

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:29.01.2019

Delivered on:05.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.69 of 2019

&

C.M.P.No.1379 of 2019

1.R.Pushparaj

2.Mrs.P.KanniammalAppellants

Vs

1.Alagesan

2.Mrs.AnjalaiRespondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 13.07.2018 passed in A.S.No.26 of 2015 by the learned I Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 14.10.2014 passed by the learned I Assistant Judge, City Civil Court, Chennai in O.S.No.4344 of 2012.

For Appellants : Mr.Ashok Menon

JUDGMENT

The above Second Appeal arises against the Judgment and Decree in A.S.No.26 of 2015 on the file of the I Additional City Civil Court, Chennai in and by which the learned Additional Judge had confirmed the Judgment and Decree passed by the I Assistant City Civil Judge, Chennai in O.S.No.4344 of 2012. The plaintiffs are the appellants. The parties, for the ease of the reference, are referred to in the same ranking as in the suit and the following is the crux of the dispute.

2.The plaintiffs had filed the suit O.S.No.4344 of 2012 on the file of the I Assistant City Civil Court, Chennai for the following relief:

"a)Directing the defendants to accept a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) and hand

over the schedule mentioned property to the plaintiffs in as his condition;

b) Grant Permanent Injunction against the Defendants or their men or agent or anybody acted on their behalf and restraining them from alienating the property or encumber the property in any manner morefully described in the Schedule hereunder;"

3.The suit property is a room in the eastern side of the property bearing old No.111, New Door No.221, Balakrishnan Road, Ganeshpuram, Mylapore, Chennai 600 004 which consists of a total of three rooms.

4.The plaintiffs had approached the Court with the following pleading:

The plaintiffs would submit that the larger extent of the schedule mentioned property was purchased by the 2nd plaintiff under a sale deed registered as Document No.9 of 1984 on the file of the Sub Registrar, Mylapore and after the purchase the property was developed using the earnings of the 1st plaintiff. The 1st plaintiff was working in the Small Causes Court, Chennai. While working as an Additional Bench Clerk (Junior Assistant) in the Court of XV Small Causes Court, Chennai on 26.08.2004, he was placed under suspension on certain allegations. By reasons of his being out of work the family underwent a financial crisis.

5.The plaintiffs were blessed with three daughters, of whom one was hearing impaired and a son, who was speech impaired. On account of these circumstances, the plaintiffs were forced to mortgage the schedule property for a sum of Rs.65,000/-. There was no interest for the said loan as the defendant was put in possession of one room and the rent was set off towards interest. It was agreed that as and when the plaintiff returns the amount the defendants would vacate and handover the vacant possession of the property without any demur. Unfortunately, contrary to the terms of the agreement the defendants had demanded interest which was refused to be paid by the plaintiffs.

6.On 24.02.2006, the suspension orders against the 1st plaintiff was revoked and he was permitted to attain superannuation with effect from 31.08.2004. His retirement benefits were not sufficient to re-deem the property since he had to clear certain debts which was incurred for conducting his daughter's marriage and also for his son's as well as wife's medical expenses.

7.The plaintiff would contend that after he had mobilized the necessary funds he had approached defendants and tendered the money. However the defendants refused to accept the money and handover the vacant possession. The plaintiffs had approached the defendants several times from 12.07.2010 to 18.06.2012 in person and through political leaders and well wishers. The plaintiffs were also constrained to file a police complaint and the defendants have escaped from the schedule property and were absconding for some time.

8.However to the shock and surprise of the plaintiffs on 04.07.2012, the defendants had come forward with a statement that the plaintiffs had sold the property on 03.07.2005 itself which the plaintiffs states is absolutely false since they did not have any intention of selling the same. The plaintiffs would contend that the defendants had fraudulently obtained their signature taking advantage of their distress. The plaintiffs further stated that the defendants were taking steps to dispose off the property and this has constrained the plaintiff to approach this Court.

9.The suit was resisted by the defendants inter alia contending that the land on which the building is constructed was Poromboke land. The defendants would submit that the schedule mentioned property is an independent unit totally divided away from the main building. The defendant is residing in the portion which he had purchased on 03.07.2005. The entire house building which include plaintiffs' and defendants' house were constructed upon Poromboke land. The plaintiffs are also an illegal encroacher. Infact, on receipt of the summons from this Court, the defendants had approached the Sub Registrar Office for the certified copy of the sale deed executed in favour of the 1st plaintiff. However the Sub Registrar stated that the alleged sale deed cannot be confirmed as the schedule property has been described as a Poromboke land. The plaintiffs have fabricated the sale deed document No.9 of 1984.

