IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2019

PRONOUNCED ON : 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.183 of 2013

1. Amirthavalli (since deceased)
2. Malarvizhi
3. Tamilvel ...Appellants/Plaintiffs

Vs.

K.R.Arumugam ...Respondent/Defendant

Prayer: First Appeal filed under Order XLI Rule 1 r/w Section 96 of Civil Procedure Code, against the judgment and decree made in O.S.No.62 of 2004 dated 18.02.2013 on the file of District Court at Karaikal, Pondicherry.

For Appellants : Mr. S. Senthilnathan

For Respondents : Mr. S. Sounthar.

JUDGMENT

Aggrieved over the judgment and decree dated 18.02.2013 passed in O.S.No.62 of 2004 on the file of District Court at Karaikal, the plaintiffs have preferred the first appeal.

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

3. Suit for setting aside the sale deed dated 08.05.2003 executed by the first plaintiff under the guise of second mortgage to the defendant as vitiated by fraud, cheating and fraudulent misrepresentation and consequential relief of permanent injunction.

4. Briefly stated, according to the plaintiff's case, the first plaintiff, since deceased, is working as a staff nurse and her husband is no more and she is the owner of the suit property and the first plaintiff applied loan for putting up residential building in the suit property and she has presented the loan application to the Government and the same has been sanctioned subject to the terms and conditions and following the same, the first plaintiff had executed a registered mortgage deed in favour of the President of India and after availing the loan, put up the residential building. However, the first plaintiff was unable to proceed with the

