IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

AS.NOS.437 & 338 OF 2019
AND
CMP.NO.11448 OF 2019

AS.No.437 of 2019

V.Kala ...Appellant / Plaintiff

Vs.

1.Thamizharasan
2.Sundaram @ Shanmugam
3.R.E.Varadharajan ...Respondents / Defendants

PRAYER : Appeal Suit is filed under Section 96 of CPC r/w Order 41 Rule 1 of CPC to set aside the judgment and decree dated 25.09.2018 in OS.No.106 of 2014 on the file of III Additional District Judge, Pondicherry.

For Appellant : Mr.R.Thiagarajan
For Respondents
For R1 & 2 : Mr.M.Rajasekhar

For R3 : No appearance

AS.No.338 of 2019

V.Kala ...Appellant / Plaintiff

Vs.

1.Thamizharasan
2.Sundaram @ Shanmugam
3.R.E.Varadharajan ...Respondents / Defendants

PRAYER : Appeal Suit is filed under Section 96 of CPC r/w Order 41 Rule 1 of CPC to allow the above first appeal by setting aside the counter claim in judgment and decree dated 25.09.2018 in OS.No.106 of 2014 on the file of III Additional District Judge, Pondicherry.

For Appellant : Mr.R.Thiagarajan

For Respondents
For R1 & 2 : Mr.M.Rajasekhar

For R3 : No appearance

COMMON JUDGMENT

Both the first appeals are filed against the judgment and decree dated 25.09.2018 passed in OS.No.106 of 2014 on the file of III Additional District Judge, Pondicherry.

2. The suit is filed for declaration and permanent injunction in respect of the suit property. The case of the plaintiff is that she purchased the suit property by the registered sale deed dated 11.12.1995 for valid sale consideration from one, Palaniandi. Thereafter, she obtained loan from the Indian Bank to construct house. A sum of Rs.5,00,000/- was also donated by her father in law and entire construction was completed in the year 2001. She could not repay interest and the loan. On 11.11.2005, the Indian Bank published an advertisement in newspaper for sale of the suit property. Therefore, she requested her son to arrange some loan for repayment of the loan due to the Indian Bank. On 19.03.2006, the husband of the plaintiff approached the plaintiff and told her that he has arranged for loan and asked her to come to Indian Bank on 20.03.2006. As per the advice of her husband, the defendants 1 and 2 repaid the loan by way of cheque and cash and original documents handed over to them as security and promised to return the same on discharge of the loan. The plaintiff and her sons signed necessary papers for borrowal of the loan from the defendants 1 and 2. The defendants agreed to receive the loan amount within two years with interest at the rate of 24% per annum.

2.1 Further case of the plaintiff is that while being so, the second defendant asked the plaintiff to vacate the suit property and hand over vacant possession. Then only, she came to understand that her signature was obtained fraudulently in stamp papers and executed sale deed dated 20.03.2006. Immediately, the plaintiff contacted her husband i.e. third defendant and he promised to cancel the sale deed dated 20.03.2006 after discharge of the loan borrowed from the defendants 1 and 2 herein. The defendants 1 and 2 fraudulently colluded with her husband i.e. third defendant and obtained signature in the sale deed and executed sale deed. Therefore, the sale deed dated 20.03.2006 is sham and nominal one and non est in the eye of law.

3. Resisting the same, the defendants 1 and 2 filed written statement and stated that the plaintiff having been executed sale deed delayed from vacating the suit property. The first defendant is the son and the second defendant is the father and after purchase of the same, the second defendant is looking after the suit property. The third defendant purchased the property in the name of the plaintiff and he offered to sell the suit property which was subject to the housing loan with the Indian Bank, Pondicherry. Therefore, the second defendant visited the suit property. The first defendant arranged fresh loan from ICICI Bank and settled the dues from the Indian Bank on behalf of the plaintiff. In fact, the plaintiff entered into a written agreement for sale with the defendants in the presence of the witnesses on 16.02.2006 and paid a sum of Rs.50,000/- as an advance in cash to the plaintiff. In fact, ICICI bank issued three cheques for total sum of Rs.13,23,985/- during the first week of March 2006. After completion of all formalities and closed the loan amount and released all original title deeds. The first defendant paid balance sale consideration to the plaintiff and the plaintiff executed sale deed dated 20.03.2006 registered vide document No.1338 of 2006. Suppressing all those facts, the plaintiff filed the present false and frivolous suit for declaration declaring that the sale deed dated 20.03.2006 as null and void. While pending the suit, the defendants 1 and 2 also filed their counter claim in respect of the suit property. They filed the counter claim seeking mandatory injunction for eviction of plaintiff for mesne profit from 24.02.2007 till the delivery of vacant possession of the suit property.

