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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022

PRONOUNCED ON : 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A. No. 135 of 2012

1.R.Ramasami (since deceased)

2.R.Kalavathi

3.R.Pachaiammal

4.R.Venkatesan

5.R.Ramamoorthy

6.R.Kumar

7.Muniammal

8.R.Padma

... Appellants/Appellants/Defendants

Vs.

Raja Bai

... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 04.02.2011 passed in A.S. No.41 of 2010 by the Principal District Judge, Thiruvallur confirming the judgment and decree dated 21.07.2009 passed in O.S.No.146 of 2005 by the Subordinate Judge, Poonamalee.

For Appellants : Mr.S.Mahimai Raj

For Respondent : Mr.S.A.Rajan

J U D G M E N T

The defeated defendants are the appellants herein.

2(a). The respondent/plaintiff has filed a suit in O.S.No.146 of 2005 before the Subordinate Judge, Poonmalee for specific performance of Ex.A1/Suit Sale Agreement, dated 15.07.1999.

2(b). Before the trial Court, on behalf of the plaintiff



PW1 to PW7 were examined and Ex.A1 was marked; on behalf of the defendants DW1 to DW4 were examined and Exs.B1 to B6 were marked.

2(c). The trial Court has disbelieved the evidence of the defendants and decreed the suit. Aggrieved over the same, the defendants filed an appeal in A.S.No.41 of 2010, before the learned Principal District Judge, Thiruvallur and the learned Judge, by an order, dated 04.02.2011, has dismissed the appeal and hence, the Second Appeal.

3. The Second Appeal was admitted on 23.08.2012, on the following Substantial Questions of Law:

"1.Whether the finding of the Courts below that Ex.A1/agreement is genuine and is not one created, with the help of the signature obtained in blank stamp papers, is perverse?

2.Whether the Courts below have erroneously cast the burden on the defendants to disprove the suit agreement, Ex.A1?

3. Whether the Courts below have committed an error in not framing a specific issue regarding the requirement of pleading and proof of readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act?"

4. Mr.S.Mahimai Raj, learned counsel for the appellants would contend that Ex.A1 is the suit agreement, dated 15.07.1999, for a sale consideration fixed at Rs.2,40,000/- and a sum of Rs.3,000/- paid as advance, time stipulated is for 11 months. As per Ex.A2, endorsement dated 25.10.2012, another Rs.2000/- is said to have been received towards further payment.

5.The appellants/defendants filed written statement contending that the loan was received from the husband of the plaintiff for agricultural purpose and they obtained signature in various papers including stamp papers and Ex.A1 is the fabricated document by the plaintiff. Some of the defendants have not signed in the documents, especially, the defendants 3, 7 and 8 are not signed in the documents. Signature found in Ex.A1 as that of Pachaimmal is specifically disputed and there was mortgage under Ex.B1 on the very same property on 10.03.2000. The case of the defendants/appellants is that when the defendants/appellants issued legal notice for redemption of mortgage of Ex.B1, the suit has been filed without pre-suit notice.

6(a). The main contention of the learned counsel for the defendants/appellants is that all the parties to the Ex.A1/suit



sale agreement have not signed in the documents and the signature of the third defendant is forged. The trial Court has rendered a finding that no steps have been taken for handwriting comparison and hence negatived the claim. It is a family property and without the signature of the other defendants 7 & 8, Ex.A1 is unenforceable.

6(b). It is the specific case of the defendants/appellants that Ex.B1/mortgage deed was suppressed. There is no plea in the plaint regarding Ex.B1/mortgage deed. Once a mortgage deed is always mortgage, and therefore, it amounts the suppression of the material fact. The plea of further Ex.A2 is denied. Ready and willingness on the part of the plaintiff was not demonstrated.

7.The learned counsel for the respondent/plaintiff made submission in favour of the judgment of the trial Court.

8.The learned counsel for the appellants could contend that both the Courts below have not properly appraised the positive evidence adduced by the defendant that the suit sale agreement is a forged one and is not enforceable and made submission in support of the substantial question of law as extracted supra.

