



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.12.2021

JUDGMENT DELIVERED ON : 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.NOS.359 OF 2012

AND

M.P.NO.1 OF 2012

Arjunan

...Appellant / Respondent /
Plaintiff

Vs.

Arunachalam

...Respondent / Appellant /
Defendant

PRAYER : This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 27.09.2011 made in A.S.No.40 of 2009 on the file of the Additional Sub Judge, Tindivanam, in reversing the judgment and decree, dated 27.07.2009 made in O.S.No.252 of 2006 on the file of the Additional District Munsif, Tindivanam.

For Appellant : Mr.P.Dinesh Kumar
for Mr.D.Ravi Chander

For Respondent : Mr.M.Rajeev Gandhi
for Mr.S.Kaithamalai Kumaran

JUDGMENT

The unsuccessful plaintiff is the appellant herein.

2. The plaintiff filed a suit for declaration of title and for Permanent Injunction in O.S.No.252 of 2006 on the file of the learned Additional District Munsif, Thindivanam and the same was decreed in favour of the plaintiff.

3. On appeal by the defendant in A.S.No.40 of 2009, the learned Additional Sub Judge, Thindivanam allowed the appeal and hence the Second Appeal.

4. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



5. The plaint proceeds on the basis that the plaintiff had purchased the suit property from the son of the defendant, namely, Perumal by a sale deed, dated 10.02.2006. However, he refused to come to the registration department for effecting registration despite the best efforts and hence the document was refused for registration on the ground of absence of the executor and hence the plaintiff preferred a departmental appeal and on appeal being allowed under Ex.A2-sale deed executed in favour of the plaintiff was registered on 28.06.2006. While being so, it is alleged that the sale deed said to have been registered on 13.02.2006 with date of execution being as 06.01.2006 and hence based upon Ex.B1-sale deed, the defendant claimed title to the property and trying to interfere with the possession and hence the suit.

6. The sum and substance of the written statement filed by the respondent/defendant is that the defendant is the father of the common vendor and the sale deed was executed on 06.01.2006 in the presence of DW2 and DW3 and the same was registered on 13.02.2006. PW2 is the attessor of Ex.A1 whereas DW2 is the attessor of Ex.B1.

7. The learned counsel for the appellant contended that the date of execution of Ex.A1-sale deed in favour of the plaintiff by the son of the defendant has been duly executed and his presentation has been spoken by PW1 and PW2 and also relied upon the admission made by DW1 in the cross-examination that at the time of the registration of Ex.B1-sale deed on 13.02.2006, he had enquired with the son as to why he has executed sale deed in favour of the father in the presence of a party, has also been admitted. The learned counsel for the appellant/plaintiff contended that after the due execution, it is presented for registration, however due to the non-cooperation of the son of the defendant-Perumal, the same could not be registered and hence the plaintiff, with due diligence, followed the provision of the Registration Act and seeks the statutory remedy provided under the Registration Act and got it registered on 28.06.2006.

8. It is a specific case of the appellant/plaintiff that after coming to know about the execution of Ex.A1 by the son of the defendant in favour of the plaintiff on 10.02.2006 besides to make it believe as it is genuinely executed, it is ante-dated as 06.01.2006 and relied upon the decision of the Hon'ble Supreme Court that admission is the best piece of evidence. Besides, the date of the execution as it is properly executed has been spoken to by DW2.

9. To draw my attention to the finding rendered by the trial Court and as well as the lower Appellate Court. The plaintiff



relying upon the Ex.A1-sale deed executed by the son of the defendant. The defendant relying upon the sale deed-Ex.B1 executed by his son(very same vendor). Ex.A1-sale deed, the date of execution is mentioned as 10.02.2006 and registered on 28.06.2006. Ex.B1-sale deed the date of execution is mentioned as 06.01.2006 and registered on 13.02.2006. The attesor of the Ex.A1 is PW2 while the attesor of Ex.B2 is DW2.

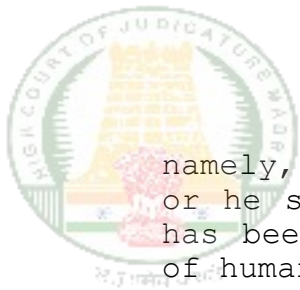
10.The defendant, namely, Arunachalam, is the father of Perumal, who is the admitted owner. Two sale deeds are before the Court. Ex.A1 executed by Perumal in favour of the plaintiff while Ex.B1 executed by Perumal in favour of the defendant(to his father). The date of execution and the date of registration of the documents are as stated supra.

