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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.01.2019

Delivered on: 03.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA
A.S.No.662 of 2008

T.Ravichandran ...Appellant/ Defendant

Vs

1.Mrs.K.Kasthuri

2.K.Senthil Sankaran

3.K.Kumaran

4.K.Velumani Kalyanasundaram
Rep.by his power agent K.Kumaran
5.Minor E Anusha Meenakshi

.. Respondent 1 to 5/
Plaintiffs 1,3 to 6

Rep.by his power agent K.Kasthuri
6.Mrs R Usha

7.T Veerapandian

...Respondents 6 and 7
Defendants 3 and 2

PRAYER: First Appeal is filed under Section 96 of the Code of Civil Procedure against the Judgement and Decree dated 28.09.2007 passed by the learned Additional District Judge, Puducherry at Karaikal made in O.S.No.75 of 2004.

For Appellant	:	Mr.K.Rajasekaran
For Respondents 1, 4 & 6	:	Mr.S.V.Jayaraman Senior Counsel for Mr.T.Susindran
For Respondent 5	:	Minor Rep. By R1
For Respondents R2&3	:	No Appearance



J U D G E M E N T

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The above first appeal arises against the Judgement and Decree in O.S.No.75 of 2004 on the file of the Additional District Court, Pondicherry at Karaikal. The 1st defendant is the appellant before this Court. The suit has been filed by the 1st respondent/1st plaintiff and her late husband Kalyana Sundaram for the following reliefs:

"1.Declaring that the 1st plaintiff is the owner of suit nanjai lands

2)Restraining the defendants, their men, Agents, Servants, employees, etc by permanent injunction not to interfere into the possession of suit properties by the plaintiffs,

3)Directing the defendants 1 and 2 jointly and severally to pay to plaintiffs a compensation of Rs.1,25,000.00, with subsequent interest at the rate of 12% per annum from the date of the plaint."

2.The suit was filed with reference to several items of Nanjai land situate in Selloor Revenue Village, Thirunallaru Sub-Registry, Pondicherry Registration District. The parties are referred to in the same array as in the suit.

3.Plaintiffs' Case:

3.1.The case of the plaintiffs 1 and 2 was that the suit property absolutely belongs to the 1st plaintiff and the 2nd plaintiff, her husband was her general Power of Attorney between the years 13.11.1992 to 28.04.1994 and was also a cultivating tenant under her. It is their case that the property was purchased by the 1st plaintiff under a registered sale deed dated 22.03.1973 and since then she has been in possession and enjoyment of the suit property through her cultivating tenant, the 2nd plaintiff.

3.2.It was their further case that one Thirumenia Pillai father of the defendants 1 and 2 had held talks with the plaintiffs 1 and 2 for an alliance for his son Thandapani Elango Pillai, with the 2nd plaintiff asking the hand of the only daughter of the 1st and 2nd plaintiffs one Dr.Vasanthi. It is the case of the plaintiffs 1 and 2 that the said Thirumenia Pillai had demanded dowry of 50 Sovereigns of Gold, furniture and utensils worth over Rs.40,000/- from the 2nd plaintiff. It is the case of the



plaintiffs that it was 2nd plaintiff who was negotiating the alliance.

3.3.They would contend that the 2nd plaintiff had promised 30 Sovereigns of Gold and utensils of Rs.40,000/- and he had informed Thirumenia Pillai that the same can be arranged only in the month of June/July of 1991, that is the Thamizh month of Aani. Since the said Thirumenia Pillai was anxious to have the marriage early, he asked the plaintiffs that he would make the initial payment and he could be paid later and in case the plaintiffs were not able to pay the amount, the property of the plaintiffs could be sold to him. The 2nd plaintiff agreed to this arrangement and initially a sum of Rs.45,000/- was received.

3.4.The said Thirumenia Pillai had assured the 2nd plaintiff that the balance amount would be paid at the time of the registration after deducting the dowry cost claimed by him. Though the value of land was a sum of Rs.785/- per Kuzhi, however Thirumenia Pillai insisted that the rate should be shown as Rs.550/- in the agreement.

3.5.It is the case of the plaintiffs that an agreement was entered into and it was only the 2nd plaintiff who had signed the same as an agent of the 1st plaintiff and title deeds were handed over to Thirumenia Pillai. It was their further case that before making the payment Thirumenia Pillai asked the 2nd plaintiff to sign the document as if he had received the entire sale consideration in cash and the 2nd plaintiff had also complied with request without even receiving a single penny therefore the sale of the land was only in consideration of the dowry.

