



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A. No.26 of 2001

Govindaraja Gounder

... Appellant

-vs-

1.Annamalai

2.Danakodi

... Respondents

Prayer: Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.03.2001 of the C.M.A. No.5 of 1995 on the file of Additional Sub Court, Tiruvannamalai, confirming the judgment and decree dated 25.11.1997 in E.A. No.203 of 1997 in E.P. No.890 of 1996 on the file of District Munsif Court, Tiruvannamalai.

For Appellant : Mr.P.Dinesh Kumar

For Respondents: Mr.T.R.Rajaraman for R1
No appearance for R2

JUDGMENT

The appeal has been filed challenging the judgment and decree dated 12.03.2001 made in C.M.A. No.5 of 1995 passed by the Additional Sub Court, Tiruvannamalai confirming the judgment and decree dated 25.11.1997 made in E.A. No.203 of 1997 in E.P. No.890 of 1996 passed by the District Munsif Court, Tiruvannamalai.

2.It is seen that accepting the reasons assigned by the District Munsif, Tiruvannamalai, allowing E.A. No.203 of 1997 in E.P. No.890 of 1996 and accepting the reasons given by the first respondent that although the appellant has given away loan of Rs.5,000/- each under two promissory notes on 20.03.1995 and 22.03.1995, the suit property was sold away by the second respondent on 26.10.1995, the Appellate Court has dismissed the appeal filed by the appellant. After four months from the date of sale of the property in question, the suit was filed by the plaintiff first respondent on 18.02.1996 on the ground that the second respondent second defendant had played tricks to defraud the plaintiff first respondent with an intention that he has alienated the property under the sale deed dated 26.10.1995.



Although an exparte decree was passed on 21.08.1996 and E.P. No.890 of 1996 was filed by the appellant, the Execution Court, entertaining the E.A. No.203 of 1997 filed by the first respondent herein, who was a bonafide purchaser, purchased the property on 26.10.1995, rightly appreciating the fact that before the suit was filed on 18.02.1996, the property of the second respondent herein was sold away on 26.10.1995 in favour of the first respondent, allowed the E.A. No.203 of 1997 on 25.11.1997. As against the same, when appeal in C.M.A. No.5 of 2001 was filed before the Additional Sub Court, Thiruvannamalai by the appellant herein, the First Appellate Court has rightly found that the suit was wrongly filed without any property to be attached, has dismissed the same. Therefore, the exparte decree passed on 21.08.1996 was unexecutable because there was nothing for execution. This Court, also agreeing with the reasons assigned by both the Trial Court and the First Appellate Court, is unable to entertain the appeal.

3.While admitting the Appeal, the following substantial questions of law are framed for consideration:

'1.Whether the Courts below are correct in law in casting the burden of proving that the sale transaction was malafide on the appellant ignoring the principle that it is the applicant who has to prove that the transaction is bonafide?

2.Whether the Courts below are correct in law in granting a relief under Order 21 Rule 58 when the applicant has failed to establish his right, title and interest in the suit property?

3.Whether the Court below are correct in law in entertaining the application after the period of limitation prescribed under Article 98 of the Limitation Act?

4.Whether the Courts below are correct in law in failing to hold the transaction fraudulent under Section 53 of the Transfer of Property Act when the applicant failed to prove that the entire sale consideration were used to discharging the judgment debtor's debts?'

4.As mentioned above, the loan of Rs.5,000/- each on 20.03.1995 and 22.03.1995 are nothing to do with the suit property for the simple reason that the second respondent had already sold away the property in question under the registered sale deed dated 26.10.1995 to the first respondent. Only after four months from the date of sale, the suit was filed. Therefore, the appellant was unable to establish that the sale transaction was mala fide. When the sale transaction of the suit property was bonafide, this Court finds that the appellant has failed to establish his right, title, interest in the suit property.



5. Therefore, this Court, answering the substantial questions of law against the appellant that the sale transaction was not fraudulent, hence, Section 53 of the Transfer of Property Act cannot be invoked, finds no infirmity in the concurrent findings of both the Courts below. Accordingly, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sub Court,
Tiruvannamalai.

2. The District Munsif Court,
Tiruvannamalai.

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VSN II(CO)
GN(13/12/2019)