

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :11.06.2019

PRONOUNCED ON:17.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.40 of 2016

and

C.M.P.No.1279 of 2016

A.Venkatachalam ..Appellant/Appellant/1st Defendant

Vs.

Benjamin (Deceased)

1.B.Pushpalatha

2.B.Arulraj

3.B.Amala

4.B.Aravinth Amalraj

Minor Rep. By his Next friend

Mother Pushpalaltha

5.Arulmary

..Respondents 1 to 5/Respondents 1 to 5
Plaintiffs 2 to 6

6.K.Rajeswari

7.S.Sellamuthu

8.M.Santhi

Respondents 6 to 8 remained

Exparte before Lower Appellate

Court. Notice to them may be

dispensed with to them ..Respondents 6 to 8/Respondents 6 to 8/
Defendants 2 to 4

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.74 of 2011 on the file of the Principal District Judge of Salem, dated 21.01.2015 confirming the judgment and decree made in O.S.No.75 of 2000 on the file of the Subordinate Judge, Attur, dated 10.01.2011.

For Appellant : Mr.M.S.Govindarajan

For RR1 to R5 : Mr.T.Murugamanickam, Senior Counsel
for M/s.Zeenath Begum

For RR6 to R8 : Exparte in lower Appellate Court

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 21.01.2015 passed in A.S.No.74 of 2011 on the file of the Principal District Court, Salem, confirming the judgment and decree dated 10.01.2011 passed in O.S.No.75 of 2000 on the file of the Subordinate court, Attur.

2. The Second Appeal has been admitted on the following substantial questions of law:

1. Whether the Courts below were right in holding that the first defendant is to pay a sum of Rs.4,30,000/- as per the terms of exhibit Ex.A2, whereas, according to the defendants in consideration of the said amount, Ex.B1 was executed selling some other property belonging to the first defendant to the plaintiff?

2. Whether the Courts below have ignored the admission made by the plaintiff in paragraph VI of the plaint to the effect that the first defendant agreed to sell some other property in consideration of the above amount which is the subject matter of the present suit?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5. The suit has been levied by the deceased plaintiff against the defendants for recovery of money and for the relief of permanent injunction.

6. Based on the materials placed on record by the respective parties and the submissions made, the trial court was pleased to grant the relief in favour of the plaintiffs for recovery of money alone with interest as determined by it against the first defendant alone and declined the relief of permanent injunction prayed for by the plaintiffs and also dismissed the plaintiffs' suit as against the defendants 2 to 4. Aggrieved over the judgment and decree of the trial court, the first defendant preferred the first appeal. The first appellate court had also confirmed the abovesaid judgment and decree of the trial court. Impugning the same, the present second appeal has been preferred.

7. As could be seen from the pleas putforth by the respective parties and the materials placed on record, it is found that the suit property described in the plaint belongs to the first defendant. It is further seen that the first defendant and the deceased first plaintiff had entered into the agreement of sale marked as Ex.A1 in respect of the sale of the suit property for the sale consideration of Rs.30,00,000/-. It is further seen that towards the sale consideration, the deceased first plaintiff had paid the sum of Rs.5,00,000/- on the date of Ex.A1 sale agreement and furthermore also paid the sum of Rs.3,17,000/- on 18.12.1999, a sum of Rs.1,00,000/- on 19.12.1999, a sum of Rs.50,000/- on 16.01.2000 and the sum of Rs.50,000/- on 31.01.2000. The endorsements with reference to the abovesaid payments are incorporated in the sale agreement Ex.A1 and separately marked as Ex.A3 series. It is also seen that for some reason or the other, the deceased first plaintiff and the first defendant could not go ahead with the sale agreement Ex.A1 and accordingly they chose to cancel the sale agreement and entered into a surrender agreement on 17.05.2000 which has been marked as Ex.A2. As could be seen from the terms of the surrender agreement marked as Ex.A3, it is found that the first defendant had agreed to return the sum of Rs.10,17,000/- to the plaintiff as received by him as abovestated under Ex.A1 sale agreement and Ex.A3 endorsements and it is further seen that on the date of Ex.A2, the first defendant had paid a sum of Rs.5,87,000/- to the deceased first plaintiff. With reference to the abovesaid facts, the parties are not at issue.

