

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.08.2019
Delivered on : 30.08.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

SA.No.158 of 2013
and
MP.No.1 of 2013

S. Kaladevi

...Appellant/Appellant/Plaintiff

Vs

1. V. R. Somasundaram
2. S. Priya
3. S. Soundararajan

..Respondents/Respondents/Defendants

PRAYER The Second Appeal is filed under Section 100 of the Civil Procedure Code praying to prefer this Memorandum of second appeal against the judgment and decree dated 10.09.2012 made in A.S.No.43 of 2012 on the file of the Principal District and Sessions Judge, Erode- confirming the judgment and decree dated 29.11.2011 made in O.S.No.46 of 2010 on the file of the Sub Court, Sathyamangalam.

For Appellant : M/s. Zeenath Begum for
Mr. T. Murugamanikkam,
Senior Counsel

For Respondents : Mr. P.R. Balasubramanian

J U D G M E N T

The unsuccessful plaintiff in the Courts below is the appellant before this Court. The array of parties is the same as in the suit.

2. The Second Appeal arises from out of the Judgment in a suit for direction to the defendants to execute a fresh sale deed, in respect of the suit property, in pursuance of the agreement of sale and for a consequential injunction restraining them from interfering with the peaceful possession and enjoyment of the suit property

3. Plaintiff's Case:

3.1. The plaintiff has come to Court with the following case that the suit property is the ancestral property of the defendants and on 27.02.2006, the first defendant for himself and as guardian and father of defendants 2 and 3 had entered into an oral agreement for sale with the plaintiff to sell the suit property for a sum of Rs.1,83,000/-. The sale deed was agreed to be registered on the very same day and accordingly a sale deed was executed and the sum of Rs.1,83,000/- was paid on the very same day to the first defendant in the presence of two attestors. The plaintiff would contend that when the document was presented for registration before the Jurisdictional Sub Registrar, the Sub Registrar refused to register the document stating that the property was already the subject matter of attachment by orders of the District Munsif's Court, Sathyamangalam in I.A.No.346 of 2004 in O.S.No.234 of 2004. Thereupon the defendants 1 and 2 admitted that the said attachment was true and promised to amicably settle the matter.

3.2. The first defendant on the day of execution of the sale deed had informed the plaintiff that the original documents were lost and therefore he had handed over the certified copies of the documents. It is the further contention of the plaintiff that physical possession of the property was also handed over to the plaintiff on the very same day namely 27.02.2006. It appears that on 21.06.2002, the first defendant had executed an agreement of sale with reference to the suit property in favour of one P. Subramaniam. The agreement of sale was not intended to be acted upon but was only executed as security for the loan borrowed by the first defendant from the said Subramaniam. On the date of the execution of the sale deed by the first defendant in favour of the plaintiff, the plaintiff had paid the sale consideration and from out of this the first defendant had paid the said Subramaniam and obtained a receipt. The receipt was also handed over to the plaintiff by the first defendant.

3.3. All of a sudden on 04.02.2007, the first defendant had approached the plaintiff along with the others and the second defendant requesting the plaintiff to hand over possession of the suit property after receiving refund of the sale consideration paid by the plaintiff to the defendant. The plaintiff had however turned down the request. Thereafter in the evening of the same day, the defendants attempted to trespass into the said property and destroyed the crops. Therefore constrained by the action of the defendants, the plaintiff had filed the suit since the non registration of the sale deed was not the fault of the plaintiff.

4. Written statement filed by the first defendant:

4.1. The first defendant had filed a written statement in

which he has clearly and categorically denied the execution of sale deed and he had stated that he was in need of money to pay up one Subramaniam from whom he had borrowed a sum of Rs.1,50,000/- initially and thereafter a sum of Rs.25,000/- for which he had executed agreement of sale as a security. The first defendant was unable to repay the amounts and therefore he was constrained to approach the plaintiff for the loan. The plaintiff also demanded security in the form of agreement of sale and therefore the first defendant had reluctantly agreed to the same.

4.2. The defendant would submit that the plaintiff had informed him that she would pay the sum of Rs.1,75,000/- directly to Subramaniam and therefore had asked the defendant to bring Subramaniam to Sub Registrar Office on 27.02.2006. The first defendant would submit that after the payment was made to Subramaniam and the receipt was received by him, the Sub Registrar asked him as to whether he had any objection to sell the property and that knowing the contents, he had executed the sale deed. It was only then that the first defendant came to know that the plaintiff had clandestinely prepared the sale deed when the agreement between him and the plaintiff was only a loan transaction. The first defendant would submit that even on the date of the alleged sale deed, the value of the property was nearly four crores and by no stretch of imagination no one would sell the property for such a meagre value. In addition to the land there were well, motor pump sets, electricity connection and other facilities available there which itself were valued at Rs.1,50,000/- . The first defendant in very clear terms denied entering into any arrangement to sell his property.

