

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2965 of 2019 and
C.M.P. No.15814 of 2019

Harishkumar

.. Appellant/Petitioner/Plaintiff

-vs-

1.N.Balasubramanian

2.Sri Kanchi Kamakodi Peedathipathi
Jagadguru Sankarachariar Swamigal
Shri Madam Samasthanam
rep. by its authorized representative
Viswanathan

... Respondents/Respondent/Defendants

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of Civil Procedure Code against the order of the III Additional District and Sessions Judge, Tiruppur at Dharapuram dated 20.11.2018 in I.A. No.223/2018 in O.S. No.329 of 2018.

For Appellant : Mr.S.Saravanan

For Respondents : Mr.S.Siva Shanmugam (caveator)

JUDGMENT

The appeal has been filed challenging the order dated 20.11.2018 passed by the III Additional District and Sessions Judge, Tiruppur at Dharapuram in I.A. No.223/2018 in O.S. No.329 of 2018.

2.Learned counsel appearing for the appellant submitted that the appellant plaintiff has approached the first respondent in the year 2014 and borrowed a sum of Rs.15,00,000/- for interest and paid Rs.75,000/- towards interest per month and again he borrowed a loan of Rs.15,00,000/- from the same first respondent in the year 2015 and has paid a sum of Rs.45,000/- towards interest for every 15 days. According to him, the first respondent obtained signed and unfilled Promissory Notes, White papers, unfilled cheques and the original title deed of the lands belonged to the appellant to an extent of 6.52 acres situated in Sirukinar Village, Dharapuram Taluk. Unfortunately,

the appellant plaintiff met with a car accident in May 2016 and sustained severe injuries on his spinal cord for which he also underwent surgery. Since he was confined in bed, he was unable to conduct his business continuously. Therefore, he was not able to pay the principal and interest amount to the first respondent. Taking advantage of the critical situation faced by the appellant plaintiff, the first respondent tried to grab the property worth about one crore belonged to the appellant. Thereafter, the first respondent forced the appellant plaintiff to sell him the suit properties. In this regard, on 06.07.2016, the first respondent called the appellant plaintiff to come Dharapuram for a compromise talk and on the same day, the appellant, his wife and his mother proceeded to Dharapuram, where the first respondent and his men forced them to execute a sale deed in favour of the first respondent in respect of the suit properties. Accordingly, the sale deed was prepared and this was also registered on the file of the Sub Registrar Office, Dharapuram in Document No.4825/2016 and on the date of execution of the sale deed, a cheque for Rs.3,30,000/- was given to the appellant plaintiff. Thereafter, the first respondent has executed a Gift Deed dated 06.04.2017 to an extent of 1.36 acres of lands in Document No.1699/2017 in favour of Shree Kanji Kamakodi Peedathipathi Jakathguru Shree Sankarachariar Swamigal Shree Madam/the second respondent herein.

3. According to the learned counsel appearing for the appellant, as the first respondent has no right over the suit properties, he ought not to have executed any gift deed in favour of the second respondent. After execution of the gift deed in favour of the second respondent, the remaining portion of the suit properties were divided into plots by the first respondent, who allotted some portions for the public utilisation and handed over those portion of lands to the Block Development Officer, Kundadum under another registered Gift Deed dated 21.08.2017 bearing Document No.4231/2017. In view of the aforementioned problem faced by the appellant plaintiff, he was constrained to approach the Dharapuram Police Station on 04.04.2018 to take action against the first respondent, but the same was pending. Finding no response, the appellant plaintiff was advised to file a suit in O.S. No.329 of 2018 for declaration declaring that the sale deed dated 06.07.2016 executed in the name of the first respondent on coercion and compulsion in Document No.4825/2016 and the Gift Deeds executed by the first respondent in favour of the second respondent through Document Nos.4231 and 1699 of 2017 are null and void.

