

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.08.2020

Delivered on : 05.10.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.919 of 2015

1.D.John

2.Shanthi John

... Plaintiffs

Vs

1.P.Pandian

2.S.Sathya

3.Ramachandran

4.Sumathy

5.Justin

... Defendants

Prayer: Suit filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of Code of Civil Procedure praying to cancel the sale deed dated 09.10.2015 executed by the plaintiffs in favour of the 1st defendant and registered as Doc.No.3010 of 2015 on the file of the SRO,

Mylapore as the same is null and void.

For Plaintiffs : Mr.T.Sundar Rajan

For Defendants : set ex parte

JUDGEMENT

The above suit has been filed by the plaintiffs for cancelling a registered sale deed executed by them in favour of the 1st defendant as null and void and for damages of sum of Rs.30,00,000/- apart from seeking an injunction restraining the defendants from alienating, encumbering or disturbing the plaintiff's peaceful possession and enjoyment of the suit property.

Evidence:

2. Although the defendants were served they had neither entered appearance in person nor through pleader and therefore the 1st defendant was set ex parte on 13.11.2019 and others by order dated 21.11.2019. Thereafter, the plaintiffs have adduced evidence and the matter was posted

before this Court for arguments.

Plaintiff's case:

3. It is the case of the plaintiffs that they are joint owners of the property morefully described in the suit schedule property. It is their case that in order to discharge their mortgage loan with the L.I.C Housing finance limited, they had decided to sell their property. One V.R.Mukundhan had approached the plaintiffs in the year 2012 for purchasing the said property and agreement of sale was entered into. However, V.R.Mukundhan did not comply with the terms of the agreement and demanded refund of the advance of the amount. Since the plaintiffs had utilised the advance amount for discharging their loans they were unable to refund the said amount immediately and had therefore issued post dated cheques to the said V.R.Mukundhan.

4. As some of the cheques have been bounced the said V.R.Mukundhan had lodged criminal complaint against the plaintiffs for cheating and the plaintiffs were arrested and remanded to Judicial

Custody. They were granted bail on condition that they pay a sum of Rs.27,00,000/-. The condition being onerous the plaintiffs were unable to make the deposit. Consequently, the 1st plaintiff was once again remanded to Judicial Custody for over a period of 5 months. Thereafter, the 1st plaintiff paid a part amount of Rs.5,00,000/-. The plaintiffs were granted two months time for paying the balance of amount Rs.22,00,000/- in two instalments of Rs.11,00,000/- each.

5. By reason of the above, once again they were in dire need of money. At this juncture they came into contact with Mr.Suresh and Mr.Sampath who were real estate agents operating near the plaintiffs' residence. Since they were aware of the entire facts regarding the earlier agreement and that the plaintiffs having gone to Jail they had introduced the 3rd and 4th defendants as prospective purchasers for the schedule property and the plaintiffs were informed that the defendants 1 and 2 would also join in the sale. The sale consideration was fixed at a sum of Rs.2.10 crores.

6. On 17.09.2015, an agreement of sale was entered into between plaintiffs and defendants 1 and 2, where the sale consideration was shown as Rs.2.10 crores. This deed was signed only by 2nd defendant and an advance of Rs.50,00,000/- was paid, namely, Rs.5,00,000/- by demand draft and Rs.45,00,000/- by cash. The defendants had agreed to pay the balance sum of Rs.1,60,00,000/- within 20 days and had assured that the sale would be completed within the said time. The 3rd defendant had taken away the original title deeds of the plaintiffs, namely, the sale deed registered as Doc.No.2482 of 2006.

7. The plaintiffs would submit that contrary to their assurance the defendants did not come forward to honour their commitment. The plaintiffs also realised that the defendants 2 to 4 were trying to defraud them and further the 1st defendant was not directly dealing with the plaintiffs. The plaintiffs also came to learn that defendants 2 to 4 had entered into separate agreement with the 1st defendant to sell their property for a higher value to him. The plaintiffs therefore expressed their disinterest in going ahead with the agreement.

8. Thereafter, the defendants showed their true colours and threatened the plaintiffs with physical harm and also threatened the plaintiffs that they would lodge a complaint against the plaintiffs. On 09.10.2015, the 5th defendant came along with one K.M.Ravichandran to the plaintiffs' house at Anna Nagar and took them to SRO, Mylapore, where under the threat of doing away with them they were forced to sign the sale deed. The sale deed would show only a sum of Rs.1,76,12,000/- as a sale consideration contrary to the agreed sum of Rs.2,10,00,000/-. The plaintiffs would submit that only a sum of Rs.1,15,00,000/- was paid to them and the balance sale consideration of Rs.95,00,000/- was not paid. The sale executed in favour of the 1st defendant is null and void on the ground that the same was obtained by coercion, undue influence and threat and further they were not paid the entire sale consideration.

