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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.238 of 2012
and MP No.1 of 2012

1. Vellayan
2. KuppalAppellants/Respondents/Plaintiffs

Vs.

1. Maniammal
2. Minor Kanagavalli .. Respondents/Appellants/Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the decree and judgment dated 12.09.2011 passed in A.S.No.141 of 2010 on the file of the Principal Subordinate Judge, Salem, reversing the decree and judgment dated 26.08.2009 passed in O.S.No.2198 of 2004 by the 1st Additional District Munsif Court, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondents:Mr.P.Jagadeesan

JUDGMENT

The plaintiffs are the appellants in this second appeal.

2.The plaintiffs filed a suit stating that they were the owners of the suit property by virtue of a registered sale deed dated 02.01.1980 and they were in possession and enjoyment of the same and the revenue records also stood in their names.

3.The further case of the plaintiffs is that the 1st plaintiff had a second marriage with the 1st defendant and the 2nd defendant was born out of the said relationship. It is stated that the 1st defendant started giving trouble to the plaintiff's family and was forcing them to part with money. Thereafter, in order to resolve the dispute, a panchayat was convened on 03.02.1992 and the 1st defendant was advised to rejoin the 1st plaintiff. However, the 1st defendant did not obey the



panchayathars and asked for a divorce from the 1st plaintiff. It was accepted by the 1st plaintiff and the marriage was dissolved as per their custom.

4. It is further stated that in the year 2000, the 1st defendant started demanding share in the property belonging to the plaintiffs. Therefore, one more panchayat was convened on 18.04.2000 and it was decided in the panchayat that the plaintiffs will execute a family arrangement deed in favour of the 1st defendant. This arrangement did not go through and once again in the year 2003, there was demand for property and once again panchayat was convened and it was suggested that a settlement deed will be executed with regard to the suit property.

5. The grievance of the plaintiffs is that the 1st defendant along with her relatives and her supporters attempted to forcibly trespass into the suit property and a suit came to be filed by the plaintiffs in O.S.No.116 of 2004 seeking for the relief of permanent injunction and this suit was pending before the 1st Additional District Munsif Court, Salem. An Interim Application was filed in this suit and the 1st defendant filed a counter in the said Interim Application. It was mentioned in the counter affidavit that a sale deed has been executed on 03.05.2000 in favour of the 2nd defendant. According to the plaintiffs, they came to know about the sale deed only at that point of time. The plaintiffs have alleged that the sale deed was obtained by fraud and undue influence and it was not even supported by any consideration. It is further alleged that the interim injunction order in the earlier suit was vacated and taking advantage of the same, the 1st defendant with the help of her supporters forcibly entered the property and had cut and removed the trees. Left with no other option, the suit came to be filed for setting aside the sale deed dated 03.05.2000, for delivery of possession and for the relief of permanent injunction.

6. The defendants filed a written statement and took a very specific stand that the 1st plaintiff did not care to maintain the 1st defendant and the minor daughter. Hence, a request was made to the 1st plaintiff to at least sell the property in favour of the defendants and accordingly, a sum of Rs.48,000/- was received by the 1st plaintiff and a sale deed came to be executed in the name of the 2nd defendant on 03.05.2000. The defendants further stated that the plaintiffs are well aware of the property sold in favour of the 1st defendant and the same being in the possession and enjoyment of the defendants. Therefore,



the defendants took a clear stand that there are absolutely no merits in the suit filed by the plaintiffs.

7. The Trial Court on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case, decreed the suit through judgment and decree dated 26.08.2009. The defendants aggrieved by the same, filed an appeal before the Principal Sub-Court, Salem in A.S.No.141 of 2010. The Appellate Court on re-appreciation of the oral and documentary evidence and on assessment of the findings of the Trial Court, found that the plaintiffs have not made out a case and hence, by a judgment and decree dated 12.09.2011, allowed the appeal and set aside the decree of the Trial Court. Aggrieved by the same, the plaintiffs have filed the present second appeal before this Court.

8. This Court framed the following substantial questions of law :-

- a) Whether the lower Appellate Court while reversing the judgment of the trial Court had spelt out the reasons and discussed the points as to why it is disagreeing with the findings of the trial Court, as mandated under Order 41 Rule 31 of C.P.C.?
- b) Whether the findings of the lower Appellate Court can be termed as perverse due to improper appreciation of the oral and documentary evidence available on record?

9. During the pendency of the appeal, the 1st appellant died and since, the legal heirs of the 1st appellant viz the 2nd appellant and the 2nd respondent were already on record, the same was recorded. The 2nd respondent was a minor at the time of filing of the suit and she attained majority during the pendency of the second appeal and hence, she was also declared as a major.

