



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.S.A.No.4 of 2015

1.Rajamanickam (died)
2.Ellammal
3.Gopalakrishnan
4.Mathiselvi
5.Radhakrishnan
6.Sathyamurthy ... Appellants/Respondents/Respondents

(Appellants 2 to 6 brought on
record as legal heirs of the deceased
sole appellant vide order of this Court
dated 25.02.2021 made in C.M.P.Nos.
17530 to 17532 of 2016 in C.M.S.A.No.
4 of 2015)

Vs.

1.Rani
2.Malar
3.Kumaran
4.Selvi
5.Maheswari ... Respondents 1 to 5/Appellants/Petitioners
6.Chinnatayi
7.Sengottaiyan
8.Ganesan
9.Palani ... Respondents 6 to 9/Respondents

PRAYER: Civil Miscellaneous Second Appeal filed under Order XXI
Rule 58 read with Section 100 of Civil Procedure Code, against
the judgment and decree dated 30.04.2004 made in C.M.A.No.31 of
1999 on the file of the Sub Court, Cheyyar, Tiruvannamalai
District, reversing the fair and decretal order dated 25.09.1998
made in E.A.No.519 of 1990 in E.P.No.353 of 1989 in O.S.No.196
of 1987 on the file of the Principal District Munsif Court,
Cheyyar, Tiruvannamalai District.

For Appellant : Mr.C.Prabakaran
For R1 to R5 : Mr.P.Mani
For R6 to R9 : No appearance



J U D G M E N T

Civil Miscellaneous Second Appeal is filed against the judgment and decree dated 30.04.2004 made in C.M.A.No.31 of 1999 on the file of the Sub Court, Cheyyar, Tiruvannamalai District, reversing the fair and decretal order dated 25.09.1998 made in E.A.No.519 of 1990 in E.P.No.353 of 1989 in O.S.No.196 of 1987 on the file of the Principal District Munsif Court, Cheyyar, Tiruvannamalai District.

2.The 1st appellant viz., Rajamanickam, decree holder filed this Civil Miscellaneous Second Appeal. Pending C.M.S.A., he died and his legal heirs were impleaded as appellants 2 to 6 by order of this Court dated 25.02.2021. The 1st appellant filed suit in O.S.No.196 of 1987 on the file of the Principal District Munsif Court, Cheyyar, Tiruvannamalai District, against one Mariappan, for recovery of money and the said suit was decreed by the judgment and decree dated 26.08.1987. The 1st appellant has also filed E.P.No.353 of 1989 against the said Mariappan for attachment and sale of petition properties. The said property was attached on 05.07.1990. At that time, one Shanmugam filed E.A.No.519 of 1990 in E.P.No.353 of 1989 under Order XXI Rule 58 of C.P.C., for raising attachment.

3.According to the said Shanmugam, the petition property is his absolute property, he purchased the property from Mariappan and his two brothers by the deed of sale dated 31.03.1986. From the date of purchase, he is in possession and enjoyment of the petition property by paying statutory dues. The judgment debtor Mariappan is owning terraced house and leased out the properties in his village. It is open to the decree holder to attach the properties of Mariappan and prayed for raising attachment of petition properties.

4.The 1st appellant, decree holder and Mariappan, judgment debtor filed separate counter affidavits and stated that Mariappan and his two brothers sold petition properties on specific condition that said Shanmugam will discharge loan amount due to the 1st appellant and dues to other creditors. The said Shanmugam has given a receipt dated 27.05.1986 and only on that day, sale deed was registered. The 1st appellant waited for discharging loan amount by said Shanmugam and on his failure, he has filed E.P.No.353 of 1989 for attachment and sale of petition property. The sale in favour of said Shanmugam is only a conditional sale on his undertaking that he will discharge the dues of Mariappan to the 1st appellant and other creditors of Mariappan. E.A. filed by Shanmugam is not maintainable and



prayed for dismissal of said E.A.

5. Before the Execution Court, the said Shanmugam examined himself as P.W.1, one P.Chandran, was examined as P.W.2 and marked four documents as Exs.P1 to P4. One P.K.Ramachandran was examined as R.W.1, Mr.Damodharan, Sub-Registrar, was examined as R.W.2, the judgment debtor and 1st appellant were examined themselves as R.W.3 and R.W.4 respectively and marked two documents as Exs.R1 and R2.

