



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.04.2021

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

S.A.No.402 of 2021 and
CMP.7655 OF 2021

Anbarasi
W/o.Subramanian

.. Appellant/Plaintiff

Vs.

J.Sivagnanam
S/o.Jambulingam

.. Respondent/Defendant

Second Appeal under Section 100 of CPC to set aside the judgement and decree dated 17.09.2020 made in A.S.No.49 of 2019 on the file of the Principal Sub-Judge at Puducherry, confirming the judgment and decree dated 29.03.2019 made in O.S.No.1431 of 2013 on the file of the Principal District Munsif, Puducherry.

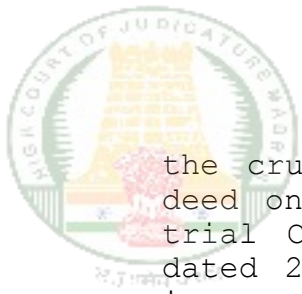
For Appellant : Mr.A.V.Arun

For Respondent : Ms.R.Nandhini
for Mr.S.S.Rajesh

J U D G M E N T

Two concurrent judgments and decrees against one Anbarasi (Wife of Subramanian) have brought her to this Court vide captioned Second Appeal under Section 100 of 'The Code of Civil Procedure, 1908' [hereinafter 'CPC' for convenience and clarity].

2. Litigation that has led to captioned Second Appeal commenced more than a half decade ago, to be precise on 29.07.2013 when a plaint was presented in the 'Principal District Munsif's Court, Puducherry' [hereinafter 'trial Court' for the sake of convenience and clarity] by the appellant before this Court inter-alia with a prayer to declare that a sale deed dated 12.12.1996 (Ex.A2) in favour of defendant is null and void. The suit property as described in the plaint admeasures 2640 sq.ft or thereabouts in Sabari Nagar, Muthirayarpalayam Main Road, Opposite to IPC Godown, Moolakulam, Puducherry, but two items of suit properties are shown in the decree drawn up by the trial Court. Learned counsel for appellant very fairly submitted that he is not able to readily explain this, however,



the crux and gravamen of the matter centers around Ex.A2 sale deed on which the suit prayer turns. After full contest, the trial Court dismissed the suit in and by judgment and decree dated 29.03.2019. The non-suited plaintiff carried the matter in appeal by way of a regular First Appeal under Section 96 of CPC vide A.S.No.49 of 2019 on the file of 'Principal Sub-Judge's Court, Puducherry' [hereinafter 'First Appellate Court' for the sake of convenience and clarity] and the First Appellate Court also dismissed the appeal suit after full contest vide judgment and decree dated 17.09.2020.

3. Before the trial Court, lone plaintiff examined herself as P.W.1 and sole defendant examined himself as D.W.1. Six exhibits namely, Ex.A1 to Ex.A6 were marked on the side of plaintiff and eight exhibits namely, Ex.B1 to Ex.B8 were marked on the side of defendant.

4. Owing to this being a legal drill under Section 100 of CPC which turns on substantial question of law, short facts sans unnecessary details will suffice. Short facts are that the plaintiff claims that she has purchased the suit property under a sale deed dated 29.09.2011 (Ex.A6) from one Anburaj; that it is the case of plaintiff that the suit property originally belongs to one J.Subramanian; that this original owner had given a Power of Attorney in favour of one J.James Chandran; that while the power was in force, original owner had executed the impugned sale deed (Ex.A2) dated 12.12.1996 in favour of defendant; that J.James Chandran, on the strength of power, sold the suit property to one Sivanoli who in turn sold it to one Krishnakumar, who in turn sold it to plaintiff's vendor Anburaj; that the suit was resisted on the ground that the sale has taken place by impersonation and the power was cancelled; that there have been criminal proceedings and other legal proceedings between the parties earlier; that the trial Court returned a factual finding that the sale deed in favour of plaintiff cannot be pressed into service as the original owner has directly executed the sale deed in favour of defendant; that the trial Court also returned a factual finding that the aforementioned purchasers from Power of Attorney Agent did not derive any title qua suit property through the sale deed as the purchase has been made without ascertaining the encumbrance as suit property had been sold by the original owner on 12.12.1996; that the trial Court also proceeded on the caveat emptor principle; that the First Appellate Court returned a factual finding that there is serious dispute regarding title to the suit property; that there have been criminal and other legal proceedings between parties; that there is no evidence regarding original title deed being handed over to the aforementioned Power of Attorney Agent and there is no evidence to conclude that Ex.A1-Power of Attorney dated 04.09.1996 is one coupled with interest qua suit property;



that on this basis, the First Appellate Court confirmed the plaintiff being non-suited by the trial Court.

5. Mr.A.V.Arun learned counsel for appellant, notwithstanding very many grounds raised in the memorandum of grounds of appeal and very many questions proposed in the memorandum of grounds of appeal as substantial questions of law, projected his argument crisply, a summation of which is as follows:

(a) The Power of Attorney dated 04.09.1996 (Ex.A1) given by original owner to J.James Chandran was cancelled only on 08.11.2012 (Ex.B3) whereas the sale deed by original owner in favour of defendant has been executed on 12.12.1996 (Ex.A2) when the power was subsisting leading to infarct of Sections 208 and 188 of the Indian Contract Act, 1872.