10.The defendants have stated that the fact that the plaintiff had been suspended would clearly show the character of the person and that he was capable of coming out with false statements. The defendants have further submitted that initially the defendants had refused to purchase the property, when the plaintiff had approached them since they needed money for conducting the daughter's marriage. Thereafter the plaintiffs forced them to purchase the same by citing daughter's marriage. The defendants therefore proceeded to purchase the suit property under an unregistered sale deed dated 03.07.2005 written by a document writer whom was appointed by the 1st plaintiff himself. The document was signed by both the plaintiffs and under this deed the defendants had purchased the

suit property. The sale deed could not be registered because the land is a Poromboke land.

11.The defendants would further submit that the present suit has arisen only on account of the fact that price of land has gone up three fold and the plaintiff somehow wanted to take away the property from the defendants. The plaintiffs were also taking advantage of the fact that the sale deed is a unregistered sale deed, since the land in question being a Poromboke land the registration department would not register the same. The defendants generally denied all the other allegations that was contained in the plaint. Ultimately, they sought for the dismissal of the suit.

12.Trial Court had framed two issues namely:

1)Whether the plaintiff is entitled to redemption of mortgage as claimed?

2)Whether the plaintiffs were entitled to for permanent injunction as prayed for?

13.The 1st plaintiff has examined himself as P.W.1 and third party as P.W.2 and Ex.A1 to Ex.A.5 were marked. On the side of the defendants, the 2nd defendant examined herself as D.W.1 and Ex.B.1 to Ex.B.8 were marked. The learned I Assistant Judge answered both the issues against the plaintiff and ultimately dismissed the suit. Challenging the said suit the plaintiffs had filed A.S.No.26 of 2015 on the file of the I Additional City Civil Court, Chennai.

14.The Appellate Court had also confirmed the Judgment and Decree of the Trial Court. Challenging this concurrent Judgment and Decree the plaintiffs are before this Court.

15.Heard, Mr.Ashok Menon, learned counsel for the appellant. He would submit that the plaintiffs had no intention to execute a sale deed and it was only a mortgage deed that they had executed. According to him there was no consensus between the parties to enter into a sale and therefore the sale deed should be ignored and it should be treated as mortgage deed. He would further argue that since Ex.B.1, sale deed dated 03.07.2005 is not legally valid it cannot be considered at all.

16.Heard the counsel and perused the papers. The plaintiffs have come forward with a case wherein they have admitted the execution of the document but would only dispute its contents and nature of the document. According to plaintiffs that they had agreed to execute in favour of the defendants a mortgage deed and that has now turned out to be a sale deed. The sale deed, admittedly is an unregistered document.

17. However, this Court when going through the oral evidence of the 1st plaintiff as P.W.1 would see that the plaintiff as P.W.1 has in categorical terms admitted that he has not signed a blank sheet and that he did not read the contents. He has also admitted that the electricity charges in respect of the property which has been in the possession of the defendants is being paid by the defendants for the last eight years which would clearly establish that the defendants, from the date of sale document Ex.B.1, have been residing in the suit premises without any demur from the plaintiffs. The water tax and property tax is also been paid only by the defendants and not in the name of the plaintiff. Defendants are also having a separate electricity connection. This clearly establishes the fact that after the sale the defendants has carved out a separate unit independent of the remaining extent.

18. The statements made above are all the admissions of the 1st plaintiff as P.W.1. In addition to the above statements P.W.2, who was examined as a witness had deposed that he was not aware of the transactions. This Court should also bear in mind the fact that the 1st plaintiff is no less than the Assistant Court Officer, of the XV Small Causes Court and is therefore a person who is well aware of the legal nuances and is capable of comprehending the contents of the documents. It is not the case of the plaintiff, that he was prevented from reading the document. On the contrary the deposition is to the effect that the plaintiff has not read the document. It is also seen from admission of the plaintiff that the defendants are not literate.

19. Therefore in view of such evidence loaded against the plaintiff the Courts below have rightly dismissed the suit and this Court is also following the suit more particularly since the plaintiff has not been able to establish any question of law.

In the result, the Second Appeal is dismissed and the Judgment and Decree in A.S.No.26 of 2015 on the file of the I Additional City Civil Judge stands confirmed. There shall be no order as to costs. Consequently, connection Civil Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1. The I Additional Judge, (TADA)
City Civil Court,
Chennai

2. The I Assistant Judge,
City Civil Court,
Chennai

+2 ccs to Mr.Ashok Menon, Advocate, S.R.No.10960

S.A.No.69 of 2019 &
C.M.P.No.1379 of 2019

AD(CO)
SSM(12/06/2019)



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