6. The learned Judge considering the materials placed before him, oral and documentary evidence, the averments in the affidavit, counter affidavits and after verifying the signature in the receipt issued by Shanmugam marked as Ex.R2 with signature of Shanmugam in the evidence, held that receipt was issued by the said Shanmugam and dismissed E.A. filed by him.

7. Challenging the said order of dismissal dated 25.09.1998 made in E.A.No.519 of 1990 in E.P.No.353 of 1989, the said Shanmugam filed C.M.A.No.31 of 1999 against Mariappan, judgment debtor and Rajamanickam, 1st appellant herein. Pending C.M.A., both Shanmugam and Mariappan died. The respondents 1 to 5 herein, who are the legal heirs of deceased Shanmugam, were impleaded as appellants 2 to 6 in C.M.A. The respondents 6 to 9 herein, who are the legal heirs of Mariappan, were impleaded as respondents 3 to 6 in C.M.A. The learned First Appellate Judge considering the averments in the sale deed and order of the learned trial Judge, allowed the appeal setting aside the order of the trial Court dismissing E.A.

8. Against the said judgment and decree dated 30.04.2004 made in C.M.A.No.31 of 1999, the 1st appellant Rajamanickam filed present C.M.S.A. against the legal heirs of third party Shanmugam and legal heirs of judgment debtor Mariappan.

9. The learned counsel appearing for the appellants contended that lower Appellate Court without properly appreciating the materials placed and well settled judicial pronouncement, erroneously allowed C.M.A. reversing the well considered order of the trial Court dismissing E.A.No.519 of 1990 filed under Order XXI Rule 58 of C.P.C. The sale in favour of Shanmugam is only to defeat the interest of creditors of Mariappan. The lower Appellate Court failed to see that trial Court after considering signature of Shanmugam in Ex.R2 with admitted signature of Shanmugam available in the Court, held that Ex.R2 was executed by Shanmugam before the Sub-Registrar. The lower Appellate Court failed to consider that first



appellant objected to registration of sale deed before the Sub-Registrar and said Shanmugam was put on notice about attachment of property. The finding of the lower Appellate Court that the trial Court ought not have compared the signature of Shanmugam is perverse and the same is against the settled principle of law. The said Shanmugam purchased the property from Mariappan pending suit and property was sold by Mariappan only for settling the debts due to the creditors. When Shanmugam failed to honour as per Ex.R2, 1st appellant has no other remedy except to bring the properties for attachment of sale and prayed for setting aside the judgment of the First Appellate Court and prayed for allowing this appeal.

10.The learned counsel appearing for the respondents 1 to 5 contended that Shanmugam purchased property from Mariappan for valuable consideration and has paid entire sale consideration. The vendor Mariappan and his brothers admitted receipt of sale consideration before the Sub-Registrar. The said Shanmugam proved payment of entire sale consideration by examining P.W.2, who was witness to the sale deed and who has seen the payment of sale consideration. The said Shanmugam was not a party to the suit filed by the 1st appellant against judgment debtor Mariappan. There is no recital in the sale deed imposing condition that he should discharge the loan due to the creditors of Mariappan. If Ex.R2 is true, it is for the appellants to initiate proceedings separately and recover the amount from the legal heirs of Mariappan. The trial Court erroneously rejected evidence of P.W.2. There is no recital in the sale deed dated 31.03.1986 that Shanmugam undertook to pay the creditors of Mariappan and the sale is conditional sale. The said Shanmugam did not issue Ex.R2. Either the 1st appellant or Mariappan failed to prove signature in Ex.R2 as that of Shanmugam by getting opinion from the handwriting expert. The trial Court exceeding its power and jurisdiction, erroneously compared the signature in the Court document with signature in Ex.R2 and held that signature in Ex.R2 is that of Shanmugam, which is not valid. The lower Appellate Court considering the entire materials on record, rightly held that there are insertions in Ex.R2 and that trial Court has no power to compare the signature and allowed the appeal. There is no error in the judgment of the lower Appellate Court and prayed for dismissal of the C.M.S.A.

11.When the matter came up for hearing on 03.12.2021, there was no representation for the respondents 6 to 9. Today also, there is no representation for the respondents 6 to 9.

