



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.257/2022 and CMP.No.5240/2022

Kandasamy

.. Appellant/Appellant/Plaintiff

Vs.

1.Duraisamy

2.Chinnasamy

3.Sundarambal

4.Lakshmi

.. Respondents/Respondents/Defendants

Prayer:- Second Appeal preferred under 100 of CPC to set aside the judgment and decree dated 21.09.2021 passed in A.S.No.5/2019 by the learned Principal Subordinate Judge, Tiruppur confirming the judgment and decree dated 28.09.2018 passed in O.S.No.11/2007 by the learned District Munsif, Tiruppur.

For Appellant :Mr.S.S.Swaminathan

JUDGMENT

- (1) The unsuccessful plaintiff in the suit in O.S.No.11/2007 before the learned District Munsif, Tiruppur who had preferred an appeal without success in A.S.No.5/2019 before the learned Principal Subordinate Judge, Tiruppur is the appellant in this second appeal.
- (2) The appellant filed the suit in O.S.No.11/2007 for specific performance of Sale Agreement dated 18.08.2005 and for other consequential reliefs. The suit is also for permanent injunction against the defendants not to interfere with the peaceful possession and enjoyment of the suit property by the plaintiff.
- (3) Brief facts that are set out in the plaint filed by the appellant are as follows:
- (4) The 1st defendant is the mother of the plaintiff and she died on 05.12.2007, after the suit, leaving behind the plaintiff and defendants 2 to 5 as her legal heirs. The suit property belonged to the 1st defendant by virtue of a



WEB COPY

registered Sale Deed dated 06.09.1972. The 1st defendant had entered into an Agreement of Sale in respect of the suit property with the plaintiff on 18.08.2005. The sale price fixed under the sale agreement was Rs.30,000/- and on the same day of agreement, the 1st defendant had received the entire sale price amount from the plaintiff and agreed to execute the Sale Deed in favour of the plaintiff whenever the plaintiff wants to get the document registered in his name. Since the entire sale consideration was received by the 1st defendant, she handed over the original Sale Deed dated 06.09.1972 and patta passbook to the plaintiff, following which the Kists were paid by plaintiff. The appellant filed the suit stating that the 1st defendant was unnecessarily prolonging the execution of the Sale Deed as agreed between them and was attempting to dispossess the plaintiff and alienate the suit property. During the pendency of the suit the 1st defendant died leaving behind defendants 2 to 5 as her legal heirs.

- (5) The suit was contested by all the defendants and the suit agreement was specifically disputed by the defendants. The suit agreement was described by the defendants as a document fabricated by committing forgery. It is contended that the plaintiff filed the suit to snatch the entire suit property from the 1st defendant by creating a fabricated agreement. Defendants 3 to 5, while denying the suit agreement, prayed for a counter claim to divide the suit properties into four equal shares and to allot two shares to defendants 3 to 5 and for other consequential reliefs. A reply statement was also filed by the plaintiff and an additional written statement was also filed by the defendants. In the reply statement, it is specifically stated that the plaintiff is in enjoyment of the suit property long before the date of sale agreement. It is stated in the reply statement that the mother of plaintiff namely, the 1st defendant, wanted to give the suit property to the plaintiff and the 2nd defendant was given some other property by their father himself and that she allowed the plaintiff to enjoy the property even during her life time prior to the agreement. Before the Trial Court the appellant produced Exs.A1 to A4 and examined himself as PW1. On behalf of the respondents, DW1 and DW2 were examined but no documents were filed.
- (6) The Trial Court after framing a specific issues, found that the execution of the suit sale agreement is probable but held that the agreement is not registered and hence it cannot be enforced in law as the Sale Agreement requires to be registered under Section 17(1A) of the Registration Act.



