



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 28.07.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

S.A(MD)No.650 of 2015

WEB COPY

1.Velayutham
2.V.Karthikeya Prabhu
3.T.Subba

: Appellants/Respondents/Plaintiffs

Vs.

V.Venkidusamy

: Respondent/Appellant/Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree dated dated 28.11.2014 passed in A.S.No.43 of 2012 on the file of the Additional District and Sessions Court, Dindigul reversing the judgment and decree dated 19.11.2012 passed in O.S.No. 43 of 2012 on the file of the Sub Court, Veda sandhur, Dindigul District.

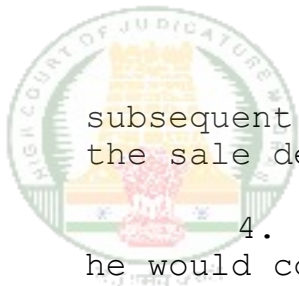
For Appellants : Mr.S.Karthik
For Respondent : Mr.R.Sreenivasan

J U D G M E N T

The present appeal is laid by the plaintiffs challenging the decree passed in A.S.No.43 of 2012 by which decree the First Appellate Court had dismissed the suit laid by the plaintiffs in O.S.No.43 of 2012 on the file of the Sub Court, Veda sandhur, Dindigul District. Earlier, the suit was decreed by the trial court.

2. The plaintiffs owned a block of land, which is described in 5 items of property in the plaint. On 28.11.2014, under Ex.A.1 sale deed, the plaintiffs have sold the property to the defendant. The property, as on the date of Ex.A.1, was outstanding on two mortgages one with M/s Catholic Syrian Bank of India and another with M/s Bank of India. The sale deed required the defendant to repay the debt due to the said banks.

3. The case of the plaintiffs is that the sale deed was executed at the instance of the defendant when the defendant would state that he would repay the debt to the banks and that the plaintiffs in turn might repay the said amount to him and have the property reconveyed to him. The plaintiffs would further add that the loan amount due to M/s Catholic Syrian Bank was paid, and the loan amount due to M/s Bank of India was not paid. The decree was passed in a suit in O.S.No.15 of 2008 filed at the instance of M/s Bank of India. Inasmuch as there is a breach of condition



subsequent in not paying the amount to M/s Bank of India in terms of the sale deed, the sale is null and void.

4. The defendant disputed this and in his written statement he would contend that the sale under Ex.A.1 is an absolute sale.

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5. The matter went to trial. The trial court found that
a) A sum of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) was paid for the loan due to M/s Catholic Syrian Bank
b) that a sum of Rs.7,35,550/- (Rupees seven lakhs thirty five thousand five hundred and fifty only) was paid as full and final settlement for the loan due to M/s Bank of India.

The trial court took the view that the loan amounts were paid to M/s Bank of India only during the pendency of the present case, which is in violation of the terms of the sale deed. It also suspected the consideration payable under Ex.A.1. This finding was reversed by the first Appellate Court.

6. Heard the learned counsel appearing on behalf of the appellants.

7. Firstly, the plaintiffs rest their cause of action under Ex.A.1 sale deed. Nowhere in Ex.A.1 could this Court find that a condition subsequent for vesting of title in the suit property in favour of the defendant/the respondent. The sale deed recites about the loan dues to the aforesaid banks and also condition to repay those loans, but nowhere it is stated that vesting of title under Ex.A.1 will take place only thereafter.

8. Secondly, a plain reading of Ex.A.1 would indicate that the title to the suit property has vested in the defendant under the very sale deed and on the very date of which it was executed. This would imply that the very foundation of the cause of action in the suit is lost. The trial court was in fundamental error when it seems to have read many facts in Ex.A.1, which are not there. This aspect was rectified by the First Appellate Court.

9. This Court does not find any merit in the case of the plaintiffs/the appellants herein and does not consider that there exists any substantial question of law to be considered by this Court.

10. In the result, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)



To

1. The Additional District and Sessions Judge,
Dindigul

2. The Sub Judge, Vendasandhur,
Dindigul District.

Copy to:

The Section Officer, (2 Copies)
V.R.Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. KARTHIK, Advocate (SR-13337[F] dated 30/07/2020)

+1 CC to M/s.R. NANDAKUMAR, Advocate (SR-13327[F] dated
29/07/2020)

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