9(a). After hearing the rival submissions made by the respective counsel and also taking note of the pleadings and documents filed before the Trial Court, I find that the respondent alleged in the suit as if that the appellants jointly entered into an agreement of sale with the respondent on 15.07.1999 agreeing to sell the suit property for the sale consideration of Rs.2,40,000/- and received Rs.3,000/- as advance on the date of agreement, ie., on 15.07.1999, then subsequently on 25.10.2002, the appellants allegedly received a further sum of Rs.2000/- towards the above sale transaction and that it was agreed to complete the sale within 11 months from the date of the said agreement of sale.

9(b).The written statement was filed by the 1st appellant herein and it was adopted by the appellants 2 to 8 wherein it was clearly stated that no such agreement of sale ever took place and what actually transpired was that the 1st and 2nd appellants borrowed a loan of Rs.5,000/- from the said A.Kasi for agricultural purpose and they also duly executed the simple mortgage deed on 10.03.2000 and it was registered as Doc.No.1309 of 2000 on the file of the Sub Registrar's office at Avadi and that at that time of such borrowal, the said Kasi obtained the



signatures of the appellants 1,2,4,5 and 6 in various stamped, typed and blank papers for the alleged purpose of securing due re-payment of the above loan.

9(c). By fabricating those papers, the said Kasi had filed the above suit with the sale object of depriving the appellants of their valuable rights in the suit property. The above agreement of sale was executed by all the above petitioners was falsified as the agreement itself ie., Ex.A1 did not bear the sign of the appellant 7 & 8. The said Pachaiaammal also did not sign the papers as she was not at all present on that occasion.

10. On consideration of oral and documentary evidence, the trial Court decreed the suit in the appeal in A.S.No.41 of 2010. The learned Principal District Judge, Tiruvallur has dismissed it and hence the second appeal. This Second Appeal is admitted on the substantial questions of law as stated supra.

11. The respondent/plaintiff seeks specific performance of the suit sale-Ex.A1 agreement dated 15.07.1999 and Ex.A2 is alleged to be an endorsement made by the defendant for receipt of Rs.3000/- on 15.07.1999 and Rs.2000/- on 25.10.2002. Both Exs.A1 and A2 are denied by the appellants/defendants both in pleadings as well as in the evidence of PW1. The defendant in his pleadings as well as DW1 could contend that the 1st and 2nd appellants borrowed a loan of Rs.5000/- from A.Kasi, who is the husband of the first plaintiff/respondent herein for agricultural purposes and executed a deed of mortgage on 10.03.2000 which was registered as Doc.No.1309 of 2000 on the file of the Sub Registrar's office at Avadi. Due to the insistence of the said Kasi apart from executing the above mortgage deed, the appellants 4,5 and 6 were also made to sign in blank, stamped and typed papers along with the 1st and 2nd appellants. The said Kasi obtained the appellants' signatures by representing that the above were obtained only as a measure of securing the due repayment of the above mortgaged amount and the appellants believed his representation while signing the same.

12(a). It is a specific evidence of DW1 that in the year 2005, the original first defendant (R.Ramasamy) has sent a registered letter to the respondent/plaintiff's husband A.Kasi-PW1 expressing his capacity to pay back the entire principal amount together with accrued interest arising out of the said Ex.B1-mortgage deed dated 10.03.2000 and called upon the said Kasi PW2 to cancel the above registered mortgage.



12(b). The sending of the above letter was necessiated due to the evasive attitude of said Kasi in receiving back the above loan amount and discharging the mortgage. Though the said letter calling upon the husband of the plaintiff, who was examined as PW2 to come for redemption of mortgage to take the property back, the said legal notice was not filed by the defendants. However, receipt of the said legal notice for redemption of the mortgage by the defendant to the husband of the first plaintiff (who is also happened to be PW2) is admitted by him in the cross-examination assumes significance.

12(c). Further more, it is a specific evidence of the DW2 that the sending of the above legal notice was necessiated due to the evasive attitude of the said cash in receiving back the above loan amount for discharge of the mortgage Ex.B1. It remains to be stated that it is a specific evidence of PW1 that after receiving the above registered letter by PW2 (husband of the first plaintiff), they did not send any reply, on the contrary, has filed the above suit in O.S.No.146 of 2005 seeking specific performance of the suit sale agreement dated 16.07.1999 assumes significance. In this context, it remains to be stated that it is a specific case of the defendant both in the written statement as well as in the witness box in the DW1 that at the time of registration of Ex.B1 mortgage deed, the plaintiff has obtained the signature in the blank paper and fabricated the Ex.A1-suit sale agreement. In order to demonstrate his pleadings, he examined himself as DW1 and deposed as so in the written statement.