12.Heard the learned counsel for the appellant, who



appeared before this Court physically as well as the learned counsel appearing for the respondents 1 to 5 through Video-conferencing/Hybrid mode and perused the entire materials on record.

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13. At the time of admission, this Court framed following three substantial question of law, which are extracted hereunder:

"(1) Whether the Court below is justified in holding that the trial Court cannot compare the signature in the disputed document on its own with the available materials before the Court?

(2) Whether the Court below was correct in allowing the petition filed by the obstructor namely Shanmugam when he had purchased the property on specific execution of the letter in Ex.R2?

(3) Whether the lower appellate Court is correct in rejecting the evidence of R.W.2, namely the Sub-Registrar who has deposed that the appellant herein had given objection at the time of registration of the sale deed dated 31.03.1986?"

Substantial question of law (1) and (2):

14. From the materials on record, it is seen that one Shanmugam filed E.A.No.519 of 1990 in E.P.No.353 of 1989 under Order XXI Rule 58 of C.P.C., to raise order of attachment dated 05.07.1990 in respect of petition property. The said Shanmugam is third party to the execution proceedings. The 1st appellant filed O.S.No.196 of 1987 against one Mariappan for recovery of money. The said suit was decreed by the judgment and decree dated 26.08.1987. The 1st appellant filed E.P.No.353 of 1989 against Mariappan, the judgment debtor, for attachment and sale of the petition property. According to the 1st appellant, the petition property belongs to said Mariappan and properties are liable to be attached and sold to realise the decretal amount. In the said E.P., Shanmugam, who is a third party filed E.A.No.519 of 1990 for raising attachment. According to the said Shanmugam, he purchased petition property from Mariappan and his two brothers by sale deed dated 31.03.1986 and paid sale consideration. On the other hand, it is the case of Mariappan, the judgment debtor that he sold the petition property in order to discharge the dues to the creditors including 1st appellant. The said Shanmugam agreed to discharge the dues to creditors including 1st appellant and issued receipt dated 27.05.1986, which was marked as Ex.R2. In the said receipt, Shanmugam agreed that if he fails to discharge the amounts due to the creditors, sale deed dated 31.03.1986 shall stand cancelled. Shanmugam failed to discharge the dues and therefore, the petition



properties have to be attached and sold.

14(i) The 1st appellant in his counter affidavit has stated that he gave an objection to the Sub-Registrar not to register any sale deed in respect of the petition property. In view of such objection only, sale deed executed on 31.03.1986 was registered only on 27.05.1986. At the time of registration, the Sub-Registrar informed both Mariappan and Shanmugam about the objection given by 1st appellant and Shanmugam knew about the objection of 1st appellant at the time of registration of sale deed itself. To substantiate their respective stand, the said Shanmugam examined himself as P.W.1, one P.Chandran as P.W.2 and marked four documents as Exs.P1 to P4. The 1st appellant examined himself as R.W.4, Mariappan examined himself as R.W.3, they examined one P.K.Ramachandran as R.W.1 and Sub-Registrar as R.W.2 and marked two documents as Exs.R1 and R2.

14(ii) P.W.2 in his chief-examination has stated that when Sub-Registrar enquired Mariappan and his brothers that whether they have received sale consideration, they admitted that they have received the amount and P.W.2 saw that they received amount. On the other hand, in the cross-examination, he admitted that he does not know when the sale deed was prepared and how many pages are there in the sale deed. R.W.2/Sub-Registrar has deposed that 1st respondent gave objection to him not to register any document in respect of petition property and at the time of registration of sale deed in favour of Shanmugam, he explained the objection given by 1st appellant to Shanmugam as well as Mariappan. The sale deed was registered only after objection of 1st appellant was known to Shanmugam. R.W.3/Mariappan in his evidence has deposed that he sold the property to Shanmugam only to discharge his dues to his creditors and Shanmugam did not pay entire sale consideration, but withheld the amounts payable to his creditors and gave receipt dated 27.05.1986 on the date of registration of sale deed promising and agreeing to discharge the dues of creditors of Mariappan. The said document was marked as Ex.R2. Shanmugam denied having issued receipt Ex.R2. In view of the said denial, the trial Court compared the disputed signature in Ex.R2 with admitted signature of Shanmugam available in the Court namely, signature in the proof affidavit and cross-examination and found that signature in Ex.R2 is that of Shanmugam. The trial Court did not accept the evidence of P.W.2 with regard to payment of sale consideration before the Sub-Registrar as he did not know when the sale deed was prepared, how many pages are there and whether the parties have signed in the sale deed. Further, the Sub-Registrar as R.W.2 has clearly deposed that he put on notice



