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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.Nos.577 & 578 of 2012

and

M.P.No.1 of 2012

S.A.No.577 of 2012

1. K. Mani (Died)

(As per the memo recorded on 14.03.2022)

2. S.Sreelatha

3. R. Sakarias

...Defendants/Appellants/Appellants

Vs

Jayachandran

...Plaintiff/Respondent/Respondent

S.A.No.578 of 2012

S. Sreelatha

...Plaintiff/Appellant/Appellant

Vs

Jayachandran

...Defendants/Respondent/Respondent

PRAYER in S.A.No.577 of 2012 : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 27.02.2012 in A.S.No.48 of 2010 on the file of the Principal District Judge, Cuddalore and confirming the Judgment and Decree dated 30.04.2010 in O.S.No.72 of 2004 on the file of the II Additional Subordinate Judge, Cuddalore.

PRAYER in S.A.No.578 of 2012 : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 27.02.2012 in A.S.No.28 of 2011 on the file of the Principal District Judge, Cuddalore and confirming the Judgment and Decree dated 30.04.2010 in O.S.No.59 of 2007 on the file of the II Additional Subordinate Judge, Cuddalore.



For Appellants in both appeals : Ms.K.Jenitha
For Respondent in both appeals : Mr.T.S.Baskaran

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JUDGMENT

The issue involved in both the second appeals are common and hence they are taken up together, heard and disposed of through this common judgment.

2. The defendants are the appellants in S.A.No.577 of 2012 and the plaintiff is the appellant in S.A.No. 578 of 2012. For proper understanding, the rank of the parties will be identified as they are described in O.S.No.72 of 2004 which is the subject matter in S.A.No.577 of 2012. The appellant in S.A.No.578 of 2012 will be addressed as the subsequent purchaser of the suit property.

3. The case of the plaintiff is that the suit property absolutely belongs to the first defendant. The plaintiff approached the first defendant and offered to purchase the suit property. Thereby they entered into an agreement of sale on 31.12.2003, marked as Ex.A1. As per this agreement, the total sale consideration was fixed as Rs.2,60,000/- and out of the said sale consideration, Rs.1,00,000/- which was already received by the father and mother of the first defendant through a registered mortgage deed dated 25.02.2000, marked as Ex.A2, was adjusted and as on the date of agreement, the plaintiff paid a sum of Rs.1,01,000/- to the first defendant. Thereby on the date of agreement, a sum of Rs.2,01,000/- was already fulfilled out of the total sale consideration, and the balance of Rs.59,000/- was agreed to be paid by the plaintiff to the first defendant within a period of three months from the date of agreement. The further case of the plaintiff is that on 23.02.2004, he approached the first defendant and expressed his willingness to conclude the contract by paying the balance sale consideration of Rs.59,000/-. It is stated that the defendant was giving evasive reply and he was not ready and willing to fulfil his part of the contract. Hence a pre-suit notice came to be issued on 28.02.2004 to the defendant, marked as Ex.A4. Parallely notice was issued by the first defendant on 06.03.2004 and the same was marked as Ex.A5. For the legal notice issued by the plaintiff, the first defendant issued a reply dated 27.02.2004 which was marked as Ex.A6. For the legal notice that was issued by the first defendant, a reply notice was issued by the plaintiff on 04.03.2004 and the same was marked as Ex.A7. The plaintiff, left with no other option, filed the



suit for specific performance. Subsequent to the filing of the suit, the second and third defendants purchased the property from the first defendant through Exs.B5 and B16. Hence they were impleaded as parties in the suit.

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4. The first defendant filed a written statement in the suit and took a stand that the suit property and along with larger extent of property, totally measuring 42 cents, was purchased by the first defendant and his father through a registered sale deed dated 31.10.1981, marked as Ex.A3. During his life time, the first defendant's father and the first defendant jointly executed a sale deed for an extent of 15 cents in favour of the plaintiff. That apart, the father of the first defendant sold 9 cents out of the remaining 27 cents in favour of his daughter-in-law on 16.12.1999. According to the first defendant, what was left to the father of the first defendant, after disposing of his share, was only 4 ½ cents. It is stated that the first defendant was entitled for 13 ½ cents in the suit property.

