



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.[MD]No.707 of 2010

WEB COPY

1.Balasubramanian

2.Prabhakaran

... Appellants/Appellants/Plaintiffs

Vs.

Selvaraj

... Respondent/Respondent/3rd Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C., praying to set aside the judgment and decree of the Lower Appellate Court dated 31.12.2009 passed in A.S.No.247 of 2007 on the file of the I Additional Subordinate Court, Thiruchirappalli, confirming the judgment and decree of the Trial Court dated 28.03.2007 passed in O.S.No.163 of 1995 on the file of District Munsif Court, Thiruchirappalli, and to allow the Second Appeal.

For Appellants : Mr.H.Lakshmishankar

For Respondent : Mr.S.Deenadhayalan

JUDGMENT

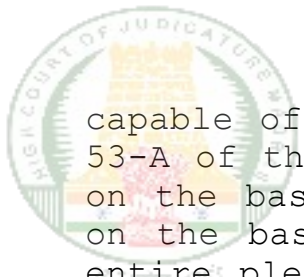
This appeal has been filed against the concurrent findings of the trial Court.

2.The brief facts leading to the filing of this appeal are as follows:

2.1.The plaintiffs filed a suit for permanent injunction. The sale agreement said to have been executed by the defendants 1 and 2 for a sum of Rs.2,30,000/- and received Rs.25,000/- as advance. Ever since the date of agreement, the plaintiffs are in possession of the property. When the matter stood thus, the third defendant interfered with the possession of the property. Hence, a suit for bare injunction came to be filed.

2.2.The first and second defendants remained ex-parte. They did not file any statement. The third defendant purchased the property from the defendants 1 and 2. The third defendant contended that the plaintiffs were never in possession of the suit property at any point of time. The Trial Court framed several issues and found that the documents are fabricated and dismissed the suit. The First Appellate Court also found that the agreement is a created one and the documents have been created only for the purpose of the suit and dismissed the same.

3.I have perused the entire materials. Even assuming that the sale agreement is a valid agreement, the agreement does not create any interest or charge over the property. At the most, it is



capable of enforcement. Unless the ingredients set out in Section 53-A of the Transfer of Property Act, 1882 is established, merely on the basis of agreement one cannot seek to protect possession, on the basis of the unregistered agreement. On a perusal of the entire pleadings, particularly the plaint pleadings, no averments whatsoever is found with regard to the ingredients set out in Section 53-A of the Act.

4.Be that as it may, the Trial Court and the First Appellate Court factually found that the agreement dated 09.09.1991 is fabricated. Hence, this Court do not find any substantial question of law for consideration.

5.Accordingly, this Second Appeal stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MR

To

1.The I Additional Subordinate Court,
Thiruchirappalli.

2.The District Munsif Court,
Thiruchirappalli.

Copy to

The Section Officer,-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.DEENADHAYALAN, Advocate (SR-104477[F] dated 11/12/2019)

+1 CC to Mr.T.VSIVAKUMAR, Advocate (SR-104645[F] dated 12/12/2019)

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