10. This Court carefully heard the learned counsel appearing on either side and perused the materials available on record and the findings of both the Courts below.

11. It is an admitted fact that Ex.A1 sale deed is a registered document that was executed in favour of the 2nd defendant. According to the plaintiffs, this document is tainted by fraud and undue influence. In order to sustain such a plea, pleadings play a major role and it is mandated under Order 6 Rule 4 of CPC. It is now a well settled proposition of law that the plea of fraud has to be specifically pleaded and proved by



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the plaintiff and merely mentioning the word "Fraud" will not be enough to sustain such a plea. Useful reference can be made to the judgment of the Hon'ble Supreme Court in [Saradamani Kandappan Vs.S.Rajalakshmi and others] reported in 2011 4 CTC 640.

12.The relevant provision viz., Order 6 Rule 4 of CPC itself mandates that where a plea of fraud is taken, all the particulars must be given regarding the dates and the manner in which such a fraud took place.

13.The pleadings that are available in the plaint with regard to the allegation of fraud is extracted hereunder :-

10. The plaintiffs came to know about the fraudulent sale deed obtained by the 1st defendant and her supporters only on 20.02.2004.The alleged sale deed dated 03.05.2000 in favour of the 2nd defendant getting by way of fraud force, undue influence and the sale is of fraudulent sale.The plaintiffs did not know about the sale deed dated 03.05.2000 only on 20.02.2004, that the alleged sale deed had executed by them. The value of the suit property is more than Rs.3,00,000/- but the defendants obtained the alleged sale deed by way of fraud and the value of the suit property is Rs.48,000/-. The defendants purposely mentioned the lowest value and fraudulently obtained the alleged sale deed dated 03.05.2000.

14.The trial Court did not focus on the requirement of details to be pleaded in a case where the plaintiff has come forward with the plea of fraud. The Lower Appellate Court went into this issue and came up with two specific findings. The 1st finding was that the plaintiffs nowhere specifically stated that either the panchayathars or the defendants misrepresented them. The Lower Appellate Court also took into consideration Ex.A2, which is the plaint that was filed in the earlier suit in O.S.No.116 of 2004 and found that there was not even a mention regarding the alleged fraud committed for obtaining the sale deed in the name of the 2nd defendant. Therefore, the Lower Appellate Court came to a conclusion that the plaintiffs did not even sufficiently plead by giving the entire particulars as to how they were misrepresented or who actually misrepresented and



made the plaintiffs execute the sale deed. The Lower Appellate Court also took into consideration the fact that the 2nd defendant is none other than the daughter of the 1st plaintiff born through the 1st defendant and the sale deed was executed in her favour. This had happened after there was a panchayat between the parties. The Lower Appellate Court also found that the contents of the sale deed could not have been written without the knowledge of the 1st plaintiff. Curiously, the 1st plaintiff choose not to get into the witness box and depose the circumstances under which the document was executed. The Lower Appellate Court also found that the assessment of all the documents that were exhibited on the side of the plaintiff did not establish possession and on the other hand, Ex.B2 showed that there was a patta transfer order and Ex.B3 showed that the patta was granted for the suit property in favour of the 2nd defendant. The Lower Appellate Court also took into consideration the tax receipts for the suit property marked as Ex.B4 which stood in the name of the 2nd defendant. Thus, the Lower Appellate Court found that the possession was also with the defendants.

15. There was no dispute with regard to the signature that was found in Ex.A1. The Lower Appellate Court on analyzing the evidence of PW1 found that there was a complete and formidable sale deed executed by the plaintiffs in favour of the 2nd defendant. These findings were rendered after appreciating the oral and documentary evidence that was available on record and this Court does not find any perversity in those findings. Hence, the 2nd Substantial question of law is answered against the appellants.

16. Insofar as the contention raised by the Learned counsel for appellants with regard to non fulfillment of the mandate under Order 41 Rule 31 is concerned, this Court finds that the Lower Appellate Court has given reasons as to why it is disagreeing with the findings of the Trial Court. While considering this issue, this Court should not adopt a hyper technical approach and what is required is to see if the Lower Appellate Court has complied with the requirements of Order 41 Rule 31 in substance. This Court is convinced that the Lower Appellate Court has fulfilled the requirements under Order 41 Rule 31 of CPC sufficiently. The 1st Substantial question of law is answered accordingly.



17. In view of the above discussion, this Court does not find any ground to interfere with the judgment and decree of the Lower Appellate Court in A.S.No.141 of 2010 and accordingly, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Principal Subordinate Judge,
Salem.

2. The 1st Additional District Munsif,
Salem.

Copy To:-
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Nalliyappan, Advocate Sr.12858
+1cc to Mr.P.Jagadeesan, Advocate Sr.12258

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