



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD)Nos.40 and 41 of 2015

and

M.P. (MD)Nos.1 and 1 of 2015

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S.A. (MD)No.40 of 2015

Shyamala

... Appellant/Appellant/
Plaintiff

versus

P.Maruthai

... Respondent/Respondent
Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 12.09.2012 made in A.S.No.206 of 2011 on the file of the learned Principal District Judge, Tiruchirapalli, confirming the Judgment and Decree dated 31.01.2011 made in O.S.No.138 of 2005 on the file of the learned II Additional Subordinate Judge, Tiruchirapalli.

For Appellant : Mr.R.Devaraj

For Respondent : Mr.K.Govindarajan

S.A. (MD)No.41 of 2015

Shyamala

... Appellant/Appellant
Plaintiff

versus

P.Krishnamoorthy

... Respondent/Respondent
Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 12.09.2012 made in A.S.No.207 of 2011 on the file of the learned Principal District Judge, Tiruchirapalli, confirming the Judgment and Decree dated 31.01.2011 made in O.S.No.140 of 2005 on the file of the learned II Additional Subordinate Judge, Tiruchirapalli.

For Appellant : Mr.R.Devaraj

For Respondent : Mr.R.Sundar Srinivasan



COMMON JUDGMENT

These appeals are filed by the plaintiff in identical suits in O.S.Nos.138 and 140 of 2005, seeking a declaration that the sale deeds executed by the plaintiff's husband and mother-in-law in favour of the respective defendants are sham and nominal and for a consequential permanent injunction, restraining the defendants from alienating the property in any manner whatsoever.

2. According to the plaintiff, the properties, subject matter of the suits, belonged to one T.S.Periyasamy Pillai, who died on 14.06.1979 leaving behind his wife Sivagangaiammal and son Selvarathinam Pillai to succeed. The said Selvarathinam Pillai died on 05.04.1999, leaving behind his mother Sivagangaiammal, wife (the plaintiff herein) and two daughters. It is also claimed that the deceased Selvarathinam Pillai was in possession and enjoyment of the property till his life time and on his death, when the plaintiff attempted to get the revenue records mutated in her name, she found that the revenue records have been transferred in the name of the defendants. Enquiry revealed that her husband Selvarathinam Pillai and her mother-in-law Sivagangaiammal had sold the property to the defendants under two sale deeds dated 07.11.1997. Contending that no consideration was paid under sale deeds either to Selvarathinam Pillai and Sivagangaiammal, the plaintiff has come forward with the above suits.

3. The suits were resisted by the defendants, contending that the owners of the property, namely, Sivagangaiammal and Selvarathinam Pillai had sold the property for a valuable consideration to the defendants in the suits. It is also claimed that the father of the defendants was working with T.S.Periyasamy Pillai. It is also claimed that the defendants purchased the property for a valuable consideration and they were in possession of the property on the date of sale. The defendants would also contend that the non-impleading of other heirs of Selvarathinam Pillai including Sivagangaiammal is fatal to the suit.

4. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A18 were marked in O.S.No.138 of 2005 and Exs.A1 to A28 were marked in O.S.No.140 of 2005. The defendant in each suit was examined as D.W.1 and Exs.B1 to B8 were marked in O.S.No.138 of 2005 and Exs.B1 to B3 were marked in O.S.No.140 of 2005. One another independent witness, Balasubramanian, was examined as D.W.2 in O.S.No.140 of 2005.

5. The trial Court upon consideration of the evidence on record concluded that the plaintiff has not established the failure of consideration pleaded by her. The Trial Court also took note of the fact that Selvarathinam Pillai was alive for two years after the execution of the sale deed and other executant, Sivagangaiammal, was



alive till 2008 and both of them had not chosen to challenge the sale deeds. The claim that the non-impleading of Sivagangaiammal is fatal to the suit was rejected by the trial Court. On the above findings, the learned trial Judge dismissed the suit.

