



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2022

PRONOUNCED ON : 07.03.2022

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

APPEAL SUIT NO.612 OF 2016

1.F.Mohamed Salam,
2.Mrs.S.Wahida,

...Appellants / Defendants

/versus/

Mrs.Mohammed Syed Umma

...Respondent / Plaintiff

Prayer : Appeal Suit has been filed under Section 96 Code of Civil Procedure, 1908, praying to set aside the decree and judgment dated 25.08.2015 in O.S.No.7860 of 2010 passed by the XVI Additional City Civil Court, Chennai and allow this appeal with costs.

For Appellants : Mr.B.Srinivasan

For Respondent : Mr.R.Thirumoorthy

J U D G M E N T

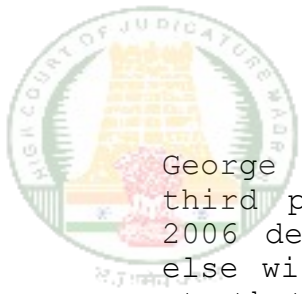
The Appeal Suit was dismissed on 02.11.2021 for non-prosecution and the Learned Counsel for the appellants have taken out an application in C.M.P.No.43 of 2022, to restore the appeal suit in A.S.No.612 of 2016 and same is allowed by this Court on 23.02.2022. Hence, the Appeal Suit is restored.

2. The appellants herein are the defendants 1 and 2 before the Trial Court. Aggrieved by the judgment and decree passed by the Trial Court, this appeal is filed.

3. The plaint averments are as under:

The plaintiff is a resident of Keelakarai, Ramanadapuram District. She is an illiterate woman. The suit property at Chennai was purchased in the name of the plaintiff by her husband, who was working in Gulf. The building in the suit land was renovated in the year 2003 and let out for rent as several portions to different families, retaining one room for her personal use when she visit Chennai.

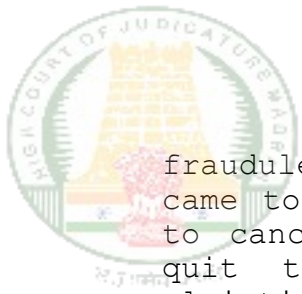
4. At the time of renovation to meet out the construction expenses, in the year 2003 she borrowed Rs.1,20,000/- from



George Town Co-operative Bank, Chennai and some more money from third parties. The George Town Co-operative Bank in the year 2006 demanded to repay the loan and close the loan account or else will bring the property for auction. Her husband, who was at that time working in Gulf advised her to get finance by creating usufructuary mortgage of the suit property. The first defendant, who was introduced by a broker came forward to advance loan of Rs.4,00,000/- for the suit property which had a market value of Rs.10,00,000/-. The plaintiff and the first defendant agreed that one room will be retained by the plaintiff and the rest of the portion will be enjoyed by the first defendant free of rent for three years. The plaintiff also agreed to pay interest for the loan amount. Before giving the loan, the first defendant insisted for the execution of a registered deed for the loan amount at the cost of the plaintiff. Therefore, there was re-negotiation and loan amount was raised to Rs.4,50,000/- on the same condition. The plaintiff executed a deed in favour of the first and second defendant and got it registered, with an impression that, it is for security to the loan transaction. The document was prepared by the first defendant. Her signature was obtained on the pretext that it is a deed of usufructuary mortgage. Being an illiterate, believing the words of the first defendant she signed the document.

5. The first defendant cleared the loan availed by the plaintiff from George Town Co-operative Bank and collected the original documents. He paid the balance amount in instalments to the plaintiff. Apart from the sale deed, she also signed other papers on the request of the first defendant on trust. After this transaction, she used to stay in the room retained by her whenever she visit Chennai. On one occasion, the second defendant told the plaintiff that she has no right in the property. Therefore, the plaintiff issued notice to the defendant on 02/09/2006 calling upon the defendant to furnish the copy of the document. In the reply notices dated 15/09/2006, sent by the defendants through their lawyer, they claimed that they have purchased the property for Rs.8,20,000/- paid Rs.7,42,000/- and got possession of the property. If the sale deed to be cancelled, the plaintiff has to repay Rs.7,42,000/- with 24% interest and costs of Rs.40,000/-. On knowing the content of this reply notice, she understood that a fraud has been played by the defendants.