5. Trial Court:

5.1. The learned Subordinate Judge, Sathyamangalam by his Judgment and Decree dated 29.11.2011 was pleased to dismiss the suit. The learned Single Judge had observed that the manner in which the plaintiff has gone about to have the deed executed does not reflect the actions of a bonafide purchaser for value. The plaintiff has not checked the encumbrance certificate prior to the purchase. Even as early as in the year 2005, which was the year in which the agreement of sale was executed in favour of the Subramaniam, the property value was shown at Rs.3,00,000/- and therefore in the year 2006 the value of Rs. 1,83,000/- was again unbelievable.

5.2. Aggrieved by the Judgment and decree of the learned Subordinate Judge, the plaintiff had filed A.S.No.43 of 2012 on the file of the Principle District Court, Erode. The Principal District Judge also confirmed the finding and Judgment of the Court below and consequently the learned Principal District Judge has dismissed the appeal.

6. Challenging this concurrent Judgment and Decree, the plaintiff has preferred the above second appeal. The following substantial questions of law have been framed when the appeal was admitted.

1. When the relief prayed for the suit is one for execution of the sale deed on the ground that the entire sale consideration has been paid, whether the Courts below were correct holding, that, the appellant herein was not ready and willing to perform his part of the contract?

2. Whether the Judgments of the Courts below are vitiated in, that, they have held the appellant herein should have resorted to compulsory registration of Ex.A1, whereas this could not be effected due to an order of attachment being pending over the property in question?

7. Heard Mr. T. Murugamanikkam, Senior counsel for Zenath Begam, learned counsel for the appellant and Mr.P.R. Balasubramaniam for respondents.

8. The learned Senior Counsel appearing on behalf of the plaintiff would submit that execution of Ex. A1 has not been denied by the first defendant, on the contrary he has only pleaded that the same was executed for the purpose of purchasing the property. The plaintiff could not proceed with the registration only on account of the attachment upon the suit property and although the attachment had been raised on 5.1.2007, the defendant had not informed the same to the plaintiff and it was only the plaintiff's counsel who had informed him that the attachment had been lifted. It is after the lifting of the attachment that the defendants had come into the suit property and demanded that the plaintiff should take back the amount paid by him.

9. The learned Senior Counsel would submit that after receiving the sale consideration the first defendant cannot now go back on the sale deed. That apart, it is the plaintiff who is in possession and enjoyment of the property. The learned counsel would draw attention of the Court to the fact that the sale deed has been executed on non judicial stamp papers and if parties had a contrary intention they would not have executed the same on stamp papers. It would have been more appropriate for the parties to have entered into an agreement of sale like others. The learned senior counsel would submit that first defendant had not informed the plaintiff about the fact that the attachment order in respect of the suit property had been raised even as early as on 5.1.2007. Therefore the learned Senior

Counsel would submit that the Court below have committed a grave error in coming to the conclusion that the plaintiff had not proved the readiness and willingness by totally overlooking the fact that the entire sale consideration had been paid by the plaintiff. Consequently he sought for the second appeal to be allowed and the orders of the Courts below to be set aside.

10. Mr.P.R. Balasubramanian, learned counsel for the respondent would argue that the document was not intended to be the sale deed and was only executed as a security for the sum of Rs. 1,83,000/- which the defendant had borrowed from one P.Subramaniam. The following reasons have been put forward by the counsel

- a) The value of the property even as early as on 2005 was Rs.5,00,000/- and therefore by no stretch of imagination would any one agree to sell the properties for a sum of Rs.1,83,000/- in the year 2006.
- b) The learned counsel would submit highlighting the fact that apart from the loan from Subramaniam, there were two other loans in respect of the suit property and further an extent of 3 cents had been sold long back and even this find a place in the schedule of property, which would go to show the sale was never intended to be acted upon.
- c) He would submit that all the loans put together even on the date of the alleged sale was nearly a sum of Rs.3,70,000/-.

10.1. Therefore the document was definitely intended to be only a security for a loan. The learned counsel would argue that the plaintiff is not a bonafide purchaser for value.