construction with the availed loan due to fluctuation in the prices of the construction materials and the first plaintiff approached the defendant for a loan of Rs.1,00,000/- and the defendant had agreed to sanction the loan subject to the payment of huge interest and the first plaintiff also gave empty cheques and unregistered sale agreement dated 22.03.1999 in respect of the suit property in favour of the defendant's mother Meenakshi and the abovesaid sale agreement had been taken as if the sale price is Rs.1,25,000/- and that the first plaintiff had obtained a sum of Rs.1,15,000/- as advance. Next month, the defendant obtained the signature of the first plaintiff on the reverse side of the sale agreement and the first plaintiff had been paying the interest without default and again on 25.12.1999 borrowed a sum of Rs.25,000/- with huge interest from the defendant and issued two signed, unfilled cheques to the defendant and continue to pay the interest without default. However, the defendant presented the cheque issued by the first plaintiff to the defendant's bank and the same having got bounced, the defendant initiated criminal action against the first plaintiff with reference to the same and filed a complaint before the Judicial Magistrate Court No.II, Karaikal, and after the receipt of the notice from the concerned court, the first plaintiff prayed time to make the payment with accrued interest and the first plaintiff had paid Rs.50,000/- towards the balance amount and on 03.06.2002, the defendant came to the suit property and threatened the first plaintiff to settle the balance amount immediately or would send her to jail and also would see that she would be dismissed from the Government Service and suggested that in order to withdraw the complaint, the first plaintiff should sign in several stamp papers and abiding to the same, the first plaintiff had signed in empty stamp papers as instructed by the defendant and also the defendant obtained the signatures from the first plaintiff's daughter and son and on 04.06.2002, the defendant had withdrawn the complaint as settled out of court. On 07.05.2003 the defendant came to the suit property along with A.T.Karuppanchettiar and other unknown persons and threatened the first plaintiff and her daughter to sign the prepared stamp paper for the security towards the loan amount of Rs.50,000/- as mortgage of the suit property and further threatened that they should sign the stamp papers as directed by the defendant or he would make use of the empty cheques issued by the first plaintiff and take criminal action and left with no other alternative, the first plaintiff and her daughter and son signed in the prepared stamp paper and the defendant did not allow them to read the contents of the same. Then the defendants subsequently obtained the signatures of the first plaintiff, her daughter signed on the empty stamp papers, empty papers and the registration was done on 08.05.2003 and the defendant obtained the sale deed from the plaintiff as if she requires second mortgage of the suit property and all the abovesaid actions of the defendant are vitiated by fraud, cheating, misrepresentation, coercion and undue influence. Therefore, the alleged sale deed dated 08.05.2003 is not valid in law and not binding upon the plaintiffs. The plaintiffs continue to be in the peaceful possession and enjoyment of the suit property as the owner of the same. On 05.07.2004, the defendant attempted to vacate the plaintiffs forcibly and hence the police complaint had been lodged. The police advised to move the Civil Court and on 02.08.2004, the defendant issued a notice as if the first plaintiff is a tenant under him in respect of the suit property on a rent of Rs.1,000/- per month and directed the plaintiff to vacate from the suit property and however, the allegation that the first plaintiff is occupying the suit property as a tenant of the defendant is false and the defendant in the guise of obtaining the signature of the plaintiff in empty stamp papers in the guise of mortgage, had created the documents as if the first plaintiff had sold the suit property to him and thereafter executed a lease deed in his favour, however, no such document had been executed by the plaintiffs on their own and the abovesaidd documents had been obtained by the defendant only by exercising undue influence, coercion, fraudulent misrepresentation, cheating and therefore, according to the plaintiffs, they had been necessitated to levy the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiffs' suit contending that the suit is not maintainable either in law or on facts. The first plaintiff borrowed Rs.2,00,000/- from the defendant and issued cheque with reference to the same and the cheque having got bounced on the presentation of the same to the bank, action had been initiated by the defendant against the first plaintiff in the Judicial Magistrate Court, Karaikal and the first plaintiff was unable to settle her liability in respect of the loan and also agreed to execute a registered sale deed after receiving the balance sale consideration of Rs.30,000/- to the defendant and accordingly duly executed an attested and registered sale deed in favour of the defendant on the file of the Sub Registrar, Karaikal and however, following the practice among the Hindus in Tamilnadu, the signatures of the first plaintiff's children were also obtained at the first instance, however, as the same is not applicable in Pondicherry, suitable corrections had been made in the sale deed with reference to the signatures of the first plaintiff's children and that it is true that an agreement of sale had been entered into between one K.R.Meenakshi and the plaintiff and however, the other transactions projected by the plaintiffs, borrowal of loan and obtainment of signature on blank papers are false. The case of the plaintiffs that the first plaintiff had been repaying the loan amount without default is false. The case projected by the plaintiffs that the defendant came to the suit property on 07.05.2003 with others and threatened the first plaintiff, her daughter to sign the prepared stamp papers for security towards the loan amount representing the same to be mortgage of the suit property is false and the case of the first plaintiff that she

had repaid a sum of Rs.50,000/- and only a sum of Rs.50,000/- is remaining to be paid is also false. The case of the first plaintiff that the defendant got the signature of the plaintiffs in the blank stamp papers in the guise of the mortgage deed by using force, undue influence, coercion, misrepresentation are all false and the plaintiffs after the execution of the sale deed in favour of the defendant, executed a lease deed in favour of the defendant in respect of the suit property agreeing to vacate the same within three months after finding suitable accommodation, however, the plaintiffs refused to vacte the same and therefore, the defendant issued a legal notice calling upon the plaintiffs to vacate the suit property and the claim of the plaintiffs that the defendant had fraudulently obtained the sale deed from them in respect of the suit property by using force, coercion, undue influence, fraudulent misrepresentation is false. The plaintiffs are not entitled to seek the setting aside of the sale deed as prayed for by them and also not entitled to obtain the relief of permanent injunction and there is no cause of action for the suit and the suit is liable to be dismissed.

