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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:28.08.2018

PRONOUNCED ON:10.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.286 & 287 of 2015

and

M.P.Nos.1 & 1 of 2015

S.A.No.286 of 2015

1.Lakshmi

2.Prabavathi

3.Sankar Raju

4.Subbalakshamma @ Subbulakshmi ...Appellants/Respondents/
Defendants

Vs.

Giri Babu ...Respondent/Appellant/
Plaintiff

S.A.No.287 of 2015

Subbalakshamma @ Subbalakshmi ...Appellants/1st Respondents/
Plaintiff

Vs.

1.S.Munirathnam Raju

2.Giri Babu

3.Dilli Babu

4.Varamma

5.Chandrakala

6.Sasiamma ...Respondents/Respondents/
Appellants/Defendants



Prayer in S.A.No.286 of 2015:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 09.10.2014 passed in A.S.No.34 of 2013 by Subordinate Judge, Tiruttani, by reversing the judgment and decree dated 31.10.2012 passed in O.S.No.121 of 2010 by the District Munsif Court, Tiruttani.

Prayer in S.A.No.287 of 2015:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 09.10.2014 passed in A.S.No.44 of 2013 by Subordinate Judge, Tiruttani, by reversing the judgment and decree dated 31.10.2012 passed in O.S.No.189 of 2010 by the District Munsif Court, Tiruttani.

For Appellants in both Appeals : Dr.C.Ravichandran

For Respondent in S.A.No.286 of 2015
and for RR2 in S.A.No.287 of 2015 : Mr.S.Udaya Kumar

For RR1, R3 to R7 in S.A.No.287 of 2015 : No representation
No appearance
Set exparte vide order
dated 28.08.2018

C O M M O N J U D G M E N T

Second Appeal Nos.286 and 287 of 2015 are directed against the judgment and decree dated 09.10.2014 passed in A.S.Nos.34 and 44 of 2013 on the file of the Subordinate Court, Thiruthani, modifying/reversing the judgment and decree dated 31.10.2012 passed in O.S.Nos.121 of 2010 and 189 of 2010 on the file of the District Munsif Court, Thiruthani respectively.

2. The appellants in Second Appeal No.286 of 2015 are the defendants in O.S.No.121 of 2010. The appellant in Second Appeal No.287 of 2015 is the plaintiff in O.S.No.189 of 2010. It is seen that the appellant in Second Appeal No.287 of 2015 is the fourth defendant in O.S.No.121 of 2010.

3.The case laid by the respondent/plaintiff in O.S.No.121 of 2010 is that, he is the absolute owner and in possession of the plaint schedule properties having purchased the same by way of the registered sale deed dated 01.06.2009 and the properties purchased by him under the abovesaid sale deed are the ancestral properties of his vendors and accordingly the vendors had conveyed the same in his favour and the plaint schedule properties are in his possession and enjoyment and the defendants/appellants without any entitlement, attempted to



interfere with his possession and enjoyment by creating fabricated documents and endeavoured to grab the same and hence according to the respondent/plaintiff, he has been necessitated to lay the suit for reliefs of declaration and permanent injunction.

4.The appellants/defendants resisted the abovesaid suit of the respondent/plaintiff by contending that item No.3 of the plaint schedule properties is the ancestral property of the respondent/plaintiff's father S.Munirathnam Raju and his paternal uncle Venkamaraju and they had agreed to sell the said property to Subbalakshamma @ Subbulakshmi, the appellant in S.A.No.287 of 2015 for a sale consideration of Rs.15,000/- on 11.08.1995 and received the entire sale consideration on the same date to discharge their family debts and put her in the possession and enjoyment of the said property and they had executed the abovesaid sale letter for themselves and on behalf of their minor children including the respondent/plaintiff and agreed that they would execute a registered sale deed in her favour, whenever called by her and since then, it is only the appellant in S.A.No.287 of 2015, who is in the possession and enjoyment of the said property and despite the demand made by her to execute the registered sale deed in her favour several times, the respondent/plaintiff's father and his paternal uncle evaded the same on some pretext or the other and the paternal uncle died leaving behind his legal heirs and after his death also, requests had been made to execute the registered sale deed in favour of the appellant in S.A.No.287 of 2015, however the same had been postponed for some reason or the other. On the other hand, the respondent had attempted to create some documents with regard to the said property and in this connection, the appellant had put forth an objection to the Registrar Office and despite the same, the document had come to be registered and thereafter the appellant in S.A.No.287 of 2015 issued a legal notice dated 22.06.2009 to all the parties including the respondent/plaintiff to execute the registered sale deed in her favour and to the same, a reply had been sent dated 02.07.2009 denying the execution of the sale letter and asserted that the respondent/plaintiff is the owner of the property covered under sale letter and the other properties and since the execution of sale letter dated 11.08.1995, it is only the appellant, who has been in the possession and enjoyment of the property comprised therein and thereby perfected her title, possession by way of adverse possession and hence according to the appellant in S.A.No.287 of 2015, the sale deed dated 01.06.2009 projected by the respondent/plaintiff had been created with a view to defeat her entitlement to obtain the sale deed in respect of the third item of the suit properties and accordingly, it is stated that the suit had been laid by the appellant in O.S.No.189 of 2010 for specific performance or in



