



Appeal Suit No.458 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.09.2022

Judgment Delivered on : 12.10.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Appeal Suit No.458 of 2012

1.M.Venkatachalam
2.P.Rasappa Gounder
3.S.Subbulakshmi
4.Thambi @ K.Ramasamy
5.Chinnathambi @ K.Natarajan

... Appellants

Versus

1.R.Santhamani
2.K.Karupannan
3.Easwari

... Respondents

Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, against the Judgment and Decree dated 30.12.2011 passed in O.S.No.531 of 2008, on the file of the Learned Additional Judge, (Fast Track Court No.IV) at Coimbatore in Tiruppur.

For Appellants : Mr.K.Govi Ganesan

For Respondents : Mr.J.Hariharan
for Mr.V.Nicholos (for R1)

: Mr. V.Annand Murthy (for R2)

: Notice served (for R3)



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JUDGMENT

WEB COPY The defendants Nos.2, 3, and 6 to 8, in O.S.No.531 of 2008, are the appellants in this Appeal Suit.

2.The first respondent / plaintiff filed the suit in O.S.No.531 of 2008, on the file of the Additional District Court, Coimbatore at Tiruppur, for recovery of a sum of Rs.10,31,000/- (Rupees Ten Lakhs Thirty-one thousand only) with interest at the rate of 12% per annum from the original defendants Nos.1 to 4. The fourth defendant died pending the suit and therefore, the legal heirs were brought on record as defendants Nos.6 to 8.

3.The brief facts as per the case of the plaintiffs is that one *Karuppannan*, the second respondent/first defendant was the original owner of the property mentioned in the schedule to the suit. He was employed in *Karunaipalayam* Primary Agricultural Co-operative Society. He had misappropriated the funds of the Society to the tune of Rs.48 Lakhs. Therefore, by proceedings in N.M.No.672 of 2022, dated 09.09.2002, recovery/surcharge/attachment proceedings were initiated and the property mentioned in the schedule to the suit, is also attached by the Society.



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4. In order to escape and defraud the Society, the first defendant constituted the second defendant as his Power of Attorney on 07.03.2002. The second defendant is well aware of the fact about the proceedings against the first defendant and his suspension from Society. On the strength of the Power of Attorney, he executed the sale deed in favour of his own relatives (*Sambandis*), the defendants Nos.3 & 4. On 07.03.2003, they in turn, by suppressing the entire encumbrance in respect of the schedule property, sold the said property to the plaintiff on 20.06.2005, for sale consideration of Rs.9 Lakhs. Subsequently, the said Co-operative Bank brought the property for sale, and the fifth defendant had purchased the same, in the public auction held on 12.01.2007. Therefore, the plaintiffs requested the defendants Nos.1 to 4, to either take steps to secure the property or to repay the sale consideration. But, however, there was no positive response, and hence, the present suit was filed for recovery of sale consideration along with the interest.

5. The first defendant in the suit/ the second respondent in the appeal suit, filed a written statement. He has denied each and every averment in the plaint. He has stated that even the execution of Power of Attorney in



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favour of the second defendant as a lie and he would further submit that the execution of sale deed by the second defendant in favour of the third and fourth defendants is also a lie. He also denied the execution of sale deed in favour of the plaintiffs as also false. After denying everything as false, he has only stated that the plaintiffs and the second and fifth defendants, have colluded to grab his property.

6.The third defendant in the suit filed a separate written statement. According to him, he along with fourth defendant purchased the suit property after verifying the title and was in possession of the suit property and he was not aware of the attachment in E.P.No.672 of 2002, dated 09.09.2002. He, along with the fourth defendant, sold the property in *bona-fide* to the plaintiff. Therefore, without taking effective steps to prevent the alleged auction, the plaintiff's suit is not maintainable.

7.Another written statement was filed by the sixth to eighth defendants, who were the legal heirs of the original fourth defendant, who died pending the suit and the said written statement is also on the same lines as that of the third defendant.



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8.On the strength of the above said pleadings, the Trial Court framed

the following issues:-

“1.Whether the plaintiff is entitled to get Rs.10,31,000/- from the defendants 1 to 4?

