



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.09.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

S.A.No.1404 of 2010
& M.P.Nos.1 of 2010
& M.P.No.1 of 2014 & M.P.No.2 of 2014

Palaniyammal,
W/o.S.R.Ranganathan,
Solampallam,
Sooramangalam,
Salem - 636 005.

... Appellant/ Appellant/Plaintiff

/versus/

1. Sarasu @ Saraswathi,
S/o.Ganapathy.

2. Dhanam,
D/o.Ganapathy.

3. Thilagam,
D/o.Ganapathy,
All residing at Dharamangalam,
Old Sooramangalam,
Solampallam,
Salem - 636 005.

... Respondents/ Respondents/ Defendants

Prayer: Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 29.09.2009, in A.S.No.51 of 2009 on the file of the Principal Subordinate Judge, Salem, confirming the judgment and decree dated 23.12.2008, in O.S.No.1259 of 1996 on the file of the Second Additional District Munsif Court, Salem.

For Appellant : Mr.D.Shivakumaran

For Respondents : Mr.Prithivi,
for Mr.S.Kaithamalai Kumaran,

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the appellant and the Learned Counsel for the respondents.

2. The suit filed for specific performance was dismissed by the Trial Court and it was confirmed by the Appellate Court on the ground that, the alleged agreement dated 30.09.1989 was not executed to alienate the property but only as security for the loan availed. Also observed that the 1st defendant had no valid reason to sell the property on behalf of the minor defendants 2 and 3.

3. Aggrieved by the said concurrent finding, the Second Appeal is filed by the plaintiff stating that the plaintiff has proved the execution of Ex.P.1 sale agreement by examining the plaintiff and one of the attesting witness. While so, the Courts below have erred in negating the sale agreement when the defendants have not disproved the agreement Ex.P.1 or positively proved it to be a loan transaction between the parties. The Courts below ought not to have arrived at different conclusion than holding the validity of Ex.A1 and enforce the agreement.

4. The Learned Counsel appearing for the appellant would further submit that the Courts below has misconstrued Section 8(2)(a) of Hindu Minority and Guardianship Act, 1956, and erred in holding that before encumbering the property of the minors, the guardian should obtain prior permission of the Court when the law does not mandates such requirement and when such encumbrance done in the interest of the minors.

5. The evidence placed before the Court by the plaintiff particularly Ex.A.1, the agreement for sale, indicates that the suit schedule property was agreed to be sold for a sale consideration of Rs.20,000/-. The recital of the deed indicates that the vendor namely the 1st defendant has received part sale consideration of Rs.17,800/- and there is a balance of Rs.2,200/- only. For which, two years period granted for completing the agreement. In the course of examination of witness, it is conceded by the plaintiff that the part sale consideration of Rs.17,800/- alleged to have been received as advance by the 1st defendant was actually towards the loan availed from the husband of the plaintiff.

6. On cumulative appreciation of the documentary evidence Ex.A1 and Ex.D.1 as well as oral evidence of D.W.1 the Courts below have rightly concluded that the sale agreement dated 30.09.1987 marked as Ex.A.1 though couched as a sale agreement, the parties have entered into the agreement only as the security for the loan availed by the spouse of the 1st defendant. In the suit for specific performance, the necessary ingredients namely ready and willingness besides consensus ad idem and the alienable right of the vendor not properly established by the plaintiff. The Courts below had rightly dismissed the suit.

7. On the perusal of the documents, this Court finds no substantial questions of law available for this Court to formulate to interference under Section 100 of C.P.C. Hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Principal Subordinate Judge, Salem.
- 2.The Second Additional District Munsif Court, Salem.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.D.Shivakumaran, Advocate SR.No. 30631

S.A.No.1404 of 2010

& M.P.Nos.1 of 2010

& M.P.No.1 of 2014 & M.P.No.2 of 2014

A.SK(07.01.2021)



WEB COPY