6. In the additional written statement, the defendant has put forth the case that the plaintiffs 2 and 3 have agreed to vacate the suit property by way of the letter of undertaking on 30.06.2004 and the lease agreement had been entered into at the time of execution of the sale deed for a period of three months till the first plaintiff finds an alternative accommodation. Therefore, the plaintiffs 2 and 3 are debarred from challenging the suit transactions. The alleged case of the plaintiffs that the defendant had obtained the sale deed by using force, undue influence,etc., is false and if really the abovesaid case of the plaintiffs is true, nothing prevented the plaintiffs from resisting the same at the time of the registration. The plaintiffs having not resorted to any legal steps, is not entitled to challenge the sale deed and the case of the plaintiffs that their signatures had been obtained by the defendant in empty papers by using force, etc., is false and further in the subsequent additional written statement, the defendant had also putforth the case that pursuant to the inspection of the suit property by the Advocate Commissioner, small errors on the identity had been noticed in the description of the suit property in the sale deed with reference to the boundary and the survey number and the boundary should be South of Anjammal Krishnamoorthy manai and house, instead of South of Krishnamoorthy punja. In respect of survey number, it should be RS.No.289/13/C/2 instead of RS No. 289/13/C/1 and in relation to Patta number, it should be Patta No.725 instead of Patta No.193. The abovesaid errors came to be detected only from the report of the commissioner in April 2008 and accordingly, the defendant presented an application in I.A.No.22/2009 to rectify the same. The same was allowed. However, the same was disallowed by the High Court in CRP No.2695/2011 and hence, the defendant

had been necessitated to seek the relief of rectification by way of counter claim in the suit and accordingly prayed for the rectification of the deed with reference to the abovesaid errors and by way of the same no prejudice would be caused to the plaintiffs and accordingly prayed for mandatory injunction by way of the counter claim in the additional statement.

7. On the basis of the abovesaid pleas put forth by the respective parties, the following issues were framed by the trial court for consideration.

(1) "Whether the plaintiffs are entitled for a declaration that the sale deed with No. 983 dated 08.05.2003 is liable to be cancelled?

(2) Whether the plaintiffs are entitled for permanent injunction as prayed for?

(3) Whether it is true that on the date of sale itself the lease had been entered between the first plaintiff and the defendant?

(4) Whether the plaintiffs have properly valued the suit and paid the correct court fees?

(5) To what relief the plaintiffs are entitled?"

Additional Issue

"Whether the defendant is entitled for a decree of mandatory injunction to rectify the sale deed dated 07.05.2003 in relation to the description of the property as prayed by directing the Sub Registrar?"

8. In support of the plaintiffs' case P.Ws.1 to 5 were examined and Exs.A1 to A41 were marked. On the side of the defendant D.Ws.1 and 2 were examined and Exs. B1 to B8 were marked. Exs.X1 and X2 were also marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit partly directing the defendant not to interfere with the plaintiffs' possession till they are evicted by due process of law and dismissed the plaintiffs' suit as regards the relief of declaration prayed for by them and as regards the counter claim prayed for by the defendant, allowed the same by directing the plaintiffs to rectify the sale deed dated 07.05.2003 as prayed for by the defendant and accordingly disposed of the suit and the counter claim. Impugning the same, the first appeal has been preferred by the plaintiffs.

10. The following points arise for determination in the first appeal.

(1) Whether the plaintiffs are entitled to seek for the cancellation of the sale deed dated 07.05.2003 as claimed by them?

(2) Whether the plaintiffs are entitled to obtain the relief of permanent injunction as put forth by them?

(3) Whether the defendant is entitled for the counter claim as put forth in the additional written statement?
(4) To what relief the plaintiffs / appellants are entitled to?
(5) To what relief the defendant is entitled to?

