



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.09.2019
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THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.(MD) Nos.361 and 391 of 2019

and

CMP(MD) Nos.7233 and 7821 of 2019

S.A. (MD) No.361 of 2019

Ramu @ Ramathilagam ... Appellant/Appellant/1st Defendant

Vs.

1.Karuppaiah ... 1st Respondent/1st Respondent/Plaintiff

Rep. Through his power agent Muthupillai

2.The Joint Sub Registrar-2
Senjai, Karaikudi Town,
Karaikudi Taluk,
Sivagangai District.

3.The District Registrar,
Muthupattinam 1st Street,
Upstairs, Karaikudi Town,
Sivagangai District.

4.The District Collector,
Collector's Office,
Sivagangai District.

... Repondents 2 to 4/Repondents 2 to 4/Defendants 2 to 4

5.Anguraj @ Ramesh ... 5th Respondent/5th Respondent/5th Defendant

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 01.03.2019 made in A.S.No.25 of 2018 on the file of Sub Court, Devakottai, confirming the judgment and decree dated 23.03.2018 made in O.S.No.20 of 2014 on the file of the Principal District Munsif, Devakottai.

For Appellant : Mr.S.Srinivasaraghavan

S.A. (MD) No.391 of 2019

Anguraj @ Ramesh ... Appellant/Appellant/5th Defendant



Vs.

1.Karuppaiah

... 1st Respondent/1st Respondent/Plaintiff

Rep. Through his power agent Muthupillai

2. Ramu @ Ramathilagam

3.The Joint Sub Registrar-2
Senjai, Karaikudi Town,
Karaikudi Taluk,
Sivagangai District.

4.The District Registrar,
Muthupattinam 1st Street,
Upstairs, Karaikudi Town,
Sivagangai District.

5.The District Collector,
Collector's Office,
Sivagangai District.

... Respondents 2 to 5/Respondents 2 to 5/Defendants 2 to 5

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 01.03.2019 made in A.S.No.22 of 2018 on the file of Sub Court, Devakottai, confirming the judgment and decree dated 23.03.2018 made in O.S.No.20 of 2014 on the file of the Principal District Munsif, Devakottai.

For Appellant : Mr.S.Srinivasaraghavan

COMMON JUDGMENT

Since the issues involved in both the second appeals emanate from the single suit in O.S.No.20 of 2014 on the file of the learned Principal District Munsif, Devakottai, this Court is passing a common judgment.

2.The first and fifth defendants are the appellants in the second appeals. The Second Appeal in S.A.No.361 of 2019 has been filed by the first defendant challenging the judgment and decree in A.S.No.25 of 2018 on the file of the Sub Court, Devakottai and the second appeal in S.A.No.391 of 2019 has been filed by the fifth respondent challenging the judgment and decree in A.S.No.22 of 2018 on the file of the Sub Court, Devakottai.

3.The suit in O.S.No.20 of 2014 has been filed by the plaintiff for the following reliefs:-



(a) Declare the cancellation deed Document No.2053/2000 dated 03.07.2000/07.07.2000 executed by the first defendant before the office of the second defendant, as null and void

(b) By way of mandatory injunction directing the second defendant to remove the cancellation deed Document No.2053/2000 dated 03.07.2000/07.07.2000 executed by the first defendant from it entries.

(c) Declare the sale deed Document No.27/2014 dated 02.01.2014 executed by the first defendant before the office of the second defendant in favour of the fifth defendant, as null and void.

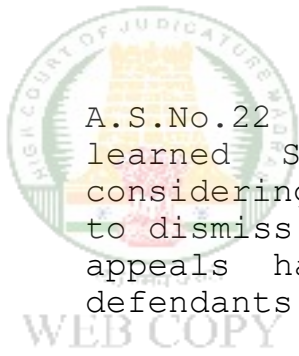
(d) By way of mandatory injunction directing the second defendant to remove the sale deed Document No.27/2014 dated 02.01.2014 executed by the first defendant in favour of the fifth defendant from it entries.

(e) directing the contesting defendants to pay the costs of the suit to the plaintiffs.