4. The third defendant filed separate written statement and stated that due to family dispute with the plaintiff, the third defendant was separated from the family and living alone. The second defendant is close friend of him. After obtaining loan from the Indian Bank, the plaintiff constructed house in the suit property and thereafter they could not able to repay the loan amount. Therefore, the plaintiff and her sons approached the third defendant to set right the problem. Therefore, on 20.03.2006, the third defendant went to the bank along with the first and second defendants and discharged the loan amount due to the Indian Bank. The original title deeds were returned and the defendants 1 and 2 called upon the third defendant to come forward to execute the mortgage deed by depositing all title deeds by the plaintiff in favour of the first defendant. They promised to return the said documents once the loan amount is fully discharged with interest. Accordingly, the plaintiff and the third defendant along with their sons went to the Sub Registrar Office, Pondicherry and executed mortgage deed prepared by the defendants 1 and 2 herein. When the defendants 1 and 2 asked the plaintiff to vacate the suit property and hand over the possession, the plaintiff came to understand that they

got executed sale deed in their favour and they also assured that when the amount was returned to them with interest, they are ready to cancel the sale deed. He further stated that the sale deed was executed for very meagre amount whereas the property valued more than Rs.65,00,000/-. Therefore, the third defendant prayed for dismissal of the counter claim and prayed for decreeing the suit.

5. The plaintiff filed written statement for the counter claim filed by the defendants 1 and 2 and stated that after filing the present suit, the defendants 1 and 2 filed the counter claim to vacate the plaintiff from the suit property. Therefore, the counter claim is not sustainable in law and liable to be dismissed. The plaintiff has no knowledge about the loan borrowed by the first defendant from ICICI Bank to the tune of Rs.13,00,000/-. The plaintiff approached the defendants 1 and 2 to grant loan to settle the dues to the Indian Bank. The plaintiff did not sign any agreement for sale dated 16.02.2006. After discharging the loan dues to the Indian Bank, received original documents of the suit schedule property and handed over to her husband i.e. the third defendant for the purpose of loan already obtained by the defendants 1 and 2. At that juncture, the defendants 1 and 2 requested the plaintiff to come and sign in necessary documents for the purpose of settling the loan. When the plaintiff and the third defendant were not in good terms, utilising the said circumstances, the defendants 1 and 2 colluded with third defendant and obtained signature of the plaintiff and created alleged sale deed dated 20.03.2006. Therefore, the counter claim is devoid of merits and deserves to be dismissed.

6. The plaintiff filed additional counter statement stating that her husband handed over the agreement deed dated 20.03.2006 and accordingly, sale consideration is fixed at Rs.16,20,000/-. The defendants 1 and 2 paid only a sum of Rs.13,23,985/- to the plaintiff by way of discharging the loan borrowed by her from the Indian Bank. In the said agreement dated 20.03.2006, the first defendant agreed to pay a sum of Rs.2,00,000/- to the plaintiff on or before 31.05.2006 after vacating the suit property by the plaintiff and hand over the key to the first defendant. So far, the first defendant did not pay any balance sale consideration of Rs.2,00,000/- to the plaintiff. Therefore, the sale deed dated 20.03.2006 is null and void.

7. On hearing the rival pleadings, the learned trial Judge framed the following issues on 27.11.2009 for determination of the suit :-

(i) Whether the suit claim is valued property?

(ii) Whether the court fee paid is correct?

(iii) Whether this court has pecuniary jurisdiction to try this suit?

(iv) Whether the sale deed dated 20.03.2006 is null and void

(v) Whether the plaintiff is entitled for the relief of declaration as prayed for?

(vi) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

(vii) Whether the defendants are entitled for the relief of mandatory injunction as prayed for?

(viii) Whether the defendants are entitled for any mesne profit? If so to what amount?

(ix) To what relief the plaintiff is entitled for?

(x) To what relief the defendants are entitled for?

7.1 The issues were re-casted on 20.04.2016 as follows:

1. Whether the plaintiff is entitled to get the declaratory relief, regarding the alleged sale deed dated 20.03.2006 is null and void and not executable against the plaintiff and consequently to cancel the same?
2. Whether the plaintiff is entitled to get the permanent injunction against the defendant?
3. Whether the suit claim is valued for the purpose of court fee and jurisdiction is correct?
4. Whether the court fees paid for the suit is correct?
5. Whether the court has got pecuniary jurisdiction to try the suit?
6. Whether the defendant entitled for the mesne profit from 24.02.2007 till the delivery of possession?
7. Whether the first and second defendants entitled for perpetual mandatory injunction?
8. To what relief both parties are entitled?

7.2 Three additional issues were framed on 12.07.2017 as follows:

(i) Whether the defendants 1 and 2 fraudulently obtained the sale deed from the plaintiff as alleged?

(ii) Whether the counter claim of D1 and D2 is not maintainable without the prayer for declaration of title to the suit property and delivery of possession as alleged by D3?

(iii) Whether there was no sale agreement on 16.02.2006 as alleged by D1, D2?

8. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and eight documents were marked as Ex.A.1 to Ex.A.8. On the side of the defendants, D.W.1 was examined and Ex.B.1 to Ex.B.8 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit filed by the plaintiff and allowed the counter claim filed by the defendants 1 and 2. Aggrieved by the same, the plaintiff has preferred the first appeals.