11. Discussion:

The plaintiff has filed a suit for the following reliefs:

- a) Directing the defendants to execute a fresh sale deed, with regard to the suit property, in pursuance of the suit agreement for sale, in favour of the plaintiff, on or before the date fixed by this Honourable Court; failing which ordering the execution of the sale deed by this Honourable Court;
- b) granting a permanent injunction against the defendants, restraining them, their men, agents and servants from disturbing, obstructing or in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property;

12. Though the defendants have referred to an agreement of sale in their relief column there is admittedly, no agreement of sale was executed between the parties. They have directly executed the sale deed. The conduct of the plaintiff in going about the sale appears to be more casual giving rise to a doubt in the mind of the court as to whether the plaintiff really intended to give effect to the sale deed. The following factors gives rise to these doubts which have not been dispelled by the

plaintiff:-

a) The plaintiff has admitted that she has not verified the title deeds or the encumbrance certificates.

b) That the plaintiff had not cross checked the extent of the suit property. Had she made an inspection she would have come to know that out of the total extent of the land, 3 cents had been already sold to 3rd parties.

c) The total debts which the first defendant had to clear on the date of the alleged sale deed was nearly Rs.3,70,000/- and the sale deed would show the sale consideration of only Rs.1,83,000/-. The agreement which was executed in favour of Subramaniam in the year 2002 shows the value of the very same property at Rs.3,00,000/- and therefore in the year 2006, the value would only increase and not decrease.

d) A perusal of A1 sale deed dated 27.02.2006 would indicate that the sale consideration is being received for clearing the loan from the Co-operative bank; to discharge a pro-note debt to one Nagammal and the loan to Subramaniam which was taken to benefit the minor, to discharge debts and to meet the family expenses. However the plaintiff has not even verified as to whether these debts were discharged on the total outstandings towards these debts.

e) The decree in O.S.No.236 of 2004, which was the suit filed by Nagammal, the holder of the pro-note was even prior to the execution of agreement of sale and it is not known as to how the discharge of the loan is not mentioned in the sale deed.

f) The fact that there has been an absolute silence on the part of the plaintiff from the date of sale deed right up to the date of institution of the present suit without any demand being made to the first defendant: to register the sale deed, it is clear that the ingredients of Sections 16(c); namely, readiness and willingness has not been fulfilled by the plaintiff.

13. Therefore on a conspectus of the above, I do not find any infirmity in the Judgment and decree of the courts below. The substantial questions of law are answered against the appellant. In the result that the second appeal stands dismissed confirming the Judgment and Decree of the Courts below. No costs. Consequently, Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mrn

To

1.The Principal District and Sessions Judge
Erode

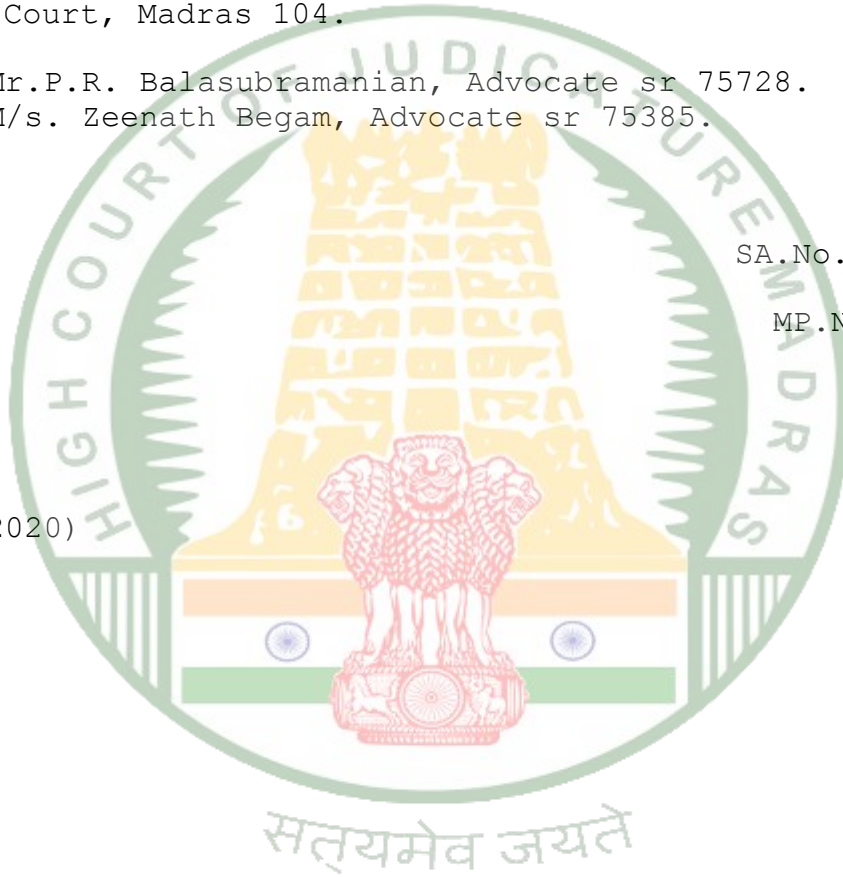
2.The Subordinate Judge
Sathyamangalam

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.P.R. Balasubramanian, Advocate sr 75728.
+1 CC to M/s. Zeenath Begam, Advocate sr 75385.

SA.No.158 of 2013
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