IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :18.06.2019
PRONOUNCED ON:02.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.111 of 2016
and
C.M.P.Nos.2577 & 2578 of 2016

V.Palanisamy ...Appellant/Respondents/Plaintiff

Vs.

B.Kalaiselvi ...Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 27.06.2013 made in A.S.No.51 of 2006 on the file of the Subordinate Judge, Namakkal reversing the judgment and decree dated 25.08.2005 made in O.S.No.461 of 2004 on the file of the Principal District Munsif, Namakkal.

For Appellant : Mr.S.Silambanan, SC
for M/s. Kaavya Silambanan Associates

For Respondent : Mr.I.C.Vasudevan

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 27.06.2013 passed in A.S.No.51 of 2006 on the file of the Subordinate Court, Namakkal, reversing the judgment and decree dated 25.08.2005 passed in O.S.No.461 of 2004 on the file of the Principal District Munsif Court, Namakkal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for specific performance and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belonged to the defendant by virtue of the sale deed dated 07.09.1995 and the plaintiff and the defendant entered into a sale agreement in respect of the suit property for a sum

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of Rs.65,000/- on 15.12.1999 and the plaintiff has paid a sum of Rs.60,000/- as advance to the defendant on the same date and the plaintiff has to pay the balance sale consideration of Rs.5000/- between 15.12.1999 and 14.03.2000 and the defendant has to execute the sale deed in favour of the plaintiff and the defendant had entrusted the original sale deed dated 07.09.1995 to the plaintiff and the first item of the suit property as described in the plaint schedule was entrusted with the possession of the plaintiff on the date of the sale agreement and though the plaintiff has been always ready and willing to pay the balance sale consideration and obtain the sale deed, the defendant has not come forward to execute the sale deed, thereupon the plaintiff has issued the legal notice on 07.03.2000 to the defendant and despite the receipt of the same, the defendant has not come forward to perform her part of the contract and execute the sale deed and hence the suit.

5.The defendant had resisted the plaintiff's suit contending that he had never executed any sale agreement in favour of the plaintiff in respect of the suit property for a sum of Rs.65,000/- on 15.12.1999 as claimed in the plaint and not received a sum of Rs.60,000/- as advance as alleged by the plaintiff and according to the defendant one Subbarayan and Padmanaban wanted to sell the suit property for a consideration of Rs.1,55,000/- and received the sum of Rs.55,000/- on 16.06.1995 and agreed to receive the balance sale price of Rs.1,00,000/- within 23.08.1995 and execute the sale deed in favour of the defendant, thereafter the defendant has paid Rs.20,000/- and the defendant has to pay the sum of Rs.75,000/- only to the abovesaid persons for obtaining the sale deed and the plaintiff and others have been running a Finance Company by name Manimalar Investments and the defendant had borrowed a sum of Rs.1,00,000/- from the abovesaid Finance Company and paid Rs.80,000/- to Subbrayan and Padmanaban and accordingly they had executed the sale deed in favour of the defendant in respect of the suit property on 07.09.1995 and it was decided that Subbrayan has to receive the receipt for the registration of the sale and the sale deed from the Office of the Registrar and at the time of borrowing the sum of Rs.1,00,000/- from Manimalar Investments, the defendant had put his signatures in empty promissory notes and empty papers and though the defendant had repaid the loan borrowed by her in installments, the defendant's husband also joined a Chit transaction with the abovesaid investments and after the settlement of the loan, the defendant's husband had approached the Finance Company and Subbrayan to return the sale deed, blank promissory notes and blank papers in which the defendant's signature had been obtained, but the same had not been returned and the defendant's husband proclaimed that he would prefer the complaint with the police and enraged over the same, Subbrayan and his men

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threatened the defendant that she would be vacated from the suit property. The defendant's husband issued a notice on 01.03.2000 and lodged a complaint with the police and Subbrayan, on account of the same, had levied the present suit with the help of the plaintiff and other partners of Manimalar Investments and therefore according to the defendant, the suit sale agreement is a fabricated document and there is no cause of action for the plaintiff and the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.Ws.1 to 4 were examined. Exs.A1 to A4 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Exs.B1 to B12 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. On appeal by the defendant, the first appellate court was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

8.At the time of admission of the second appeal the following substantial question of law was formulated for consideration.

> Whether the lower appellate court was right in reversing the judgment and decree of the trial court without considering the documents and evidences in proper perspective?