11. On what date, the previous owner of the land had executed the sale deed, which the sale deed is prior in time is the point for consideration. Admittedly, the vendor of both the plaintiff and defendant being Perumal is not added as a party by the plaintiff.

12(a). The law governing the field is under Section 47 r/w 23 of the Registration Act, which in effect goes to show that when the date of execution and the date of registration are different, the document takes effect from the date of execution. Both the party wants to take the benefit of the said provision.

12(b). It is a specific case of the plaintiff that after knowing about the execution of Ex.A1-sale deed on 10.02.2006, the defendant being the father of the vendor, had ante-dated the document Ex.B1-sale deed as if it was executed on 06.01.2006 and presented for registration and got it registered on 13.02.2006. It is the further case of the plaintiff that he initially presented the document on 17.03.2006 and the same was returned for the absence of the executant of the document and the Sub Registrar refused to register and retuned on 18.04.2006 and hence he moved the statutory appeal provided under the Tamilnadu Registration Act and statutory appeal was allowed on 21.06.2008 and got the order in his favour under Ex.A2, thereafter got it registered on 28.06.2006.

13. As pointed out by the Mr.M.Rajeev Gandhi, learned counsel for the respondent, no document evidencing the presentation of the Ex.A1 on 17.03.2006 being presented before the Sub Registrar Office is filed before the Court. The document only shows it was presented on 18.04.2006, but not as stated by the plaintiff in the plaint. If Ex.A1 is executed on 10.02.2006 and he went to the registration and the vendor, namely, Perumal has not come for the registration, as a normal prudent man, either he could have issued a legal notice to the vendor,



namely, the executant of the document to come for registration or he should have given a complaint. Admittedly, no such action has been taken by the plaintiff, it reflects the normal conduct of human being in the above stated situation.

WEB COPY

14. No doubt through that Ex.B2 is a sale deed executed by the son in favour of the father. Execution of both the document have been clearly spoken to by PW2 and DW2 respectively. As stated supra, the vendor, namely, Perumal was not impleaded as a party. On the factual position, I find that non-impleading of the vendor of the property, namely, Perumal is fatal to the suit. As per the records available before the trial Court, only after 1 ½ months from the date of execution(10.02.2006), the document Ex.A1 was said to have been presented before the Sub Registrar. There is no valid explanation as to why he has not issued any legal notice calling upon the vendor, namely, Perumal to come and cooperate for registration. There is no valid explanation from PW1 as to whether he has approached the said Perumal for completion of the sale deed and formalities thereto. On close perusal of Ex.B1, it appears that the stamp papers were purchased on 06.01.2006 and execution was completed on the same day and was presented for registration on 13.02.2006. It appears that on completion of the registration of Ex.B1-sale deed, thereafter only, Ex.A1 was presented on 17.03.2006 itself assumes significance. Learned counsel for the appellant/plaintiff to rely upon the answer elicited from the cross-examination of PW1 that at the time of the registration of Ex.B1, though the vendor of the parties, namely, Perumal, son of the defendant was present in the Sub Registrar office, there was no exchange of communication between the father and son namely, vendor and the defendant. On the said date of presentation, namely, 13.02.2006, PW2 knew the execution of the sale deed. However, the said fact alone will not come to the rescue of the plaintiff for more than one reason. Had Perumal-the vendor, party to the proceedings, ought to have cross-examined by either of the parties, it could have thrown light. Admittedly, Perumal was not impleaded as a party defendant. None of the party has called upon Perumal to give evidence on their behalf and hence in the absence of Perumal being added a party defendant and when no notice was given or issued by the plaintiff to calling upon the said Perumal-vendor to come and cooperate for the registration formalities, in the absence of any explanation for the delay representation, I find that the reasons assigned by the defendant is more probable. Besides in the absence of no evidence on the side of the plaintiff as to the plea of presentation of the Ex.A1 on the very same day and as per the endorsement, it was only on 18.04.2006, Ex.A1 was presented for registration before the registering authority, which is much after 13.02.2006-the date of registration of Ex.B1.