12(d). It is a specific evidence of the defendant as DW1, that at the time of borrowal of money by mortgaging the very same suit property under the mortgage deed Ex.B1 on 10.03.2000, which is registered as Doc.No.1309 of 2000 before the Sub Registrar office at Avadi, PW2, Kasi-husband of the first plaintiff obtained the signature of PWs.1,2,4,5 and 6, however, Pachaimmal, Muniammal and Padma are not signed in the document since they have not come to the registration of the mortgage deed. It is the further evidence of the appellants that the suit property is a family property wherein the above three persons also has a right over the property. This was not disputed by the plaintiff assumes more significance.

13. It remains to be stated that the plaintiff has not issued any pre-suit notice for specific performance of suit sale agreement. The date of the suit sale agreement-Ex.A1 is 15.07.1999, date of filing of the suit is 09.11.2005. For the purpose of limitation, the counsel for the respondent/plaintiff



respective counsels are taken note of. The prime plea raised by the appellants/defendants is that there is no jural relationship between the appellant and the respondent which is as that of the vendor and purchaser. Admittedly, the appellants 7 and 8 and another Pachaimmal have never signed the sale agreement and hence it clearly creates a doubt as to the nature of the document, namely, whether it is an agreement entered between the parties.

15(c). In order to coming into existence of Ex.B1-mortgage deed and also a cloud surrounding upon Ex.A1-sale agreement. The defendants have raised the issue that one of the attesor of the Ex.A1 has clearly admitted that the third defendant was not at all present at the time of mortgaging of the suit property and she never signed the Ex.A1-sale agreement. Thus as to the coming into the existence of Ex.A1-sale agreement, I find that there was a material contradiction in the deposition of the plaintiff as PW1 and one of the attesting witness-PW4 Rajendran, while PW1 claimed that the sale agreement was signed at her house, attesor-PW4 claimed that all the appellants/defendants signed the above sale agreement only in the Sub Registrar office at Avadi.

15(d). In view of the clear admission by the attesor PW4-Rajendran that the third appellant and the third defendant-Pachaimmal was not at all present at the time of signing of the above agreement in the Sub Registrar office also creates a cloud of doubt.

15(e). Further more, as to the coming into the existence of Ex.A1, PW4-Rajendran attesor had admitted that he did not see the third appellant Pachaimmal in the Sub Registrar office. Yet another point is that the another attesor of the Ex.A1, namely, PW3 Balasubramaniam, Raja Bai only gave the advance amount of Rs.3000/- towards the sale transaction to the Kalavathi, another attesting witness PW4-Rajendran deposed that the husband of the first plaintiff-Kasi gave the above to the first appellant Ramasamy and therefore, payment of advance amount under Ex.A1 itself found to be two version by the two attested witnesses, namely PW3 and PW4 cause doubt as to the alleged payment of sale consideration on 15.07.1999.

16. Hence in view of the inconsistency in the evidence of Pws.1, 2, 3 and 4 (Attesor of Ex.A1-sale agreement) as discussed supra clearly demonstrate the fact that at the time of the registration of Ex.B1-mortgage deed, it appears that the plaintiff has obtained signature in the blank paper and made it as an agreement. The passing of the advance of Rs.3000/- under



Ex.A1 is also run in the rough weather. In view of the inconsistency between the version of the PWs.3 and 4-attestors as to the place of execution of Ex.A1 payment under Ex.A1 also cause serious doubt as to the coming into the existence of Ex.A1 sale agreement. In view of the inconsistency as discussed supra coupled with the fact that the suit has also filed without any pre-suit notice though not it is mandatory cause serious doubt as to the true and genuineness of the Ex.A1 agreement.

16(a). Besides, there is a material suppression as to the registered mortgage Ex.B1 also probablise the plea of the defendants/appellants in the written statement.

