

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2019

PRONOUNCED ON : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.827 of 2019

1.Muniyammal

2.Boopathi

3.Prakash

...

Appellants/Plaintiffs

Vs.

K.R.Manickam

...

Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 08.04.2019 passed in A.S.No.9 of 2018 on the file of the Principal District Court, Krishnagiri, confirming the Judgment and Decree dated 28.03.2017 passed in O.S.No.38 of 2015 on the file of the Subordinate Court, Uthangarai.

For Appellants

: Mr.V.Nicholas

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 08.04.2019 passed in A.S.No.9 of 2018 on the file of the Principal District Court, Krishnagiri, confirming the Judgment and Decree dated 28.03.2017 passed in O.S.No.38 of 2015 on the file of the Subordinate Court, Uthangarai.

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

3.Originally, the suit had been laid by the deceased first plaintiff against the defendant for the relief of specific performance in respect of the sale agreement dated 05.03.2008 said to have been executed by the defendant in favour of the deceased first plaintiff for selling the suit properties in favour of the deceased first plaintiff for a sum of Rs.1,20,000/- and accordingly, the deceased first plaintiff put forth the case that he had paid a sum of Rs.1,00,000/- to the

defendant on the date of the sale agreement and the sale agreement had also been registered and the defendant had entrusted the original title deeds to him and further, it is stated by the deceased first plaintiff that he had also paid the balance sale consideration of Rs.20,000/- to the defendant on 12.01.2009 and in that connection, the defendant had also made an endorsement granting extension of time for completing the sale transaction and accordingly, put forth the case that inasmuch as the defendant had not come forward to execute the sale deed pursuant to the sale agreement, despite the receipt of the sale consideration in toto and also the issuance of notice dated 22.08.2009, accordingly, the deceased first plaintiff is found to have come forward with the suit against the defendant seeking the relief of specific performance.

4.The defendant resisted the plaintiff's suit contending that he had only borrowed a loan of Rs.1,00,000/- from the deceased first plaintiff and as a security for the said loan, the sale agreement had been secured from him by the deceased first plaintiff and also as the defendant had not been able to repay the loan amount within the time agreed to and hence, he sought for the extension of time, it is stated that on the direction of the deceased first plaintiff, he had made the endorsement on 12.01.2009 and in fact, no amount much less a sum of Rs.20,000/- had been paid by the plaintiff to the defendant on the said date and accordingly, contended that the plaintiff is not entitled to seek the relief of specific performance based on the sale agreement.

5.It is found that pending the suit, the first plaintiff had died and his legal representatives had been brought on record as the plaintiffs 2 to 4 and thereafter, it is seen that the plaintiffs, who had come on record, had preferred an application in I.A.No.103 of 2016 seeking for the claim of the refund of the sum of Rs.1,00,000/- from the defendant with interest at 18% per annum and accordingly, prayed for the inclusion of the said relief alternatively to the main relief of specific performance. The abovesaid application had been contested by the defendant and it is found that the same had come to be allowed by the trial Court by way of an order dated 23.03.2016 and consequentially, the defendant had also filed the additional written statement contending that the relief of refund of the advance amount prayed for by the plaintiffs by way of the amendment having been made 8 years after the loan amount had been disbursed and therefore, contended that the alternative relief prayed for by the plaintiffs is barred by limitation and on the abovesaid pleas, the parties went for trial and adduced evidence in support of their respective contentions.

6. Based on the materials placed on record both oral and documentary, the Courts below were pleased to dismiss the plaintiffs' suit. Impugning the same, the present second appeal has been preferred.

7. Though it is found that the suit had been laid by the first plaintiff seeking the relief of specific performance based on the agreement of sale on 05.03.2008 marked as Ex.A1 and as abovenoted, the defendant had resisted the abovesaid relief of specific performance as prayed for by the plaintiffs contending that the sale agreement had been taken from him only as a security for the receipt of the loan of Rs.1,00,000/- from the deceased first plaintiff and accordingly, it is found that as determined by the Courts below, considering the evidence of PW1, the third plaintiff, it is found that PW1 has clearly admitted that the defendant had received a sum of Rs.1,00,000/- only as a loan from his father and only for the recovery of the said amount, the suit had been levied and the defendant had secured the said loan only for his son's educational expenses from his father and also admitted that only in connection with the said loan, the sale agreement Ex.A1 had been executed and thereafter, neither his father nor he had advanced any amount to the defendant and further admitted that his father had been running the finance business in the name and style of Om Sakthi finance and also further admitted that when they advance the loan, they used to obtain the sale agreement as a security in connection with the same and only on that line, Ex.A1 sale agreement had been obtained from the defendant for advancing the loan of Rs.1,00,000/- and furthermore, also admitted that there is no other monetary transaction between the defendant and them after 05.03.2008.