to both Mariappan and Shanmugam about the objection of 1st appellant and then only registered the sale deed. R.W.2 is a Government Official and there is no necessity to depose in a biased manner. Secondly, the evidence of P.W.2 was rightly not accepted by the trial Court as except signing the sale deed as witness, he did not know anything about the sale deed. Mariappan deposed that he informed the Sub-Registrar that he received sale consideration in view of Ex.R2. The trial Court after holding that signature in Ex.R2 is that of Shanmugam and considering all the materials placed before it including oral and documentary evidence, dismissed E.A. filed by Shanmugam holding that said Shanmugam is liable to pay decretal amount and hence, the petition property was attached and there is no necessity to change the order of attachment.

14(iii) On the appeal filed by the said Shanmugam, First Appellate Court set aside the order of trial Court and allowed the E.A. filed by the said Shanmugam on the ground that the trial Court has no power to compare the disputed signature with admitted signature in the Court, the trial Court ought to have obtained opinion from the handwriting expert with regard to genuineness of signature in Ex.R2 and then only ought to have decided the genuineness of signature. The said reasoning of First Appellate Court is erroneous. The Court can either obtain opinion from the handwriting expert with regard to signature or at the same time, the Court has power to compare the disputed signature with admitted signature in the Court and come to a conclusion whether signature in the document is available or not. In the present case, the trial Court has exercised the power conferred on it by law and on proper exercising of said power, has held that signature in Ex.R2 is that of Shanmugam only. In view of power conferred on the trial Court, the finding of the First Appellate Court that the trial Court without power, compared the signature in Ex.R2 is invalid, illegal and is liable to be set aside and is hereby set aside.

14(iv) Once Ex.R2 is proved to be issued by Shanmugam, to be genuine, then he is bound by the contents of Ex.R2. In Ex.R2, Shanmugam has categorically agreed to discharge the dues of Mariappan's creditors. The Sub-Registrar, who was examined as R.W.2 has deposed that Shanmugam executed Ex.R2 and then only on the same date, sale deed was registered. From Ex.P1/sale deed, it is seen that Ex.P1 is dated 31.03.1986, but it was registered only on 27.05.1986. This proves that on the objection by the 1st appellant and only after Shanmugam agreed to discharge the dues of Mariappan by issuing Ex.R2, the sale deed was registered. Having accepted to discharge dues of Mariappan to his creditors,



the said Shanmugam is liable to pay the amounts claimed by 1st appellant in the E.P. and there is no reason to interfere with the order of attachment of petition property by the trial Court. First Appellate Court on erroneous reason set aside the well considered order of the trial Court. For the above reasons, Substantial question of law (1) is decided by this Court that the learned trial Judge has power to compare the disputed signature with available signature in the Court records. Substantial Question of law (1) is answered in favour of the appellants.

14(v) Insofar as substantial question of law (2) is concerned, First Appellate Court has committed an error in allowing E.A. filed by the obstracter, when he purchased the petition property on specific execution of Ex.R2. Substantial question of law (2) is answered accordingly.

Substantial question of law(3):

15.As far as substantial question of law (3) is concerned, this Court has already held that Sub-Registrar, R.W.2 is a Government Official and he has no bias to depose against obstracter. Substantial question of law (3) is answered against the respondents as First Appellate Court has erroneously rejected the evidence of R.W.2, Sub-Registrar.

16.For the above reasons, Civil Miscellaneous Second Appeal stands allowed. The judgment of the First Appellate Court made in C.M.A.No.31 of 1999 is set aside. The order of the trial Court is restored and E.A.No.519 of 1990 filed by Shanmugam is dismissed. The trial Court is directed to proceed with E.P.No.353 of 1989 and dispose of the same on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Court,
Cheyyar, Tiruvannamalai District.



2.The Principal District Munsif Court,
Cheyyar, Tiruvannamalai District.

Copy To

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

+1cc to Mr.P.Mani, Advocate SR.No.65888

C.M.S.A.No.4 of 2015

VBM(CO)
GN(09/02/2022)