



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.(MD)Nos.521 & 522 of 2012

and

M.P.(MD)No.2 of 2012

WEB COPY

- 1.Rakkappan (Died) ...Appellant/Appellant/1st Plaintiff
- 2.Panchavarnam
- 3.Gopal
- 4.Ganesan
- 5.Kariyamal
- 6.Vigneshwari
- 7.Vimala
- 8.Janaki
- 9.Pothumani

(A2 to A9 are brought on record as LR's of the deceased sole appellant in both the appeals vide Court order dated 04.01.2021 made in CMP(MD)Nos.11408 to 11410/2018

C.M.P.(MD)Nos.11411 to 11413/2018) ... Appellants in both S.As.

Vs.

P.Thangalakshmi Ammal

... Respondent/Respondent/
Defendent in both S.As.

COMMON PRAYER: These Second Appeals are filed under Section 100 of Civil Procedure Code, against the judgment and decree of the lower appellate Court dated 05.02.2007 made in A.S.Nos.296 & 297 of 2002 on the file of the I Additional District Judge, Madurai, confirming the judgment and decree of the trial Court dated 24.09.2002 made in O.S.Nos.2172 of 1981 & 1100 of 1983 on the file of the Principal District Munsif Court, Madurai Town.

For Appellants : Mr.D.Senthil
For Respondent : Mr.V.Ramakrishnan

COMMON JUDGMENT

These Second Appeals have been filed as against the common judgment dated 05.02.2007, made in A.S.Nos.296 & 297 of 2002, on the file of the I Additional District Judge, Madurai, confirming the judgment and decree dated 24.09.2002 made in O.S.Nos.2172 of 1981 & 1100 of 1983 on the file of the Principal District Munsif Court, Madurai Town.

2. Originally, O.S.No.2172 of 1981 was filed for redemption of mortgage of suit property. O.S.No.1100 of 1983 was filed to set



aside the sale deed registered under compulsory registration by the Registrar. Both suits were tried together and by a common judgment, dated 24.09.2002, both suits were dismissed by the trial Court, as against which, A.S.Nos.296 & 297 of 2002 were filed on the file of the I Additional District Judge, Madurai and the same were dismissed by a common judgment, dated 05.02.2007, confirming the judgment and decree of the trial Court.

3. For the sake of convenience, parties are referred to herein, as per their rank before the trial Court.

4. The brief case of the plaintiffs in O.S.No.2171 of 1981, is as follows:

The plaintiffs are the brother and sister. They have borrowed a sum of Rs.2,000/- (Rupees Two Thousand only) from one Somasundaram Pillai and executed a usufructuary mortgage deed, dated 06.02.1977. The said mortgagee has executed an assignment deed in favour of the defendant on 09.07.1971. Thereafter, the plaintiff has agreed to sell the suit property to the defendant and an agreement of sale had been entered into between the parties on 30.01.1976, for a sum of Rs.7,000/- (Rupees Seven Thousand only) towards sale consideration. The time stipulated in the agreement is one year. However, the defendant has not come forward to execute the same and failed to perform her part of obligation. Therefore, the plaintiffs being the owners of the property are entitled to the benefit of Act 40 of 1979 and the mortgage deed has been wiped out by virtue of that Act and hence, filed a suit for redemption of mortgage.

5. In the written statement, it is contended by the defendant that though the property belonged to the first plaintiff, his sister has also joined in the execution of mortgage and it is her contention that on 29.01.1981, the first plaintiff alone has executed the sale deed with the presence of the witnesses and hence, prayed for allowing the suit.

6. The brief case of the plaintiff in O.S.No.1100 of 1983, is as follows:

The plaintiff is the owner of the suit property. The plaintiff and his sister executed a registered usufructuary mortgage deed on 06.02.1967 in favour of one Somasundaram pillai. The said mortgagee has executed an assignment deed in favour of the defendant on 09.07.1971. The defendant later entered into an agreement of sale dated 30.01.1976 with the plaintiff. It is the contention of the plaintiff that the defendant and her husband created a false and fraudulent sale deed dated 29.01.1981. The defendant filed a petition for registration of the alleged sale deed before the Joint Sub Registrar. The plaintiff also appeared on 18.08.1981 before the Registrar and denied the execution of the sale deed and also denied the signature. However, the document was registered. Hence, filed a suit for cancellation of the sale deed.