9. The plaintiffs issued a legal notice dated 14.10.2015 to the defendants with copies marked to the Registration Department and the Commissioner of Police calling upon the 1st defendant to come forward to

jointly cancel the sale deed dated 09.10.2015 on the ground that the agreed price had not been paid and also to receive the sum of Rs.1,15,00,000/-. The defendants 1 and 2 issued a reply through their counsel contending untenable allegations. They would admit that the sale consideration was a sum of Rs.2,10,00,000/- but they would contend that the balance sum of Rs.95,00,000/- was paid in the presence of Sub Registrar. The plaintiffs issued a rejoinder refuting these allegations.

10. The plaintiffs would further submit that although a reply notice dated 16.10.2015 was received stating that it was issued on behalf of the 1st and 2nd defendants, however the notice issued by the plaintiffs to the addresses of defendants 1 and 2 at Chennai was returned unserved with the endorsement "*incorrect or insufficient address*".

11. The plaintiffs would submit that the entire transaction is tainted with fraud and without paying the balance sale consideration of Rs.95,00,000/- the defendants have made the plaintiffs sign the sale deed under threat of physical harm. The plaintiffs would submit that they are

ready to refund the sale consideration of Rs.1,15,00,000/- paid by the defendants on return of the original title and parents documents by the defendants. The ground, first and second floors of the schedule mentioned property is in the possession of the tenants and the plaintiffs are collecting rent from them. The third floor of the schedule property is in the possession of the plaintiffs. Therefore, the plaintiffs have come forward to file the above suit.

12. The 1st plaintiff was examined as P.W.1 and he has marked Ex.P.1 to Ex.P.19. P.W.1 would reiterate the contentions made in the plaint in his proof affidavit in lieu of Chief examination dated 18.12.2019. The following are the documents that have been filed:

<i>S.No</i>		<i>Description of Document</i>
1	Ex.P.1	The photocopy of the orders passed in CrI.M.P.No.1/15 in CrI.O.P.No.33678/14 to the plaintiffs dated 06.02.2015.
2	Ex.P.2	The photocopy of the sale agreement to plaintiffs and defendants 1 and 2 dated 17.09.2015.
3	Ex.P.3	The original of the letter 3 rd defendant to plaintiff dated 29.09.2015.

<i>S.No</i>		<i>Description of Document</i>
4	Ex.P.4	The photocopy of the demand draft 1 st defendant to plaintiffs dated 06.10.2015.
5	Ex.P.5	The certified copy of sale deed Doc.No.3010/15 plaintiffs to D-1 dated 09.10.2015.
6	Ex.P.6	The original of plaintiff to Commissioner of Police complaint copy with registration receipt dated 12.10.2015.
7	Ex.P.7	The office copy of legal notice issued by plaintiff counsel dated 14.10.2015.
8	Ex.P.8	The original of the Acknowledgment card to 3 rd defendant dated 15.10.2015
9	Ex.P.9	The original of the Acknowledgment card to I.G of registration dated 15.10.2015
10	Ex.P.10	The original of the Acknowledgment card to S.R.O, Mylapore dated 16.10.2015
11	Ex.P.11	The original of the Returned Covers 2 nos to the 1 st defendant.
12	Ex.P.12	The original of the returned Cover to the 2 nd defendant.
13	Ex.P.13	The original Returned cover to the 4 th defendant.
14	Ex.P.14	The original Returned cover to the 5 th defendant.
15	Ex.P.15	The original reply notice to the counsel for D-1 dated 16.10.2015
16	Ex.P.16	The photocopy of the Rejoinder to plaintiffs counsel to D-1 and D-2 counsel dated 26.10.2015
17	Ex.P.17	The photocopy of the Requisition for video footage of plaintiffs to SRO Mylapore dated 28.10.2015.
18	Ex.P.18	The photocopy of the Requisition letter of plaintiffs to SRO Mylapore 28.10.2015.

<i>S.No</i>		<i>Description of Document</i>
19	Ex.P.19	The photocopy of the letter with copy of legal notice and reg receipt from plaintiff's counsel to 5 th defendant dated 03.11.2015.

Submission:

13. Mr.T.Sundar Rajan, learned counsel appearing on behalf of the the plaintiffs would submit that the plaintiffs had entered into an agreement of sale with the defendants. He would submit that the original agreement of sale could not be filed and reasons for the same is mentioned in paragraph no.7 of the plaint which would read as follows:

“7. The Plaintiffs state that on 17.9.2015, an Agreement for Sale was entered into between the Plaintiffs and the 1st and 2nd Defendant for sale of the property for Rs. 2.10 crores. The Plaintiffs state that only the 2nd Defendant had signed the Sale Agreement and an advance amount of Rs. 50,00,000/-, namely Rs. 5,00,000 by Demand Draft and the balance sum of Rs. 45,00,000/- was paid by cash to the Plaintiffs. The Plaintiffs state that it was agreed that the balance sum of Rs. 1,60,00,000/- would be paid within 20

days and the sale would be completed. The original sale agreement was taken by the 2nd Defendant and only a Xerox copy was handed over to the Plaintiffs”.