the alternative, for the refund of the sale consideration and also for the relief of permanent injunction.

5. Inasmuch as the common issues were involved in both the suit proceedings, both the proceedings were taken up for joint trial and in support of the appellant's case, P.Ws.1 to 5 were examined. Exs.A1 to A5 were marked. On the side of the respondent, D.W.1 was examined. Exs.B1 to B5 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit laid by the respondent as prayed for, insofar as the items 1 and 2 of the plaint schedule properties and dismissed the suit in respect of the item 3 of the plaint schedule properties and granted the relief of specific performance in favour of the appellant as prayed for and also the relief of permanent injunction in favour of the appellant in O.S.No.189 of 2010. Aggrieved over the same, the respondent preferred the first appeals.

7. The first appellate court, on an appreciation of the materials placed on record, was pleased to allow the appeals and accordingly, set aside the judgment and decree of the trial court, insofar as the dismissal of the respondent's suit as regards the item 3 of the plaint schedule properties and decreed the suit in O.S.No.121 of 2010 in entirety and dismissed the suit laid by the appellant by setting aside the judgment and decree of the trial court, granting the relief of specific performance in favour of the appellant. Aggrieved over the same, the present Second Appeal has been laid.

8. At the time of the admission of the Second Appeals, the following substantial questions of law were formulated for consideration.

S.A.No.286 of 2015

(A) Whether the Lower Appellate Court has committed error in holding that the plaintiff is not in possession of the suit property especially in absence of non-examination of 1st defendant who is one of the executants of Ex.A1 and non-examination of independent witness by the defendants and also without considering of the findings of the trial court with regard to the possession of the suit property by the plaintiff?

(B) Has not the Lower Appellate Court committed error in holding that Ex.A1 viz., sale letter dated 11.08.1995 should be impounded totally over looking the provisions of Section 36 of Indian Stamp Act and also Section 49 proviso of Indian Registration Act?



S.A.No.287 of 2015

(A) Whether Lower Appellate Court has committed an error in reversing the judgement and decree of Trial Court by misreading and misconstruction of oral evidences and documentary evidences and erroneously construed the provision of Article 54 of Limitation Act in dismissing the suit?

(B) Has not the Lower Appellate Court committed error in holding that Ex.A1 viz., sale letter dated 11.08.1995 should be impounded totally over looking the provisions of Section 36 of Indian Stamp Act and also Section 49 provisio of Indian Registration act?

9. The issue between the parties is as regards the item 3 of the plaint schedule properties involved in O.S.No.121 of 2010 namely survey No.94/10 measuring an extent of 0.20.00 hectares. It is not in dispute that the said property originally belonged to respondent's father and his paternal uncle. Now according to the appellant, they had agreed to convey the said property in her favour by receiving a sum of Rs.15,000/- on 11.08.1995 to discharge the family debts and thereby , put the appellant in the possession of the said property and further according to the appellant, the sale letter had been executed with reference to the same on 11.08.1995 and despite the insistence of the appellant thereafter, the respondent's father and his paternal uncle had been evading to execute a regular registered sale deed in her favour and even after the demise of the paternal uncle, though the appellant had been demanding his legal heirs as well as the respondent to execute the sale deed in her favour, they had been postponing the same for one reason or the other and on the other hand, they had created documents in respect of the said property and hence according to the appellant , she had issued a legal notice calling upon them to execute the sale deed in her favour and the reply containing false allegations had been sent and hence according to her, she has necessitated to lay the suit for the relief of specific performance and other reliefs.