3.6.Thereafter on 27.03.1991, the marriage between the plaintiffs' daughter and Thirumenia Pillai's was conducted and after the marriage the couple had left for Seychelles. The plaintiffs would further go on to state that in the month of March 1994, Thirumenia Pillai came to India and had approached the 2nd plaintiff for executing a registered sale deed. The 2nd plaintiff was taken to the scribe and on the instructions of Thirumenia Pillai the sale deed was prepared and once again the balance sale consideration was not paid but however, Thirumenia Pillai assured the 2nd plaintiff that on the date of the registration the said amount would be paid.



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3.7. On 29.04.1994 the signature of the 2nd plaintiff was obtained in the sale deed and he was asked to come the next day to the Sub-Registrar office for registration. The 2nd plaintiff had come to the registration office but however Thirumenia Pillai came to the Registration Office at the close of working hours and he therefore requested the plaintiff to come on the 2nd of May 1994 for registration, however the 2nd plaintiff came to know that Thirumenia Pillai had returned back to Seychelles.

3.8. Once again in June 1994, the said Thirumenia Pillai had come to India along with the plaintiff's son-in-law and Thirumenia Pillai had sent third parties to the house of the plaintiff to get the sale deed registered. Though Thirumenia Pillai had promised to purchase and give the dowry Jewels and other articles to the plaintiff's daughter he had however not given the same to the plaintiff's daughter.

3.9. Therefore the 2nd plaintiff insisted that the Thirumenia Pillai should give Jewels to his daughter and only then he would have the sale deed registered. Thereafter, the plaintiffs came to know that Thirumenia Pillai was taking steps to have the sale deed compulsorily registered. Immediately the 1st plaintiff had filed a suit O.S.No.322 of 1994, for an injunction against Thirumenia Pillai and the Sub-Registrar, Thirunallaru, from registering the sale deed. The 2nd plaintiff was shown as the 2nd defendant in the said proceedings. The suit was ultimately dismissed on the ground that there cannot be an injunction against the statutory authorities. The issue of dowry was not considered or raised in the said proceedings.

3.10. While the suit was pending the plaintiff's daughter who had become estranged from her husband, reunited with him and they had set up a separate residence. After the dismissal of the suit O.S.No.322 of 1994, the plaintiff's son-in-law sent a letter asking the plaintiffs to execute the sale deed in favour of his daughter Anusha Meenakshi and not in favour of his father.

3.11. In February 1998, the plaintiff's daughter died while she was in India on account of a Heart Ailment. On her death Thirumenia Pillai, had taken away even the Thirumangalyam and therefore no sale consideration except the initial sum of Rs.45,000/- had passed for the sale. That apart the consideration was illegal as the same was in



3.12. In the month of August 2004, certain workers stating to be working under the 3rd defendant had entered the suit property to undertake certain maintenance work stating that the 2nd defendant had sold the property to 3rd defendant. The same was successfully prevented by the plaintiffs and therefore left with no other alternative the plaintiffs was constrained to issue a general notice by way of publication in one issue of the Dinamalar and Dinathanthi.

4. Defendants' case:

4.2. The defendants had further gone on to state that the District Registrar had passed orders for compulsory



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registration only after examining the parties in detail and the 2nd plaintiff had been present during the enquiry and had submitted his statement in connection with the sale and after all this the plaintiff has come forward with the contention that the sale consideration was in lieu of dowry.

4.3.The defendants would categorically deny the pleadings made by the plaintiffs. They would contend that the plaintiffs who were on the look out for a Bride Groom from a wealthy family for their daughter, had come across the alliance of the son of Thirumenia Pillai through the marriage broker. Thirumenia Pillai was a very successful businessman in Seychelles and he owned extensive lands and properties in his home town at Mayiladuthurai.

4.4.Thirumenia Pillai wanted the marriage to be conducted emergently as his son was coming to India within a month and when the 2nd plaintiff had informed him that they were short of funds, Thirumenia Pillai undertook to bear the entire expenses however the 2nd plaintiff insisted that Thirumenia Pillai should purchase the lands as he required funds to meet the incidental expenses.

4.5.The sale consideration was also fixed by the 2nd plaintiff and Thirumenia Pillai did not bargain for the price. He had given an advance of Rs.45,000/- to the 2nd plaintiff. With this money the betrothal took place and thereafter the plaintiffs wanted money to purchase Jewellery in Mayiladuthurai itself, for this Thirumenia Pillai had paid a sum of Rs.61,000/-, since Thirumenia Pillai had reposed absolute faith upon the 2nd plaintiff, who behaved like a gentleman, he had not insisted on any written document.