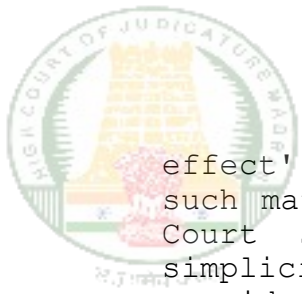


15. DW1 in the cross-examination admitted that the plaintiff's property is on the other side of the suit property and the plaintiff has to go through the suit property to reach his land and it was according to DW1, Ex.A1 is a manipulated sale deed after the purchase. It remains to be stated that the reason assigned by the plaintiff for presentation of Ex.A1 on 17.03.2016, ie., after Ex.B1 was registered on 13.02.2006 is not found to be convincing. No independent witnesses were examined to substantiate the alleged reason stated by the plaintiff assumes significance and held against the plaintiff. Regarding the answer of DW1, I find that the same is to infirm to hold against the defendant. PW1 in the cross-examination admitted that within 20 days of his execution of the sale deed in his favour, he came to know about the registration of the Ex.B1. When such being the case, according to the plaintiff's version, any normal prudent man could have given any police complaint for having departed with the alleged sale consideration as Ex.A1 for a sum of Rs.10,000/-. No legal notice was also issued in complaining thereto caused serious doubt about the conduct of the plaintiff. Non-issuance of any legal notice nor any police complaint by the plaintiff against his vendor and non-impleading of the vendor as a party defendant though not singly, but on cumulative of all the three coupled with the fact that the vendor Perumal was very much alive during the registration of Ex.B1-sale deed, which was duly admitted by PW1 besides DW2 and DW3 as it is seen from the endorsement made in Ex.B1 also duly corroborates the presence of the vendor at the time registration of Ex.B1 and hence I find that a snap answer elicited in the cross-examination of PW1 will not come to the rescue of the plaintiff.

16. Hence I find that on the proved circumstance, in the manner known to law, it appears that the plaintiff has come forward with a case taking into the clue of the Registration Act that the Registration Act gives an option to a party to register a document within four months from the date of execution. However, the same cannot be an isolated ground to hold in favour of one of the party. The attentive circumstances by way of evidence adduced before the Court has been taken into in the manner as discussed supra.

17. In view of the clear and cogent evidence by the defendant and also as to the factum of the non-compliance of the various factors as indicated on behalf of the plaintiff, I find that the finding rendered by the lower Appellate Court, for different reasoning, as stated supra, is hereby confirmed.

18. I find that the provision under Section 47 r/w 23 of the Indian Registration Act is one of the most misused provision by the general public. In the said Section 'retrospective



effect' has been given, once registration is taken place. When such matters have been dealt with by the lower Court, the lower Court shall not simply go by retrospective operations in simpliciter, as stated in the said Section, but however has to consider all the attentive circumstances as to the purchase of stamp paper and the evidence of description, if any, presence of the executant and whether the executant, namely, seller is a party defendant in the suit. Only on a cumulative analysis of the all attentive circumstances, decision is to be rendered not by general presumption as stated by the provision alone. In the instant case, whether the executant of Ex.A1 admits execution or not and Ex.A1-sale deed is genuine or not could not be determined by the Court in view of the non-impleading of the vendor namely, the executant of Ex.A1. For the reasons best known the respondent/plaintiff has not chosen to implead him as a party, who could be the better position and the competent witness to speak about the said document.

19. Yet another point is that there is absolutely no evidence on record to show that the document has been presented on the said date as stated in the plaint. As discussed supra, only after the presentation and registration of Ex.B1, the said Ex.A1 was presented for registration before the concerned Sub Registrar, who had refused to register for the absence of the executant and only after appeal, the same was registered and hence I find that in view of the deficiency in the pleadings, it caused serious doubt and hence the Court below has rightly caused the burden of the proof on the plaintiff to prove the attentive circumstances as elucidated by this Court in the preceding paragraphs and hence on appreciation of evidence by the lower Appellate Court, is just and proper, this Court come to the conclusion that the plaintiff has not discharged the burden of proof and merely relied upon the said section in the Registration Act, which has been discussed in detail as supra, accordingly, the finding of the lower Appellate Court is hereby confirmed.

20. In the result, this Second Appeal is dismissed, by confirming the Judgment and Decree, dated 27.09.2011 passed in A.S.No.40 of 2009, by the learned Additional Subordinate Judge, Tindivanam and the Judgment and Decree, dated 27.07.2009 passed in O.S.No.252 of 2006 by the learned Additional District Munsif, Tindivanam, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

PJL



To

1.The Additional Subordinate Judge,
Tindivanam.

2.The Additional District Munsif,
Tindivanam.

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

+1cc to Mr.D.Ravichander, Advocate Sr.No.13247

S.A.No.359 of 2012

AJB (CO)
RVM(12/05/2022)