10. Per contra, it is the case of the respondent that the sale letter projected by the appellant cannot be considered as a sale agreement at any angle and even if the same is true, it is barred by limitation and according to the respondent, it is he, who is the absolute owner of the suit properties involved in the matters, having purchased the same by way of a sale deed dated 01.06.2009 and enjoying the same by retaining them in his possession and hence sought for the dismissal of the suit laid by the appellant for specific performance. As abovenoted, the respondent had levied the independent suit seeking the relief of declaration and permanent injunction in respect of the



properties purchased by him, by way of the sale deed dated 01.06.2009.

11. The appellant has laid the suit for specific performance based on the sale letter dated 11.08.1995 marked as Ex.A1. On a perusal of Ex.A1, it is seen that the same is found to be only a sale deed and not the sale letter/agreement as such. It is found that all the ingredients necessary for the sale transaction are incorporated in the said document and the document also recites as if the entire sale consideration had been paid by the appellant to the vendors and the vendors thereby had entrusted the possession of the property comprised therein, in favour of the appellant and that thereby the appellant had been granted the absolute right in respect of the property conveyed thereunder, to be enjoyed by her and her legal representatives forever absolutely and also undertaken to discharge any encumbrance in respect of the property conveyed thereunder and accordingly, it is seen that, a reading to the recitals contained in Ex.A1 would only go to show that it is indeed a pucca sale deed. Furthermore, on a naked view of the said document, it is seen that the recital incorporated therein, as if the vendors had agreed to execute the registered sale deed as and when demanded from them has been incorporated at the end and the said insertion is found to be written in a different ink and also found to be totally unconnected with the other recitals found in the document. When the earlier recitals are found to be conveying the possession, title to the property conveyed thereunder in favour of the appellant absolutely, there is no need for inclusion of such a recital as if the vendors had undertaken to execute the registered document in favour of the appellant as and when demanded. Therefore, as rightly put forth, the abovesaid recital had been incorporated in the document at the end, at a later point of time and accordingly, the ink pertaining to the same is found to be differing with the ink of the other recitals contained in the same. Even the word "letter" written at the top of the said document is found to be in different ink. The document recites as if the same is a sale deed for Rs.15,000/-. Thus, it is found that Ex.A1 had been taken by the appellant only as the sale deed from the executors thereof, however, the said document has not been registered in accordance with law. Left with no other alternative, with a view to enforce the said document in a court of law, it is seen that the abovesaid insertions had come to be made by the appellant and accordingly, it is seen that the ink portions of the aforestated recitals differ as abovenoted in the said document with reference to the undertaking given by the vendors that they would execute the registered sale deed as and when demanded in favour of the appellant and also the word "letter" written at the top.



12.Be that as it may, the materials placed on record go to show that the respondent had taken the plea that even in case, Ex.A1 is to be treated as a sale agreement, the same is barred by limitation and hence the appellant is not entitled to seek the relief of specific performance with reference to the same. On the other hand, according to the appellant, though, she had been demanding the executors of Ex.A1 to execute the sale deed and also their legal heirs including the respondent to execute the regular registered sale deed in her favour, they had been postponing the same one way or the other and refused to comply with her demand, hence, according to her, she had been necessitated to issue the legal notice dated 22.06.2010 marked as Ex.A10 and only by way of a reply dated 02.07.2010, the respondent and the other defendants had repudiated Ex.A1 and hence according to the appellant, the suit having been laid by her immediately thereafter from the date of refusal made under Ex.A3, the suit is not barred by limitation. However, the abovesaid contention is found to be not acceptable, considering the evidence adduced by the appellant in this matter.

13.The appellant has been examined as P.W.1. P.W.1, during the course of her cross examination, has admitted that she does not know the survey number of the property comprised in Ex.A1 and does not know where the stamp papers for Ex.A1 was obtained and she had not produced any document, patta, chitta, adangal to evidence that she is in possession and enjoyment of the property covered under Ex.A1 and also admitted that she does not know the contents of Ex.A1 and she had not paid any tax in respect of the property conveyed under Ex.A1 so far and also further admitted that she does not know/ own any document to evidence her possession of the property conveyed under Ex.A1 and further admitted that the patta, chitta, adangal extract in respect of the property in dispute is only in the name of R.Giribabu and according to her, right from 1995 onwards, she had been demanding the respondent and the other defendants to execute the registered sale deed in her favour and also admitted that within 6 months from the date of execution of Ex.A1, she had demanded them to execute the sale deed and also demanded to execute the sale deed in 1999, 2000 and also stated that demanding the execution of the registered document, she had sent legal notice during 1996, 1997, 1998 and 1999 and also would aver that inasmuch as they had not come forward to execute the registered sale deed, she had preferred the complaint with the police during 1996 and also another complaint during 1997 and the police had called them for enquiry, however, did not register any case against them and she had also not preferred any complaint before the Magistrate court against the respondent and the other defendants and also admitted that for the past 14 years, she had not taken legal action through court against the respondent and the defendants. Thus, it is found that as per



