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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.145/2022 and CMP.No.2921/2022

Pavunambal

..Appellant/Appellant/Defendant

Vs.

Raja

..Respondent/Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 17.02.2020 passed in AS.No.43/2018 on the file of the learned Additional District Judge, Ariyalur, confirming the judgment and decree passed by the learned Subordinate Judge, Ariyalur, in O.S.No.108/2010 and allow the appeal dated 02.08.2018.

For Appellant: M/s.A.Vinupradha

JUDGMENT

- (1) The defendant in the Suit in O.S.No.108/2010 on the file of the Sub Court, Ariyalur is the appellant in the Second Appeal.
- (2) The respondent in this Appeal, as plaintiff filed the Suit in O.S.No.108/2010 for recovery of possession of the Suit property which is described as an extent of 1023 $\frac{3}{4}$ sq ft of land with a tiled house built therein in New Natham S.F.No.426/2004 in Palayapadi Village, Ariyalur.
- (3) It is not in dispute that the defendant and her daughter had executed a registered Sale Deed dated 19.02.2009 in favour of the plaintiff in respect of the Suit property. It is also admitted that defendant is the paternal aunt of the plaintiff. It is the case of plaintiff that after purchase he renovated the building and agreed to let the defendant be in permissive occupant on her request as she wants accommodation till she finds an alternative place. Stating that the defendant did not keep up the promise as there was no sign of defendant seeking an alternative place, the



plaintiff filed the Suit after a personal demand and issuing notice revoking the permission and calling upon the defendant to vacate the Suit property.

- (4) The Suit was contested by the defendant. According to the defendant she was married to one karuppiah who died immediately after the birth of a female child. It is the case of defendant that she was under the mercy of her brother namely the father of plaintiff who promised to help the defendant to maintain her family and administer her properties.
- (5) It is further stated that the plaintiff 's father was always in a position to dominate the will of the defendant and that the plaintiff and his father obtained the Sale Deed from her and daughter without any consideration by coercion and under influence. It is admitted that the Sale Deed itself was executed by the defendant and her daughter. It is also stated by the defendant that she had executed a Settlement Deed in favour of her daughter conveying her right in respect of the Suit property even before the sale. In the Written Statement a few other circumstances were also pointed out to indicate that the defendant was always under the care and custody of the plaintiff 's father and that she could not resist the Sale Deed especially when it was done at the time when the defendant had arranged the marriage of her daughter.
- (6) Before the Trial Court, the plaintiff examined himself as PW1 and another witness by name Arumugam. On behalf of plaintiff, Ex.A1 to A6 were marked before the Trial Court. Similarly, defendant examined her as DW1 and another witness by name Tirunavukarasu as DW2. The defendant also filed documents Ex.B1 to B3. Based on appreciation of pleadings and evidence, the Trial Court decreed the Suit after holding that the defendant had not proved her case. Since, the document under Ex.A1 namely the Sale Deed executed by the defendant in favour of the plaintiff is not challenged on the ground that is vitiated by fraud or coercion or undue influence, the Trial Court held that the plaintiff is entitled to relief as the defendant's possession is not lawful. Aggrieved by the findings of the Trial Court, the appellant preferred an appeal and the First Appellate Court dismissed the appeal in AS.No.43/2018 (before the I Additional District Munsif Court, Ariyalur). Aggrieved by the concurrent findings of the Courts below the above Appeal is preferred.



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- (7) The appellant has raised the following substantial questions of law in the Memorandum of Grounds of Second Appeal.

1. Whether on facts and circumstances of the case the Courts below was right in rejecting that Ex-B1 to Ex-B3 is correct in law, when such documents establishes the plaintiff has caused undue influence in Execution of Exhibit A1?

2. Whether on facts and circumstances of the case the Courts below were right in passing a decree when the defendant has disputed the execution of the sale deed in Exhibit A1 is correct in law?

3. Whether on facts and circumstances of the case the Court below failed to consider that the plaintiff has not filed the Suit for declaration?

- (8) It is admitted that the document under Ex.A1 is duly registered. It is also admitted that the Sale Deed under Ex.A1 dated 19.02.2009 is valid and no step was taken by the defendant to set aside the document on the ground of undue influence. It is to be noted that under Section 19 A of the Contract Act, "when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused."
- (9) In this case, admittedly the appellant has not filed any Suit or raised a counter claim to set aside or rescind the Sale Deed on the ground of undue influence. The Trial Court and the Lower Appellate Court have considered all the issues elaborately in the light of pleadings and held that the defendant has no right over the Suit property after executing a valid Sale Deed. The Courts below have rendered the findings after proper appreciation of evidence and this Court finds no substance in any of the substantial questions of law framed by the appellant. Hence, this Court find no merits in the Second Appeal.



(10) In the result, the Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge, Ariyalur.
2. The Subordinate Judge, Ariyalur.

Copy to
The Section Officer, VR Records,
High Court, Chennai.

+1 CC to M/s.A.Vinupradha, Advocate sr 13288.

SA.No.145/2022

NR(CO)
SP(06/05/2022)