

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.03.2018

PRONOUNCED ON: 06.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.755 of 2016

Ezhumalai.P

Plaintiff

Vs

1. Rajendiran
2. Mohan @ Bullet Mohan
3. R.Vijayakumar

Defendants

Prayer:- This Civil Suit is filed under Section 31 of the Specific Relief Act read with Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : Mr.R.Baskar

For Defendants : Set Exparte

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree, against the Defendants:-

(a) for declaration that the sale deed, dated 7.7.2015, registered as Document No.2699 of 2015, in the Sub Registrar Office, Kodambakkam is void, unenforceable, not valid in law and not binding on the Plaintiff and ordering it to be delivered up and cancelled, and consequently to send a copy of the decree to the Sub Registrar Office, Kodambakkam and to note on the copy of the sale deed contained in his book the fact of its cancellation.

(b) for permanent injunction, restraining the Defendants from

in any manner interfering with the Plaintiff's possession and enjoyment of the suit property.

(c) for costs of the suit

2. The case of the Plaintiff as set out in the plaint is as follows:-

a. The Plaintiff is the absolute owner of the suit property at Village No.109, Puliur Alagiri Nagar, East Street, in S.No.50, Block No.2, TS.No.49, measuring 924 sq.ft. described in the partition deed No.1394 of 1977. In 2012, he availed a loan, by mortgaging the suit property with Sundaram BNP Paribas Home Finance Limited, of sum of Rs.12,05,000/-, agreeing to repay the same in installments. For non payment of loan amount, in the proceedings initiated under the SARFEASI Act, the suit property was taken symbolic possession. Hence, the Plaintiff approached the 2nd Defendant for availing a loan of Rs.12,05,000/- by mortgaging the suit property. When on 7.7.2014, the Plaintiff was present in the SRO, Kodambakkam, for execution of a simple mortgage in favour of the 2nd Defendant, the 2nd Defendant introduced the 1st Defendant and produced a general Power of Attorney for registration, saying that it is more secure than the simple mortgage deed, since the suit property already was mortgaged with the Bank. Hence, the Plaintiff had executed a general Power of Attorney dated 7.7.2014 in favour of the 1st Defendant.

b. The 1st Defendant had given a sum of Rs.12,05,000/- towards the loan to the Sundaram BNP Paribas Home Finance Limited and the Bank also informed the Plaintiff that the document will be available on 18.7.2014 and receipt will also be executed on that day. Thereafter, the 2nd Defendant compelled the Plaintiff to execute a sale agreement for the said sum of

Rs.12,05,000/- in favour of the 2nd Defendant, who is the son of the 1st Defendant and stated that the sale agreement would not be enforced by the 3rd Defendant. Hence, the Plaintiff executed a sale agreement on 10.7.2014, registered as Document No.2663 of 2014, in the Office of the Sub Registrar, Kodambakkam and handed over title deeds to the 2nd Defendant along with the receipt executed by the said Finance Company, on 18.7.2014. He did not receive any amount from the Defendants 1 and 3 for execution of the above Power of Attorney or the sale agreement.

c. The Plaintiff repaid the loan received from the 2nd Defendant by installments of Rs.1,00,000/- per month from July 2014 to May 2015 and in all, he paid a sum of Rs.11,00,000/- to the 2nd Defendant. When in June 2015, the Plaintiff offered to pay interest, the 2nd Defendant refused to receive the same and stated that as the payment made by the Plaintiff is only towards interest, he has to pay a sum of Rs.20,00,000/-. On 25.6.2015, the Defendants informed that the Plaintiff has to pay a sum of Rs.20 lakhs in a week or to execute a sale deed in favour of the 2nd Defendant or otherwise, the 1st Defendant will register a sale deed in favour of the 2nd Defendant on 29.6.2015. The sale agreement dated 10.7.2014 also expired. Since the amount given as loan by the 2nd Defendant was paid, the 2nd Defendant ought to have returned the original documents in respect of the above property on payment of Rs.1,05,000/- and interest at the rate of 12% p.a. in all Rs.1,44,600/- for the principal amount of Rs.12,05,000/-.

d. The Plaintiff filed a suit for bare injunction in OS.No.3652 of 2015 against the Defendants and also filed IA.No.9155 of 2015 for interim injunction,

wherein notice was ordered returnable by 10.8.2015. The Plaintiff cancelled the Power of Attorney on 10.7.2015, registered as Document No. 2747 of 2015 in the Office of the Sub Registrar, Kodambakkam and issued a legal notice dated 9.7.2015 to the 1st Defendant. A reply notice was sent on 27.7.2015. The 1st Defendant had stated that the sale was completed on 7.7.2015 and the sale deed was registered as Document No.2699 of 2015 in the Office of the Sub Registrar, Kodambakkam and also stated that the entire sale consideration was received by the Plaintiff from the 2nd Defendant. The 1st Defendant colluded and conspired with the Defendants 2 and 3 and created a document and registered the same and hence, the Defendants are liable for the criminal acts of conspiracy, fraud and cheating.

e. The Plaintiff obtained an encumbrance certificate on 5.8.2015 and on verification, he came to know that the said sale deed was withheld for reason of under valuation of Rs.61,10,000/- under Section 47A of the Indian Stamps Act. Immediately, the Plaintiff issued a legal notice dated 28.8.2015 to the Defendants, calling upon the 2nd Defendant to execute a deed of cancellation and return the original documents, blank signed papers, promissory notes within a week and a reply notice dated 10.9.2015 was sent. But, the 2nd Defendant refused to receive the notice. It is under these circumstances that this civil suit had been filed, seeking the reliefs as stated above.