7. In the written statement, denying the allegation of the plaintiff that the sale deed is a false and fraudulent, it is the contention of the defendant that documents were presented for compulsory registration and after due enquiry, the same was registered by the office of the Registrar and therefore, prays for the dismissal of the suit.

8. On the basis of the above pleadings in both the suits, the trial Court has framed the following issues:

I. Issues in O.S.No.2172 of 1981 are as follows:

1. Whether the plaintiffs are entitled to redeem the suit property?
2. whether the plaintiffs are entitled for damages?
3. whether the mortgage has been merged with the sale?
4. To what other reliefs, the plaintiffs are entitled?

II. Issues in O.S.NO.1100 of 1983, are as follows:

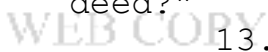
- 1.whether the sale deed dated 29.01.1988 is void and unenforceable?
2. whether the sale consideration is paid?
- 3.Whether the Court fee paid is correct?
4. To what other reliefs, the plaintiff is entitled to?

9. In both the suits, common evidence was recorded. On the side of the plaintiff, Exs.A1 to A10 were marked. On the side of the defendant Exs.B1 to B7 were marked. Exs.X1 to X11 and Exs.C1 and C2 were marked as Court documents.

10. Based on the evidence and materials, the trial Court dismissed both the suits. As against the dismissal of O.S.No.2172 of 1981, an appeal suit in A.S.No.521 of 2012 was filed. Similarly, as against the dismissal of the suit in O.S.No.1100 of 1983, an appeal suit in A.S.No.522 of 2012 was filed. Both the appeals were also dismissed by a common judgment. As against which, the present second appeals have been filed.

11. While admitting the Second Appeals, the following substantial question of law has been framed:

Is the Courts below are right in overlooking the fact that the othi under Ex.B2 and assignment to the respondent under Ex.B.7, stood discharged under Act 4/01979 and as such the appellant, who is entitled to the benefits of the said Act is entitled to get possession of the property together with mesne profits?



14. The learned counsel appearing for the respondent submitted that Ex.A8 has been clearly proved and the so-called handwriting experts, who issued Ex.C1 and C2, have not been examined before the trial Court. However, the evidence of P.W.1 itself clearly indicated that he used to sign the signature in a different manner in different times. What was compared with Ex.A8 - signature is only a specimen signature given by the plaintiff in the year 1996. All these facts were clearly considered by the trial Court and further, the document has been registered after proper enquiry before the Registrar, where the attesting witness also examined and the said proceedings has not been challenged before this Court. Hence, it is his contention that the first appellate Court and the trial Court have considered all these facts and correctly dismissed both the suits. Hence, prays for dismissal of the second appeals.

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both sides. The only dispute revolving between the parties is with regard to Ex.A-8 sale deed said to have been executed by the plaintiff in O.S.No.1100 of 1983. Though argument was advanced to the effect that since the property was ancestral property, the so-called agreement said to have been executed only by the first plaintiff. If at all, any such agreement executed or any other document executed by one of the co-owner, the same will not confer any title to the vendee.

16. Such contention cannot be countenanced for the simple reason that the plaintiff claimed that he is the owner of the property and he has never stated that the property is an ancestral property. Such contention is put forth only in the second appeal. Be that as it may, it is the contention of the plaintiff that Ex.A8, sale deed was forged and a signature was also forged by the defendant. It is to be noted that the entire burden lies on a person who takes a plea of forgery to establish the same. A legal notice was issued by the plaintiff as early as on 12.02.1981-Ex.A3 and the defendant has sent a reply to the said legal notice, which was marked as Ex.A4. In the above reply notice, he has clearly stated as to the execution of the sale deed, dated 29.01.1981. If really, such a document has been forged as alleged by the plaintiff, his normal conduct and immediate reaction would be to take steps to challenge the above document. Having received such reply, instead of challenging the document, he has filed a suit in O.S.No.2172 of 1981 only for redemption of document. The said suit has been filed only after the receipt of the reply notice. Even in the above suit, there is no whisper whatsoever made with regard to the allegation now pressed into service. This conduct of the plaintiff in keeping silent, despite knowing the fact of the alleged document, which according to him, is a result of forgery, would clearly go against him and therefore, his contention that document dated 29.01.1981 is a result of rank forgery, is void.