9. The suit has been laid by the plaintiff based on the sale agreement dated 15.12.1999, which has been marked as Ex.A2. It is not in dispute that the defendant is the owner of the suit property and she had purchased the same by way of the sale transaction dated 07.09.1995 and the abovesaid sale deed has been marked as Ex.A3. Now according to the plaintiff, the defendant had agreed to sell the suit property for a sum of Rs.65,000/- to him on 15.12.1999 and received a sum of Rs.60,000/- as advance and both the parties had entered into Ex.A2 sale agreement with reference to the same and further according to the plaintiff, the balance sale consideration of Rs.5,000/- should be paid between 15.12.1999 and 14.03.2000 and though he had always ready and willing to pay the balance sum and obtain the sale deed, the defendant had been evading the same and hence the plaintiff issued the legal notice on 07.03.2000, the copy of which has been marked as Ex.A4 and despite the receipt of the same, the defendant has not come forward to execute the sale deed as per the terms of Ex.A2 sale

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agreement and further according to the plaintiff, the first item of the suit property as described in the plaint had been entrusted with his possession on the date of the sale agreement and the title deed of the defendant dated 07.09.1995 has also been handed over to him on the date of the sale agreement and hence the suit.

10.The defendant resisted the plaintiff's suit contending that Ex.A2 sale agreement is a fabricated record. According to the defendant, she had purchased the suit property from one Subbrayan and Padmanaban and according to her, they had agreed to sell the suit property for a sum of Rs.1,55,000/- and received a sum of Rs.55,000/- on 16.06.1995 and the sum of Rs.20,000/- within two weeks thereafter and for the balance sale consideration, according to the defendant, she had borrowed a sum of Rs.1,00,000/- from Manimalar Investments in which Subbrayan and others including the plaintiff are the partners / interested persons and on the basis of the loan obtained from Manimalar Investments for a sum of Rs.1,00,000/-, she had paid Rs.80,000/- to Subbrayan and Padmanaban and obtained the sale deed from them in respect of the suit property and according to the defendant, at the time of the receipt of the loan from Manimalar Investments, her signatures had been obtained in empty promissory notes and empty papers and though she had repaid the loan borrowed from Manimalar Investments through her husband by joining the Chit transaction, despite requests, Subbrayan and others refused to return the promissory notes and papers in which her signatures were obtained and when the defendant's husband threatened with police action, Subbrayan and his men threatened that they would vacate the defendant from the suit property and therefore the defendant issued the legal notice to them and also gave a complaint with the police and enraged over the same, it is contended that Subbrayan and others had instigated the plaintiff to levy the suit and hence the suit is liable to be dismissed.

11. In the light of the abovesaid defence version projected by the defendant that the sale agreement Ex.A2 is a fabricated document, the duty is cast upon the plaintiff to establish the genuineness of the same. To sustain his case, the plaintiff has examined his power agent as P.W.1 and P.W.1 has has clearly deposed about the knowledge of the execution of the sale agreement Ex.A2 by the defendant and the attestation of the same by the attestors and also deposed about the scribing of the sale agreement by Ramachandran and clearly averred that accepting the terms of the sale agreement Ex.A2, both the plaintiff and the defendant had signed in the same in the presence of the attestors and that he was present at the time of execution of the sale deed. The plaintiff has also examined the attestors of the sale agreement Ex.A2 as P.W.2 and P.W.3 and

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they have clearly tendered evidence with reference to the execution of the sale agreement Ex.A2 by the defendant agreeing to sell the suit property in favour of the plaintiff as recited in the sale agreement and the receipt of Rs.60,000/- from the plaintiff on the date of the sale agreement and the scribe of the sale agreement has been examined as P.W.4 and P.W.4 has also testified the abovesaid execution of the sale agreement by the defendant in favour of the plaintiff which has been marked as Ex.A2 and the obtainment of the signatures of the plaintiff and the defendant and their LTI in the sale agreement and the attestation of the same by the attestors concerned and despite the cross examination of P.Ws.1 to 4 by the defendant, nothing has been culled out from them to discredit their evidence in any manner. Therefore, as rightly found and determined by the trial court, when P.Ws.1 to 4 have adduced convincing and reliable evidence qua the execution of the sale agreement Ex.A2 by the defendant and the receipt of the sum of Rs.60,000/- by the defendant from the plaintiff on the date of Ex.A2 and when it is found that the defendant had also been handed over the title deed Ex.A3 to the plaintiff on the date of the sale agreement and coupled with the fact, the defendant had also entrusted the possession of the first item of the suit property in favour of the plaintiff as recited in Ex.A2 sale agreement, in all, it is found that the trial court is found to be wholly justified in upholding the truth and validity of Ex.A1 sale agreement.