(b) Section 48 of 'The Transfer of Property Act, 1882' [hereinafter 'TP Act' for the sake of convenience and clarity] deals with priority of rights created by transfer and not in favour of plaintiff as the power was subsisting?

6. This Court now, embarks upon the exercise of examining if any substantial question of law arises in the case on hand. The expression 'substantial question of law' is not defined in CPC, but it has been elucidatively explained in a long line of authorities starting from Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju and others reported in AIR 1951 Mad 969 (FB)] to Santosh Hazari's case [Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179]. This has been recently reiterated in Nazir Mohamed case [Nazir Mohamed Vs. J.Kamala, reported in 2020 SCC OnLine SC 676] which was rendered on 27.08.2020. The term 'substantial' occurring as prefix to 'question of law' has also been explained in a line of authorities. Further more, the expression 'involved in any case' occurring in Section 100 of CPC has also been explained. In this regard, it will suffice to extract Paragraph No.12 of Santosh Hazari's case and Paragraph Nos.32 & 33 of Nazir Mohamed case which read as follows:

Paragraph No.12 of Santosh Hazari's case:

'12.The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of



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law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. T. Ram Ditta* [AIR 1928 PC 172 : 55 IA 235] , the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.* [AIR 1962 SC 1314 : 1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

"[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the



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question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.''

Paragraph Nos.32 & 33 of Nazir Mohamed case:

'32. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

33. To be a question of law "involved in the case", there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.'

7. To be noted, in Nazir Mohamed case, Hon'ble Supreme Court has reiterated Sir Chunnilal Mehta's case rendered by a Constitution Bench wherein Rimmalapudi Subba Rao's case elucidation of expression 'substantial question of law'.

8. The points for consideration which arise in the captioned Second Appeal are:

(a) Whether execution of the impugned sale deed dated 12.12.1996 (Ex.A2) during subsistence of Ex.A1 - Power of Attorney dated 04.09.1996 vitiates it?

(b) Whether the plaintiff gets priority of rights under Section 48 of TP Act?

(c) Whether any substantial question of law arises in the case on hand?

9. This Court carefully examined the judgments of the Courts below. The trial Court, in its judgment, more particularly paragraph No.12 has returned a factual finding that the sale deed executed by the Power of Attorney agent was on 20.12.1996 and the same was registered on that day. The sale deed executed by principal is on 12.12.1996 and that was also presented for registration on that date itself. Hence, the trial Court held that the sale deed executed by the principal conveyed title to the defendant and it is for the purchaser of the property to be vigilant. This has been neatly captured in Paragraph No.12 of the judgement of the trial Court which reads as follows:

'12. However, in this case the sale deed



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executed by the agent was on 20.12.1996 and the same was registered on that date. The sale deed executed by the principal on 12.12.1996 was also presented for registration on that date itself. Hence, this Court holds that the sale deed executed by the principal conveyed title to the defendant and it is for the purchaser of the property to be vigilant on the principle of caveat empty to ascertain the encumbrances in the property. Hence, this Court holds that the sale deed in favour of the defendant is valid one and the plaintiff's claim that because of execution of power of attorney prior to execution of sale deed the principle had no right to execute sale deed is not acceptable.'

10. There is nothing demonstrable that aforementioned factual finding is incorrect and to be noted this is a concurrent finding of fact as the First Appellate Court also has returned the same factual finding. This by itself a complete answer to the points for determination (a) and (b) as the argument that sale deed was executed by original owner when the power was in force falls flat and the priority of rights under Section 48 of TP Act also pales into insignificance in the light of the above chronicle/sequence. This takes us to the third point for determination i.e., substantial question of law. To test this, this Court reminds itself of the expression 'substantial question of law' occurring in Section 100 of CPC as well as 'substantial' prefixing 'question of law' and expression 'involved in the case' elucidation of all of which by case laws have been extracted and reproduced supra.

11. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This Court draws inspiration from Nazir Mohamed case supra to say that this observation in Nazir Mohamed case comes into play in the matter on hand. In a second appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact (concurrent in this case) is not open to challenge in a second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in V.Ramachandra Ayyar and another Vs. Ramalingam Chettiar and another reported in AIR 1963 SC 302. This proposition has been reiterated in Nazir Mohamed case, which was rendered on 27.08.2020.

12. In the light of discussion thus far, the narrative and dispositive reasoning more particularly extracts and judgements of the trial Court which have been concurrently affirmed by the First Appellate Court, this Court has no hesitation in coming to



the conclusion that no substantial question of law arises and no substantial question of law is involved in this case.

13. Therefore, this Court following Kirpa Ram principle being principle laid down by Hon'ble Supreme Court in Kirpa Ram Vs. Surendra Deo Gaur and others reported in 2020 SCC Online SC 935 deems it appropriate to dismiss the captioned Second Appeal at the admission stage, holding that no substantial question/s of law arise/s. Considering the nature of the matter and nature of submissions made by learned counsel, there shall be no order as to costs.

Sd/-

Deputy Registrar (AD II)

//True Copy//

Sub Assistant Registrar

Mk

To

1. The Principal Sub-Judge
Subordinate Court, Puducherry.
2. The District Munsif
District Munsif Court
Puducherry.

+2cc to Mr.S.S.Rajesh, Advocate, S.R.No. 26065

+1cc to Mr.A.V.Arun, Advocate, S.R.No. 25517

S.A.No.402 of 2021

SR II(CO)
GN(28/10/2021)