4.6.It is their categoric case that there was no dispute between the son and daughter-in-law of Thirumenia Pillai and allegations about the daughter leaving the home and seeking shelter was denied as absolutely concocted. The defendants would submit that the plaintiffs' daughter had a congenital heart ailment and she was taken great care by her husband.

4.7.In March 1994 when the Thirumenia Pillai had come down to India he had met the 2nd plaintiff and informed him that he was ready to go ahead with the registration of the sale deed and the 2nd plaintiff readily accepted the same



and requested Thirumenia Pillai to purchase the stamp papers. Since Thirumenia Pillai was not familiar with the document writers of Karaikal, the 2nd plaintiff took him to the document writer, Subbaiya Pillai and the 2nd plaintiff had handed over documents for preparing the sale deed and both the 2nd plaintiff and Thirumenia Pillai gave instructions to the document writer.

4.8.The 2nd plaintiff informed the document writer he would like to have the balance sale consideration on the execution of the sale deed and when Thirumenia Pillai was informed about the same he had paid the balance sale consideration without any hesitation. Thirumenia Pillai asked the 2nd plaintiff to come to the document writer's place to sign the document. Since he did not come to the office as promised, Thirumenia Pillai along with Swaminathan and Kaliyamoorthy had gone to the 2nd plaintiffs house. The 2nd plaintiff read the contents of the deed and thereafter signed the document he also promised to come the Sub-Registrar Office but however he did not do so.

4.9.Thereafter Thirumenia Pillai came to know that the plaintiffs wanted him to purchase the land measuring 25 Kuzhis over which the plaintiff did not have any right but they had belonged to ten other persons and therefore Thirumenia Pillai refused to purchase the land and aggrieved by the same the 2nd plaintiff refused to register the sale deed. Therefore the sale deed was presented by Thirumenia Pillai before the Sub-Registrar, who refused to register the same as there was denial of registration. The said Thirumenia Pillai had therefore moved the District Registrar for compulsory registration of the deed.

4.10.Immediately thereafter the 1st plaintiff had filed a suit O.S.No.322 of 1994 for an injunction against not only Thirumenia Pillai but also against her husband, the 2nd plaintiff and the Sub-Registrar in the said suit. The 1st plaintiff had specifically pleaded that apart from a sum of Rs.45,000/- which was received no other amounts were paid. The 2nd plaintiff though impleaded as the 2nd defendant, deposed as P.W.1 on behalf of the plaintiff. He would also reiterate the same contention. The learned District Munsif, held that the sale deed was duly executed by the 2nd plaintiff as a Power Agent of the 1st plaintiff and therefore the suit was dismissed. Meanwhile the District Registrar had also directed compulsory registration of the



sale deed by his order dated 25.09.1998 and on 28.09.1998 the sale deed was also registered.

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4.11. Possession of the properties was handed over to Thirumenia Pillai on the date of execution of the sale deed, however the Judgement and Decree of O.S.No.322 of 1994 was not taken up on appeal or revision. Similarly, the order of the District Registrar, directing compulsory registration was also not appealed against them. Without challenging the orders passed against them, the plaintiffs herein, all of sudden in the month of 2004 had issued the paper publication to which a reply was also addressed by the 2nd defendant.

4.12. The defendants would submit that despite instructions that Vasanthi should not be taken to hill station the plaintiffs had flouted the instructions and taken her to Thirupathy where she suffered an attack and passed away. Her husband wanted to have the funeral at his home town Mayiladuthurai but however the 2nd plaintiff insisted that funeral should take place in his native place and ultimately the cremation was done only at Pondicherry.

4.13. The defendants would contend that Vasanthi had brought her Jewellery to India when she had come down. The plaintiffs who were with her had taken away the Jewellery and that apart Thirumenia Pillai and his son had deposited Rs.21,00,000/- in the name of the minor daughter and it is for getting their hands on this amount that the plaintiffs have been filing this suit. The defendant would contend that the suit property had been purchased by paying the entire sale consideration and they would further contend that they are in possession and enjoyment of the suit property and therefore sought for the dismissal of the suit.

5. Trial Court:

5.1. The learned Additional District Judge, Pondicherry at Karaikal had initially framed the issues which was ultimately recast and the re-casted issues are as follows:

"1. Whether the plaintiff executed the sale deed under compulsion of the deceased Thirumenia Pillai in lieu of Dowry demanded by him?