6. Therefore, she collected the copy of the registered document and understood that the property worth 10 lakhs rupees in the year 2006 was got registered for Rs.2,30,000/- in the name of the defendants. While the plaintiff purchased the property for Rs.2,96,000/- in the year 2001 and improved the property spending more than Rs.1,00,000/- with borrowed money,



fraudulently transferred in favour of the defendants. Hence, she came to Chennai and met the defendants. The defendants promised to cancel the deed if she pays Rs.4,50,000/- and promised to quit the suit property on receipt of Rs.4,50,000/-. The plaintiff was able to mobilise the money since her husband was not in India, so soon after she gathered money, approached the defendants 25/05/2009 to receive the money and cancel the deed, but the defendant refused. Hence the suit to:-

i). declare the sale deed dated 26/05/2006 executed by the first plaintiff in favour of the defendants 1 and 2, as null and void.

ii). declare the plaintiff as the absolute owner of the suit property; and

iii). to direct the defendants to vacate and hand over the vacant possession of the suit property to the plaintiffs on receipt of Rs. 4,50,000/-

7. The written statement of the defendants:

The plaint averments are denied as false and baseless. The claim of the plaintiff that she executed a document on 26/05/2006 under the impression that, it was an usufructuary mortgage deed is lie and afterthought. The deed was witnessed by one Abdul Azees, maternal uncle of the plaintiff and the plaintiff was well aware of its content while executing it.

8. In fact, the plaintiff agreed to sell the suit property for a consideration of Rs.8,20,000/- and received Rs.4,50,000/- as initial advance on 20/04/2006 and the sale agreement was reduced into writing. Later, a sum of Rs.1,96,000/- was paid on behalf of the plaintiff to George Town Co-operative Bank to redeem the mortgage of the suit property. While the suit land sold to the defendants, there were 8 tenants in the suit property occupying in different portions of the property. To 6 tenants, the defendants paid Rs.4,000/- each and got them vacated and took possession and paid Rs.12,000/- to clear the property tax and water tax. Paid Rs.3500/- towards electricity consumptions charges. These payments were made on the instruction of the plaintiff and same got adjusted to the sale consideration. Thereafter, on 23/05/2006 a sum of Rs.6,500/- by cash and on 27/05/2006 a sum of Rs.50,000/- was paid in cash. Thus, a total sum of Rs.7,42,000/- received by the plaintiff towards sale consideration and only Rs.78,000/- is due and payable which they are ready to pay on surrender of the vacant possession occupied by the remaining two tenants.

9. The Trial Court based on the above pleadings, framed the following recasted issues for its consideration:-

(i). Whether the plaintiff borrowed a sum of Rs.4,50,000/- from the 1st defendant?

(ii). Whether there was a sale agreement



plaintiff, were all facts which belie the case of the plaintiff, however totally ignoring these proven facts, the Trial Court has come to a wrong conclusion.

13. The Trial Court reliance on Ex.A-4 reply notice purported to have been issued on behalf of the defendant is an error in appreciation of evidence, since the said notice was not issued on the instruction of the defendant. Though the plaintiff claims she is an illiterate lady, her conduct would clearly show that she is a worldly wise lady dealing with men and money with ease. Contrary to Section 91 and 92 of the Evidence Act, the trial court erred in holding the registered written document as null and void, based on the self serving oral testimony of the plaintiff without any corroboration. The failure to examine the witnesses to the registered document is fatal to the case of the plaintiff, but the Trial Court has totally ignored to appreciate this lapse.

14. Per contra, the Learned Counsel for the respondent/plaintiff would argue that, when the testimony of the plaintiff is inspiring and beyond any pale of doubt, there is no error in relying her evidence. Further, Ex.A-4, the reply notice of the plaintiff admitting the loan transaction and his willingness to cancel the deed on receipt of Rs.4,50,000/- not disproved by the defendants. The plaintiff had no intention to sell the property worth Rs.12 lakhs and the signature in the deed was obtained by dubious manner. After getting the deed in his favour, the defendant started troubling one of the tenant to vacate. This forced the tenant to file O.S.No.4827/2006 against the plaintiff. When she received the summons and informed the defendant he promised to look after the case on her behalf and obtained signatures. These facts were brought to the notice of the defendant in Ex.A-3 notice. For which, the defendants replied and in the said reply Ex.A-4, the defendant had agreed to cancel the deed on receipt of the money advanced. Therefore, there is no error in the trial court judgment.

Point for consideration:-

Whether the trial court erred in declaring the registered sale deed Ex.A-1 as null and void, based on ocular evidence of P.W-1 and Ex.A-4 ?

15. The admitted case of the parties is that, the property belongs to the plaintiff and she executed a deed on 26/05/2006 and the said deed is a registered deed. The contentious issue is whether the execution of the deed was with consensus of mind. The Trial Court relying upon the judgment of this court in M.Ramaswami Chettiar -v- V.Srinivasa Pillai and others reported in (1933) 38 LW 1000 has held that the mind of the signer did



not accompany the signature. To arrive at that conclusion, the Trial Court has accepted the plea of the plaintiff that she is an illiterate Pardanashin woman, not in a position to differentiate a mortgage deed and a sale deed.