4. Learned counsel appearing for the appellant plaintiff would further submit that the appellant plaintiff has also moved I.A. No.223 of 2018 seeking an order of ad interim injunction restraining the first respondent from alienating the suit

properties till the disposal of the suit. The learned Trial Court, although being appraised of the fact that the first respondent has cheated the appellant plaintiff by advancing a loan of Rs.15,00,000/- for interest in the year 2014 and on advancing another sum of Rs.15,00,000/- in the year 2015, taking advantage of the said car accident occurred in May 2016 in which the appellant sustained grievous injuries on his spinal cord and for which, he also underwent surgery, the first respondent has compelled the appellant to execute the sale deed, has come to the conclusion that on the date of execution of the sale deed, the loan amount, which was borrowed by the appellant from the first respondent and the interest amount, were adjusted with part of sale consideration amount and the remaining sale consideration amount has also been paid by the first respondent to the appellant by way of Cheque for a sum of Rs.3,30,000/-, the first respondent has also further complicated the issue by executing a Gift Deed dated 06.04.2017 in favour of the second respondent and also executed one more Gift Deed dated 21.08.2017 in the name of Block Development Officer, Kundadum. Without even analysing the case of the appellant plaintiff, the Trial Court has erroneously dismissed the I.A. though there is no fault on the appellant, who has unnecessarily waited for almost two years from the date of execution of the sale deed because of the attitude of the first respondent.

5.Secondly, it is pleaded, the learned Trial Court, wrongly finding that the appellant plaintiff, on the date of execution of the Sale Deed, namely on 06.07.2016, has received a cheque for Rs.3,30,000/- which was encashed after two years from the date of the cheque, has observed that the appellant plaintiff cannot come to the Court for declaration declaring that the sale deed dated 06.07.2016 executed in the name of the first respondent on coercion and compulsion in Document No.4825/2016 and the Gift Deeds executed by the first respondent in favour of the second respondent through Document Nos.4231 and 1699 of 2017 are null and void. Such an approach adopted by the Trial Court is unacceptable, therefore, the impugned decretal order is liable to be interfered with.

6.Opposing the above prayer, the learned counsel appearing for the respondents pin pointed three palpable blunders committed by the appellant plaintiff in proceeding against the respondent. Firstly, the factum of borrowing huge amount of Rs.15,00,000/- in the year 2014 and Rs.15,00,000/- in the year 2015 from the first respondent has not been disputed. Secondly, it is not even disputed by the appellant plaintiff that in the guise of meeting a car accident in May 2016, the appellant plaintiff conveniently refused to answer the first respondent to repay the huge amount. Finally, when a compromise meet was organised, the appellant plaintiff in the presence of his wife

and mother, negotiated further payment of Rs.3,30,000/- so that the sale deed could be executed and accepting the request made by the appellant plaintiff, the first respondent also paid additional amount of Rs.3,30,000/- by way of cheque towards the land in question and the same was also encashed conveniently by the appellant plaintiff and after exhausting the entire amount, to extract more money from the first respondent, the appellant plaintiff erroneously approached the Dharapuram Police Station on 04.04.2018 to mount pressure on the first respondent. In the meanwhile, the first respondent has executed a Gift deed dated 06.04.2017 bearing Document No.1699/ 2017 giving away 1.36 acres of land in favour of the second respondent and has also executed one more registered Gift Deed dated 21.08.2017 bearing Document No.4231/2017 for the public utilisation and the portion of lands had been handed over to the Block Development Officer, Kundadum. Thereafter, the first respondent has approached the Tahsildar for approval of the revenue records and after considering the registered sale deed executed by the appellant plaintiff in favour of the first respondent, the Tahsildar has issued patta in favour of the first respondent.

7. When the first respondent was able to prove the payment of Rs.3,30,000/- by way of cheque and that was negotiated by the appellant, finding that the appellant plaintiff has admitted his claim that he has borrowed a sum of Rs.30,00,000/- on two occasions, the learned Trial Court, looking into the conduct of the appellant plaintiff, has refused to accept the interim relief sought for by the appellant plaintiff. In any event, the matter is seized off by the learned Trial Court and after framing the issues, the trial is also ready now. Therefore, at this juncture, the appeal cannot be entertained and if it is done, the pending Trial would be unnecessarily prolonged causing prejudice to both parties.

