

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.578 of 2014

and M.P.No.1 of 2014

S.Mani

..Appellant/Respondent/
defendant

Vs.

1. K.Mani

2. Indumathi

3. Sindhumathi

.. Respondents/Appellants/
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Subordinate Judge, Vellore, dated 08.04.2014 in A.S.No.12 of 2013, reversing the judgment and decree of the District Munsif, Katpadi, Vellore District, dated 27.04.2011 in O.S.No.13 of 2010 (V.D.M.C.O.S.No.525 of 2004).

For Appellant : Mr.P.Mani

For Respondents: Mr.K.Sivasubramaniam

J U D G M E N T

The sole defendant in O.S.No.525 of 2004 who was able to convince the trial Court to dismiss the suit for declaration of title and recovery of possession filed by the respondents herein, upon its reversal by the lower appellate Court in A.S.No.12 of 2013 has come up with this second appeal.

2. The suit was laid by the plaintiffs seeking declaration of title and recovery of possession. According to the plaintiffs, the suit property originally belonged to the defendant and he had entered into an agreement of sale in respect of the suit property agreeing to sell the same to the 1st plaintiff for a consideration of Rs.80,000/- on 20.12.1995. On the date of the agreement, the defendant received a sum of Rs.70,000/- as advance leaving a balance of Rs.10,000/-. Two years time was fixed for performance of the agreement. On the same day i.e., on 20.12.1995, the defendant also executed a Power of Attorney in favour of the 2nd plaintiff, the husband of the first plaintiff empowering him to deal with the property. Pursuant to the said power, the 2nd plaintiff received the balance sale consideration from the 1st plaintiff and executed a

Sale Deed in her favour on 11.06.1997. Since the defendant failed to deliver possession, the plaintiffs had originally filed the suit for recovery of possession simpliciter on 11.02.1998. Subsequently, after filing of the written statement, the plaintiffs sought for amendment of the plaint to include the relief of declaration and the same was granted, thereby the prayer for declaration was included in the suit.

3. The suit was resisted by the defendant contending that the sale agreement dated 20.12.1995 was not intended to be acted upon, it was executed only as security for a Chit transaction in which the defendant owed monies to the plaintiffs. The Power of Attorney was also executed only as a security for the Chit transaction. Thus, the sum and substance of the defence is that both the sale agreement as well as the Power of Attorney were not intended to be acted upon and were executed only as security for the Chit Transaction.

4. At trial, the 1st plaintiff was examined as PW1 and two other witnesses were examined as PW 2 and PW 3. Exs A1 to A14 were marked. On the side of the defendant, the defendant was examined as DW1 and one Munisamy was examined as DW2. Ex.B1 was marked.

5. The trial Court upon a consideration of the evidence on record, concluded that the defendant cannot resist the suit without seeking a declaration that the Sale Deed dated 11.06.1997 is invalid or for cancellation of the Sale Deed on the ground that it is vitiated by fraud. The trial Court however concluded that the suit is barred by Limitation on the ground that the prayer for declaration was sought for later. Having held that the suit is barred by Limitation, the trial Court dismissed the suit. Aggrieved, the plaintiffs preferred an appeal in A.S.No.12 of 2013.

6. The appellate Court upon reconsideration of the evidence on record and on law relating to the Limitation concluded that since the suit was filed for recovery of possession, within the time allowed by law, the addition of the prayer for declaration will not render the entire suit barred by limitation. The appellate Court also concurred with the finding of the trial Court regarding the validity of the Sale Deed dated 11.06.1997 executed by the Power Agent of the plaintiff. On the said finding, the appellate Court allowed the appeal and decreed the suit as prayed for. Aggrieved, the defendant has come up with this second appeal. At the time of admission, the following substantial questions of law were framed:

1. Whether in law the declaratory relief sought for by the plaintiff is barred under Art.58 of the

Limitation Act when admittedly the said relief was added by amending the plaint three years after the filing of the written statement by the defendant?

2. Whether the amendment of the plaint with respect to the declaratory relief relate back to the date of filing of the suit or take effect from the date of filing the petition for amendment?
3. Whether in law Ex.A4 sale deed confer valid title in favour of the first plaintiff when the same was executed on the basis of the sale agreement obtained fraudulently without the knowledge of the defendant and on the basis of the deed of power of attorney obtained from the defendant as security for the payment of money?

7. I have heard Mr.P.Mani, learned counsel for the appellant and Mr.K.Sivasubramaniam, learned counsel for respondents.

8. Elaborating on the questions of law, Mr.P.Mani, learned counsel appearing for the appellant would vehemently contend that the suit is barred under Article 58 of the Limitation Act. He would also submit that the relief of declaration added by way of amendment would not relate back to presentation of the plaint. As the relief of declaration is barred by limitation, the suit itself should not have been decreed.

