



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: **07.09.2021**

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

S.A(MD)No.498 of 2021

and C.M.P(MD)No.6649 of 2021

WEB COPY

1. Karudiyan
2. A.Velu
3. A.S.Mariappan
4. V.Mariappan

... Appellants/Appellants/
Defendants

Vs.

S.Muthaiah

... Respondent/Respondent/
Plaintiff

PRAYER:- Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 21.02.2020 passed in A.S.No.54 of 2015 on the file of the Additional Sub Judge, Tirunelveli confirming the judgment and decree dated 20.04.2015 passed in O.S.No. 531 of 2009 on the file of the Principal District Munsif, Tirunelveli.

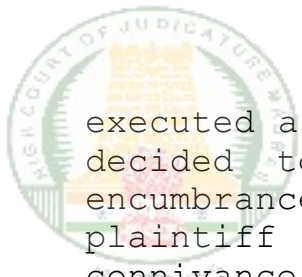
For Appellants : Mr.T.Selvan
For Respondent/
Caveator : Mr.S.P.Maharajan

J U D G M E N T

The defendants, who were unable to convince both the trial court and the appellate court to allow the suit for declaration and recovery of possession filed by them, have come up with this Second Appeal against the plaintiff.

2. For the sake of convenience, the parties are referred to as per their ranking in the original suit.

3. The case of the plaintiff is that the suit property was purchased by him through a registered sale deed dated 26.04.1980 and he was in possession and enjoyment till 31.01.2001. The 1st defendant was already known to the plaintiff through his wife's brother. The defendants 1 and 2 were also looking after the lands of the plaintiff's father-in-law, which is adjacent to the plaintiff's land. According to the plaintiff, since he settled at Chennai from 31.01.2001, he had entrusted the suit property to the defendants to look after it. It is also stated that the original title deed dated 26.04.1980 was handed over to the 1st defendant for the purpose of effecting mutation in the revenue records. It is his further case that the 1st defendant in connivance with the 2nd defendant had forged the signature of the plaintiff and had



executed a sale deed in favour of the 1st defendant. The plaintiff decided to sell the property and therefore, he applied for encumbrance certificate on 23.12.2008. At that time only, the plaintiff came to know the fact that the 1st defendant in connivance with the 2nd defendant had forged the signature of the plaintiff and executed a sale deed dated 04.01.2002 in favour of the 1st defendant. The plaintiff had never executed any sale deed and coming to know the forgery and fraud, the plaintiff issued a legal notice to the 1st defendant. After issuance of legal notice to the 1st defendant, he had executed a sale deed in favour of the 3rd defendant and in turn, the 3rd defendant had executed a sale deed in favour of the 4th defendant on 14.07.2009. Hence, the plaintiff had filed the suit to declare that the sale deed dated 04.01.2002 in the name of the 1st defendant and the sale deed dated 14.07.2009 in favour of the 4th defendant as null and void.

4. The 1st defendant has filed a written statement. It is claimed by the first defendant that the suit property was purchased by the plaintiff on 26.04.1980. On 04.01.2002, the plaintiff had sold away the property to the 1st defendant. The signature in the sale deed is that of the plaintiff. On the date of execution of the sale deed in favour of the 1st defendant, the plaintiff had handed over the title deed dated 26.04.1980. According to the first defendant, from the date of purchase, the 1st defendant was in possession and enjoyment of the suit property. On the basis of the application given by the 1st defendant, the patta had been transferred in the name of the 3rd defendant. On 08.06.2009 he had executed a power deed in favour of the 3rd defendant and he, in turn, had sold the property to the 4th defendant. According to the first defendant, the suit is not maintainable either in law or on facts.

5. Though the fourth defendant has filed separate written statement, he has adopted the averments made by the first defendant. According to the fourth defendant, on 08.06.2009 the first defendant had executed a power deed in favour of the 3rd defendant and that the 3rd defendant had sold the property to him. It is claimed by the fourth defendant that from the date of purchase, he is in possession and enjoyment of the property. After execution of the sale deed in favour of the 1st defendant, the plaintiff was never in possession and enjoyment of the schedule property. Hence the plaintiff does not know whether the suit schedule property is nanja property or punja property and hence, the fourth defendant had prayed for dismissal of the suit.

6. The Trial Court framed as many as 6 issues:

i) Whether the sale deed dated 04.01.2002 is liable to be declared null and void.

ii) Whether the Court fee paid is deficit



- iii) Whether the suit is barred by limitation
- iv) Whether the suit is bad for non-joinder of necessary parties
- v) To what other relief
- vi) Whether the plaintiff is entitled to get the relief to declare the sale deed dated 14.07.2009 as null and void

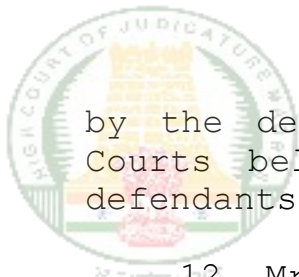
7. Before the Trial Court the plaintiff had examined himself as PW.1 and the Special Sub Inspector of Police one Mohan was examined as PW. 2 and one Finger Print Expert Vijayarani was examined as PW.3. The documents Ex.A.1 to Ex.A.9 were marked.