8. I find much force on the submissions made by the learned counsel appearing for the respondents. When the appellant has admitted that he has borrowed a sum of Rs.30,00,000/- from the first respondent and he has not come forward to pay any part of the principal amount and he went to the first respondent's house at Dharapuram along with his wife and mother and executed a sale deed on receipt of Rs.3,30,000/- by way of cheque towards full sale consideration of the land in question, the arguments advanced by the appellant plaintiff that the first respondent has forcibly executed a sale deed cannot be accepted. Had it been the case of the appellant that on coercion and force the sale deed dated 06.07.2016 was executed, he ought not to have accepted the cheque and after encashing a sum of Rs.3,30,000/-, he ought not to have filed a criminal complaint before the Dharapuram Police Station, that too, after two years from the date of execution of the sale deed. Therefore, this Court, looking at the conduct of the appellant plaintiff, is unable to

entertain the appeal as the same has to be dismissed at the threshold with costs of Rs.5,000/- payable to the first respondent. Accordingly, the appeal is dismissed with costs of Rs.5,000/- payable to the first respondent by the appellant plaintiff and the Trial Court shall ensure the payment before

conducting trial. Consequently, C.M.P. No.15814 of 2019 is also dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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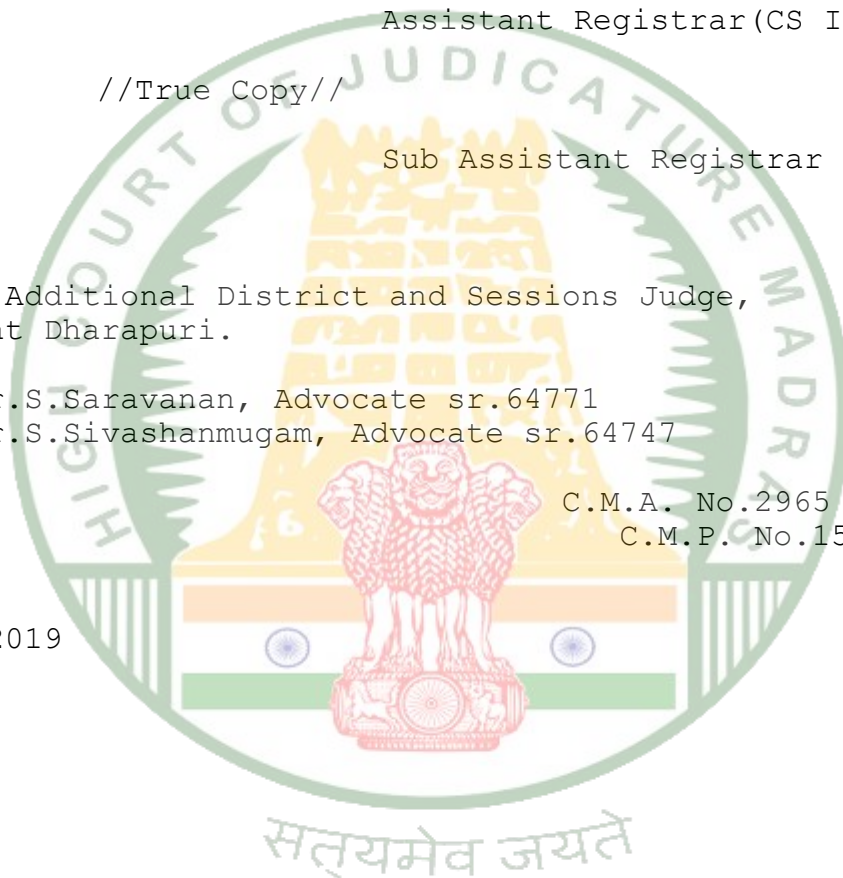
1.The III Additional District and Sessions Judge,
Tiruppur at Dharapuri.

+1cc to Mr.S.Saravanan, Advocate sr.64771

+1cc to Mr.S.Sivashanmugam, Advocate sr.64747

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