2.Is there any cause of action for the suit?

3.Whether the Court fee paid is correct?

4.To what relief the plaintiff is entitled if any?

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9.On the said issues, the sole plaintiff examined herself as P.W.1.

One *Karthikeyan* was examined as P.W.2 and One *Kesavaraj* was examined as P.W.3, and ***Exs.A-1 to A-21*** were marked on behalf of the plaintiff. The first defendant examined himself as D.W.1. The seventh defendant examined himself as D.W.2. The eighth defendant examined himself as D.W.3 and ***Exs.B-1 to B-6*** were marked. Apart from the above, the documents relating to name transfer from Tamil Nadu Electricity Board, and the Avinashi Corporation were marked along with the order of the Registrar of the Co-operative Societies, Coimbatore, as ***Exs.X-1 to X-6***.

10.After considering the evidence on record, by Judgment and Decree, dated 30.12.2011, the Trial Court found that the defendant No.2 did not contest the case. D.W.1 has admitted that even during October



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2022, he knew that the property will be attached. The Trial Court

considered the inconsistent defence of the first defendant in the suit that as if the second defendant/Power of Attorney had cheated him taking advantage of the situation and his further averment to the contrary is that he has already received a sum of Rs.6 Lakhs from the second defendant in the year 2007 itself. Considering the knowledge about the first defendant's deeds by the defendants D2 to D4 and the relationship between them, the Trial Court found that the claims of the D3 and D4 are not *bona-fide*. The very fact that D.W.3 was the President of the Society, in whose tenure that the misappropriation took place, proved the fact that the entire transaction was not *bona-fide*. Further, the Trial Court considered **Ex.B-2** sale deed, **Ex.B-3/Varthamana** receipt, which were in contradiction to each other. Further, the Trial Court found that all the defendants themselves have admitted that the other properties purchased by the defendants Nos.3 & 4, were again re-sold to the sons of the first defendant.

11.Upon considering all the facts, the Trial Court came to the conclusion that the defendants Nos.1 to 4 have colluded with each other and defrauded the plaintiff and knowingly sold the property without any valid title and decreed the suit as prayed for. Aggrieved by the same, the



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present Appeal Suit is laid by the second defendant, third defendant and the defendants 6 to 8, being the legal heirs of the deceased fourth defendant.

12.Heard, *Mr.K.Govi Ganesan*, learned Counsel for the appellants and *Mr.V.Nicholos*, learned Counsel appearing for the first respondent as well as *Mr.V.Annanda Murthy*, learned Counsel appearing on behalf of the second respondent. Though notice is served to the third respondent, there was no representation on behalf of the third respondent.

13.The learned Counsel appearing on behalf of the appellants contended that the first appellant/*Mr.Venkatachalam*, is a Power Agent. He was neither the title holder, nor the conveyor of the title to the plaintiff. The sale consideration, therefore, ultimately went only to the first defendant. Therefore, the Trial Court erred in decreeing the suit, jointly and severally as against the second defendant also.

14.As far as the other appellants are concerned, he would again submit that, ultimately it is only the first defendant who is the undue beneficiary. The third and fourth defendants purchased the property, for



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which they have paid the sale consideration to the first defendant, through the second defendant. The sale consideration obtained by them is in turn from the plaintiff and therefore, to make them also liable for the decree, would be unduly making them to suffer the loss. The loss if any to the plaintiff is the gain of the first defendant in the suit, namely the second respondent herein and therefore the suit has to be decreed only against him.

15.The learned Counsel would further submit that, except for the fact that alleging D.W.3 as the President of the Society, the plaintiff has not proved any collusion between the appellants herein and the first defendant, therefore, in the facts and circumstances of the case, the Trial Court ought not to have decreed the suit as against the appellants herein. He would further submit that the very fact that the fifth defendant, who purchased the suit property in the auction, is the sister of the plaintiff, would itself prove that instead of contesting the auction of the Society, the plaintiff purchased the property in the name of the sister, and thereafter, claiming the sale consideration from the other defendants in the suit is impermissible, and therefore, the Trial Court ought to have dismissed the suit in its entirety.