4.The narration of the event in the plaint is that the suit property belonged to the first defendant. On 24.06.1993, the property was sold to the plaintiff by the first defendant for the valuable consideration of Rs.99,500/- and the document was registered on 28.06.1993. It is the case of the plaintiff that the first defendant had received the entire consideration and possession had also been handed over to the plaintiff. Thereafter, the plaintiff erected the fencing. The further case of the plaintiff is that when he had proposed to put up the construction in the said property, he had approached the bank for a loan. Hence, he had applied for an encumbrance certificate on 12.02.2014. On perusal of the encumbrance certificate, he was shocked to learn that the first respondent unilaterally cancelled the sale deed dated 24.06.1993 registered as Document No.1213/93 by a deed dated 03.07.2000. It is also seen that after cancellation of the deed, the first defendant had created a sale deed in favour of the fifth defendant dated 02.10.2014, which is also pending for registration. In view of the above encumbrance that has been created by the first defendant, the plaintiff has come forward with the suit.

5.The defence to the above suit is that though the sale deed was executed and registered, however the sale consideration had not been paid by the plaintiff. Since the plaintiff had not paid the sale consideration, the first defendant was constrained to cancel the deed and thereafter, executed the sale deed in favour of the fifth defendant. The same defence has been adopted by other defendants.

6.The learned Principal District Munsif cum Judicial Magistrate, Karaikudi, by judgment and decree, dated 23.03.2018 was pleased to decree the suit as prayed for. Challenging the said Judgment and decree, the first defendant had preferred the appeal in A.S.No.25 of 2018 on the file of the Sub Court, Devakottai and the



A.S.No.22 of 2018 on the file of the Sub Court, Devakottai. The learned Subordinate Judge on perusal of the documents and considering the judgment and decree of the trial Court, was pleased to dismiss the both appeals. Challenging the same, these two second appeals have been filed before this Court by the respective defendants.

7.Heard Mr.S.Srinivasa Ragavan, learned counsel for the appellants. His main contention is that the passing of consideration for the sale deed, has not been proved by the plaintiff, particularly, when the defendants have taken out the defence that the amount has not passed on hands. He would further state that P.W.1 has not been able to substantiate this allegation through cogent evidence.

8.Heard the learned counsel for the appellant. From the perusal of the judgment and decree of the Courts below and the pleadings of the parties, it is seen that the original sale deed had been executed by the first defendant in favour of the plaintiff, wherein the recital would categorically show that a sum of Rs.99,500/- had passed hands and possession has also been handed over to the plaintiff. It is the defendants who have to prove that there is no passing of consideration as they are setting up a plea contrary to the written document. The defendants have failed to prove the same. That apart, there is no evidence on the side of the defendants to show that there was any demand on the side of the first defendant to the plaintiff to pay the sale consideration, which according to them, had not been paid.

9.In these circumstances, the only logical conclusion that can be arrived is that the first defendant had received the entire sale consideration recited in the sale deed and executed the sale deed. Further the cancellation has taken place seven years after the sale deed had been executed in favour of the plaintiff. There is no evidence to show that the first defendant had issued any communication prior to that, calling upon the plaintiff to pay the money and put him on notice that in the event the payment is not paid, the deed would stand cancelled.

10.In these circumstances, I do not find any infirmity in the judgments and decrees of the Courts below. The appellants are not able to show the question of law muchless, the substantial question of law arises for consideration in the second appeals.

11.In the result, the Second Appeals stand dismissed by confirming the Judgment and Decree dated 23.03.2018 passed in A.S.Nos.25 and 22 of 2018 by the learned Subordinate Judge, Devakottai and the Judgment and Decree dated 23.03.2018 passed in



O.S.No.20 of 2014 on the file of the learned Principal District Munsif, Karaikudi. No costs. Consequently, connected miscellaneous petitions are closed.

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// True Copy //

Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar (CS)

cp

To:

1. The Subordinate Judge, Devakottai.
2. The Principal District Munsif, Karaikudi.
3. The Section Officer,
Vernacular Records, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.S. SRINIVASARAGHAVAN, Advocate SR-85437, 85438

Common Judgment Made in
S.A. (MD) Nos.361 and 391 of 2019
and
CMP (MD) Nos.7233 and 7821 of 2019
05.09.2019

MK (30.12.2019) 5P 7C