8. From the terms contained in the surrender agreement Ex.A3, it is found that the first defendant had agreed to pay the balance sum of Rs.4,30,000/- to the deceased first plaintiff on or before 30.06.2000 and inasmuch as, the first defendant had failed to pay the said sum, it is seen that the plaintiffs had come forward with the suit against the first defendant and the other defendants for the recovery of the abovesaid sum from the first defendant as well as sought the relief of permanent injunction.

9.As regards the abovesaid claim of Rs.4,30,000/- based on Ex.A1 sale agreement and Ex.A2 surrender sale agreement, the defence has been raised by the first defendant, in particular, that he has repaid the amount by executing the sale deed on 17.05.2000 in favour of the deceased first plaintiff marked as Ex.B1 and according to the first defendant, Ex.B1 sale deed had been executed in lieu of the balance amount of Rs.4,30,000/- and according to him, considering the value of the property comprised in Ex.B1 sale deed, as the same would fetch the sum of

Rs.200 per sq.ft, accordingly it is contended on behalf of the first defendant that the abovesaid sale deed had been executed only in lieu of the payment of the balance sum of Rs.4,30,000/- in favour of the deceased first plaintiff and accordingly prayed for the dismissal of the plaintiffs' suit.

10. As rightly determined by the Courts below, when it is found that from Ex.A1 sale agreement and Ex.A2 surrender agreement, the first defendant is liable to pay a sum of Rs.4,30,000/- to the deceased first plaintiff and according to the first defendant, Ex.B1 sale deed had been executed in favour of the deceased first plaintiff in respect of the property described and comprised therein, in lieu of the payment of Rs.4,30,000/- and when the abovesaid defence version projected by the first defendant has been challenged by the plaintiffs in toto, as rightly determined by the Courts below, it is the bounden duty of the first defendant to establish that Ex.B1 sale deed had been executed only in lieu of the payment of the balance sum of Rs.4,30,000/- required to be paid by him by way of Ex.A1 sale agreement and Ex.A2 surrender agreement.

11. It is to be noted that Ex.A2 surrender agreement and Ex.B1 sale deed had been executed on the same date i.e., on 17.05.2000. If really as put forth by the first defendant, Ex.B1 sale deed had been executed only in lieu of the payment of the balance sum of Rs.4,30,000/- as put forth by the first defendant, necessary recitals to that effect would have been incorporated in Ex.B1 sale deed. On the other hand, on a perusal of Ex.B1 sale deed, it is found that no recital is mentioned therein as regards the execution of the abovesaid sale deed only in lieu of the payment of the balance sum of Rs.4,30,000/-. On the other hand, as found and determined by the Courts below, it is found that the recitals contained in Ex.B1 sale deed go to disclose that the abovesaid sale deed had been executed by the first defendant in favour of the deceased first plaintiff for a sum of Rs.18,600/- in respect of the property comprised therein and the document further recites that the deceased first plaintiff had paid the abovesaid amount to the first defendant and thereby the first defendant had come forward to execute the abovesaid sale deed in favour of the deceased first plaintiff. In the light of the abovesaid factual matrix, when there is no indication contained in Ex.B1 sale deed that the abovesaid transaction had been entered into between the deceased first plaintiff and the first defendant for the consideration of the payment of the sum of Rs.4,30,000/-, on the other hand, when Ex.B1 recites that the same had been executed only for the sale consideration of Rs.18,600/- which amount is also found to have been paid by the deceased first plaintiff to the first defendant on the date of

the sale deed Ex.B1, in such view of the matter, the case projected by the first defendant that the Ex.B1 sale deed had been executed by him in favour of the deceased first plaintiff only in lieu of the payment of the sum of Rs.4,30,000/- as such cannot be countenanced in any manner.

12. In this connection, the first defendant would contend that the value of the property comprised in Ex.B1 would fetch a sum of Rs.200 per sq.ft and considering the abovesaid value, according to him, the Courts should have held that the abovesaid transaction had been entered into only for the balance sum of Rs.4,30,000/-. However, as rightly found and determined by the Courts below, when the sale deed Ex.B1 does not contain any recital as regards the execution of the abovesaid document for the balance sum of Rs.4,30,000/- required to be paid by the first defendant to the deceased first plaintiff, in such view of the matter, the first defendant is not entitled to plead and adduce evidence contrary to the recitals contained in the abovesaid document and as rightly contended by the plaintiffs' counsel, the abovesaid defence version projected by the first defendant is found to be not in consonance with the principles of law outlined u/s.92 of the Indian Evidence Act and found to be barred under the abovesaid provisions of the Act.

