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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.01.2022

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CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1316 of 2011

and

M.P.No.1 of 2011

Mannankatti Kounder

..Appellant/Plaintiff

Vs

1.Rajasekar

2.Rajeswari

3.Sankar

4.Durairaj

5.Manohar

6.Lakshmi

..Respondents/Defendants 3 to 8

Prayer: The Second Appeal is filed under Section 100 of C.P.C. against the Judgment and Decree dated 01.12.2010 passed in A.S.No.105 of 2009 on the file of the Principal District Court, Villupuram, confirming the Judgment and Decree dated 22.06.2009 passed in O.S.No.304 of 2003 before the I Additional Sub Court, Villupuram.

For Appellant : Mrs.Nilaphar
for Mrs.R.Meenal

For Respondent-3 : Mr.K.Govi Ganesan

For Respondents-1,
2, 4 to 6 : Given up

JUDGMENT

The second appeal is focused as against the Judgment and Decree dated 01.12.2010 passed in A.S.No.105 of 2009 by the learned Principal District Judge, Villupuram, confirming the Judgment and Decree dated 22.06.2009 passed in O.S.No.304 of 2003 by the learned I Additional Subordinate Judge, Villupuram.



2. For the sake of convenience, hereinafter the parties are referred as per their respective litigative status before the trial Court.

3. The laconic averments made in the plaint are as follows:

3.1. The items Nos. 1 to 9 of the suit schedule property belonged to the first defendant. One Ramalinga Chettiar, Apparasam Chettiar, Sathasiva Chettiar and Devaraj Chettiar, who are all the sons of Narayanasamy Chettiar, have purchased the said properties and other properties along with the first defendant from one M.R. Lakshminarayana Reddiar vide registered sale deed dated 24.07.1959. After made purchase, all the purchasers vide partition deed dated 10.05.1961, partitioned the said property, wherein 'A' schedule properties were allotted to the share of Ramalinga Chettiar and his brothers and 'B' schedule properties were allotted to the share of the first defendant. The respective sharers have been in possession and enjoyment of their respective properties allotted to their share under the partition deed. Accordingly, the item No. 10 of the suit schedule property was allotted to one Balakujalambal Ammal and Dhayanithi Ammal, who are the wives of Shanmugam Chettiar, who is the first defendant. The said Balakujalambal had died intestate and her half share in the suit item No. 10 was succeeded by her husband, namely, the first defendant, his son Rajasekar and his daughter Rajeswari. About thirteen years ago, the first defendant leased out the suit properties to the plaintiff and that the plaintiff has been regularly paid the lease to the first defendant. As a lessee, the plaintiff is in the possession and enjoyment of the suit schedule properties.

3.2. While so, the deceased first defendant has approached the plaintiff to sell the suit properties, which is an extent of 2½ kawnies at the rate of Rs. 1,44,000/- (Rupees One lakh Forty Four thousand only) per kawni i.e. for a sum of Rs. 3,60,000/- (Rupees Three lakhs sixty thousand only) and agreed to execute a sale deed along with his wife, namely, the second defendant and children as and when requested by the plaintiff. The first defendant had executed an agreement of sale on 17.08.2002 and the terms of agreement were reduced into writing and the agreement was duly signed by the first defendant and also by his son Manohar. During such time, the plaintiff paid a sum of Rs. 3,50,000/- (Rupees Three lakhs Fifty thousand only) on the date of execution of agreement of sale and agreed to pay the balance amount of Rs. 10,000/- (Rupees Ten thousand only) in Sub Registrar Office. It is also agreed that the sale deed is to be executed by the defendants 1 to 4 as and when requested by the plaintiff on payment of the balance of Rs. 10,000/- of sale consideration. On 21.08.2002, the plaintiff has purchased the stamp papers for the value of Rs. 15,600/- and also other forms



and that he has waited till the closure of the Sub Registrar's Office at Vikravandi with the balance amount of Rs.10,000/-. But the defendants 1 to 4 have failed to turn up to execute the sale deed for the reasons best known to them.