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the clear admission of the appellant, right from 1996 onwards she had been demanding executants of Ex.A1 and their legal heirs continuously to come forward and execute the registered sale deed in her favour, however they had refused to the same and also it is her case that she had sent legal notices to them during 1996 to 1999 and also preferred the complaints with the police during 1996, 1997 and despite the same, they had not chosen to execute the registered sale deed in her favour. Thus, it is found that when right from 1996 onwards, the appellant's request for executing the registered sale deed in her favour had been turn down by the executants of Ex.A1 as well as their L.R's including the respondent and the other defendants involved in the matter, to say that, on the part of the appellant that she had no knowledge of the refusal of the respondent and the other defendants in the execution of the registered sale deed till Ex.A3 reply notice as such cannot be countenanced. Accordingly, as rightly determined by the first appellate court, when as per the own admission of the appellant, right from 1996 onwards, the executants of Ex.A1 as well as their legal heirs including the respondent as well as the other defendants of the matter had been refusing to execute the registered sale deed in her favour based on Ex.A1 document and when thereafter, after a period of nearly 14 years, the act of the appellant in laying the suit against the respondent and others for the relief of specific performance based on Ex.A1, as rightly determined by the first appellate court, is clearly hit by the law of limitation. In such view of the matter, the contention put forth by the appellant's counsel that the limitation point for the suit for specific performance laid by the appellant would commence only from the date when she had notice that the performance had been refused is acceptable and when as seen from the admission of the appellant herself that the performance had been refused during 1996 itself and also continuously refused throughout, to say that she had knowledge about the refusal only after Ex.A3 reply notice as such cannot be countenanced in any manner and accordingly, it is seen that the first appellate court had rightly discountenanced the abovesaid case of the appellant and in such view of the matter, I do not find any reason to interfere with the abovesaid determination of the first appellate court in holding that the suit laid by the appellant for the relief of specific performance is clearly barred by limitation.

14.As abovenoted, inasmuch as Ex.A1 itself is not a sale agreement as such and on the other hand, it is only found to be an unregistered sale deed and accordingly, the appellant unable to enforce the same in the manner known to law is found to have put forth a case falsely as if, she had been demanding the execution of the registered sale deed pursuant to Ex.A1 from the executants thereof and their legal representatives. On the



other hand, inasmuch as the executants had not conveyed the property comprised under Ex.A1 in favour of the appellant as per law accordingly, it is found that they had also not accepted or heeded to the so called demand of the appellant to execute the registered sale deed in her favour and right from the inception, turned down her request. The appellant also knowing fully well that she could not enforce the said document i.e., Ex.A1 did not initiate further action against them immediately and on the other hand, after the period of limitation is over, is found to have come forward with the suit very belatedly and in such view of the matter, even assuming the sake of arguments that Ex.A1 has to be considered as a sale agreement when, it is found that the appellant had failed to enforce the sale agreement within a period of three years from the date of knowledge of the refusal of the same, as above discussed, it is clearly found that the suit laid by the appellant for the relief of specific performance is hit by the law of limitation.

15.Inasmuch as the executants of Ex.A1 had not intended to convey the property comprised therein in favour of the appellant, though, it is recited therein that the possession had been handed over to the appellant, however, the materials placed on record go to show that the appellant is not in the possession and enjoyment of the said property, accordingly, it is seen that the appellant herself had admitted in the course of evidence that she is not in the possession and enjoyment of the property and the documents of possession and enjoyment of the suit property are only in the name of the respondent Giribabu. If really the property comprised under Ex.A1 is intended to be conveyed to the appellant and pursuant to the same, the appellant had taken the possession of the same and enjoying the said property, naturally the Kists, Chitta, Adangal etc., in respect of the said property would be in the name of the appellant. However, not a scrap of paper has been placed by the appellant to show that the property is in her possession and enjoyment. On the other hand, she had admitted that the documents of possession are only in the name of the respondent and the respondent had also produced the revenue documents to evidence his possession and enjoyment of the said property as well as the other properties.