14. He would further submit that the plaintiffs have pleaded in detail the fraud as contemplated under Order VI Rule 4 of the Code of Civil Procedure. The plaintiffs have only received a sum of Rs.1,15,00,000/- and balance of Rs.95,00,000/- is still due and payable by the defendants.

15. Considering the fact that the sale deed has been executed under threat, coercion and undue influence and the sale deed so entered into lacks *consensus ad idem*, the same has to be declared as null and void. The learned counsel would further submit that the complaint challenging the forcible execution of the sale deed has been lodged by them immediately without any delay. The plaintiffs were forced to execute the sale deed dated 09.10.2015 and the complaint was made on 12.10.2015. The suit has also been filed without any delay on 04.11.2015. Therefore, there is no delay on the part of the plaintiffs. The learned counsel would

submit that the plaintiffs are ready to deposit the entire sum of Rs,1,15,00,000/- received by them if the Court holds in their favour.

16. He would rely on the Judgement reported in **CDJ 1999 SC 1017 – Vidhyadhar Vs. Manikrao & Another** in support of his contentions. He would rely on paragraph no.38 of the said judgement which would read as follows:

“38. The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in praesenti or in future. The intention is to be gathered from the recital in the sale deed, conduct of the parties and the evidence on record.”

17. The learned counsel would also rely on the following Judgement:

i) **CDJ 2009 SC 1313 – Kaliaperumal Vs. Rajagopal and another.**

ii) ***CDJ 2012 MHC 649 – M/s.Hotel Chandra Towers Ltd., rep by its Managing Director K.Prabu Vs. Henry Isidore & others.***

Discussion:

18. The essence of the argument put forward by the learned counsel for the plaintiff is that the sale deed Ex.P.5 has come into existence by coercion and the consent given was not a free consent. The agreement of sale Ex.P.2 is a photocopy. The plaintiffs have explained as to why they have filed a photo copy of the agreement in their pleadings. In paragraph no.7 of the plaint they would state as follows:

"The original sale agreement was taken by the 2nd defendant and only a xerox copy was handed over to the plaintiffs".

19. A reading of the agreement would indicate that the agreed sale consideration was a sum of Rs.2,10,00,000/- (Rupees Two Crores and Ten Lakhs only). This is further confirmed by the recitals about the consideration. The agreement would read that a sum of Rs.5,00,000/- was paid by demand draft on the date of the agreement and Rs.45,00,000/- by cash. The balance sale consideration of Rs.1,60,00,000/- was to be paid

within 20 days and the sale deed was to be registered i.e., the sale was to be completed by 07.10.2015. Therefore, the contention of the plaintiffs that the agreed sale price was Rs.2,10,00,000/- stands proved. Further, this is also acknowledged by defendants 1 and 2 in their reply notice dated 16.10.2015 (Ex.P.15).

20. The plaintiffs have admitted that in all they had received a sum of Rs.1,15,00,000/- leaving a balance of Rs.95,00,000/-. The case of the plaintiffs is that their consent and signature in Ex.P.5 sale deed had been obtained under threat and coercion and that they had not received any amount on the said date. The defendants along with some rowdies had threatened to do away with the plaintiffs if they did not sign the sale deed and it is on this threat that Ex.P.5 sale deed was executed by the plaintiffs.

21. The plaintiffs' statement that they have not received the balance sale consideration appears to be true since in the reply notice (Ex.P.15) the defendants would state that a sum of Rs.95,00,000/- was paid in the presence of the Sub-Registrar but a reading of Ex.P.5 would show that a

sum of Rs.61,12,000/- was paid at the time of execution of the sale. If Rs.95,00,000/- had been paid in the presence of the Sub-Registrar an endorsement to this effect would have been made by the Sub-Registrar. Such an entry is missing. That apart, it is not explained as to how such a huge sum of Rs.95,00,000/- had been paid by cash and why the recital regarding the payment of Rs.61,12,000/- in the sale deed would read that it is given at the time of execution of the deed.

22. The fact that the sale deed was executed by coercion is evident from the complaint filed within two days. The suit is also filed without any delay.

23. The defendants though served have failed to enter appearance and state their case. It is also seen that the original documents were given to the 3rd defendant and witnessed by the 2nd defendant (who has also signed Ex.P.2 agreement) for scrutiny and they had assured to return it after legal scrutiny. In the sale deed it is recited that the originals were handed over on the date of the sale which also shows that the recitals are

false.

24. Considering the above facts it is clearly evident that there is no free consent by the plaintiffs in the execution of Ex.P.5 sale deed and the admitted balance sale of consideration of Rs.95,00,000/- has also not been paid as there is no contra pleading or evidence. The plaintiffs have not substantiated their claim for damage and therefore this relief cannot be granted.

25. In the result, the Civil Suit is decreed as prayed for as regards prayer (a) and (c) with costs and dismissed with regard to prayer (b). The plaintiffs shall deposit the sale consideration of Rs.1,15,00,000/- received by them within a period of four weeks from the date of receipt of a copy of this Judgment.

05.10.2020

Internet : Yes/No
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P.T. ASHA. J.

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Pre-delivery Order

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C.S.No.919 of 2015

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