8. In the light of the abovesaid clear admission tendered by PW1, as rightly held by the Courts below, it is found that the sale agreement Ex.A1 had been secured from the defendant only as a security for the loan advanced to him by the deceased first plaintiff. Therefore, the Courts below are found to be totally justified in holding that there is no consensus ad idem between the parties for the sale of the suit properties in favour of the deceased first plaintiff by the defendant and further, are right in holding that Ex.A1 sale agreement had not been entered into between the parties for the purpose of alienation of the suit properties as recited therein, on the other hand, the materials available on record clearly point out that the sale agreement had been taken only as a security from the defendant for the loan transaction. The abovesaid determination of the Courts below is found to be based on the proper appreciation of the

available materials on record and no interference is called for with reference to the abovesaid determination.

9. Furthermore, as above pointed out, PW1 has admitted that after the loan of Rs.1,00,000/-, there has been no other money transactions between the defendant and them and therefore, it is found that the Courts below are also justified in disbelieving the case of the plaintiffs that the first plaintiff had subsequently paid a sum of Rs.20,000/- to the defendant on 12.01.2009 and obtained the endorsement with reference to the same from the defendant.

10. The real intention of the plaintiffs in laying the suit is only for the recovery of the loan amount paid by them to the defendant. As abovenoted, though the suit has been laid by the plaintiffs on 02.11.2009, it is found that at the time of the filing of the suit, they had only prayed for the relief of specific performance and much later, only during the year 2016, they had preferred an application in I.A.No.67/2016 for claiming the relief of the refund of advance amount of Rs.1,00,000/- from the defendant with interest. No doubt, the abovesaid application had been entertained, however, according to the defendant, the claim of the refund of the advance amount by the plaintiffs is time barred and the plaintiffs are not entitled to obtain the said relief.

11. According to the plaintiffs, inasmuch as the claim of the refund of the sum of Rs.1,00,000/- has been sought for by them pursuant to the sale agreement Ex.A1, accordingly, put forth the contention that they are having a separate charge in respect of the suit properties comprised in the sale agreement and accordingly, contended that in such view of the matter, only Article 62 of the Limitation Act would apply and accordingly, put forth that the relief of the refund of advance amount being sought for within the period of 12 years as contemplated under Article 62 of the Limitation Act, thus, their claim of refund of the amount is not time barred and in this connection, they had also relied upon the decision of the Apex Court reported in (2017) 1 MLJ 266 (P.Muthusamy Vs. K.Arumugam and Ors). The Courts below had not accepted the abovesaid case of the plaintiffs and held that the claim of refund of advance amount prayed for by the plaintiffs is barred by limitation and the Courts below had also held that as the sale agreement had not been entered into between the parties for the purpose of selling the suit property and the same had been taken only as a security for the loan advanced to the defendant by the deceased first plaintiff, accordingly, held that Article 62 of the Limitation Act, would not apply and in this connection, they had also

placed reliance upon the decision of this Court reported in 2016 2 MWN (civil) page 61 Ramasamy Vs. ChellaKutti.

12.As rightly held by the Courts below, when the plaintiffs have miserably failed to establish that the Sale agreement Ex.A1 had been entered into between the parties concerned for the sale of the suit properties and on the other hand, as abovenoted, the materials placed on record go to disclose that the sale agreement Ex.A1 had been taken only as a security for the loan advanced by the deceased first plaintiff to the defendant on 05.03.2008 and hence, the claim of the plaintiffs that the refund of the advance amount is sought for by them based on the statutory charge in their favour as provided under Section 55 (6) (b) of the Transfer of Property Act, as such, cannot be accepted. When the Courts below are found to be justified, as above pointed out, in holding that the sale agreement Ex.A1 had been taken only as a security for the loan transaction and not for the purpose of the sale of the suit properties as described therein, in such view of the matter, there is no question of claim of any statutory charge on the part of the plaintiffs qua the suit properties based on the abovesaid sale agreement by relying upon Section 55 (6) (b) of the Transfer of Property Act. Therefore, it is found that the sale agreement having been given only as a security for the loan as held by the Courts below, the Article 62 of the Limitation Act would not apply to such a transaction and thereby, it is found that the refund of the advance amount prayed for by the plaintiffs having been claimed only during 2016 and in such view of the matter, the relief of recovery of refund of the advance amount of Rs.1,00,000/- is found to be barred by limitation as determined by the Courts below. The abovesaid determination of the Courts below do not warrant any interference.

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

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Court, Krishnagiri.

2.The Subordinate Court, Uthangarai.

+lcc to Mr.V.Nicholas, Advocate sr.70004

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