16.In view of the above position, it is found that the respondent R.Giribabu having acquired the title of the property in dispute from the lawful owners of the same by way of Ex.B1 sale deed and also found to be in possession and enjoyment of the same, it is seen that accordingly, it is only the respondent, who is the title holder and is in the possession and enjoyment of the property in dispute as well as the other properties comprised in Ex.B1.



17. In the light of the above discussions, considering the materials placed on record, particularly, the clear admission of the appellant herself that, it is only the respondent, who is in possession and enjoyment of the property in dispute as well as the other properties, it is seen that the non-examination of the respondent's father and also the non-examination of the independent witness with reference to the possession and enjoyment of the respondent of the property in dispute would not in any manner undermine the reasonings and conclusions of the first appellate court in accepting the case of the respondent and in non-suiting the appellant. Equally when it is found that the document Ex.A1 is relating to a sale transaction and also purported to be only a sale deed and as the recital as if the executants thereof, had agreed to execute the registered sale deed is found to be written in a different ink, which could be obviously noted on the naked vision, the first appellate court has also determined that such being the nature of the document marked as Ex.A1 and the recitals contained therein, the same should have been impounded as per the Stamp Act and the Registration Act, whereby also noted about the failure of the lower court in not resorting to the abovesaid course of action. But, insofar as the Second Appeals are concerned inasmuch as, it is found that the suit for specific performance is clearly hit by law of limitation, and the appellant has miserably failed to establish her possession and enjoyment of the property in dispute pursuant to Ex.A1, the substantial questions of law formulated are accordingly answered in favour of the respondent and against the appellant.

18. In support of his contentions, the appellant's counsel placed reliance upon the decisions reported in

1. 2014 (6) CTC 773 [R.Munusamy Vs. G.Krishttappillai and others]
2. AIR 1961 SC 1655 [Javer Chand and others Vs. Pukhraj Surana]
3. AIR 1963 ALL 376 [Thakur Har Bux Singh Vs. Satish Chandra and others]
4. CDJ 2009 BHC 367 [M/s.Shantez, A Partnership firm & Another Vs. M/s.Applause Bhansali Films Private Limited Company and Others]
5. 1999 (3) SCC 457 [Iswar Bhai C.P.Lates @ Bachu Bhai Patel Vs. Harihar Behera and another]
6. 1993 (3) SCC 573 [Vidhyadhar Vs. Manikrao and another]
7. AIR 2001 AP 425 [Goparaju Venkata Bharata Rao and Another Vs. Nagula Ramakotayya and others]
8. 2005 (12) SCC 764 [S.Brahmanand and others Vs. K.R.Muthugopal (dead) and others]
9. CDJ 2009 SC 709 [Ahmmadsahab Abdull Mulla (dead) By proposed Lrs Vs. Bibijan & Others]



- 10.2015 (1) SCC 705 [Zarina Siddiqui Vs. A.Ramalingam @ R.Amarnathan]
11.2015 (6) MLJ 529 [K.Sugumar Vs. P.K.Sundaram and Others]
12.2010 (2) CTC 184 [Periyasamy and 4 others Vs. Lakshmi Nadesan]
13.AIR 2006 SC 2281 [Pancharan Dhara and Others Vs. Monmatha Nath Maity (D) by L.Rs and Another]
14.2010 (5) SCC 401 [S.Kaladevi Vs. V.R.Somasundaram and others]
15.AIR 1999 SC 441 [Vidhyadhar Vs. Mankikrao and another]

Similarly, in support of his contentions, the respondent's counsel placed reliance upon the decision reported in 2006 (5) SCC 353 [Prem Singh and others Vs. Birbal and others]. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

19.In conclusion, both the Second Appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

MFA

To

1. The Subordinate Judge, Tiruttani.
2. The District Munsif Court, Tiruttani.

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High Court, Madras.

- + 2 ccs to Dr.C.Ravichandran, Advocate, S.R.No.69861, 69862
- + 2 ccs to Mr.S.Udayakumar, Advocate, S.R.No.69903, 69904.

S.A.Nos.286 and 287 of 2015

GJ(CO)
SSM(04/12/2018)