 issues and

concluded that the plaintiff has not substantiated his claim on the title and possession of the suit properties satisfactorily. The learned trial court Judge relied on the deposition made by the plaintiff as Pw1. In his deposition, Pw1 had deposed that he was not sure as to from when the suit properties are in his possession and enjoyment. He also did not know as to when the patta was transferred to his name and also admitted that the defendant and his legal heirs were in possession and enjoyment of the suit properties for the past 4 to 5 years and also remitting the kist. Pw2, the scribe who had written the sale deed admitted that he was not aware who bought the stamp papers and in whose name and when the stamp papers were bought and also did not know about the payments of sale proceed. He had clearly stated that no sale consideration was paid in his presence and that he was also not aware, whether it was mentioned in the contents of the deed.

7. On the other hand, Dw1, the defendant clarified that the plaintiff was a witness, who signed on the pronote executed by the defendant's wife Parvathy Ammal in favour of Chinnammal, the original owner of the suit properties and also that the plaintiff was fully aware of the O.S.No.618 of 1979, the money suit filed by Chinnammal against the wife of the defendant Parvathy Ammal. The contention of the defendant that the suit was also bad for non joinder of necessary parties, as the children of the defendant were already major at the time of the sale deed dated 24.08.1981 was accepted by the trial court. Also the contention of the defendant that the relief was barred by the principles of resjudicata was also accepted by the trial court.

8. The defendant (Dw1) and another attesor to Ex.A1 (Dw2) have deposed that Parvathy Ammal was not the executor of Ex.A1. In fact, Dw2 goes to the extent of stating that Parvathy Ammal was not alive on the date of execution of Ex.A1. In such circumstances, the trial court dismissed the suit on the following grounds.

- a] The suit is barred by resjudicata.
- b] The suit is bad for non-joinder of necessary parties, namely the children of late Parvathy Ammal.

9. The first appellate court in its order harped on the following aspects.

i] The date of death of Parvathy Ammal has not been mentioned by both the parties in order to find out, whether she was alive on the date of the Ex.A1, since Dw2 had deposed that she was not even alive on the date of the execution of Ex.A1.

ii] Notwithstanding the fact about the validity of Ex.A1, the first appellate court has also pointed out that based on the sale deed (Ex.A4) dated 24.08.1981 in favour of the plaintiff, the plaintiff got his name mutated in

the revenue records and the patta under UDR scheme was adduced by him as Ex.A7.

iii] As regards the plea of resjudicata, barring the plaintiff from filing this suit, the appellate court has vested its finding on the observation made by the learned Judge in CMA No.4/1985 against the plaintiff. According to the observation, the promissory note executed by Parvathy Ammal in favour of Chinnammal was attested by the plaintiff as a witness and therefore, he cannot be said to be a bonafide purchaser for value without notice and therefore, is barred by resjudicata.

10. The learned first appellate Judge held that since the suit is barred by the principles of resjudicata in view of the findings given in C.M.A.No.4 of 1985, there was no necessity to interfere with the findings of the trial court and in the result dismissed the appeal.

11. The substantial questions of law in the present appeal were the following.

a] Whether the court below were right in holding that the decision in C.M.A.No.4 of 1985 operates as resjudicata in the present suit, when no issue as to validity of sale was decided in the earlier proceedings?

b] Whether the courts below were right in holding that Ex.A1 invalid in the absence of a relief by the defendant and based on evidence inadmissible under section 92 of the Evidence Act?

c] Whether the courts below were right in rejecting Ex.A1 when the suit property was not sold pursuant to attachment and the decree was fully satisfied under Ex.B8 and execution petition closed, contrary to the principles and scope of Section 65 of Code of Civil Procedure?

12. The lower courts had concluded that the suit filed by the plaintiff was barred by resjudicata. As already observed by both the courts below and by the first appellate court more elaborately held that the suit is barred by the principles of resjudicata, as the plaintiff was not only an attestor to the promissory note executed by Parvathi Ammal in favour of Chinnammal way back in 1974 but also knowing about the original suit for recovery of money filed by Chinnammal in 1979, the plaintiff found it fit to enter into a sale agreement with Parvathi Ammal without even mentioning about that or atleast ensured that the dues are settled before effecting the execution of the sale deed in August 1981. With no substantiating oral evidence for the passing of the consideration of the sale, and more so, the execution of the agreement itself, the entire transaction is sham and nominal without an iota of doubt.

13. The lower courts were right in holding Ex.A1 as invalid due to the suspicious nature of the transaction. The Dw2, who is an attester went to the extent of stating that the said Parvathy Ammal was herself not alive at the time of the execution of Ex.A1 making it all the more difficult to believe the document even assuming there was consideration. So the lower courts were right in deciding that the Ex.A1 was invalid.

14. As already discussed and concluded, Ex.A1 being invalid and with no consideration passed, Ex.A4 is also sham and nominal. The plaintiff has not approached the court with clean hands. Despite his knowledge about the borrowal of money by Parvathi Ammal, wife of the defendant, the plaintiff purchased the suit property and he also preferred to keep silent in order to help the defendant come out of the legal tangle. That the dues to Chinnammal were settled subsequently by the defendant proves only one valid point "what you sow, so you reap". In view of the discussions and conclusions in the foregoing paragraphs, this court finds no reason to interfere with the decree and judgment of both the courts and hence the appeal is liable to be dismissed.

15. In the result, the second appeal is dismissed.
No costs.

Sd/-
Assistant Registrar(CS II)
//True Copy//
Sub Assistant Registrar

mst
To

1. The Principal District Judge, Villupuram .
2.The Principal District Munsif, Tirukoilur .
3. The section officer,
VR Section,
High court
Madras

+2ccs to Mr.T.Dhanyakumar , Advocate SR.No. 69022 & 68324
+1cc to Mr.T.S.Baskaran , Advocate SR.No. 67968

S.A.No.2193 of 2002

ASK(13/11/2018)