

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

S.A.No.528 of 2018

Paramaguru

... Appellant/Plaintiff

-Vs-

1. Palanivel

S/o.Subramanian

2. Bharathidasan

S/o.Subramanian

... Respondents/Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Decree and Judgment in A.S.No.10 of 2016 dated 09.03.2018 on the file of the Subordinate Court, Panruti reversing the Decree and Judgment in O.S.No.154 of 2007 dated 14.07.2016 on the file of the District Munsif Court, Panruti.

For Appellant : Mr.P.R.Thiruneelakandan

For Respondents: No Appearance

J U D G M E N T

Appellant/plaintiff has preferred suit in O.S.No.154/2007 seeking the following relief:-

(i) A decree for specific performance against the defendants directing them to execute the sale deed in favour of the plaintiff in respect of the suit property on receipt of the balance sale price within the time to be fixed by this Hon'ble Court on production of necessary general stamp papers.

(ii) To pass a decree for the cost of the suit to be paid by the defendants and

(iii) To pass such other relief as this Hon'ble Court deems it fit and just necessary in the circumstance of the case.

2. Before the Trial Court, appellant/plaintiff examined 4 witnesses and marked 7 exhibits. The first defendant/first

respondent herein examined himself as DW-1 and marked 3 exhibits [D1 to D3]. On appreciation of evidence, Trial Court held in favour of the appellant and decreed the suit. There against, the respondents/defendants preferred A.S.No.10/2016 before Sub-Judge, Panruti, which under judgement dated 09.03.2018 allowed the appeal. Aggrieved by the same, appellant/plaintiff preferred this Second Appeal.

3. Heard learned counsel for appellant as also perused the materials available on record.

4. It is the submission of learned counsel for appellant that

(i) First Appellate Court failed to consider the evidence on record which establishes the case of plaintiff that on 29.11.2006, the defendants entered into a sale agreement-Ex.P1 to sell the suit property for a consideration of Rs.35,000/- and received a sum of Rs.25,000/- on the date of sale agreement and agreed to execute the sale deed on receipt of balance sale consideration of Rs.10,000/- within 6 months from the date of sale agreement. The execution of sale agreement was established through PW-2 and PW-3, who witnessed the sale agreement and the statement of witness PW-4, who is a document writer of Sale Agreement-Ex.P1 also proves the execution of the sale agreement by the defendants and payment of advance amount made by the plaintiff. Further, the documentary evidence Ex.P5-Sale Deed dated 17.06.2004 executed by the defendants in favour of one Arumugam and Ex.D1, Mortgage Deed executed by the defendants in favour of one Balakrishnan, clearly prove that the defendants are absolute owners of the suit property. Ex.P2 to P4, legal notices issued to the defendants also prove that the plaintiff was ready and willing to pay the balance sale consideration towards execution of the sale deed.

(ii) First Appellate Court failed to consider Ex.P5, Sale Deed executed by defendants in favour of Arumugam and Ex.D1, Mortgage Deed in respect of the suit property in favour of one Balakrishnan. Further, the defendants stated that they are the absolute owners of the suit property and in the sale deed, as also in the Mortgage Deed. Their brother viz., Prem Kumar had not signed as co-sharer or joint owner of the suit property and in the said documents, it is not stated that the said Prem Kumar is a Co-sharer or joint owner of the suit property. The defendants have not explained as to why their brother was not made as party to the sale deed and as to why his name has not been shown as joint owner of the suit property. The defendants failed to establish their case by letting in oral and documentary evidence to the effect that the said Pream Kumar is the brother of defendants and he is joint owner of the suit property.

(iii) First Appellate Court failed to consider the statement of PW-1 made in his cross-examination in entirety and erroneously held that there was no sale agreement between the plaintiff and defendants. Further, PWs-2 and 3 have deposed to the time (6 months) provided to pay the balance sale consideration.

(iv) Execution of sale agreement-Ex.P1 was established through PW-1 to PW4 and the defendants have not disputed the same and no effort was taken to disprove the defendants' signature.

5. Court below in allowing the Appeal filed by the respondents/defendants, has taken into consideration their contention that the property in suit was joint family property, consisting not only of the respondent/appellant/defendant and the assertion of the first respondent when examined as D.W.1 that the property has been mortgaged in favour of the father of the plaintiff on 24.12.1998 under Ex.D.1 and denied that the mortgage has not been cleared asserting that sums due had been repaid in the year 2005, but no receipt there regards had been registered and the encumbrance continued to be reflected in the records but Ex.A1 agreement for sale relied upon by the plaintiff had not been executed by him. Court below took note of the position that such assertion has not been objected to by the appellant/respondent/plaintiff. Observing that P.W.1 in cross had first deposed to the boundaries of the suit property informed in the agreement to be that informed by the respondent/appellant/defendant subsequently has admitted that the boundaries shown were in keeping with that shown in defence Ex.D1-Mortgage deed executed in favour of his father. Without categorically stating whether the mortgage was subsisting or cleared. P.W.1 had merely taken the stand that the mortgage and agreement for sale were unrelated. In the circumstances, Court below observed that Ex.D1 agreement for sale relied upon by the appellant/respondent/plaintiff was a rank forgery by misuse of the signature of respondent/defendant available in Ex.D1.

6. The reasoning of the Court below reflects that it has seen through the attempt of the appellants to unjustly enrich themselves. The judgment under challenge reflects sound reasoning and no substantial question of law arises for consideration.

7. Accordingly, this second appeal shall stand dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Court
Panruti.
2. The District Munsif Court,
Panruti.
3. The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to M/S.P.R.ThiruNeelakandan, Advocate Sr.67537

S.A.No.528 of 2018

cnr[co]
srg 25/03/2019

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