



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.812 of 2021

Thirupathi,
S/o.Kaliyanna Gounder,
Agrahara Periya Ayyampalayam,
Nalli Palayam Post,
Namakkal Taluk and District.

... Appellant/Appellant/
2nd Defendant

.Vs.

1.Santhi,
W/o.M.Krishnamoorthy,
Agrahara Periya Ayyampalayam,
Nalli Palayam Post,
Namakkal Taluk and District.

...1st Respondent/1st Respondent/
Plaintiff

2.Palanisamy,
S/oAyyannan,
Katoor, P.Nattamangalam Post,
Salem Taluk and District.

...2nd Respondent/2nd Respondent/
1st Defendant

PRAYER: Second Appeal filed under Section 100 of CPC to set aside the Decree and judgment passed in A.S.No.:58/2020 dated 24.02.2021 by the learned Additional Subordinate Judge, Namakkal, confirming the Decree and judgment dated 29.09.2020 passed by the learned Additional District Munsif, Namakkal in O.S.No.222 of 2016.

For Appellant : Mr.R.Rajesh

J U D G M E N T

This Second Appeal is filed against the judgment and decree passed in A.S.No.58 of 2020 by the learned Additional Subordinate Judge, Namakkal on 24.02.2021.



2.The 1st Respondent filed Suit in O.S.No.222 of 2016 for the relief of (1) declaration that the judgment and decree dated 04.08.2011 in O.S.No.239 of 2011 on the file of the Additional District Munsif, Namakkal and the proceedings taken in R.E.P.No.109 of 2012 in pursuance of the decree passed in O.S.No.239 of 2011 dated 13.09.2013 by executing sale deed in favour of the 2nd defendant, as null and void and not binding on the Plaintiff and (2) for injunction restraining the 2nd defendant from interfering with Plaintiff's possession and enjoyment of the suit property and for other reliefs.

3.It is seen from the Plaintiff's averments that the 1st Respondent/Plaintiff purchased the suit property from 2nd respondent/1st defendant on 02.05.2008 and has been enjoying exclusively. The 2nd Respondent purchased the suit property from Periyathambi vahaiyara on 24.11.1998. The 2nd Respondent had entered into a sale agreement with one Mr.Chinnu on 02.02.1999 and that sale agreement had not fructified into sale. Thereafter, 1st Respondent purchased the suit property. 1st Respondent made efforts to construct building in the suit property and when she obtained Encumbrance Certificate she found that a sale in favour of the 2nd respondent was effected by the Additional District Munisff, Namakkal in R.E.P.No.109 of 2012 in O.S.No.239 of 2011. She came to know that an unregistered sale agreement was created between the appellant and the 2nd respondent on 25.04.2008. On the basis of the said agreement, the Suit in O.S.No.239 of 2011 was filed for relief of specific performance and suit was not contested by the 2nd respondent and therefore, exparte decree was passed. On the basis of this ex parte decree, R.E.P.No.109/2012 was filed and sale deed was executed in favour of the Appellant. Therefore, suit for the aforesaid reliefs.

4.Appellant filed written statement denying all the allegations made against him. It is contended that sale agreement was true and genuine. On the basis of the sale agreement, he filed suit for specific performance and the suit was decreed. Subsequently, sale deed also executed in favour of the Appellant. It is also pleaded that in pursuance of the sale deed executed by the Court in R.E.P.No.109 of 2012, the appellant is in possession and enjoyment of the suit property. Thus appellant prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial Court framed the following issues for consideration:

"(1)Whether the Plaintiff is entitled for the relief of declaration?

(2)Whether the Plaintiff is entitled for the



relief of injunction?

(3) To what other relief, Plaintiff is entitled?"

6. During the trial, Plaintiff/1st Respondent was examined as PW1 and appellant/2nd defendant was examined as DW1. Exs.A.1 to A.10 were marked on the side of the 1st Respondent and Exs.B.1 to B.3 were marked on the side of the Appellant.

7. On considering the oral and documentary evidence and the submissions of the learned counsel appearing on behalf of the parties, the learned Additional District Munsif, Namakkal, found that the 1st Respondent is entitled for the relief of declaration that the judgment and decree in O.S.No.239 of 2011 and the execution of sale in R.E.P.No.109 of 2012 insofar as the 1100 sq. ft. of the suit property is not legally sustainable and will not bind the Plaintiff. Also granted permanent injunction against the appellant not to disturb the possession and enjoyment of the property by the 1st Respondent. In Appeal, the judgment of the trial Court is confirmed. Challenging the same, Second Appeal is filed.