3. The Defendants were served on 19.12.2016. However, no written statement had been filed by the Defendants within time and hence, the matter was ordered to be listed under the caption of "Undefended Board". For

non filing of the Written Statement in spite of sufficient opportunity given, the Defendants were set exparte and Exparte Evidence was ordered to be recorded by the order of this court, dated 07.12.2017.

4. The Plaintiff had filed his proof affidavit for his chief examination and receipt of 16 documents as documentary evidence to prove the suit claim. In the Exparte Evidence, he had examined himself as PW.1 and marked Exs.P1 to P16 as documentary evidence in order to prove the suit claim.

5. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P16 adduced by PW.1 and in the absence of rebuttal evidence on the side of the Defendants, this Court is of the view that the plaintiff has proved the suit claim and consequently, the suit is decreed, as prayed for, with costs.

06.03.2018

Index:Yes/No

Web:Yes/No

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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - P.Ezhumalai

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the certified copy of the partition deed executed between the Plaintiff and his brothers dated 28.9.1977.
2. Ex.P2 is the certified copy of the general Power of Attorney executed by the Plaintiff in favour of the 1st Defendant dated 30.6.2014.
3. Ex.P3 is the certified copy of the agreement for sale executed by the Plaintiff in favour of the 3rd Defendant dated

23.6.2014.

4. Ex.P4 is the certified copy of the receipt executed by the Sundaram Finance in favour of the Plaintiff d t18.7.2014.
5. Ex.P5 is the copy of the plaint filed in OS.No.3652 of 2015, dated 29.6.2015.
6. Ex.P6 is the certified copy of the sale deed executed by the 1st Defendant on behalf of the Plaintiff in favour of the 2nd Defendant dated 7.7.2015.
7. Ex.P7 is the copy of the legal notice sent by the Plaintiff dated 9.7.2015.
8. Ex.P8 is the original deed of cancellation of Power of Attorney executed by the Plaintiff dated 10.7.2015.
9. Ex.P9 is the original reply notice sent by the 1st Defendant dated 27.7.2015.
- 10.Ex.P10 is the encumbrance certificate dated 5.8.2015.
- 11.Ex.P11 is the copy of the legal notice sent by the Plaintiff to the Defendants dated 28.8.2015.
- 12.Ex.P12 is the copy of the reply notice dated 10.9.2015 sent by the 1st Defendant to the Plaintiff.
- 13.Ex.P13 is the copy of the ration card.
- 14.Ex.P14 is the copy of the property tax demand card.
- 15.Ex.P15 is the copy of the water and sewage demand card.
- 16.Ex.P16 is the copy of the EB card in the name of the Plaintiff.

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

06.03.2018

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Note to Office:-

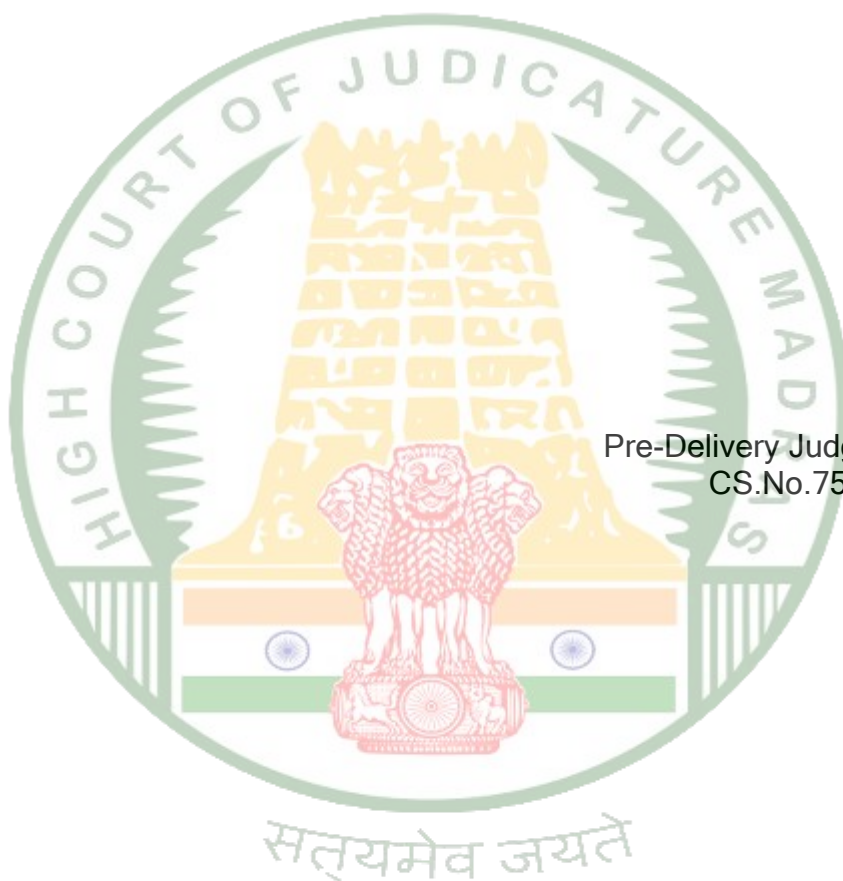
Issue on 06.03.2018



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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.755 of 2016

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