

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	22.10.2019
Judgment Delivered on	18.12.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

A.S. No.347 of 2016
and
CMP No.7683 of 2016

M.A. Syed Mohamed : Appellant/Plaintiff

Vs.

1.V.M.S Hajara Beevi
K.Srinivasa Raj (died)
2.Mohammed Ismail
3.Minor Raashid Sultan
4. Minor M. Shamima Ader
5. Minor Suhail Ahmad
6. Mr. R. Nagarajan
7. Mrs. Manohari
8. Mr. Manoj
9. Minor Raj

: Respondents/Defendants

Prayer: Appeal Suit filed under section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908, against the judgment and decree passed in O.S.No.424 of 2006, dated 06.02.2016 by the Additional District Court, Chengalpattu.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.I.Mohamed Faizal
Hafeez Mohamed

For Respondents : No appearance

J U D G M E N T

T.KRISHNAVALLI, J

This appeal suit is directed against the judgment and decree passed in O.S.No.424 of 2006, dated 06.02.2016 by the Additional District Court, Chengalpattu.

2.The case of the plaintiff is that originally, the suit property belonged to the 1st defendant and the 1st defendant offered to sell the same to meet her husband's financial crisis and that the plaintiff agreed to purchase the suit property. In this regard, an agreement of sale was entered into between the plaintiff and the 1st defendant, dated 19.05.2003 for a total sale consideration of Rs.28,32,500/-. The 1st defendant received advance amount of Rs.7,00,000/- and the time fixed for completion of transaction is 19.11.2003. In the meantime, the 1st defendant received several amounts to the tune of Rs.18,00,000/- on the promise and made endorsement in the sale deed. The plaintiff entered into 2nd agreement on 27.08.2004 by superseding the 1st agreement and it was agreed that the sale agreement to be completed on or before 27.07.2005. Thereafter, the 1st defendant was evading the performance of contract. In this regard, the plaintiff sent a letter on 28.06.2005, but the 1st defendant began to repudiate the contract that she received only Rs.5,00,000/- and 1st defendant sold the schedule mentioned property to the 2nd defendant on 11.11.2005. On knowing the above fact, the plaintiff preferred a Police complaint and after a long mediation, the 2nd defendant in turn sold the schedule mentioned property to the plaintiff on 28.03.2006 for a total sale consideration of Rs.31,57,984/-. But the 2nd defendant executed a sale deed in favour of the defendants 4 to 6 in respect of the suit property. Further, the 1st defendant created a sham and nominal agreement in the name of the 7th defendant, giving Power of Attorney to K.R.Selvaraja Kumar. Hence, the suit is filed by the plaintiff for declaration and permanent injunction.

3.The 1st defendant filed her written statement contending that the she never sold the suit property to the 2nd defendant, dated 11.11.2005 and she had not obtained a hand loan of Rs.5,00,000/- from one Ashok, who is the friend of the plaintiff and as a security of the said loan, the plaintiff obtained signatures in various papers and the plaintiff took the original documents also and later she came to know about the sale deed standing in the name of the 2nd defendant, which was created by the plaintiff and the alleged sale deed dated 11.11.2005 was obtained by fraud and misrepresentation. The 1st defendant is in possession and enjoyment of the suit property and she had not executed any agreement of sale to the plaintiff on 19.05.2003 or 27.08.2004 and she did not receive any advance amount and prayed for dismissal of the suit.

4. The 2nd defendant filed his separate written statement denying the plaint averments and stated that there is no huge payment made by the plaintiff and only cash payments were made and the subsequent endorsement is not true. The plaintiff did not take any steps for issuance of legal notice and he has purchased the suit property from the 1st defendant on 11.11.2005 for a sale consideration of Rs.15,79,000/- and he

is a bona-fide purchaser. The defendants 2 and 3 are jointly running a bicycle stand and two wheeler stand. The 2nd defendant executed a Power of Attorney on 20.03.2006 and he was forced to execute the sale deed in favour of the plaintiff and subsequently, a sale deed was executed in favour of the defendants 4 to 6 and the guardian took possession of the property and in this regard, a complaint was lodged against the plaintiff, but the police did not take any action and thereafter, a petition was filed before the High Court, Madras and the same is pending and that the defendants 4 to 6 are enjoying the property and prayed for dismissal of the suit.

5. The minor defendants 4 to 6 filed their written statement through their Court Guardian stating that the 2nd defendant is the absolute owner of the suit property and the defendants 4 to 6 purchased the same for valid sale consideration and that the defendants 4 to 6 are not aware of the alleged facts stated in the plaint and prayed for dismissal of the suit.