13. Furthermore, as could be seen from the pleas set out by the first defendant as well as the evidence adduced by him, though he is found to have executed Ex.B1 sale deed in favour of the deceased first plaintiff in respect of the property comprised therein, according to the plaintiffs, the possession of the property comprised in Ex.B1 had not been handed over to the plaintiffs. Furthermore, the first defendant has also accepted that he is still retaining the possession and enjoyment of the property comprised in Ex.B1. In such view of the matter, as rightly found and determined by the Courts below, if really the first defendant had executed the sale deed Ex.B1 for the payment of Rs.4,30,000/- as claimed by him, he would have handed over the possession of the property to the deceased first plaintiffs at the time of execution of the sale deed. However, the first defendant would contend that inasmuch as, the deceased first plaintiff had failed to hand over the sale agreement, he had not parted with the possession of the property to the deceased first plaintiff comprised in Ex.B1. When the parties had chosen to cancel the sale agreement Ex.A1 by way of Ex.A2 surrender agreement and when Ex.A2 surrender agreement itself is found to be incorporated on the reverse side of the last page of Ex.A1 sale agreement and when the execution of Ex.A2 surrender agreement has not been disowned by the deceased first plaintiff, in such view of the matter, the contention put forth by the first

defendant that he had not handed over the possession of the property comprised in Ex.B1 to the deceased first plaintiff on the footing that the deceased first plaintiff had not surrendered the sale agreement to him, as such, cannot be readily believed and accepted, when by way of Ex.A2 surrender agreement, Ex.A1 sale agreement has been rendered infructuous.

14. Accordingly, it is found that the first defendant had not endeavored to reclaim the custody of Ex.A1 sale agreement from the deceased first plaintiff. Furthermore, when as above noted, the deceased first plaintiff had also accepted the receipt of Rs.5,37,000/- by way of Ex.A2 surrender agreement, in all, it is found that the defence projected by the first defendant that he had not surrendered the possession of the property comprised in Ex.B1 to the deceased first plaintiff, on the footing that he had not handed over the sale agreement Ex.A1 to him as such cannot be believed and countenanced in any manner.

15. The contention has been raised by the first defendant that the Courts below had failed to consider the market value of the property comprised in Ex.B1 and if the market value of the property is taken into consideration, the inevitable conclusion would be the said sale deed had been executed only for a sum of Rs.4,30,000/-. However the abovesaid contention does not merit acceptance. Considering the evidence adduced by the first defendant through D.Ws.1 to 4 as well as the documents projected by him, when the same had been assessed and analysed by the Courts below, particularly, the trial court in extenso and found that for the value of the property comprised in Ex.B1, the stamp duty had been properly calculated by the appropriate authority and furthermore when there is no acceptable and reliable material to hold that the property comprised in Ex.B1 would fetch more value as putforth by the first defendant and with reference to the documents marked as Exs.X1 and X2, there is no reliable and corroborative materials on the part of the first defendant for upholding the contents thereof and when D.Ws.1 to 4 are not entitled to adduce evidence contrary to the recitals contained in Ex.B4, in view of the bar outlined u/s.92 of the Indian Evidence Act, the Courts below are right in not relying upon the evidence of D.Ws.1 to 4 for the reasons furnished by them and I do not find any acceptable cause for taking a contrary view to the abovesaid determination of the Courts below for not accepting the evidence of D.Ws.1 to 4.

16. In the light of the abovesaid discussions, it is found that the Courts below had assessed and analysed the materials placed on record in the right perspective and correctly come to the conclusion that the first defendant had failed to establish

that Ex.B1 sale deed had been executed by him in favour of the deceased first plaintiff in lieu of the payment of Rs.4,30,000/- required to be paid by him to the deceased first plaintiff by way of Ex.A1 sale agreement and Ex.A2 surrender agreement. Accordingly, the reasonings and conclusions of the Courts below with reference to the same do not warrant any interference. In such view of the matter, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the first defendant and in favour of the plaintiffs.

17. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal District Judge, Salem.
- 2.The Subordinate Judge, Attur.

Copy to : The Section Officer, VR Section,
High Court, Chennai.

+1 cc to M/s.Zeenath Begum, Advocate Sr.No. 49162

AKM/25.02.2020/7P-5C /

सत्यमेव जयते

judgment made in
S.A.No.40 of 2016
and C.M.P.No.1279 of 2016

WEB COPY