2. Whether the plaintiffs are entitled to claim title to the suit property without getting (sic: setting aside) the sale deed dt.2.3.94 and registered in September 1998 as per the order of the competent authority in favour of 1st



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defendant's father and the subsequent sale deed dt.31.01.01 in favour of 2nd defendant and the subsequent sale deed dated 19.08.04 in favour of the 3rd defendant?

3.Whether the plaintiffs are not in possession of the suit properties?

4.Whether the frame of the suit is hit under Order II Rule 2 CPC and under Order XI Rule 11 (a) (d) CPC?

5.Whether the plaintiffs are entitled for the declaration of title and consequent injunction as prayed for?

6.Whether the filing of this suit is an abuse of process of law in view of the earlier litigations between the parties and as such the defendants are entitled to compensatory costs u/s 33-A CPC?

7.Whether the suit is barred for suppression of facts and without cause of action?

8.To what reliefs the parties to the suit are entitled?"

5.2.The 1st plaintiff had examined herself as P.W.1 and had marked Ex.A.1 to Ex.A.12. Pending the suit the 2nd plaintiff had died and the plaintiffs 3 to 6 were brought on record as his legal heirs and the 6th plaintiff was the grand daughter of Thirumenia Pillai. The defendants on their side had examined six witnesses, the 1st of whom was the 1st defendant and had marked Ex.B.1 to Ex.B.12. The defendants had marked Ex.X.1 to Ex.X.4 through the Agricultural officer (D.W.3).

5.3.The learned Additional District Judge on perusing the pleadings and evidence decreed the suit holding that the suit land was sold by the 2nd plaintiff to Thirumenia Pillai in lieu of Jewellery for the marriage of the daughter of the plaintiffs 1 and 2. He had also returned a finding that the defendants were not in possession and enjoyment of the property and that the sale deed in favour of the 1st defendant and 3rd defendant was void since the very sale deed in favour of Thirumenia Pillai had been declared as void transaction.

5.4.The learned Judge has held that since the transaction was void there was no necessity for the plaintiff to ask for the cancellation of the deed and that



Honourable supreme Court in the Judgement and Decree in Ishwar Dass Jain (Dead) through Lrs. Vs. Sohan Lal (Dead) by Lrs. reported in (2000) 1 SCC 434 , at paragraph No.27 it can be presumed that the endorsement made by the Sub-Registrar under Section 58 of the Registration Act was correct.

6.8.He would further go on to argue that the suit was not maintainable since the plaintiffs had not asked for cancellation of the sale deed executed in favour of the said Thirumenia Pillai by compulsory registration. He would argue that without seeking for a cancellation by means of astute drafting the plaintiffs were attempting to get the sale deed set aside by asking for a declaration of their title to the property.

6.9.He would submit that the said suit is not maintainable in the light of the Judgements in Chellakannu, Son of Pichamuthu, Vethiyar Vettu village, Udayarpalayam Taluk Vs. Kolanji, Wife of Shanmugam, Vethiyar Vettu Village, Udayarpalayam Taluk reported in 2005 (4) CTC 197 and B.Raghumaran (Rep. By his power agent, R.Bharathidasan) Vs. Mrs.Pushpabai and another reported in 2016 (6) MLJ 286.

6.10.He would argue that the plaintiffs are estopped from arguing contrary to the recitals contained in the registered document which would state that not only was the total sale consideration received but that the title deeds as well as the possession had been handedover to the said Thirumenia Pillai. He would also draw the attention of the Court to the deposition of D.W.1 to contend that, in the cross examination there was no questions asked with reference to the possession or with reference to the sale. He would rely on the Judgement in Sarwan Singh Vs. State of Punjab reported in (2003) 1 SCC 240, where the Honourable Supreme court has held as follows:

"It is a rule of essential Justice that whenever opponent has declined to avail himself of the opportunity to put his case in cross examination it must follow that the evidence tendered on that issue ought to be accepted"

6.11.Therefore the counsel would submit that in the light of the non-examination of D.W.1 with reference to these issues the Court has to only presume that the recitals in Ex.B.1 sale deed is true and is binding on the plaintiffs. He would contend that the onus is cast on the



party asserting that title has not passed and this onus has not been discharged by the plaintiffs.

