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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.06.2018

PRONOUNCED ON : 01.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.2148 of 2001

M. Rajagopal ... Appellant/Respondent/plaintiff

Vs

1.K.Nagappan
2. K. Krishnan

... Respondents/Appellants/Defendants 2 & 3

PRAYER:Second Appeal filed under Section 100 of C.P.C, against the judgment and decree of the learned Subordinate Judge, Maduranthagam dated 29.03.2001 in A.S.No.32 of 2000 modifying the Judgment and Decree of the learned District Munsif, Maduranthagam dated 27.04.2000 in O.S.No.548 of 1993.

For Appellant : Mr. N.E.A.Dinesh

For Respondents : Mr.K.Jayachandran

JUDGMENT

This Second Appeal has been filed by the plaintiff against the Judgment and Decree passed by the Sub-Judge, Maduranthagam in A.S.No.32 of 2000 dated 29.03.2001 modifying the judgment and decree passed by the District Munsif, Madurantagam in O.S.No.548 of 1993 dated 27.04.2000.

2. The appellant herein has filed a suit in O.S.No.548 of 1993 on the file of the District Munsif, Madurantagam, for permanent injunction restraining the defendants, their men, etc., from interfering with his peaceful possession and enjoyment of the suit property. The learned District Munsif, Madurantagam, by the judgment and decree dated 27.04.2000 has decreed the suit as prayed for with costs. She also directed the defendants to take separate action for recovery of the balance sale consideration. Aggrieved by the same, the defendants 2 and 3 have filed an appeal in A.S.No.32 of 2000 on the file of the Sub-Judge, Madurantagam. The learned Sub-Judge, Madurantagam, by the judgment and decree dated 29.03.2001 has modified the judgment and decree passed by the trial court that the plaintiff



is in possession of the suit property only on the basis of the usufructuary mortgage executed by the defendants in favour of the plaintiff's wife and granted permanent injunction restraining the defendants from interfering with the plaintiff's possession till the defendants are discharging the mortgage said to have been executed by the defendants in favour plaintiff's wife. He further directed that the parties should bear their respective costs. Feeling aggrieved, the plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

3. The averments made in the plaint are, in brief, as follows:

The plaintiff had purchased the suit property from the defendants under a registered sale deed dated 02.08.1993 for a valid consideration of Rs.20,700/-. From the date of said purchase, the plaintiff is in possession and enjoyment of the suit property as absolute owner. Even prior to the said sale, the plaintiff has been in possession and enjoyment of the suit property by virtue of the two usufructuary mortgage deeds executed by the defendants in favour of the plaintiff's wife dated 02.07.1987 and 19.09.1988. Through the aforesaid sale, mortgages were discharged. Patta also has been transferred into the name of the plaintiff. While so, that on 04.11.1993, when the plaintiff was ploughing the suit land, the defendants came and objected to the same stating that the plaintiff should pay more amount. The plaintiff resisted the same as their claim is illegal. The defendants are powerful persons and they may interfere in the peaceful possession and enjoyment of the suit property and hence, the plaintiff has filed the above suit seeking permanent injunction against the defendants.

4. During pendency of the said suit, the first defendant died. The third defendant has filed a written statement and the same was adopted by the second defendant.

5. The averments made in the written statement filed by the third defendant and adopted by the second defendant are, in brief, as follows:

The plaintiff is not in possession of the suit property. The alleged sale deed dated 02.08.1993 was not for valuable consideration. The said document never seen the light of the day. The defendants did not handover the possession of the suit property to the plaintiff. On the date of the alleged sale, the defendants have received only Rs.5000/- and another Rs.1000/- and it was accepted to be adjusted towards mortgage in favour of the plaintiff's wife. Further, it was agreed that after paying the entire sale consideration, the possession will be handed over to the plaintiff. The plaintiff undertook to pay the balance sale consideration along with Rs.200/- which was paid by the defendants towards kist and Rs.500/- towards motor expenses



and Rs.300/- towards deepening of the well which were spent by the defendants. For payment of the balance sale consideration and the aforesaid amount, a 'Pulli' was written and signed by the plaintiff. Hence, the alleged sale deed is not at all supported by consideration. The defendants have sent notice calling upon the plaintiff to pay the balance amount, but the plaintiff did not pay any amount. Hence, the defendants have cancelled the alleged sale deed dated 02.08.1993 by a registered cancellation deed dated 06.09.1993. Since the defendants are in possession of the suit property, the allegation that the defendants attempted to prevent the plaintiff from ploughing the land is false. On the date of alleged sale, a sum of Rs.11,875/- was due. The defendants also put to loss because of the execution of the sale deeds. They reserved the right for taking separate proceedings for claiming damages. Therefore, the defendants 2 and 3 prayed to dismiss the above suit.

6. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1. He also examined two more witness as PW2 and PW3. He has marked Exs.A1 to A5 as exhibits. On the side of the defendants, the second defendant was examined as DW2 and three more witnesses were examined as DW2 to DW4. They have marked Exs.B1 to B5 as exhibits.

7. The learned District Munsif, after considering the materials placed before her, found that even though in Ex.A1 sale deed, it was stated that the entire sale consideration was passed, only a sum of Rs.10,000/- was adjusted towards discharge of the mortgage and the balance amount of Rs.11,875/- was not paid by the plaintiff. However, she found that the non-payment of the entire sale consideration would not invalidate the sale transaction. Accordingly, she decreed the suit as prayed for. She also directed the defendants to take separate action for recovery of the balance sale consideration. Aggrieved by the same, the defendants 2 and 3 have filed an appeal in A.S.No.32 of 2000 on the file of the Sub-Judge, Madurantagam. The learned Sub-Judge has held that since the entire sale consideration was not passed, title was not passed to the plaintiff. However, he found that even prior to the execution of the Ex.A1 sale deed, the plaintiff was in possession of the suit property based on the usufructuary mortgage executed in favour of the plaintiff's wife and therefore, until the said mortgage is discharged, the plaintiff is entitled to retain possession of the suit property. Accordingly, he modified the trial court's judgment and decree and granted permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property until they discharge the aforesaid mortgage. Feeling aggrieved, the plaintiff has preferred the present second appeal.



8. At the time of admitting the second appeal, this court has formulated the following substantial questions of law :

"1. When the defendants are disputing the execution of the sale deed and the recitals therein and thereby are estopped from challenging the said sale deed, whether the lower appellate court is correct in holding that the said sale deed is not a valid one?

2. Having found that the defendants have not established their possession of the suit property and that the revenue records stand in the name of the plaintiff after the execution of the sale deed, whether the lower appellate court is correct in restricting the relief of permanent injunction till the redemption of mortgage in favour of the plaintiff's wife who is not a party to the present proceedings?

3. When the ownership, title and all interest in property pass to the purchaser on execution and registration of a sale deed unless different intention is expressed or necessarily implied which has to be proved by the party who is challenging the sale deed and that when there is no evidence placed by the defendants in this regard, whether the lower appellate court is correct in restricting the relief of permanent injunction?"

9. Heard M/s.V. Nicholas & N.E.A.Dinesh, learned counsel for the appellant and M/s.K.Jayachandran & K.Paranthaman & Bhagya K. Prabhakaran, learned counsel for the respondents.