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3.3. The plaintiff has always been ready and willing to perform his part of contract. Since the first defendant is making an attempt to alienate the properties to one Shankar (5th defendant), the plaintiff had issued a notice on 30.11.2002 to the deceased first defendant and his son Manohar and thereby called upon the first defendant to receive the balance amount of Rs.10,000/- of sale consideration. After acknowledging the said notice, the first defendant and his son Manohar sent a reply notice dated 14.12.2002 with false allegations. It is falsely contended by the first defendant that the item Nos.1 to 9 of the suit schedule properties belong to the joint family consisting of first defendant and his sons and daughters. The properties described as Item Nos.7 and 8 in the plaintiff's notice dated 30.11.2002 and Item No.11 in the notice are one and the same and therefore, the said item Nos.7 and 8 are not mentioned in the suit and therefore the description of properties is rearranged as item Nos.1 to 10 in the place of item Nos.1 to 12 in the notice. The defendants 1, 2 and 4 have created a sham and nominal sale deed in favour of the fifth defendant after the issuance of his notice dated 30.11.2002 in respect of 0.611/2 cents out of 0.92 ½ cents in suit item No.10. The fifth defendant is not a bonafide purchaser. The fifth defendant has made an attempt to interfere with the possession of the plaintiff and the same was managed by the plaintiff. The plaintiff has made several attempt to persuade the first defendant to execute the sale deed along with other defendants in pursuance of the agreement for sale dated 17.08.2002 but proved to be futile. Hence, the circumstances compelled the plaintiff to file a suit for the relief of specific performance directing the defendants to execute the sale deed in favour of the plaintiff in respect of the suit schedule properties.

4. The averments found in the written statement filed by the first defendant are as follows:

4.1. The suit schedule properties are not the exclusive properties of the first defendant. The first defendant had no separate funds to acquire the said properties. The item Nos.1 to 9 of the suit schedule properties were purchased by the first defendant from and out of the income derived from their ancestral properties and the funds raised by selling the ancestral properties in the year, 1957 and 1959. Hence, the said properties are the joint Hindu family properties of the first defendant and his children. It is true that the suit item No.10 belonged to the two wives of the first defendant, namely,



Balakujalambal Ammal and Dhayanithi Ammal. After the death of the said Balakujalambal Ammal, her half share in the suit item No.10 has been succeeded by the first defendant, his son Rajasekar and his daughter Rajeswari, who are the defendants 3 and 4. Since the half share of the item No.10 of the suit property belonged to Balakujalambal Ammal, the first defendant had relinquished his 1/6th share in favour of his daughter Rajeswari after the death of Balakujalambal Ammal. Therefore, the first defendant is not having any subsisting right in the suit item No.10.

4.2.It is utterly false that the suit properties were leased out by the first defendant in favour of the plaintiff in the year 1990 and that he has been paying the lease to the first defendant. It is also false that the first defendant approached the plaintiff to sell the suit properties at the rate of Rs.1,44,000/- per kawni and agreed to execute the sale deed along with his wife and children as and when requested by the plaintiff. The plaintiff asked the first defendant to pass a receipt for the receipt of Rs.3,50,000/- by him. At the time of signing the receipt, the extent of the property was not mentioned and neither the attestor was present, nor any attestor signed in the receipt in the presence of either parties.

4.3.The plaintiff had entered into an agreement with the first defendant to purchase item Nos.1 to 9 of the suit properties excluding his half right in the bore well and 7.5 h.p. Electric Motor Pump set. Since the property particulars were not available at the time of writing the receipt, the extent of the property was not written in the receipt. The first defendant never intended or agreed to sell the item No.10 of the suit properties. All the terms of the alleged agreement were not reduced into writing when the first defendant signed the said receipt. Since the plaintiff has personal knowledge that the suit item Nos.1 to 9 are the joint family properties, he has inserted the names of the first defendant's wife and children as joint executants of the sale deed. Since the receipt dated 17.08.2002 is fraudulently tampered, the same is unenforceable. The first defendant was always ready and willing to execute the sale deed in respect of item Nos.1 to 9 of the suit properties alone after receiving the balance sale consideration of Rs.10,000/-. The first defendant had no intention to sell the properties to the fifth defendant as fictitiously alleged by the plaintiff.