6. Aggrieved over, the plaintiff preferred two appeals in A.S.Nos.206 and 207 of 2011. The learned Principal District Judge, Trichy, who heard the appeals concurred with the findings of the trial Court and dismissed the appeals. Hence, the above second appeals.

7. The following substantial questions of law were framed at the time of admission:

(i) Whether the Courts below are correct in not appreciating the admission of the respondent/defendant to the effect that though he has purchased the same in the year 1997, he has not made any attempt to change the revenue records till 2005?

(ii) Whether the Courts below are correct in come to the conclusion that the Appellant is not entitled to the relief sought for in view of the fact that Selvarathinam Pillai and Sivagangai Ammal have not raised any objection during their life time?

(iii) Whether the respondent/defendant has failed to prove the sale deed as required under Section 106 of the Indian Evidence Act?

8. I have heard Mr.R.Devaraj, learned counsel for the appellant and Mr.K.Govindarajan, learned counsel for the respondents.

9. Mr.R.Devaraj, learned counsel appearing for the appellant would vehemently contend that the non-mutation of revenue records from the date of purchase till 2004 is fatal to the claim of the defendants. The very fact that the defendants had kept quiet for a period of five years would show that the sale deeds are sham and nominal. It is also contended that the evidence of D.W.1, wherein, D.W.1 has admitted that he did not have the title of his vendor, verified prior to the purchase.

10. I am unable to accept the submissions of the learned counsel for the appellant. Mere non-mutation of revenue records cannot denude the purchaser of title to the property. The plaintiff has come with a case that the sale deeds were not supported by the consideration. Both the sale deeds are registered instruments. Being registered instruments, the presumption under Section 60(2) of the Registration Act would automatically apply. The plaintiff must be able to dislodge the said presumption by unimpeachable evidence. There is no evidence except the evidence of the plaintiff as P.W.1 to show that the documents were not supported by consideration.



11. Yet another feature, which has been taken note of by the trial Court in rejecting the plaintiff's claim, is more important and that is the fact that Selvarathinam Pillai, till his life time, did not choose to challenge the sale though he was alive for two years, after the execution of the sale deeds and Sivagangaiammal had not chosen to challenge the sale deeds though she was alive till the date of filing of the suit. These facts would disprove the case of the plaintiff. Therefore, the first question of law is answered against the appellant.

12. The second question of law should also be answered against the appellant, inasmuch as the appellant, who only succeeds to the estate of Selvarathinampillai on his death, cannot challenge the validity of the sale deed independently, without there being a challenge by the persons, who had executed the sale deeds during their life time, more so, when one of the executants of the sale deeds was still alive, when the suit came to be filed.

13. The third question of law, in my opinion, does not arise in the case on hand. The payment of consideration is evidenced by the registered instrument and endorsements made therein. The Registration Act raises a presumption regarding the endorsements made by the Registering Officer on the registered instrument. The endorsements made by the Registering Officer would show that the executant has admitted the receipt of the consideration. In the light of the above, Section 106 of the Evidence Act will not apply to the facts of the case on hand. Hence, all the three questions of law are answered against the appellants. The Second Appeals, therefore, fail and accordingly, dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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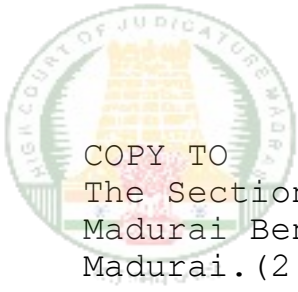
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Sub Assistant Registrar(CS)

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To

1. The learned Principal District Judge,
Tiruchirapalli.
2. The learned II Additional Subordinate Judge,
Tiruchirapalli.



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The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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+2 CC to M/s.R.DEVARAJ, Advocate SR No-1812[F]
+1 CC to Mr.R.SUNDAR SRINIVASAN, Advocate SR.No. 1772

S.A. (MD) Nos. 40 and 41 of 2015
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PK (CO)
TR (03.03.2021) 5P 9C