10. Question Nos. 1 to 3:

The learned counsel for the appellant/plaintiff has submitted that the first appellate court erred in reversing the findings of the trial court that the title was already passed to the plaintiff. He further submitted that in Ex.A1 sale deed, it is clearly stated that the entire sale consideration was passed and that being so, it is not open to the defendants to adduce evidence against the recitals of the Ex.A1 sale deed. He further submitted that the defendants have not proved the execution and writings of the letter said to have been given by the plaintiff and the account sheet (Pulli) dated 03.08.1993. He further submitted that as per Section 54 of the Transfer of Property Act passing of consideration is not sine quo non for completion of sale and non-payment of price does not prevent the passing of title. In support of the aforesaid contentions, he relied upon the decision in Annamalai Mudaliar & 2 Others vs. Krishnaveni Ammal & 5 Others 2002 -1- LW 425



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11. On the contrary, the learned counsel for the respondents, has submitted that though registration of the sale deed is prima facie proof for transfer of the property, it is not a proof of operative transfer if payment of consideration is a condition precedent for passing of the property. He further submitted that as per Section 92 of the Indian Evidence Act, oral evidence can be adduced to disprove the recitals found in the Ex.A1 sale deed. He further submitted that the trial court has rightly found that the plaintiff did not pay the entire sale consideration and the same was confirmed by the first appellate court. He further submitted that though the trial court has found that that through Ex.A1 sale deed, title was passed to the plaintiff, the first appellate court has rightly held that since the entire sale consideration was not passed, the title was not passed to the plaintiff and in the said factual findings, this court cannot interfere. In support of his contentions, he relied upon the following decisions:

1. Kaliaperumal Vs. Rajagopal and Another, AIR 2009 SC 2122

2. Janak Dulari Devi and Another Vs. Kapildeo Rai and Another, 2011 6 SCC 555

12. It is an admitted fact that the suit property originally belonged to the defendants and they have sold the suit property to the plaintiff on 02.08.1993 under the Ex.A1 sale deed for Rs.20,700/-. In Ex.A1, it is stated that the sale consideration was Rs.20,700/- and out of the said amount, a sum of Rs.12000/- which was due under the two usufructuary mortgages executed in favour of the plaintiff's wife was adjusted and the balance amount of Rs.8700/- was received by the defendants as cash. So, total sale consideration of Rs.20,700/- was passed as per the Ex.A1 sale deed.

13. The case of the defendants is that though in Ex.A1 sale deed, it was mentioned that the entire sale consideration was passed, on 02.08.1993 itself, the plaintiff has issued an account statement (pulli) stating that a sum of Rs.6280/- was due to be paid. Their further case is that on 02.08.1993 itself, the plaintiff has issued a letter acknowledging that he has to pay a balance amount of Rs.6280/- including Rs.200/- which was paid by the defendants towards kist. The said documents were marked as Exs.B3 and B4 respectively.

14. Though the plaintiff, when he was examined as PW1, has denied the execution of Exs.B3 and B4, the trial court, after taking into consideration the evidence of DW1 to DW4, came to the conclusion that Exs.B3 and B4 were executed by the plaintiff. The said finding was confirmed by the first appellate court. In the said concurrent factual findings, this court cannot interfere.



15. As per Proviso (1) attached to Section 92 of the Indian Evidence Act, any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.

16. In view of the said proviso, the defendants are entitled to adduce oral evidence to show that though in Ex.A1 sale deed, it is stated that the entire sale consideration has been passed, part of the sale consideration was actually not passed. As already pointed out, the courts below found that the Exs.B3 and B4 are executed by the plaintiff and in the said documents, he has admitted that the balance sale consideration of Rs.6,280/- has to be paid and in the said factual findings, this court is not inclined to interfere.

17. In Kaliaperumal Vs. Rajagopal and Another (supra), the facts are totally different. In that case, the vendors appeared before the Sub-Registrar and admitted the execution of the sale deed, but refused to make an endorsement to that effect on the deed as they had not received the balance consideration of Rs.40,000/-. Further in the operative portion of the sale deed, it was clearly stated that the vendors have agreed to receive Rs.40,000/- in the presence of the Sub-Registrar on the date of registration of the sale deed and that in consideration of payment to be so made, the property was being conveyed to the purchaser. Taking into consideration of the aforesaid facts, the Hon'ble Supreme Court has held that the intention of the parties was that the title to the properties should pass only on passing of the consideration and since in that case, the consideration was not passed, the title was not conveyed to the purchaser. But in the instant case, no such recitals found in the Ex.A1 sale deed that only after passing of the entire sale consideration, the title will be conveyed. Therefore, the aforesaid decision will not apply to the facts of this case.