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6.12. He would further contend that even assuming that the order of compulsory registration, pursuant to which the registration had taken place is void, the document has to be set aside within a reasonable time and in support of this proposition he would rely on the Judgement in State of Rajasthan and others Vs. D.R. Laxmi and others reported in (1996) 6 SCC 445 at paragraph No.10. Though the plaintiffs in the instant case were aware about the compulsory registration they had not taken any steps till 2004 to initiate proceedings in fact even when the earlier suit was filed the plaintiffs had the cause of action for challenging the sale deed (which they had not done).

6.13. In the above circumstances the learned counsel would pray that the Judgement and Decree of the Trial Court be set aside and to sum up his arguments the learned counsel would submit that he has challenged the Judgement and Decree in O.S.No.75 of 2004 on the following grounds:

- a) There is no prayer for cancelling the sale deed
- b) Valuation ought to have been made under Section 40 of the Tamil Nadu Court Fees and suit Valuation Act since the relief that is claimed albeit is one for cancellation.
- c) The suit is hopelessly barred by limitation
- d) That possession is with the plaintiffs has not been proved by them despite the fact that they had contended that the 2nd plaintiff was a cultivating tenant under the 1st plaintiff.

7.1. Per contra, Mr.S.V.Jayaraman, Senior Counsel arguing on behalf of Mr.T.Susindran, would contend that a very reading of the sale deed would clearly show that the second part of the consideration constitutes a part of dowry and therefore was hit by the Dowry Prohibition Act, 1961.

7.2. The learned senior counsel would submit that under Section 2 of the Dowry Prohibition Act dowry has been defined as follows:

"2. Definition of "dowry".-In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

- (a) by one party to a marriage to the other party to the marriage; or



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(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II: The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code."

7.3. Therefore from a reading of the very Section and the recital in the sale deed would amply demonstrate that part consideration is dowry. He would further submit that therefore the sale was hit by Section 24 of the Indian Contract Act.

7.4. He would further submit that when the property has been sold in lieu of dowry the same has to be transferred to the person from whom the dowry was sought for. He would rely on the Judgement of the Kerala High Court in Moilliakiriath Abbas Vs. Meeyanathu Kunhipathu and another reported in AIR 1975 Kerala 129. He would therefore contend that the 1st defendant is only holding the property as a trustee as per the language of Section 6 of the Dowry Prohibition Act.

8. Points for consideration:

After hearing the counsels on either side the following points for consideration emerge in the above first appeal:

a) Whether the purchase of the suit property by Thirumenia Pillai was in lieu of Dowry?

b) whether the suit for declaration without seeking to cancel the sale deed dated 31.03.1994 is valid?

c) Whether the suit is barred by limitation?

d) Whether the suit O.S.No.75 of 2004, is barred by the Provisions of Order II Rule 2 of the Civil Procedure Code?

9. Discussion:

9.1. The entire suit revolves around Ex.B.1, sale deed dated 31.03.1994, with particular reference to the 2nd portion of the sale consideration which according to the plaintiffs would clearly demonstrate that the sale is nothing but a dowry. This leads us to consider the



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recitals of Ex.B.1, sale deed. The sale deed would indicate that Kalayana Sundaram as Power Agent of Kasthuri has executed the sale deed in favour of Thirumenia Pillai. The sale deed would recite that the sale consideration has been fixed at Rs.1,36,500/- and the same has been received by the Power Agent in the following manner:

a) A sum of Rs.45,000/- has been received as an advance on 27.08.1990.

b) A sum of Rs.61,000/- has been received on 07.02.1991 towards purchase of Jewels (this is the amount which is claimed to be the dowry).

9.2. From the pleadings and evidence on the defense side it is seen that the plaintiff had wanted to postpone the marriage as they did not have the necessary funds to purchase Jewels for the Bride. Since Thirumenia Pillai had wanted to have the marriage at an earlier date he had agreed to advance some money to the plaintiffs to purchase Jewellery for their daughter and since the amount was not repaid in 1994 when the sale deed was prepared a portion of the sale consideration is this sum of Rs.61,000/- which was advanced by Thirumenia Pillai for the purchase of the Jewels for the plaintiffs' daughter.

9.3. It is customary that parents buy Jewellery for their daughters at the time of the wedding. Nowhere in their pleadings have the plaintiffs stated as to what was the Jewellery that they gave their daughter and what over and above this quantity had they given Thirumenia Pillai as dowry. In the absence of such a plea and evidence it can be concluded that the only Jewellery that the plaintiffs' daughter had worn for her wedding was what her parents had got her out of the money advanced by Thirumenia Pillai which even according to the plaintiff had not been repaid but only adjusted towards the sale consideration. This by no stretch of imagination would fall within the definition of dowry as per Section 2 of the Dowry Prohibition Act.