6. Based on the pleadings of both parties and on a perusal of the entire materials available on record, both oral and documentary, the trial court partly decreed the suit, declaring that the suit sale deed, dated 29.03.2006 executed by the 2nd defendant in favour of the defendants 4 to 6 in respect of the property, more fully described in the schedule and registered as document No.1976/06 at SRO, Neelankarai, Chennai, is illegal, invalid and non-est in the eye of law and consequently, not binding upon the plaintiff and dismissed the suit in respect of other reliefs claimed by the plaintiff. Aggrieved by the judgment of the trial court, the plaintiff as appellant is before this court.

7. This court has framed the following points for consideration:-

1. Whether the sale agreements dated 19.05.2003 and 27.08.2004 are true and valid?

2. Whether the sale deed dated 28.03.2006 in favour of the plaintiff is true, valid and acted upon?

3. Whether the sale deed dated 29.03.2006 executed by the 2nd defendant in favour of the defendants 4 to 6 is true and valid?

4. Whether the plaintiff is in possession of the suit property?

5. Whether the plaintiff is entitled for the relief of declaration and permanent injunction?

trial Court is correct?

7. Whether the appeal is liable to be allowed? and

8. To what relief the appellant is entitled to?

Point No. 1 to 6:

8. It is admitted on both sides that the suit property belonged to the 1st defendant.

9. The learned Senior counsel appearing for the appellant/plaintiff argued that the 1st defendant expressed her willingness to sell the suit property and approached the plaintiff and a sale agreement was entered into between the plaintiff and 1st defendant for a total sale consideration of Rs.28,32,500/- and the 1st defendant agreed to receive a sum of Rs.7,00,000/- as advance and the balance sale consideration was payable on or before 19.11.2003. Subsequently, the plaintiff and the 1st defendant entered into another sale agreement on 27.08.2004, which superseded the earlier agreement of sale, dated 19.05.2003 and a sum of Rs.18 Lakhs was acknowledged towards advance for sale consideration. The plaintiff agreed to complete the sale transaction on or before 27.07.2005 and the plaintiff has made payment of Rs.21,05,000/- as against the agreed consideration of Rs.28,32,500/-. Thus, the plaintiff is liable to pay a sum of Rs.7,27,500/-, being the balance sale consideration and the plaintiff is ready and willing to perform the balance part of contract. But the 1st defendant sold the said property to the 2nd defendant and in turn, the 2nd defendant sold the same property to the defendants 4 to 6 and the appellant/plaintiff is entitled to the suit property and prayed that the Appeal Suit may be allowed.

10. On the other hand, it is the case of the 1st respondent/1st defendant that she never agreed to sell the suit property to the plaintiff and she approached the plaintiff for a loan of Rs.5,00,000/- and accordingly, the plaintiff took the original documents and the 1st defendant requested the plaintiff to make arrangement for sale of the suit property and the 3rd defendant obtained her signature in several papers. The 1st defendant requested the plaintiff to get the consideration from the 3rd defendant and informed that he would get the entire consideration on the date of registration of the sale deed for the shops in favour of the 3rd defendant, but later the 1st defendant found that the defendants 2 and 3 created a sale deed and subsequently, the 2nd defendant conveyed the suit property to the plaintiff and further, the 2nd defendant had executed another sale deed in respect of the same suit property in favour of the defendants 4 to 6, who are

all minor children of the 3rd defendant. The 1st defendant had not sold the suit property to the 2nd defendant under the alleged sale deed on 11.11.2005 and hence, the above sale deed is a sham document created by the plaintiff. The 2nd defendant had an intention to illegally grab the property of the 1st defendant and the 1st defendant had not given any consent for the said sale deed and the same had been brought about by misrepresentation and fraud. Hence, the above sale deeds are not valid and the 1st defendant never sold the suit property to the 2nd defendant and she has not received any sale consideration from the 2nd defendant and the 1st defendant has not handed over the possession to the 2nd defendant or to the plaintiff and she is in continuous possession of the suit property till date. The 2nd defendant has got no right or title to further convey to the plaintiff and again, subsequently to the defendants 4 to 6, and it clearly reveals the fact that the plaintiff and other defendants are colluding with each other and are creating bogus documents in respect of the suit property in order to illegally grab the same by depriving the rights of the 1st defendant in respect of the suit property. The 1st defendant is the absolute owner and the 1st defendant had not sold the suit property to the 2nd defendant and hence, the alleged sale agreements, dated 19.05.2003 and 27.08.2004 are not valid and the sale deed in favour of plaintiff and the defendants 4 to 6 are not valid and the plaintiff is not entitled to any relief as prayed for and the 1st defendant prayed that the Appeal Suit may be dismissed.

11. In this case, on the side of the plaintiff, it is stated that once the 1st defendant executed the sale deed in respect of the suit property in favour of the 2nd defendant and the 2nd defendant sold the suit property in favour of plaintiff, the alleged sale agreements executed on 19.05.2003 and 27.08.2004 had become invalid.