Point Nos 1 to 3

11. The suit had been originally laid by the deceased first plaintiff. After her demise, her children had been brought on record as the plaintiffs 2 and 3. It is seen that the deceased first plaintiff is the owner of the suit property. The plaintiffs would put forth the case that the deceased first plaintiff availed loan from the defendant and that the defendant lent the loan with huge interest and also obtained unfilled signed cheques and the sale agreement as a security with reference to the suit property from the plaintiff and it is stated that the first plaintiff had been repaying the borrowed sum without any default. However, as rightly found by the trial court, the plaintiffs have not come forward with the clear case as to when they had approached the defendant for the initial borrowal of Rs.1,00,000/- from him and as to what were the terms of repayment with reference to the abovesaid loan transaction. Other than stating that at one point of time the first plaintiff approached the defendant for borrowal of Rs.1,00,000/- and the defendant had agreed to lend the same on condition that the first plaintiff should repay the same with 4% interest per month, no other details of the alleged transaction had been spelt out by the plaintiffs in the plaint as well as during the course of evidence. However, according to the defendant, the first plaintiff borrowed Rs.2,00,000/- from him and issued cheque with reference to the same. As regards the case of the plaintiffs that at the time of lending a loan of Rs.1,00,000/- the defendant obtained two empty cheques from her and also obtained the sale agreement in favour of his mother with reference to the suit property, the defendant would deny the obtainment of two empty cheques at the time of the alleged borrowal of Rs.1,00,000/- as put forth by the plaintiff. If really the defendant had obtained any empty cheques from the first plaintiff at the time of the borrowal, the first plaintiff as a prudent lady, particularly, she being a nurse, would have initiated appropriate action against the defendant for the retrievement of the cheques handed over to him at the time of the borrowal. Though the first plaintiff would claim that she had been repaying the said amount, however, there is no material pointing to the same. As above noted, it is the specific case of the defendant that he had only lent Rs.2,00,000/- and for the same, the first plaintiff had issued the cheque. From the materials available on record and also not in dispute, the cheque issued by the first plaintiff having got bounced, it is found that the criminal complaint had been lodged by the defendant against the first plaintiff on the file of the Judicial Magistrate Court No.II, Karaikal and following the

same, it is found that according to the defendant as the first plaintiff was unable to discharge the loan liability and accordingly agreed to convey the suit property for Rs.2,30,000/- and after receiving the sum of Rs.30,000/-, conveyed the suit property by way of the sale deed in his favour on 07.05.2003 and registered the same on 08.05.2003. Per contra, according to the plaintiffs, in respect of the loan transaction, the defendant and his men using fraud, cheating, fraudlent misrepresentation, coercion and undue influence obtained their signatures in the blank stamp papers representing the same to be a mortgage of the suit property for the security of the loan and however, created the sale deed by using the same and also got it registered and therefore, it is put forth that inasmuch as the plaintiffs had not voluntarily executed the sale deed in favour of the defendant with reference to the suit property, according to them, as the sale deed dated 07.05.2003 obtained by the defendant from the first plaintiff in particular with reference to the suit property is vitiated by fraud, cheating, fraudulent mis-representation, undue influence and coercion, the plaintiffs have come forward with the suit seeking for appropriate reliefs with reference to the same.

12. The impugned sale deed dated 07.05.2003 has been marked as Ex.B1. Ex.B1 is found to be a registered instrument. The same is found to registered on the next day i.e. 08.05.2003. The plaintiffs have challenged the abovesaid sale deed on the ground of various vitiating factors as above pointed out. The plaintiffs have not disputed their signatures in the abovesaid sale deed. As above noted, the abovesaid sale deed is a registered instrument. If really any element of coercion, fraudulent misrepresentation and undue influence had been exercised by the defendant in the obtainment of the abovesaid sale deed as put forth by the plaintiffs, naturally, as determined by the trial court, the plaintiffs would have initiated necessary legal action against the defendant in the manner known to law, atleast by lodging a police complaint against the defendant with reference to the unlawful action and however, it is found that no complaint as such has been filed by the first plaintiff against the defendant complaining of any intimidation exercised on the part of the defendant in the obtainment of the sale deed. From the materials available on record, particularly the evidence of the second plaintiff, examined as P.W.2, it is seen that the first plaintiff had executed the sale deed without any demur. The impugned document having been registered on the next date, that too, before the competent authority,if really the first plaintiff had not been willing to proceed with the execution of the sale deed and the same had been brought about by the defendant, as put forth by her, as contended by the defendant, nothing prevented the first plaintiff to disclose the same to the Sub Registrar concerned and would have refused to come for the registration of the same. On the other hand, it is seen that the registration of the document had been done without any