17(a). The next point that was alleged by the plaintiff is the endorsement of Rs.2,000/- on 25.10.2002. PW1 in the witness box has admitted that he had seen the defendants 1 to 6/appellants 1 to 6 only on one occasion at the Registration office. Therefore, consequently, no endorsement was made after receiving Rs.2000/- from the respondent on 25.10.2002 under Ex.A2. Hence, this Court finds that the plaintiff has failed to prove the coming into the existence of Ex.A2 and receipt of advance of Rs.2000/- on 25.10.2002 also surrounded by serious suspicion and thus, I find that the burden of proof the legality of Ex.A1 is on the shoulders of the plaintiff and they miserably failed to prove the same.

17(b). Moreover, the third defendant/third appellant-Pachaimmal as DW5 has clearly deposed that she has not signed in the sale agreement or any other paper and hence the signature found in Ex.A1 is that of the Pachaimmal or not has not been proved in the manner known to law.

18(a). Thus, this Court finds that the respondents/plaintiffs have suppressed the existence of mortgage deed Ex.B1 in his pleadings, which is mortgaged with the husband of the plaintiff, who is examined as PW2 and in view of the settled position of law that once a mortgage is of a mortgage and considering the nature of the present suit being suit for specific performance of suit sale agreement and the husband of the plaintiff, namely PW2, being the mortgagee in his favour suppression of Ex.B1 is a material suppression affecting the case of the plaintiff and creates doubt as to the coming into the existence of Ex.A1 suit sale agreement.

18(b). Hence, I find that it is surrounded by sea of suspicion in view of the inconsistency with the pleadings of the PW1 besides inconsistency and mutually destructive version of PWs



1 and 3, namely, the attestor of Ex.A1 regarding the place of execution and payment thereon under the agreement and the appellants 7 and 8 are not made parties to the agreement who are admittedly co-owner and a plea has been raised before both the Courts below was not considered and hence, I find that the plaintiff has miserably failed to demonstrate that the unregistered Ex.A1 suit sale agreement is true and genuine and so not entitled to be a sale agreement between the parties of the suit property and suppression of the registered mortgage-Ex.B1 amounts to material suppression of fact effecting the specific performance of Ex.A1. There is a total inconsistency in the evidence of PWs.1 and 2 regarding the parties to the document under Ex.A1 as to the vital variants between the version of the attestors-PW3 and PW4 regarding the place of execution and the payment under Ex.A1 besides Ex.A2 is not proved in the manner known to law and hence, I find that it is totally unsafe to rely upon Ex.A1.

19. As stated supra, a specific performance suit has been filed without pre-suit notice expressing the ready and willingness on the part of the plaintiff, it was issued only after the notice for redemption of the very same suit property issued by the defendants-land owner to the plaintiff, which was admitted by him in the cross-examination of PW2 and hence, I find that the relief of specific performance being a discretion relief and the plaintiff has not approached the Court with clean hands and the plaint as far as the very material suppression of fact PWs 1 and 2 are not reliable in their version. The version of PWs.3 and 4-attesting witnesses in the cross examination runs contrary to the version of PWs.1 and 2 as to its truth and genuineness and hence, I find that the defendants have successfully demonstrated that Ex.A1 is not true and genuine and hence, the contra finding recorded by both the Courts below are liable to be vacated and the same shall stand vacated and it is held that Ex.A1 is not true and genuine and under Ex.A2 no consideration or advance is paid and consequently, the relief of specific performance cannot be granted.

20. In view of the discussion of the preceding paragraphs, the Substantial Questions of Law 1 to 4 are answered in affirmative in favour of the appellants/defendants and against the respondent/plaintiff.

21. In fine, the judgement and decree, dated 04.02.2011 passed in A.S.No.41 of 2010 by the Principal District Judge, Thiruvallur confirming the judgment and decree dated 21.07.2009 passed in O.S.No.146 of 2005 by the Subordinate Judge,



Poonamalee are hereby set aside. Accordingly, this Second Appeal stands allowed. The suit is O.S.No.146 of 2005 on the file of the Sub Court, stands dismissed. No Costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

PJL

To

1. The Principal District Judge, Thiruvallur.

2. The Subordinate Judge, Poonamalee.

Copy to:

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

+2cc to Mr.S.Mahimai Raj, Advocate SR.No.25258

+2cc to Mr.S.A.Rajan, Advocate SR.No.25553, 25554

S.A.No.135 of 2012

PPA(CO)

CB(02/05/2022)