4.4.It is false to contend that the sale deed executed by the defendants 1, 2 and 4 in favour of the fifth defendant in respect of the suit item No.10 is a shame and nominal one and that it is not true, valid and binding upon the plaintiff. Though the first defendant had already relinquished his 1/6th



share in the suit item No.10 in favour of the fourth defendant, he has signed the sale deed in favour of the fourth defendant since the Sub Registrar insisted this defendant's signature in the said sale deed. Further, the allegations that the defendants 1, 2 and 4 have no right to alienate the said property and that the fifth defendant has not taken possession of the said property are false and baseless. Hence, the suit framed by the plaintiff is not maintainable.

5. The averments found in the written statement filed by the fifth defendant are as follows:

5.1. The suit item No.10 belonged to Balakujalambal Ammal and her sister Dhayanithi Ammal, namely, the second defendant and that after the death of Balakujalambal Ammal her undivided share devolved upon her son Rajasekar, daughter Rajeswari and husband Shanmugam Chettiar. It is false and untenable to state that the defendants 1, 2 and 4 have created a sham and nominal sale deed in favour of the fifth defendant in respect of the suit item No.10. The suit item No.10 has not been stated in the pre-suit notice. The defendants 1 and 3 never exercised any right over the suit item No.10. After the death of Balakujalambal Ammal, the defendants 2 and 4 alone in possession and enjoyment of the entire extent of suit item No.10. While so, on 09.10.1999, the defendants 2 and 4 leased out the entire extent in suite item No.10 in favour of the fifth defendant. Ever since the date of the said lease agreement, the fifth defendant has been in possession and enjoyment of the suit item No.10 as lessee. At the time of registration of the said sale deed, the Sub Registrar insisted that the first defendant should also sign in the sale deed since his name also finds a place in the Family Card. Hence the first defendant has also signed in the sale deed. The fifth defendant has no knowledge about the agreement alleged to have been signed by the first defendant and his son Manohar and the notices passed between the plaintiff and the first defendant. The fifth defendant is a bonafide purchaser in respect of item No.10 of the suit schedule property.

6. The averments found in the written statement/counter claim filed by the defendants 6 and 8 are as follows:

6.1. The suit properties are not the exclusive properties of the first defendant. The first defendant had no separate funds to acquire the said properties. The Item Nos.1 to 9 of the suit properties were purchased by the first defendant from and out of the income derived from the ancestral properties and the funds raised by selling the ancestral properties vide two sale deeds dated 22.05.1957 and 04.03.1959. It is true that the suit item No.10 belonged to the two wives of the first defendant. It is not correct that the first defendant had approached the



plaintiff to sell the suit properties and agreed to execute the sale deed along with his wife, namely, the second defendant and children. Since item Nos.1 to 9 of the suit properties are joint family properties of the deceased first defendant, his sons and his daughters viz. defendants 3, 4, 6, 7 and 8 are entitled to $1/6^{\text{th}}$ share each. After the death of the first defendant his undivided $1/6^{\text{th}}$ share has devolved upon the defendants 2 to 4 and 6 to 8. Thus, the defendants 6 and 8 are entitled to $7/36$ share each in suit item Nos.1 to 9. Hence, it would be necessary to pass a preliminary decree for partition and separate possession of their respective $7/36$ share in the suit item Nos.1 to 9.

7. Based on the above averments, the trial Court framed necessary issues and tried the suit. Before the trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and nine documents were marked as Exs.A1 to A9. On the side of the defendants D.W.1 and D.W.2 were examined and two documents were marked as Exs.B1 and B2.

8. Having considered the materials placed before him, the learned I Additional Subordinate Judge, Villupuram, had partly allowed the suit, wherein he granted the relief of specific performance in favour of the plaintiff, particularly, in respect of the item Nos.1 to 9 of the suit schedule properties. In respect of item No.10 of the suit property, the suit was dismissed. Aggrieved over the said finding, the plaintiff has preferred an appeal in A.S.No.105 of 2009 on the file of the Principal District Court, Villupuram, wherein, the learned Principal District Judge, Villupuram, after confirming the findings arrived at by the trial Court had dismissed the appeal. Feeling aggrieved over the same, the plaintiff is before this Court with the present second appeal.

9. At the time of admission, this Court had formulated the following Substantial Questions of Law:

(i) Whether in law the Courts below are right in overlooking that as Ex.A1 was admitted and held to be true, item 10 was subject matter of the document could be excluded when passing a decree for specific performance?