8. Learned counsel for the Appellant submitted that the Appellant has bonafidely entered into sale agreement with the 2nd respondent. He was not aware of the sale deed executed by the 2nd respondent in favour of the 1st Respondent. The sale consideration was fixed at Rs.25,000/-, he paid a sum of Rs.20,000/- as advance and three years period was fixed for paying the balance sum of Rs.5,000/- and for completion of sale. Since the 2nd respondent has not come forward to execute the sale deed, it necessitated, the filing of O.S.No.239 of 2011. The suit in O.S.No.239 of 2011 was decreed and then, the sale deed was executed by the Court in pursuance of the decree. There is nothing to suggest that he colluded with the 2nd respondent in creating the sale agreement. He obtained a valid decree and got the sale deed executed. It is not legally correct on the part of the 1st respondent to seek the relief of declaration that the judgment and decree in O.S.No.239 of 2011 and the sale deed executed in pursuance of the decree will not bind her. These aspects have not been considered by the Courts below. It is also submitted by the learned counsel for the appellant that the first Appellate Court has not considered the matter independently. It extensively referred the judgment of the trial Court and confirmed the judgment of the trial Court, without giving any independent opinion and finding. Therefore, the judgment of the learned Subordinate Judge, Namakkal passed in A.S.No.58 of 2020 dated 24.02.2021 has to be set aside and the Second Appeal has to



be allowed.

9. There are certain facts in which there is no dispute. The 2nd Respondent is the owner of the suit property in O.S.No.239 of 2011. The suit property in O.S.No.239 of 2011 is only to an extent of 1100 sq. ft., whereas the suit property in the case before hand (i.e.,) O.S.No.222 of 2016 is 2205½ sq.ft. Admittedly, this property was purchased by the 1st respondent from the 2nd respondent on 02.05.2008. The sale agreement in favour of the appellant was dated 25.04.2008. The sale agreement was executed just 7 days before the execution of the sale deed by the 2nd respondent in favour of the 1st respondent. This sale agreement was marked as Ex.A4. It is seen from the recital of the sale agreement that the sale price for the property was fixed at Rs.25,000/-. On the date of sale agreement, (i.e.,) on 25.04.2008, a sum of Rs.20,000/- was paid as advance. A period of three years was fixed for paying a paltry balance sale consideration of Rs.5,000/-. It is not known, why a long period of three years was fixed for paying a paltry balance sale consideration of Rs.5,000/-. There is no specific reason given in the sale agreement for giving such a long time for paying the balance sale consideration of Rs.5,000/-.

10. It is recited in the sale agreement that the possession was handed over, but the truth is that the possession was not handed over to the appellant on the date of sale agreement. It is on record that appellant filed EP for execution of sale deed. When the appellant was in a position to pay 4/5th share of the sale consideration (i.e.,) Rs.20,000/- out of Rs.25,000/-, why he has not paid entire sum of Rs.25,000/- and executed the sale deed, instead of going for sale agreement, giving three years period for paying balance sale consideration. There is no explanation at all. The suit property with its larger extent of 2205½ sq.ft., sold for Rs.1,50,000/-. At any rate, the sale price fixed at Rs.25,000/- in Ex.A.4 sale agreement is not in consonance with sale price found in Ex.A.3, sale deed. Appellant cannot be considered as a bona fide purchaser for value. Thus for all these reasons, the Courts below have come to the conclusion that the sale agreement in favour of the Appellant is not true and genuine and it was created in collusion with the 2nd respondent. The fact that the 2nd respondent remained exparte in the suit for specific performance lends support to this view.

11. Therefore, this Court finds no reason, to interfere with the findings of the Court below. Though the 1st Appellate Court had extensively extracted the judgment of the trial Court,



it has also recorded its own reason and finding to concur with the judgment of the trial Court. There is no substantial question of law involved in this Appeal and therefore, this Second Appeal is dismissed, by confirming the judgment of the learned first Appellate Court in A.S.No.58 of 2020 dated 24.02.2021 made by the learned Additional Subordinate Judge, Namakkal, confirming the Decree and judgment dated 29.09.2020 made by the learned Additional District Munsif, Namakkal in O.S.No.222 of 2016. No costs.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

sai

To

1.The Additional Subordinate Judge,
Namakkal.

2.The Additional District Munsif,
Namakkal.

+1cc to Mr.S.Balasubramanian, Advocate SR.No.58148

S.A.No.812 of 2021

SSD(CO)
CB(06/01/2022)