18. In Janak Dulari Devi and Another Vs. Kapildeo Rai and Another (2011) 6 SCC 555 (supra), the Hon'ble Supreme Court in paragraph No.24 has observed as follows:

"24. We hasten to add that the practice of ta khubzul badlain (of title passing on exchange of equivalent) is prevalent only in Bihar. Normally, the recitals in a sale deed about transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the



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sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. The exception to this rule is stated in Kaliaperumal (supra). The practice of 'ta khubzul badlain' in Bihar recognizes that a duly executed sale deed will not operate as a transfer in praesenti but postpones the actual transfer of title, from the time of execution and registration of the deed, to the time of exchange of equivalents that is registration receipt and the sale consideration, if the intention of the parties was that title would pass only on payment of entire sale consideration. As a result, until and unless the duly executed and registered sale deed comes to the possession of the purchaser, or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale merely remains an agreement to be performed and will not be a completed sale. But in States where such a practice is not prevalent, possession of Registration Receipt by the Vendor, may not, in the absence of other clear evidence, lead to an inference that consideration has not been paid or that title has not passed to the purchaser as recited in the duly executed deed of conveyance. Where the purchaser is from an outstation, the vendor being entrusted with the Registration Receipt, to collect the original sale deed and deliver it to the purchaser, is common. Be that as it may."

19. In States where such a practice is not prevalent, possession of registration receipt by the vendor, may not, in the absence of other clear evidence, lead to an inference that consideration has not been paid or that title has not passed to the purchaser as recited in the duly executed deed of conveyance. Therefore, the aforesaid decision will not help the defendants in this case.

20. In Annamalai Mudaliar & 2 Others vs. Krishnaveni Ammal & 5 Others (supra), this court after referring to several decisions has held that the payment of consideration is not a sine qua non for the completion of a sale under Section 54 of the Transfer of Property Act. If the intention is that the property should pass on registration, the sale is complete as soon as the deed is registered, whether the price has been paid or not. Then the purchaser is entitled to sue for possession although he has not paid the price.



21. In Kaliaperumal Vs. Rajagopal and Another (supra) also, the Hon'ble Supreme Court has held that if the intention of the parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. It was also held that in the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price and he cannot avoid the sale. Therefore, merely because a part of sale consideration was not paid by the plaintiff, it cannot be said that the title not passed on to the plaintiff.

22. It is also to be pointed out that in Ex.A1 the defendants have not reserved any right to cancel the sale deed in the case of non-payment of balance sale consideration. Even in the Ex.B4 letter, it is not stated that if the plaintiff failed to pay the balance sale consideration, the defendants are entitled to cancel the sale deed. Therefore, the cancellation deed executed by the defendants will not bind upon the plaintiff. Since the parties have not intended that unless the entire sale consideration is paid that the title would not pass, the finding of the appellate court that the title not passed to the plaintiff is an erroneous one. Therefore, the finding of the first appellate court that for non-payment of balance sale consideration, the title not passed on to the plaintiff is liable to be set aside. Accordingly, the decree and judgment of the first appellate court are liable to be set aside and the judgment and decree passed by the trial court have to be restored. Accordingly, these substantial questions of law are answered.

23. In the result, the second appeal is allowed. The judgment and decree passed by the first appellate court are set aside and the judgment and decree passed by the trial court are restored. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



1. The Subordinate Judge,
Maduranthagam

2. The District Munsif,
Maduranthagam.

+1cc to Mr.V.Nicholas, Advocate sr.no.52172

S.A.No.2148 of 2001

gj(co)
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