12. The defendant has not entered the witness box. Her husband has been examined as D.W.1. D.W.1 had admitted the signature of the defendant in Ex.A2 sale agreement and however feigned ignorance about the execution of the sale agreement. However, admitted that prior to the institution of the suit, the plaintiff has issued the legal notice Ex.A4 and further admitted that he had not sent any reply notice and with reference to the non-issuance of reply notice, according to D.W.1, inasmuch as Ex.A2 sale agreement had been entered into, no reply was sent by them and further admitted that the title deed dated 07.09.1995 is not available with them and feigned ignorance as to how the first item of the suit property had been entrusted with the possession of the plaintiff as recited in Ex.A2 sale agreement and on the other hand, would state that he does not know for which property, the plaintiff has laid the suit. Therefore, when it is found that the signature of the defendant has been admitted in Ex.A2 sale agreement and it is only the plaintiff who had produced the title deed Ex.A3 and the plaintiff is also found to be in the possession and enjoyment of the first item of the suit property which fact has not been controverted, in such view of the matter, it is found that D.W.1 has also admitted the execution of the Ex.A2 sale agreement in favour of the plaintiff as claimed by the plaintiff.

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13.On the other hand, according to the defendant, she had purchased the suit property by way of Ex.A3 sale deed from Subbrayan and Padmanaban and according to her, they had agreed to sell the suit property for a sum of Rs.1,55,000/- and received a sum of Rs.55,000/- on 16.06.1995 and further sum of Rs.20,000/- thereafter and further according to the defendant for paying the balance sale consideration, she had borrowed a sum of Rs.1,00,000/- from Manimalar Investments and out of the loan obtained, she had paid the balance sale consideration and obtained the Ex.A3 sale deed and further according to the defendant, at the time of lending the said loan, her signatures were obtained in blank promissory notes and blank papers and making use of the same according to her, the suit sale agreement had been created. The defendant has also putforth the plea that after the loan had been discharged by her through her husband, though she had claimed the return of the blank promissory notes and blank papers in which her signatures had been obtained, the same had not been returned by Subbrayan and his men who are associated with Manimalar Investments and therefore she had issued the notice and lodged the complaint against them and therefore according to her, enraged over the same, they had instigated the plaintiff to levy a false suit against her.

14. At the foremost, the defendant has failed to establish that she had purchased the suit property from Subbrayan and Padmanaban for a sum of Rs.1,55,000/- as claimed by her. On the other hand, though she would state that the sale consideration was fixed for Rs.1,55,000/- and she had paid Rs.55,000/- on 16.06.1995 and thereafter a sum of Rs.20,000/- and after obtaining the loan from Manimalar Investments, she had paid a sum of Rs.80,000/- for completing the sale transaction, however nothing has been whispered about the same in Ex.A3 sale deed. On the other hand, Ex.A3 sale deed proceeds as if, it had been entered into between the parties concerned only for a sum of Rs.65,000/- and that the said amount had been paid in one lumpsum by the defendant and obtained the sale deed. There is no whisper in Ex.A3 sale deed that the sale consideration was fixed for Rs.1,55,000/- that Rs.55,000/- was paid by the defendant on 16.06.1995 and Rs.20,000/- was paid by her two weeks from 16.06.1995 and Rs.80,000/- was paid by her subsequently for completing the sale transaction. Therefore to say that the defendant had been necessitated to borrow loan of Rs.1,00,000/- from Manimalar Investments for completing the sale transaction Ex.A3 as such cannot be believed and accepted. In this connection, Ex.B1 receipt said to have been issued by Subbrayan and Padmanaban for the receipt of Rs.55,000/- has been pressed into service by the defendant and in Ex.B1, there are recitals as if the parties thereto had agreed for the sale transaction of the suit property for a sum of Rs.1,55,000/-. However, Padmanaban examined as P.W.2 would feign ignorance

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about Ex.B1 receipt and would only state that he does not remember with reference to the issuance of any receipt qua the sale transaction Ex.A3, Furthermore, if really Ex.B1 has any semblance of truth, necessary recitals with reference to the same would have been incorporated in Ex.A3 sale transaction, however as above noted, Ex.A3 recites as if the sale is entered only for a sum of Rs.65,000/-. Furthermore, there is no acceptable and reliable material to hold that the defendant had borrowed Rs.1,00,000/- from Manimalar Investments and Subbrayan and his men including the plaintiff were in any way associated with Manimalar Investments. Though the defendant would mark Exs.B5, B7 and B8 with reference to the chit transaction entered into by her husband with Manimalar Investments, on the basis of the abovesaid documents, it cannot be inferred that Subbrayan and his men including the plaintiff were in any way associated with the abovesaid investments and that the defendant had borrowed Rs.1,00,000/- from the Investments and at the time of obtaining the loan, her signatures had been obtained in blank promissory notes and blank papers. With reference to the discharge of the said loan, absolutely there is no acceptable and reliable material on the part of the defendant. Therefore to say that the defendant had been directed to put her signatures in blank papers and blank promissory notes at the time of receipt of loan from Manimalar Investments at the instigation of Subbrayan and his men cannot be believed and consequently the further case of the defendant that Subbrayan with the assistance of the plaintiff had fabricated the sale agreement by making use of her signatures in blank papers and blank promissory notes etc., also cannot be accepted, particularly, when Subbrayan and his men are not shown to be associated with Manimalar Investments as such. As abovenoted, there is no material to hold that the defendant had discharged the loan amount of Rs.1,00,000/- said to have been received from Manimalar Investments and therefore when the documents marked as Exs.B5, B7 and B8 are not in any manner useful to sustain the abovesaid version, the trial court is found to be fully justified in disbelieving the case projected by the defendant.