9. The questions of law 1 to 2 go together.

10. The sale deed is dated 11.06.1997. Originally the suit was instituted on 02.03.1998 seeking recovery of possession. The written statement was filed by the defendants on 24.04.2000 and the additional written statement was filed on 10.01.2007. The plaintiffs filed an application in I.A.No.1742 of 2004 to incorporate the relief of declaration and the same was allowed on 21.09.2004. Therefore, according to the learned counsel, the relief of declaration having been sought for after three years, after filing of the written statement, the same is barred in view of Article 58 of the Limitation Act. I am unable to agree with the learned counsel for the appellant for the following reasons.

11. The original suit that was filed is one for recovery of possession on 02.03.1998. Even without a prayer for declaration, the plaintiffs could have sought for recovery of possession and the Court in a suit for recovery of possession could go into the question of law of title also, unlike a suit for injunction. Once the prayer for recovery of possession is within time, the addition of relief of declaration during the

pendency of the suit for recovery of possession will not have the effect of postponing the institution of the suit for recovery of possession. Even otherwise, the amendment, unless it is specifically held to be perspective, is retrospective and it will relate back the date of institution of the suit .

12. In the case on hand, the original suit was filed for recovery of possession and therefore the amendment will eventually take effect from the date of the suit. Therefore, the lower appellate Court was perfectly justified in concluding that the suit is not barred by limitation. In view of the above, the first two questions of law are answered against the appellant.

13. As far as the third question of law is concerned, the Sale Deed Ex.A4 was admittedly executed by the Power Agent who was appointed by the defendant. Therefore, the legal effect is that it is the defendant who has executed the sale deed. Unless, the defendant seeks to set aside the Sale Deed in the manner known to law, he cannot deny the execution of the Sale Deed. It is the case of the defendant that the Sale deed is vitiated by fraud which makes it only voidable and not void. An voidable instrument, unless avoided in a manner known to law, is perfectly valid. The defendant cannot question the validity of the Sale Deed dated 11.06.1997 without seeking to set aside the same in the manner known to law within the time allowed by law. The lower appellate Court is right in concluding that the defendant cannot question the Sale Deed Ex.A4. Hence, the third question of law is also answered against the appellant.

14. In view of the answers to the questions of law, the second appeal fails and it is dismissed accordingly. Consequently, connected miscellaneous petition is closed. No costs.

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1. The Subordinate Judge
Vellore.

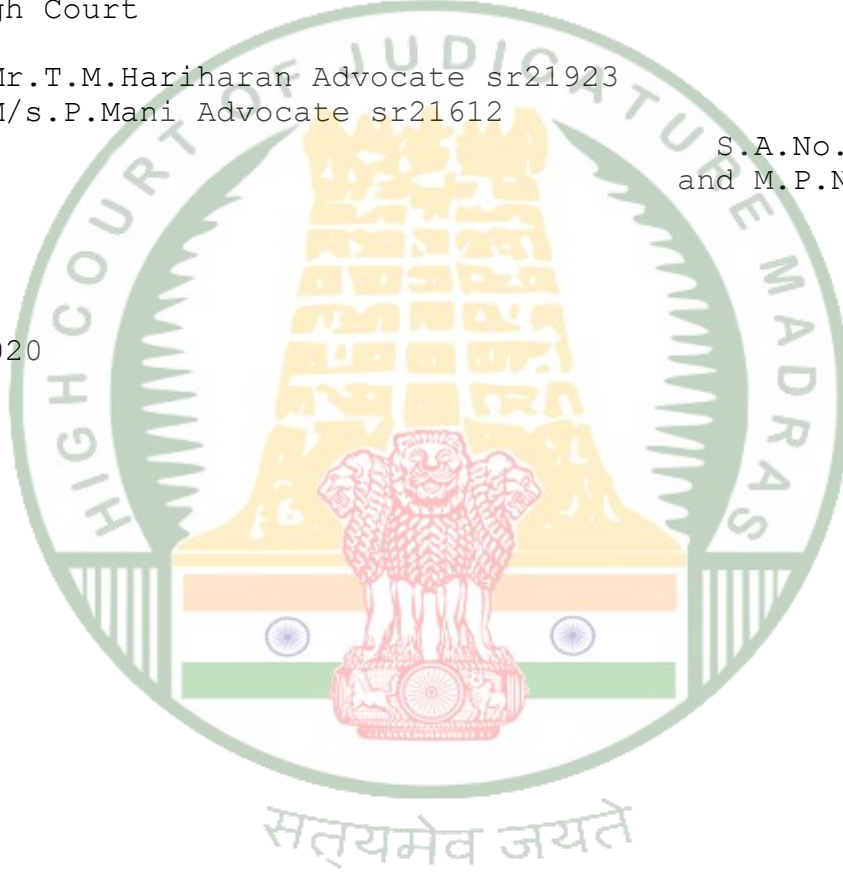
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