17. Now, admittedly, the above unregistered sale deed dated 29.01.981 was presented for compulsory registration before the concerned registration office. Ex.B4 proceedings clearly shows that after due enquiry, the attesting witnesses were examined and the plaintiff has also appeared through his counsel. Thereafter, the document was registered by the Registrar. Be that as it may, no appeal whatsoever, was filed as against the order passed by the Registrar registering the document and the suit has been filed seeking declaration to declare the said document as null and void and no declaration whatsoever was sought with regard to the proceedings of the Registrar.

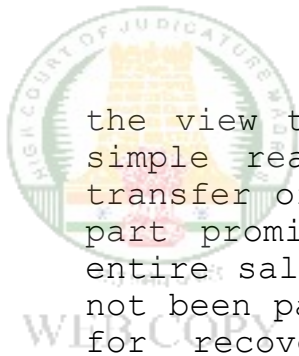
18. Be that as it may, now looking at the other issue raised by the plaintiff that the document Ex.B8 was forged and the signature was also forged by the defendant, much reliance was placed on Ex.C1 and C2, reports of the Handwriting experts. It is to be noted that none of the experts, who have given a report was summoned



before the trial Court by the plaintiff. It is to be noted that the report of the handwriting expert cannot be construed to be a conclusive one. It has to be proved in the manner known to law. The experts, who examined the document had given a report under Ex.C1 and C2 have also not appeared before the Court. Therefore, merely on the basis of Ex.C1 and C2, which are not based on exact science cannot be given much credence. At any event, the expert, in fact, compared the signature found in Ex.A8 and the specimen signature said to have been given by the plaintiff before the Court during trial in the year 1996. Specimen signatures were taken in the Court on 16.10.1996 after 15 years of Ex.A8, which was said to have been executed on 29.01.1981. Therefore, to compare the signatures by the handwriting experts, the admitted and contemporaneous signatures alone will be useful for proper comparison by the experts, whereas in this case, a specimen signature, which was given after 15 years in the trial Court, was sent for comparison. Therefore, even any such evidence adduced by the expert will not be any assistance to prove the alleged forgery.

19. It is also relevant to note that P.W.1 in his evidence also admitted that while giving a specimen signature in the Court, he has signed differently as against the original signature found in Ex.B1 and he has also admitted that he has also signed differently in various documents also. This has also been considered by the appellate Court. It is further to be noted that when Ex.A8 was confronted with P.W.1, the above document was admitted as an evidence and marked as EX.A8, after admission made by the plaintiff as to the signature found in Ex.A8. On a perusal of the entire evidence, it makes clear that what was shown to the witness is not a mere signature alone and the entire document was shown to him and he has categorically admitted his signature. The stand taken by him that the above signature is a result of forgery cannot be countenanced and such a plea has to fail. It has already been indicated that the execution of the document was pleaded in Ex.A4 in the reply notice, as early as on 02.03.1981, but the plaintiff has not taken any steps immediately. On the other hand, he has filed only a simple suit for redemption. The above conduct and his further conduct of signing in different style in different times and signing specimen signature differently would make it clear that the above signatures were made only to non-suit the document executed by him. It is also relevant to note that before the Registrar, all the attesting witnesses were examined and the plaintiff has also participated. However, the said witnesses could not have been examined before the Court after their death. Therefore, the same will not establish the plaintiff's case, merely on the basis of non examination of attesting witnesses. The first appellate Court has clearly appreciated all the evidence in a proper manner.

20. With regard to the another contention of the learned counsel for the appellants that the sale price has not been paid fully and therefore, the sale deed is not valid, this Court is of



the view that such contention also cannot be countenanced for the simple reason that it is relevant to note that the sale is a transfer of ownership for a price paid or promised or part paid and part promised. Therefore, for a valid sale, there need not be entire sale consideration. If at all any full consideration has not been paid as alleged by the plaintiff, the remedy would lie only for recovery of unpaid sale consideration. Therefore, such contention cannot be countenanced. Since the subsequent agreement executed and sale consideration was adjusted and the sale deed is also registered, the suit filed for redemption of mortgage also has to fail. Accordingly, all the points are answered against the appellants.

21. In the result, the second appeals are dismissed and the judgment and decree of the Courts below are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

To

1. I Additional District Judge, Madurai.
2. The Principal District Munsif, Madurai Town.
- 3.The Section Officer,(2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+2CC to Mr.V.RAMAKRISHNAN, Advocate (SR-4692,4693[F] dated 12/02/2021)

+1 CC to Mr.D.SENTHIL, Advocate (SR-4991[F] dated 15/02/2021)

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