16.In support of his contentions, learned Counsel would rely upon



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the Judgment of the Bombay High Court, in W.P.No.4802 of 2021 (929),

dated 17.03.2021, in *Bhusahed Eknath Salunke Vs. The State of Maharashtra and Others*, and the Judgment of the Hon'ble Supreme Court of India, in *Suraj Lamp & Industries Pvt.Ltd., Vs. State of Haryana and Anr*, in SLP (C).No.13917 of 2009, to press home the point that the second defendant/first appellant being only a Power of Attorney, cannot be mulcted with the decree.

17.Per contra, the learned Counsel for the first respondent/plaintiff taking this Court through the evidence on record and the cross-examination of the defendants, would submit that it can be seen from the facts on record that after knowing about the attachment proceedings and imminent likelihood of sale of the all the properties of the first defendant, the first defendant constituted the second defendant as the Power Agent, who in turn sold the properties to the third and fourth defendants. It is also on record that the third defendant and the fourth defendant are related to each other and also to the second defendant. The said defendant was the President of the Co-operative Society Bank, in whose tenure, the actual misappropriation took place. As a matter of fact, after purchasing several items of the properties, except this item, other items, are again re-conveyed



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back to the first defendant's son. All these facts cumulatively prove that

the purchase by the third and fourth defendants is not a *bona-fide* purchase and the first to fourth defendants have colluded and caused the loss and damage to the plaintiff by selling the property, without any title, and therefore, the Trial Court has rightly decreed the suit.

18.I have considered the rival submissions made on either side and perused the material records of this case.

19.As far as the first defendant is concerned, he has not filed any appeal and thus, he had accepted the Judgment and Decree of the Trial Court.

20.As far as the second defendant is concerned, even though it is now pleaded that he is only a Power of Attorney, the evidence on record would show as if he has already paid a sum of Rs.6 Lakhs to the first defendant and therefore, had Power in his favour and thereafter, sold the property to the third and fourth defendants. In the teeth of the said evidence, the first appellant/the second defendant did not contest the suit, he remained *ex-parte*, therefore, he has no legs to contest or make the



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present submissions before this Court as if he is only a power of attorney agent.

21.The only question remains to be seen is that whether or not the defendants Nos.3 & 4 were *bona-fide* purchasers. As rightly found by the Trial Court, the defendants Nos.3 & 4 were relatives. All the parties know each other. The third defendant was the President of the Society, from which the money was misappropriated. As rightly found by the Trial Court, they have admittedly re-conveyed some other items of the properties back to the sons of the first defendant.

22.Therefore, in the light of these glaring facts, on the face of it it is clear that defendants Nos.1 to 4 have colluded with each other and entered into these transactions, resulting in the loss of the sale consideration to the plaintiff. The plaintiff is entitled for refund of the sale consideration along with interest. In the facts and circumstances of the case, the decree granted by the Trial Court along with 12% per annum is in order, considering the nature of transactions between the defendants herein. Thus, the well considered evidence of the Trial Court is in order and is on proper appreciation of evidence on record, and in view thereof, I answer issue



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No.1 that the plaintiff is entitled for a sum of Rs.10,31,000/- with the further interest at the rate of 12% per annum, from the date of the plaint, till the date of realization. I answer the issue No.2 that there is a cause of action for filing this suit, and I answer issue No.3 that the Court fees had been correctly paid by the plaintiff. Accordingly, issue No.4 stands answered that the suit be decreed on the above terms.

23.In the result:

- i) The Appeal Suit in A.S.No.458 of 2012 is dismissed;
- ii) The Judgment and Decree of the Learned Additional District (Fast Track Court No.IV), Coimbatore at Tiruppur, dated 31.12.2011 in O.S.No.531 of 2008 stands confirmed;
- iii) The first respondent/plaintiff will also be entitled for the costs of this Appeal Suit, besides the costs of the suit imposed by the Trial Court.

12.10.2022

Index : yes/no

Speaking/Non-speaking order

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To

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- 1.The XIX-Additional Judge, City Civil Court, Chennai.
- 2.The Section Officer, V.R. Section, High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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