WEB COPY

PW1, though was cross-examined partly for reasons known to the appellant, he did not appear before the Court to subject himself for further cross-examination by the defendants. The witnesses examined by the defendants, namely DW1 and DW2, were not cross examined by the plaintiff. Taking the over all evidences, the Trial Court dismissed the suit. Though the Trial Court held that the sale agreement is not admissible in evidence for want of registration, it is to be seen that the suit sale agreement was executed prior to the amendment introduced to the Registration Act in 2012 and therefore the findings with regard to the requirement of registration may be not in accordance with law. However, the suit was dismissed on merits after referring to the several other circumstances as well. The counter claim of defendants 3 to 5 was allowed and the Trial Court granted a preliminary decree in favour of defendants 3 to 5 allotting 1/4th share in favour of the 2nd defendant and 1/4th share in favour of defendants 3 and 4 jointly. Aggrieved by the judgment and decree of the Trial Court the plaintiff/appellant preferred an appeal in A.S.No.5/2019 before the learned Principal Subordinate Judge, Tiruppur.

- (7) The Lower Appellate Court, after independently considering the entire evidence came to the conclusion that the suit agreement is surrounded by suspicion and the appellant has failed to prove the execution of the sale agreement. The Lower Appellate Court also considered the conduct of the appellant in the course of trial. While finding that the appellant has failed to prove the sale agreement, the Lower Appellate Court justified the dismissal of suit. The Lower Appellate Court found that non appearance of the plaintiff for further cross-examination and failure to cross examine defendants' witnesses for no valid reason would falsify the case. Since the appellant did not discharge his burden of proof, the Lower Appellate Court dismissed the appeal. Though the Lower Appellate Court found that the suit sale agreement does not require registration, it is held that the transaction as a whole is not proved by the plaintiff, as the plaintiff has not examined any independent witness to prove the passing of consideration for the sale agreement. The plaintiff, came forward with a version that he was in possession of the property even before the sale agreement, in the reply statement and that the property was handed over to the plaintiff pursuant to the sale agreement and claimed protection under Section 53A of the Transfer of the Property Act. Since the agreement is not registered, there is no scope for considering the plea relying upon



WEB COPY

Section 53 of the Transfer of Property Act. Aggrieved by the judgments and decrees of the Courts below the above appeal is preferred by the appellant/plaintiff.

(8) In the Memorandum of Grounds of Appeal, the appellant has raised the following substantial questions of law:-

- a. Whether the Courts below are justified in applying the provisions of the Tamil Nadu Act 29 of 2012 in respect of sale agreement executed in the year 2005?
- b. Whether the Courts below are entitled to give retrospective application of the provisions of Tamil Nadu Act 29 of 2012 even though not provided for in the amendment itself?
- c. Whether the Courts below are justified in rendering its decision based on conjectures and misreading and misinterpreting the evidence and law?
- d. Whether the Lower Appellate Court can suo moto remand the suit for fresh disposal based on the available materials especially when plea for remand made in the written arguments?
- e. Whether the Courts below can render its decision totally based on assumption and presumption of evidence?
- f. Whether the findings of the Court below are supported by material evidence?

(9) From the discussions by the Courts below, this Court finds that the appellant has come forward with a suit for specific performance against his own mother. Further, the appellant failed to subject himself to the continuation of his cross examination and did not cross examine the defendant side witnesses. This is fatal. Defendants 2 and 4 were examined as DW1 and DW2 and their version describing the suit agreement as forgery is not controverted. No independent witness was examined to prove execution of Sale Agreement. Though defendants made an attempt to prove forgery, the document sent for expert's opinion came back as the thumb impression of 1st defendant was smudged. The plaintiff in a suit for specific performance should not



WEB COPY

only prove the genuineness of agreement but also to exhibit a fair conduct to get the equitable relief. The conduct of plaintiff during trial is fatal to his case. Though the first two questions of law are answered in favour of the appellant as the suit agreement need not be registered, still the plaintiff is not entitled to the relief as he failed to prove the genuineness of the agreement. This Court is unable to appreciate the conduct of the appellant especially when he has come to Court for an equitable relief. This Court is unable to find any illegality or irregularity or perversity in the judgment of the Lower Appellate Court which is well founded and supported by material evidence and attending circumstances.

- (10) In the result, the Second Appeal is devoid of merits and hence, dismissed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

cda

To

1.The Principal Subordinate Judge, Tiruppur.

2.The District Munsif, Tiruppur.

Copy to:

The Section Officer

VR Section, High Court
Chennai.

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.21661

SA.No.257/2022 and
CMP.No.5240/2022

NR(CO)
CB(20/04/2022)