15. The first appellate court has dismissed the plaintiff's suit mainly on two counts. According to the first appellate court, Ex.A2 sale agreement has been engrossed on a stamp paper dated 26.06.1995 and therefore disbelieved the sale agreement which according to the plaintiff had taken place on 15.12.1999. There is nothing against law in incorporating the sale agreement dated 15.12.1999 in a stamp paper purchased during 29.06.1995. When the plaintiff has not in any manner been established to be associated with the sale transaction covered under Ex.A3 sale deed or with Subbrayan or with Manimalar Investments and in such view of the matter, the first

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appellate court is found to have committed a total error in non-suiting the plaintiff merely on the footing that the suit sale agreement had been engrossed in a stamp paper purchased during 1995. When the utilization of the stamp paper purchased during 1995 for entering into a sale agreement on 15.1.2.1999 is not established to be against law, in such view of the matter, the abovesaid reasonings projected by the first appellate court for disbelieving the plaintiff's case, as such, cannot be countenanced in any manner.

16.The second count for which the first appellate court rejected the plaintiff's case is that the defendant would not have ventured to alienate the suit property, purchased by her for a higher price under Ex.A3 sale deed, for a lower price under Ex.A2 sale agreement. According to the first appellate court, the suit property's value had been fixed at Rs.1,16,000/- in Ex.A3 sale deed and therefore opined that the defendant would not have come forward to alienate the suit property to the plaintiff for a sum of Rs.65,000/-. As above pointed out, there is no material on the part of the defendant worth acceptance to hold that she had orally entered into the sale transaction with Subbrayan and Padmanaban for a sum of Rs.1,55,000/- qua Ex.A3 sale transaction and on the other hand, Ex.A3 sale transaction recites that it had been entered into between the parties concerned only for Rs.65,000/-. Accordingly when the defendant had agreed to sell the suit property to the plaintiff for the same amount merely because the market value had been mentioned at a higher rate in Ex.A3 sale transaction, that factor alone would not be the basis for rejecting Ex.A2 sale agreement. When as per section 20 of the Specific Relief Act 1963, inadequacy of consideration cannot be deemed to constitute the unfair advantage as contemplated under class (a) of the abovesaid section and when there is no material on the part of the defendant that the sale consideration covered under Ex.A3 had been entered into for Rs.1,16,000/- as determined by the first appellate court and on the other hand as per the terms contained in Ex.A3 sale transaction, the sale had been entered into between the parties only for a sum of Rs.65,000/-, in such view of the matter, particularly when the defendant, as above discussed, failed to establish her defence version with reference to the borrowal of the loan from Manimalar Investments and the obtainment of her signatures in blank promissory notes and blank papers etc., and when there is no material evidencing the value of the suit property on the date of the sale agreement, in all, it is found that the abovesaid reasonings adduced by the first appellate court, particularly in the absence of any evidence adduced by the parties concerned pointing to the same and in fact, when Ex.A3 sale transaction is found to be entered into only for the consideration recited therein and accordingly the plaintiff and the defendant had

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proceeded to enter into the sale agreement for Rs.65,000/- as putforth by the plaintiff and when Ex.A2 sale agreement had also been established by the plaintiff without any ambiguity as above discussed and pointed out, in all, it is found that the first appellate court is not justified in rejecting the plaintiff's case, on the footing that the consideration recited in the sale consideration is grossly inadequate. When it is not the case of the defendant that the sale consideration recited in Ex.A2 is inadequate and that the value of the suit property is on the higher side, the first appellate court is found to have taken special pleadings in support of the defendant without any basis and hence the contention of the plaintiff's counsel that the first appellate court has totally erred in reversing the well considered judgment and decree of the trial court without considering the pleas, the oral and documentary evidence adduced in the matter in the proper perspective as well as the principles of law applicable to them on the case at hand cannot be brushed aside easily and in such view of the matter, in my considered opinion, the judgment and decree of the first appellate court do not stand scrutiny in the eyes of law and liable to be setaside.

17. For the reasons aforestated, the substantial question of law formulated in the second appeal is accordingly answered in favour of the plaintiff and against the defendant.

18. In conclusion, the judgment and decree dated 27.06.2013 passed in A.S.No.51 of 2006 on the file of the Subordinate Court, Namakkal are set aside and the judgment and decree dated 25.08.2005 passed in O.S.No.461 of 2004 on the file of the Principal District Munsif Court, Namakkal are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar

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To

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2.The Principal District Munsif,
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