protest and such being the position, it is seen that the alleged vitiated circumstances projected by the plaintiff for impugning the sale deed Ex.B1 cannot at all be believed in any manner and rightly rejected by the trial court. As held by the trial court, the party who pleads coercion, undue influence, cheating, etc., should prove the same by giving particulars with reference to the same in detail and also establish the same. However, insofar as this case is concerned, other than vague plea of the obtainment of the sale deed on the abovesaid factors, the plaintiffs had not endeavoured to explain the same in detail and also not substantiated the same with acceptable and reliable materials. It is found that P.Ws.1 and 2 had not visited the Registrar office at the relevant point of time and therefore, pleaded complete ignorance as to what had happened at the Registrar's office. That apart, the document writer has been examined as P.W5 by the plaintiffs themselves and he has clearly deposed that the plaintiffs are aware of the contents of the document at the time of the execution of the same. He has clearly deposed that it was he who had prepared the document at the request of both the first plaintiff and the defendant and the executant, the first plaintiff appeared before him and executed the document and he had prepared the document only on the information given to him by the first plaintiff. Therefore, as rightly determined by the trial court, the plaintiffs through the evidence of P.W.5, had fortified the defence version that Ex.B1 sale deed had been voluntarily and freely executed by the plaintiffs without any protest and fully knowing the contents of the same. In addition to that, the Sub Registrar, Karaikal examined as P.W.3 has also deposed about the registration of the document in his presence and therefore, when nothing has been culled out from P.W.3 as regards the alleged vitiated circumstances surrounding the document, all put together, it is found that the case of the plaintiffs that the sale deed Ex.B1 had been obtained by the defendant by exercising fraud, coercion, undue influence, etc., cannot at all be believed and accepted.

13. As rightly determined by the trial court, even assuming for the sake of arguments, the plaintiffs were unable to raise any protest regarding the execution of the sale deed at the time of the registration, nothing prevented the first plaintiff atleast thereafter to lodge her protest against the defendants qua the document in question and explain her case as to how come the document had been secured from her. However, when with reference to the same, no action, whatsoever, had been taken by the first plaintiff at any point of time and on the other hand, considering the evidence of the document writer and the Sub Registrar concerned and when the execution of the document had been done on 07.05.2003 and the registration of the same done on 08.05.2003, the next day, when the acts with reference to the same are found to have been exercised by the first plaintiff on her own volition without any demur or protest and no further action had also been initiated by her subsequent thereto and the persons

associated with the document have only adduced evidence in support of the defence version and not in favour of the plaintiffs, as above pointed out, in such view of the matter, it is found that the claim of the plaintiffs that the document Ex.B1 sale deed had been obtained from her by the defendant using various vitiated circumstance as put forth by her cannot at all be believed and rightly disbelieved by the trial court. In such view of the matter, in my considered opinion, no interference is called for in the determination of the trial court with reference to the same.

14. According to the defendant at the time of the execution of the sale deed, a lease deed had also been entered between the parties wherein the plaintiffs had agreed to vacate the suit property within 3 months after finding suitable accommodation. Following the same, it is also noted that the defendant had taken steps to vacate the plaintiffs form the suit property. The trial court on the basis of the materials available on record, accordingly noting that it is only the plaintiffs who are in the possession of the suit property as on date, accordingly granted them the limited relief of not to disturb their possession of the suit property until they are dispossessed as per the due process of law. The abovesaid determination of the trial court, in my considered opinion, do not warrant any interference, particularly when admittedly the plaintiffs are in the possession of the suit property, the defendant has to work out the remedy by vacating the plaintiffs form the suit property on the basis of the lease deed obtained by him from the plaintiff.