9. The learned counsel for the appellant submitted that the plaintiff availed loan and purchased the suit property. Due to non payment of the loan amount, with the help of her husband approached defendants 1 and 2 to avail loan. Utilising the circumstances that the plaintiff and the third defendant were not in good terms, the third defendant and the defendants 1 and 2 obtained signatures in the stamp papers and fabricated the sale deed as if the plaintiff sold out the suit property. She executed some deed only as security for the loan obtained by the plaintiff from the defendants 1 and 2. Even assuming that the plaintiff executed sale deed as per the agreement deed dated 20.03.2006, the balance sale consideration of Rs.2,00,000/- to be paid by the first defendant. Therefore, the sale deed dated 20.03.2006 is null and void.

10. Per contra, the learned counsel for the respondents 1 and 2 submitted that the plaintiff duly executed sale deed in favour of the first defendant on discharge of the loan obtained by the plaintiff from the Indian Bank to purchase the suit property. Having been executed sale deed, she challenged the sale deed by way of the present suit. The plaintiff failed to prove her case before the trial court that the defendants 1 and 2 colluded with the third defendant and obtained signatures in the stamp papers and fabricated the sale deed. Therefore, the court below rightly dismissed the suit filed by the plaintiff

and allowed the counter claim and also ordered to vacate the suit premises.

11. Heard, Mr.R.Thiagaran, the learned counsel for the appellant and the Mr.M.Rajasekhar, the learned counsel for the respondents 1 and 2.

12. The plaintiff filed the suit as against the first and second defendants for declaration declaring that the sale deed dated 20.03.2006 as null and void. While pending suit, the third defendant was impleaded. The first and second defendants filed their written statement along with counter claim claiming mandatory injunction for eviction of the plaintiff and claiming mesne profits from 24.02.2007. Admittedly, the plaintiff is the wife of the third defendant. She purchased the suit property by the registered sale deed dated 11.12.1995 as vacant plot and constructed house in the suit property by raising loan from the Indian Bank. Thereafter, the plaintiff failed to discharge the loan amount to the Indian Bank. Due to dispute between the plaintiff and the third defendant, since the third defendant is an alcoholic, through her elder son, the plaintiff met her husband and requested him to make arrangement to settle the loan amount. Accordingly, the third defendant informed the plaintiff that he had arranged loan and asked her to come to Indian Bank. The defendants 1 and 2 were present in the bank and obtained signatures from the plaintiff. Thereafter, they repaid the loan amount by way of cheque and cash and got back the original sale deeds of the suit property.

13. According to the plaintiff, they promised to return the documents on discharge of the entire loan. In fact, on the request of the third defendant, the sons of the plaintiff also signed as witnesses. In support of her contention, PW1, who is the power agent of the plaintiff was examined and he is the attesting witness to the sale deed and son of the plaintiff. PW2 is another son of the plaintiff, who is another witness to the sale deed. The plaintiff categorically admitted in her reply statement to the counter claim with regards to the execution of the sale deed dated 20.03.2006. That apart, PW1 and PW2 were stood as witnesses to the sale deed. It is also not in dispute that the defendants 1 and 2 had discharged the loan borrowed by the plaintiff from the Indian Bank to the tune of Rs.13,23,985 /-. The outstanding amount of the plaintiff was discharged to the Indian Bank and all the original parent documents were handed over to her. In turn, she handed over the original documents to defendants 1 and 2. Even before the sale deed, there was an agreement for sale between the plaintiff and the first defendant dated 16.02.2006 and the same was categorically admitted by the plaintiff in her reply statement. Therefore, the factum of the execution of the sale agreement

dated 16.02.2006 is proved by the admission of the plaintiff. The plaintiff further contended that according to the agreement for sale, the sale consideration was fixed at Rs.16,20,000/- and accordingly, the defendants 1 and 2 have to pay the balance sale consideration of Rs.2,00,000/-. Therefore, the court below rightly dismissed the suit filed by the plaintiff.

14. As far as the counter claim is concerned, when the sale deed which was marked as Ex.A2 is not proved by the plaintiff as fraudulent one and not executable and concluded that the Ex.A2 is valid document made for proper consideration, the defendants 1 and 2 are entitled for mandatory injunction, since the plaintiff is only in permissive possession after the sale deed. The defendants proved the fact that the suit property was purchased for valid sale consideration and they permitted the plaintiff to be in possession for a period of two months time to vacate the suit property after execution of the sale deed. But the plaintiff failed to vacate the suit property and as such they issued legal notice to vacate the suit premises and hand over the same. It is also categorically admitted by the plaintiff in the document marked as Ex.B7. Ex.B7 revealed that the defendants called upon the plaintiff that they revoke the permission granted to the plaintiff till 31.05.2006 and directed the plaintiff to vacate the premises and hand over the same. Therefore, the plaintiff is in permissive possession of the property after execution of the sale deed dated 20.03.2006, and the court below rightly allowed the counter claim and directed the plaintiff to vacate the suit property and hand over the vacant possession of the suit property to the first defendant. Hence, this court finds no infirmity or illegality in the judgment and decree passed by the court below, and the first appeals deserve to be dismissed.

15. Accordingly, both the first appeals are dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District Judge,
Pondicherry.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.M.Rajasekar, Advocate, S.R.No.32644

AK(CO)
RVM(15/11/2021)