(ii) Whether in law the Courts below are right in holding that the 3rd respondent was a bonafide purchaser for value without notice when the sale to him was hit by lis pendens?

(iii) Whether in law the Courts below are right in not moulding the decree with respect to sale consideration and the extent of item 10 to be



conveyed to the appellant?

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. It is not in dispute that the suit pertains to the second appeal has been filed in respect of the 10 properties, which was narrated in the plaint as item Nos.1 to 10. The trial Court decreed the suit in favour of the plaintiff only in respect of the suit item Nos.1 to 9 against which, the aggrieved party, who are the defendants have not preferred an appeal. Only the plaintiff had preferred an appeal in respect of the suit item No.10 and therefore, the findings rendered by the trial Court in respect of item Nos.1 to 9 becomes final and therefore, it would not be necessary to verify as to whether the decree granted by the Courts below in respect of item Nos.1 to 9 is a subject matter of the second appeal. Therefore, it needs to be verify as to whether the appellant/plaintiff is entitled to the relief of specific performance in respect of the suit item No.10 alone. In this regard before the trial Court, the alleged sale agreement dated 17.08.2002 was marked as Ex.A1.

12. It is the case of the defendants that the alleged sale agreement was not executed by them with an intention to sell the suit schedule properties. According to them, the said sale agreement is nothing but a receipt. Further, the said receipt do not have any characteristic feature of sale agreement. It is the contention raised by the learned counsel for the respondents/defendants that the fair perusal of the said document would clearly shows that the sale agreement document was fabricated. He would further contend that the wordings set out in the agreement is a clear proof that some of the wordings are inserted.

13. In this regard, the learned counsel appearing for the appellant/plaintiff would contend that being the reason that the signature of the defendants found in the said document is not denied by the respective defendants, it would not be necessary to verify as to whether the alleged sale agreement is genuine or not.

14. Now on considering the said submissions made by the learned counsels appearing on either side with relevant records, it is needless to say, in the alleged sale agreement, the following words were inserted at the bottom of the agreement:

“இந்தப்படி நான் சம்மதித்து எழுதிக்கொடு நில அக்ரிமெண்ட் பத்திரம்”

15. More than that the defendant Nos.2, 4, 6, 7 and 8, who are the parties to the document as a vendor, have not put their signature as a party to the document. Apart from that, in the



said sale agreement except mentioning the extent of the property, which was proposed to be purchased by the plaintiff, nothing has been mentioned in respect to S.F.Nos., four boundaries, etc. In this regard, it would be necessary to see the judgment of this Court reported in (2007) 3 LW 224, wherein, this Court held as follows:

"..when the terms of the agreement are ambiguous, the agreement holder is not entitled to the specific performance of the contract."

16. Accordingly, the precedent set out in the above referred judgment is applicable to the facts of the present case as herein also the recitals found in the agreement does not show the actual extent of the property, S.F.Nos., four boundaries etc. and therefore, the plaintiff is not entitled to the relief of specific performance.

17. More than that it is an admitted fact that item No.10 of the suit property has been belongs to the two wives of the first defendant. Though Balakujalambal Ammal, who is the first wife, is no more, for purchasing the said property, it would be necessary to get a consent from Dhayanithi Ammal. But in the sale agreement, the said Dhayanithi Ammal has not signed as a vendor. Therefore, the alleged sale agreement is not having any character of sale agreement and also the wordings set out in the said document does not show that one of the owner, namely, Dhayanithi Ammal is intended to sell the property to the plaintiff. The Courts below have also traversed on the same line and came to the conclusion that the relief of specific performance cannot be granted to the plaintiff. I am also of the considered view that the findings rendered by the trial Court is absolutely within the settled law. Accordingly, in view of the above discussion stated supra, the substantial Questions of Laws framed are answered in favour of the respondents/defendants.

18. In the result, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rsi



To

1. The Principal District Judge,
Villupuram.

2. The I Additional Subordinate Judge,
Villupuram.

Copy To

The Section Officer
V.R. Section,
High Court,
Madras - 104.

+1cc to Mrs.R.Meenal, Advocate, S.R.No.3303

+1cc to Mr.K.GoviGanesan, Advocate, S.R.No.3526

S.A.No.1316 of 2011

CA(CO)
RGA(07/04/2022)