9.4. It is also the case of the plaintiffs that an agreement had been entered into documenting this arrangement however this document has not seen the light of the day.

9.5. Therefore the first point for consideration is answered against the plaintiffs.



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9.6.The plaintiffs have sought the relief of declaring their title to the suit property. In the plaint as well as in the evidence they have contended that since Ex.B.1, sale deed is void as a part consideration constitutes dowry which was illegal. They would therefore contend that no title would pass on to Thirumenia Pillai and through him to the 1st defendant. However no relief for setting aside the sale has been asked for and this assumes significance as the plaintiffs were aware of the sale since they had filed O.S.No.322 of 1994 for an injunction restraining the Sub-Registrar from registering the sale deed moved for compulsory registration and the suit had been dismissed.

9.7.Thereafter, the present suit has been filed in the year 2004, nearly ten years after the execution of Ex.B.1 and six years after its compulsory registration. Further the order of compulsory registration has not been challenged. It is also note worthy that nowhere in the earlier suit O.S.No.322 of 1994, the 1st plaintiff had raised the plea that the sale deed was in lieu of dowry and should therefore not be registered.

9.8.In the Judgement reported in 1998 (2) MLJ 564 - A.Leela Vs. Palaniyandi and others, single Judge of this Court relying on an earlier Full Bench and Division Bench Judgements of this Court as also Judgements of single Judge held as follows:

"19.In view of this settled legal position, apart from the declaration that is sought for, plaintiff has also asked for consequential injunction restraining the third defendant from proceeding against the plaintiff for payment of licence-fee and also for return of the title deeds from the first defendant. On a reading of the entire plaint, it is clear that the plaintiff, though alleges contain irregularities in the preparation of the document, has signed the same with intention to execute a deed. The invalidity is stated only because the first defendant did not pay the consideration thereafter, that will not ex facie invalidate the document which has been executed voluntarily.

20.Even if the allegations are true, before Court, these documents are purported to have been executed by the plaintiff. The same cannot be declared as invalid without setting aside the



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same. By declaration, plaintiff is really asking for setting aside the deed. Naturally, she has to pay the Court-fee under Section 40 of the court Fees Act (Old Section 7 (IV-A) of the Madras Court Fees Act), which deals with setting aside a document."

9.9. Therefore from a reading of the plaint in the instant case though the relief sought for is one for declaration of the plaintiffs title to the suit property however they are in effect attacking Ex.B.1, sale deed and without seeking for its cancellation and valuing the suit under Section 40 of the Court Fees Act, the suit as framed is not maintainable. Therefore the 2nd point is also answered against the plaintiff.

9.10. As narrated herein above, the sale deed had been executed on 31.03.1994 and was compulsorily registered on 28.09.1998. The suit was presented on 25.10.2004. It is not the case of the plaintiffs that they were not aware of Ex.B.1, on the contrary the entire pleading proceeds on the footing of how the sale deed had been executed by the 2nd plaintiff as Power Agent of the 1st plaintiff without receiving the sale consideration and that they were forced to execute it. Therefore the suit filed nearly ten years and seven months after the execution of the same and six years and a month after its compulsory registration is clearly barred by limitation. Therefore the third point is also answered against the plaintiff.

9.11. The suit O.S.No.322 of 1994 was filed when the said Thirumenia Pillai had moved the District Registrar for compulsory registration of Ex.B.1. The 1st plaintiff had filed the suit for an injunction restraining the 1st defendant, Sub-Registrar from registering the sale deed in favour of Thirumenia Pillai in which more or less the same contentions as pleaded in the instant suit O.S.No.75 of 2004 has been raised. This suit after contest has been dismissed. The 1st plaintiff who admitted the execution of the sale deed by the 2nd plaintiff had not sought for its cancellation though the cause of action for the said relief had arisen even then. No leave under the provisions of Order II Rule 2 of the Code of Civil Procedure has been sought for. It is therefore clear that the present suit is clearly barred by the provisions of Order II Rule 2 of the Code of Civil Procedure. This point is also answered against the plaintiff.



In the result the Appeal Suit is allowed and the Judgement and Decree in O.S.No.75 of 2004 on the file of the Additional District Judge, Puducherry at Karaikal, is set aside on costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To,
The Additional District Judge,
Puducherry at Karaikal.

+1cc to Mr.K.Rajasekaran , Advocate SR.No. 49934

A.S.No.662 of 2008

A.SK(12/11/2019)