

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2019

PRONOUNCED ON : 19.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A. No. 747 of 2019

1. Bala Josephine
2. Aruldoss
3. Jayamary
4. Nirmala Arokia Mary
5. Christuraj ... Appellants/Plaintiffs

Vs.

1. J.Balammal,
2. G.J.Anthonysamy
3. G.J.Floria Motcha Rani,
4. J.Therasa
5. J.Dhilip Immanual
6. J.ShantiD' Silva ... Respondents/ Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed by the I Additional District Judge, Tiruvallur in A.S. No.19 of 2015 dated 22-02-2019 in confirming the Judgment and decree of the Sub Judge, Tiruvallur in O.S. No.136 of 2006 dated 07-01-2015.

For Appellants : Karthikaa Ashok

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 22-02-2019, passed in A.S. No.19 of 2015, on the file of the I Additional District Court, Tiruvallur, confirming the judgment and decree dated 07-01-2015, passed in O.S. No.136 of 2006, on the file of the Subordinate Court, Tiruvallur.

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

3. Suit for specific performance.

4. The plaintiffs had laid the suit seeking to enforce the sale agreement dated 02.03.2004 and according to the plaintiffs, the deceased defendant had offered to sell the suit property to the plaintiffs' father for a sum of Rs.1,03,000/- and entered into the sale agreement with reference to the same on 02.03.2004 and received Rs.1,00,000/- on the date of the sale agreement and further, it is stated that the balance amount of Rs.3,000/- has also been paid and it is also put forth that the deceased defendant had executed a power deed in favour of their father on 02.08.2004 i.e. on the date of the sale agreement and it is also put forth by the plaintiffs that the deceased had executed an unregistered sale deed dated 06.08.2004 and handed over the possession of the suit property and on that footing put forth the case that the deceased defendant had not come forward to execute the sale deed pertaining to the sale agreement, hence, the suit has come to be laid by the plaintiffs.

5. The defendants, in toto, repudiated the alleged sale agreement put forth by the plaintiffs for enforcing the claim of specific performance and also disputed the factum of passing of the consideration under the sale agreement and subsequent thereto, as put forth by the plaintiffs and also disputed the factum of the execution of the power deed in favour of the plaintiffs' father and contended that the suit property had been already alienated by the deceased first defendant to one Sunilkumar in the year 2006 itself and also disputed the unregistered sale deed said to have been executed by the deceased defendant in favour of the plaintiffs' father and accordingly, put forth that the abovesaid documents projected by the plaintiffs are not true, valid and accordingly, prayed for the dismissal of the plaintiffs' suit.

6. On the basis of the material placed on record and the submissions made, the Courts below were pleased to dismiss the plaintiffs' suit. Aggrieved over the same, the present second appeal has been preferred by the plaintiffs.

7. The plaintiffs had levied the suit for the relief of specific performance based on the sale agreement dated 02.03.2004, marked as Ex.A1. On a perusal of the sale agreement Ex.A1, as rightly found by the Courts below, though the deceased defendant is described as J.Joji Naidu, the signature in Ex.A1 of the first defendant is shown as 'G.Joji' and in the endorsement found therein, the signature is shown as 'G.Joji Naidu'. That apart, on a perusal of the agreement with naked eyes, it is seen that there are corrections in the agreement relating to the sale consideration mentioned therein and also with reference to

the survey number of the suit property and the abovesaid corrections had not been authenticated by the executor of the sale agreement. Furthermore, as could be seen from the materials placed on record, a registered joint power of attorney deed is found to have been executed in favour of the plaintiffs' father Lourdu Naidu by the deceased defendant Joji Naidu. Now, according to the plaintiffs, their father had paid the entire sale consideration to the deceased defendant. If that be so, as rightly found by the Courts below, the plaintiffs' father, on the basis of Ex.A2 power deed, would have endeavoured to execute the sale deed in his capacity as the power agent either in his name or in the name of his nominees one way or the other. Therefore, the in action on the part of the plaintiffs' father in not proceeding further despite the execution of the power deed Ex.A2 in his favour and the alleged case of the plaintiffs that their father had paid the entire sale consideration as recited in Ex.A1, furthermore, if really Ex.A1 had been entered into and the plaintiffs' father had paid the entire sale consideration and the deceased defendant having also executed a registered power deed in favour of the plaintiffs' father and when the sale agreement and the execution of the power deed had occurred on 02.08.2004, it does not stand to reason as to why the plaintiffs' father had endeavoured to obtain the unregistered deed from the deceased defendant on 06.08.2004, particularly, when prior to the same a registered power deed had been executed in favour of the plaintiff's father by the deceased defendant. Therefore, as rightly pointed out by the Courts below, the documents and the case projected by the plaintiffs are found to be not clear and in such view of the matter, serious doubt arises as regards the truth and validity of the sale agreement Ex.A1.

8. According to the defendants the sale agreement Ex.A1 is a fabricated document. It is seen that though the plaintiffs had endeavoured to examine PWs 2 and 3 to establish the proof of the execution of the sale agreement, PWs 2 and 3 had only deposed about the signature of the one of the attestors of the sale agreement and nothing more. Therefore, it is evident that PWs 2 and 3 have no direct knowledge about the execution of the sale agreement. Ex.A1 sale agreement had been attested by three witnesses. As to why the plaintiffs have not endeavoured to examine the other witnesses to prove the truth and validity of the sale agreement, there is no explanation on the part of the plaintiffs. Furthermore, as rightly determined by the Courts below, Ex.A1 is an unregistered document. As abovenoted, when there are corrections noted in Ex.A1 sale agreement with reference to the description of the property etc and the same had not been authenticated by the executor of the same, it is for the plaintiffs to establish as under what circumstances the abovesaid corrections had come to be

incorporated in the sale agreement. As regards the alleged payment of Rs.3,000/-, as per the endorsement found in the sale agreement and as rightly found by the Courts below, there is no date mentioned in the said endorsement and the same has also not been established by the plaintiffs with acceptable materials. It is found that PW1 has no direct knowledge about the execution of Ex.A1 and in such view of the matter, when with reference to the materials placed on record by the plaintiffs and the case projected by them and when the plaintiff has failed to explain the corrections found in the sale agreement and also the due execution of the same by the deceased defendant, in such view of the matter, on the basis of the materials available on record, both oral and documentary, it is seen that the Courts below are justified in holding that the plaintiffs had miserably failed to establish the truth and validity of the sale agreement Ex.A1 and in such view of the matter, the plaintiffs having failed to establish their entitlement for specific performance and when the plaintiffs are not entitled to contend that they are allowed to be in the possession of the suit property based on the unregistered sale deed and furthermore, the so called unregistered sale deed has also not seen the light of the day and though Ex.A2 power deed is found to be admitted, however, the same ceasing to remain in force after the death of the power holder, in all, it is found that the plaintiffs have miserably failed to establish the truth and validity of the Ex.A1 sale agreement and qua the abovesaid determination, the Courts below are found to have rightly assessed and analysed the materials placed on record and determined that the plaintiffs have miserably failed to establish their case in toto and in such view of the matter, when the reasonings and conclusions of the Courts below do not call for interference in any manner, in such view of the matter, I do not find any reason warranting interference to the judgment and decree of the Courts below.

9. In the light of the abovesaid discussions, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District Judge,
Tiruvallur.
2. The Subordinate Judge, Tiruvallur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.Karhika Ashok , Advocate SR.No. 61725

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A.SK(10/10/2019)



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