12. Further, the learned Senior counsel appearing for the appellant argued that the 1st defendant is the contesting defendant. But she has not entered into the witness box and opposed the allegations as stated by the plaintiff. When one person filed suit against another person, it is the bounden duty of the other person to appear before the Court and defend the case and when the opponent failed to appear before the Court, it is presumed that he admitted the allegations found in the plaint and adverse interference can be drawn and the learned Senior Counsel appearing for the appellant prayed that the appellant/plaintiff is entitled to the reliefs as prayed for.

13. The case of the plaintiff is that the 1st defendant sold the said property to the 2nd defendant and in turn, the 2nd defendant sold the said property to the plaintiff and subsequently, the 2nd defendant sold the same suit property to the defendants 4 to 6. The registration copy of the sale deed executed by the 1st defendant in favour of the 2nd defendant was

marked as Ex.A21 and the registration copy of the sale deed executed by the 2nd defendant in favour of plaintiff was marked as Ex.A23. In this case, the 1st defendant has not filed any counter-claim to set aside the sale deed executed in favour of the 2nd defendant.

14. Further, the 1st defendant has not come before this Court to oppose the allegations stated by the plaintiff. Ex.A21 is the registration copy of the sale deed executed by the 1st defendant in favour of the 2nd defendant. Further, the 1st defendant has not given any complaint to the police station, but Ex.A21 sale deed was obtained by fraud and forgery. If a person states that a deed was obtained by fraud and forgery, it is his bounden duty to prove that the deed was obtained by way of fraud and forgery. But in this case, the 1st defendant failed to appear before the Court to prove that Ex.A21 was obtained by the 2nd defendant in collusion with the plaintiff by way of fraud and forgery. Hence, it is clear that the sale deed executed by the 1st defendant in favour of the 2nd defendant is valid. The 2nd defendant sold the suit property to the plaintiff for valuable consideration by way of Ex.A23. Hence, it is held that as per Ex.A23, the plaintiff became the owner of the suit property. Therefore, Ex.A1 sale agreement becomes invalid.

15. The 1st defendant in her written statement stated that already, she mortgaged the suit property with one Ashok for a sum of Rs.2.5 lakhs and in order to clear the said loan and medical expenses for her husband, she approached the plaintiff for a loan of Rs.5,00,000/- and accordingly, the plaintiff gave Rs.5,00,000/- and the plaintiff took the original documents in respect of the suit property from Ashok and believing the plaintiff being a close relative, she permitted the plaintiff to retain the document of title deeds and she approached the plaintiff to get back the documents, by repaying the loan amount of Rs.5,00,000/-, but the plaintiff evaded to return the original documents. She sent a notice calling upon the plaintiff to return her original documents and then she came to understand that the plaintiff colluded with the defendants 2 and 3, created bogus sale deed and prayed that the above sale deeds are sham documents and will not bind on her and prayed that the plaintiff is not entitled to any relief. To prove the above fact, the 1st defendant had not let in any contra evidence. Further, to prove that, she sent a notice calling upon the plaintiff to return the original documents, but the copy of the notice was not filed before the trial court. Hence, the allegation stated in the written statement by the 1st defendant that she permitted the plaintiff to retain the original documents in respect of the suit property and with the above documents, plaintiff colluded with the 2nd defendant and Exs.A21 and Ex.A23 were created by the 3rd defendant, is not at all acceptable.

the 1st defendant sold the suit property to the 2nd defendant for valuable consideration and then, the 2nd defendant sold the above property to the plaintiff for valuable consideration.

17.The trial court granted the relief to the effect that the sale deed dated 29.03.2006 executed by the 2nd defendant in favour of the defendants 4 to 6 is null and void. Against that relief, the 1st defendant has not filed any appeal.

18. On a careful perusal of the documents filed in this case, it reveals that the 2nd defendant sold the suit property to the plaintiff and hence, it is held that the plaintiff is the owner of the suit property and that the appellant/plaintiff is entitled to the relief of declaration and permanent injunction in respect of the suit property. Accordingly, the points for consideration Nos.1 to 6 are answered in favour of the appellant/plaintiff.

Point for consideration Nos.7 and 8:-

19.This court held that the plaintiff is entitled to the relief of declaration, and hence, it is necessary to interfere with the findings given by the trial Court in respect of the relief of declaration and injunction. Hence, the judgment and decree of the trial court are liable to be set aside. Accordingly, they are set aside.

20.In the result, this Appeal Suit is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

smn/er/cs
To

The Additional District Judge,
Chengalpattu.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to M/s.I.Mohamed Faizal , Advocate SR.No. 105585

A.S No.347 of 2016

A.SK(23/09/2020)