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16. However, the Trial Court failed to take note of the fact that the said document was not executed in secret but in a public place i.e., before the Sub Registrar and witnessed by two adults. One among them is admittedly the maternal uncle of the plaintiff. Further, the case of the plaintiff is that her husband living in Gulf and she availed loan from George Town Co-operative Bank in the absence of her husband. She was taking care of the property and getting income from the tenants and she borrowed money from private individuals also to renovate the building. Therefore, merely because she is a Pardanashin woman, it cannot be presumed she had engaged in all these worldly mundane activities without any application of mind.

17. Particularly, the sale deed Ex.A-1 did not come into existence suddenly. From Ex.B-1, it is clear that prior to the registration of sale deed, the plaintiff has executed the agreement of sale on 28/04/2006 and received part sale consideration. The passing of consideration mentioned in Ex.B-1 is proved through D.W-2, who is the witness to the agreement Ex.B-1. The Trial Court has disbelieved this document for the reason that the first defendant has not affixed his signature in page No.5 of the document, where space left for the purchaser to subscribe his signature.

18. In this regard, the learned counsel for the appellant submitted that, in an agreement for sale, the signature of the buyer is sufficient if there is no terms for reciprocal obligation except payment of balance sale consideration. Ex.B-1 cannot be suspected for the absence of the vendee signature when the vendor herself admits the receipt of money to discharge her loan with George Town Bank and also proved through Ex.B-1.

19. This Court finds that the Trial Court has ignored Ex.B-1 and the evidence of D.W-2 stating that it is not at all an agreement in the eye of law. This finding is perverse. When the Trial Court believe the plaintiff that she received Rs.4,50,000/- from the first defendant and precisely the content of Ex.B-1, there is no reason to say Ex.B-1 is not est in the eye of law.

20. The perusal of Ex.B-1 apart from the main recital indicating receipt of Rs.4,50,000/- there are subsequent endorsements for receipt of Rs.6,750/- and Rs.1,90,000/- on two different dates. The plaintiff had suppressed these receipts in her pleadings. The Trial Court, being carried away by the plea



that the plaintiff is a Pardanashin woman, had overlooked to scrutinise the documents which were executed at different point of time by the plaintiff and the quid pro quo from the first defendants. After taking advantage of the money paid by the defendant to clear her debt in George Town Bank and got 6 out of 8 tenants vacated putting the appellant in possession, after lapse of three years the suit is filed. The Trial Court had not even taken note of the fact that the plaintiff, who after receipt of the reply dated notice Ex.A-3 dated 02/09/2006 did not come forward to pay the money received with interest which was an alternate suggestion proposed by the first defendant but belatedly laid the suit denying receipt of Rs.7,45,000/- from the first defendant. If it is so, she should have laid the suit immediately on receipt of the reply or should have given a rejoinder to the reply.

21. This Court find that the plaintiff, who pleads fraud ought to have come to the Court soon after the fraud came to her knowledge. She should have come with clean hands. The due execution of a registered document is a matter of presumption under law. To prove the contrary, under section 101 and 102 of the Evidence Act, the burden is on the person who pleads the contrary. That apart, the embargo under Section 91 and 92 of the Evidence Act, also to be satisfactorily cleared by the plaintiff who has pleaded contrary to the content of a registered document.

22. In the instance case, the plaintiff has failed to discharge the burden. Her deposition and 4 documents relied by her noway will lead to hold Ex.A-1 is a void document. Particularly, when the plaintiff failed to examine the witness to the registration. Also, the inordinate and unexplained delay in filing the suit after receipt of Ex.A-3 reply coupled with suppression of her pleadings in the suit filed by one of her tenant, admitting the sale, goes to show that the Trial Court has with unmindful of law and evidence erroneously allowed the suit.

23. The Learned Counsel for the respondent/plaintiff relying upon the judgment of the Supreme Court in S.P.Chengalvaraya Naidu -v- Jagannath reported in AIR 1994 SC 853 contended that, the document registered by playing fraud has to be held as non est in law. The principle laid in the said case not applicable to the facts of the case. The plaintiff, who pleads fraud should establish how fraud was committed. Merely by retracting the content of a written registered document, fraud cannot be presumed solely on the ground that the signatory is a Pardanashin woman. The factum of Pardanashini will gain significance and be relevant only if the factum of lack of meeting of mind is proved. The conduct of the plaintiff does



not indicate that when she entered into the agreement of sale under Ex.B-1 or when she executed the sale deed Ex.A-1 and got it registered, she had no consensus ad idem.

24. Therefore, the judgement of the Trial Court is liable to be set aside and appeal to be allowed.

25. In the result, the Appeal Suit is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

bsm

To:-

The XVI Additional Judge,
City Civil Court,
Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to M/s.B.Srinivasan, Advocate Sr.No.14826

Appeal Suit No.612 of 2016

RR(CO)
RVM(01/06/2022)