15. The plaintiffs' counsel mainly put forth the contention that the counter claim pleaded by the defendant is not sustainable in law and also not entitled to obtain the same. However, on a perusal of the available materials, it is found that as against the counter claim granted in favour of the defendant, the plaintiffs, as such, have not preferred any independent appeal challenging the same. The present appeal has been instituted only against the judgment passed in the main suit and not against the counter claim as such. Be that as it may, according to the plaintiffs' counsel, the defendant is not entitled to raise the counter claim after the filing of the written statement . However, according to the defendant, the errors which had crept in the description of the suit property has come to his notice only after the report had been submitted by the commissioner and the engineer in the matter and thereby he had been necessitated to seek the counter claim with reference to the rectification of the instrument. At this juncture, it has to be noted that, insofar as the identity of the suit property is concerned, there is no dispute between the parties. Therefore, when it is found that the parties are fighting with each other only with reference to the suit property and the plaintiffs had also chosen to challenge the sale deed in question contending that the same pertains to the suit property, in such view of the matter, considering the

relief of rectification sought for by the defendant, with reference to the boundary recitals, survey number and patta number not substantial in nature and not changing the character of the document in any manner and as contended by the defendant, when it is found that the abovesaid errors had come to the knowledge of the defendant after the report had been filed by the Commissioner and Engineer in the matter and when it is seen that the defendant had also preferred an independent application with reference to the same and that the same had been initially allowed by the trial court, however, the said order had been set aside by the High Court, but, at the time of disposal of the CRP, it is found that the defendant has been granted permission to raise the plea of rectification by way of counter claim and accordingly it is found that the defendant has preferred the counter claim, in the abovesaid background, when it is seen that the cause of action for the defendant to seek the counter claim qua the rectification of the instrument had arisen only after the report of the commissioner and the engineer concerned and not prior to the same and to cap it further when the defendant has also been granted permission by the High Court to seek the rectification by way of the counter claim and considering the fact that the parties are not at dispute regarding the identity of the property as such, in such view of the matter, the rectification sought for by the defendant with reference to the change of one boundary, survey number and the patta number are found to be on minute errors not altering the lie of the property or the character of the property as well as the character of the instrument as such and furthermore, the trial court rightly noting that the abovesaid relief of rectification sought for by the defendant could be directed only against the plaintiffs, in such view of the matter, in my considered opinion, the trial court is wholly justified both on factual aspects as well as on legal aspects to uphold the counter claim prayed for by the defendant in the additional written statement and no interference is warranted with reference to the same.

16. In this connection, the counsel for the defendant placed reliance upon the decisions reported in

1. (1987) 3 SCC 265 (Mahendra Kumar and another vs. State of Madhya Pradesh and others)
2. (2016) 11 SCC 800 (Vijay Prakash Jarath vs. Tej Prakash Jarath)
3. (1979) 1 MLJ 180 (K. Krishnaswami Pillai vs. The kumbakonam City Union Bank).
4. (1982) 1 SCC 525 (Babu Lal vs. M/s. Hazari Lal Kishori Lal and others)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17. In the light of the abovesaid discussions, I hold that the plaintiffs are not entitled to seek for the cancellation of the sale deed dated 07.05.2003 as claimed by them and I hold that the plaintiffs are not entitled to obtain the relief of permanent injunction as put forth by them. I further hold that the defendant is entitled for the counter claim as put forth and as determined by the trial court. Accordingly, the point numbers 1 to 3 are answered.

Point Nos. 4 and 5

18. For the reasons aforestated, the judgment and decree dated 18.02.2013 passed in O.S.No.62 of 2004 on the file of District Court at Karaikal, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True copy//

Sub Assistant Registrar

bga

To
The District Judge,
District Court, Karaikal

Copy To:

The Section officer,
V.R. Section,
High Court, Madras

+1cc to Mr.S.Senthil Nathan, Advocate SR.No.753

+1cc to Mr.S.Sounthar, Advocate SR.No.527

A.S.No.183 of 2013

VG I(CO)
GMY(01/10/2020)