8. On the side of the defendants 4th defendant Mariappan was examined as DW.1 and the office staff of the Sub Registrar one Senthilkumar was examined as DW.2 one Nainar was examined as DW. 3 and one Subha was examined as DW.4 The documents Ex.B.1 to B.8 were marked. Ex.X.1 was marked through PW2 and Ex.X.2 was marked through PW.3 and Ex.X.3 to Ex.X.5 were marked through DW.2. The Trial Court after considering the oral and documentary evidence on both sides decreed the suit with costs.

9. The defendants filed A.S. No.54 of 2015 on the file of the Additional Sub Court, Tirunelveli. Among other grounds the defendants specifically contended that suit for declaration seeking to declare the sale deed dated 04.01.2002 as null and void ought to have filed within a period of 13 years and that it was barred by limitation as per the article 59 of the limitation Act. The Trial Court finding that it is the case of the plaintiff that he came to know of the execution of the plaint dated 04.01.2002 only on 23.12.2008 when he applied for encumbrance certificate is acceptable and returned a finding that the defendants had not rebutted the same and held that the suit is not barred by limitation. Further the Trial Court has held that the plaintiff had proved his case by examining PW.2, the Special Sub Inspector and marking Ex.X.1, First Information Report and by examining PW3/expert proving that the finger print found in the sale deed dated 04.01.2002 does not tally with him and that had belonged to one Nellaiappan by marking Ex.X2. The Trial Court had rendered a categorical finding that the sale deed dated 04.01.2002 in favour of the first defendant was not examined by the plaintiff and that sale deed was executed fraudulently.

10. Thus answering the issues in favour of the plaintiff had declared the sale deed dated 04.01.2002 and the subsequent sale deeds as null and void.

11. The appellate Court also concurred with the view of the Trial Court holding that the plaintiff had proved that he has not executed sale deed dated 04.01.2002 and that the suit had been filed within period of limitation and dismissed the appeal filed



by the defendants, against the concurrent findings of both the Courts below the present second appeal has been filed by the defendants.

12. Mr.T.Selvan, learned counsel appearing for the appellants/defendants and Mr.S.P.Maharajan, learned counsel for the respondent/Caveator and perused the materials on record.

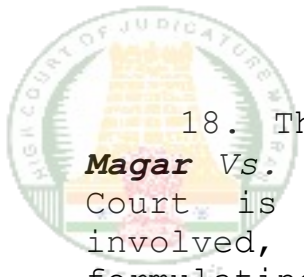
13. The learned counsel for the appellant would contend that the Courts below erred in relying on Ex.X.2/Expert opinion without comparing it with the admitted thumb impression of the plaintiff. The Courts below failed to take into consideration that the original documents were handed over to by the plaintiff to the defendants .

14. Per contra, the learned counsel for the respondents would submit that the plaintiff by categorical evidence had explained how and in what manner the documents went into the hands of the plaintiff and further, by examining PW2/Special Sub Inspector of Police and PW3/expert had proved that the thumb impression on the sale deed dated 04.01.2002 was not that of the plaintiff and that it was that of one Nellaippan, thereby proved that the sale deed was not executed by the plaintiff. It is a clear case of fraud committed by the defendants. One Nellaippan in collusion with the defendants had impersonated himself to be plaintiff and had executed fraudulent sale deed. The plaintiff came to know of the sale deed only when he applied for Encumbrance Certificate and the suit has been filed within a period of limitation.

15. The Courts below after pursuing the oral and documentary evidence have come to definite conclusion that the plaintiff had established his case by proving that he has not executed sale deed and the sale deed had been created by the defendants by impersonation and fraud. Further the Courts have held that the suit is within the period of limitation.

16. In **S.P.Chengalvaraya Naidu .vs. Jagnath (1994)1 SCC 1**, the Apex Court has held that "...the Courts of law are meant for imparting justice between the parties. One who comes to Court, must come with clean hands." In the case on hand, the Courts below have held that the defendant had refuted the claim of the plaintiff based on the sale deed which was found to be created by impersonation . The defendant had not come to the Court with clean hands.

17. In the opinion of this Court, this Court finds no error in the factual and legal findings recorded by the Courts below. The appellant has not made out any substantial question of law to admit the second appeal.



18. The Hon'ble Apex Court in **2015 (16) SCC (Ashok Rangnath Magar Vs. Shrikant Govindrao Sangvikar)** has held that if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the Second Appeal even without formulating substantial question of law. The above view has been confirmed in the case of **Kirpa Ram (Deceased) through legal representatives and others Vs. Surendra Deo Gaur and Others** reported in **(2020 SCC Online SC 935)**.

19. As stated above this Court does not find any error in the findings of the Courts below. There is no substantial question of law involved in the appeal. This Court concurred with the findings of the Trial Court as well as the appellate Court. In the result second appeal stands dismissed without being admitted. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

CM

To:

1. The Additional Sub Judge, Tirunelveli.

2. The Principal District Munsif, Tirunelveli.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-28484[F] dated 08/09/2021)

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