5. The first defendant took a further stand that the plaintiff obtained a mortgage deed from the father and mother of the first defendant on 25.05.2000 under undue influence for the entire property. According to the first defendant, if at all there was a mortgage, the father and mother could have mortgaged only 4 ½ cents and they could not have mortgaged 27 cents covered under the mortgage deed. Therefore, the first defendant questioned the very validity of the mortgage deed, which was marked as Ex.A2. The first defendant also stated that he has not executed any sale agreement nor as he received any cash from the plaintiff, as claimed by the plaintiff. The first defendant further stated that he had executed a power of attorney in favour of one Selva Natarajan and one Balaraman for his entire properties. Even though this fact was known to the plaintiff, the plaintiff has concocted a sale agreement and is claiming for a relief for which he was not entitled. Thus the first defendant sought for the dismissal of the suit.

6. The second and third defendants filed an independent written statement and they took a stand that they are bonafide purchasers for value and they have become the owners of the suit property by virtue of Exs.B5 and B16 and the plaintiff is not entitled for the relief sought for in the suit.

7. One of the subsequent purchaser, who was the second defendant in the suit, independently filed a suit seeking for the relief of permanent injunction on the ground that she is in



possession and enjoyment of the suit property and that the plaintiff is attempting to trespass into the property.

8. The suit filed by the second defendant was transferred to the file of the II Additional Sub Court, Cuddalore and was renumbered as O.S.No.59 of 2007 and it was tried along with the suit filed by the plaintiff in O.S.No.72 of 2004.

9. The Trial Court, on appreciating the oral and documentary evidence and after considering the facts of the case, was pleased to pass a Judgment and Decree on 30.04.2010, whereby O.S.No.72 of 2004 was decreed and O.S.No.59 of 2007 was dismissed. Aggrieved by the same, the defendants filed A.S.No.48 of 2010 and the plaintiff in O.S.No.59 of 2007 filed A.S.No.28 of 2011. Both the appeals are taken up together by the Principal District Judge, Cuddalore and through a common Judgment and Decree dated 27.02.2012, both the appeals were dismissed and the Judgment and Decree of the Trial Court was upheld. Aggrieved by the same, both the second appeals have been filed before this Court.

10. Heard, Ms.K.Jenitha, the learned counsel for the appellants and Mr.T.S.Baskaran, the learned counsel for the respondents. This Court carefully perused the materials available on record and the findings of both the Courts below.

11. The first defendant has questioned the validity of both the mortgage deed that was marked as Ex.A2 as well as the tenability of the sale agreement that was marked as Ex.A1. Both the Courts below found that the mortgage deed, which is a registered document, was never put to challenge and hence it could not be questioned till the document remains in force. Hence a portion of the sale consideration, which was adjusted from the amount that was given as loan by the plaintiff to the parents of the first defendant, was accepted by both the Courts below. Insofar as the sale agreement is concerned, the first defendant has taken a stand to the effect that the plaintiff has obtained the signature as well the thumb impression in blank papers and has misused the same and the mortgage deed and sale agreement, according to the first defendant are concocted documents. The best evidence that could have been let in to establish this stand taken by the first defendant is that the first defendant should have got into the box and explained the circumstances under which such signature and thumb impression was taken from him by the plaintiff. Unfortunately, the first defendant has not got into the box and both the Courts below



have rightly taken adverse inference against the first defendant. In view of the same, except for the ipse dixit of the first defendant, there was absolutely no proof to show that the sale agreement marked as Ex.A1 is a concocted document.

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12. Both the Courts below found that out of the total sale consideration of Rs.2,60,000/-, a sum of Rs.2,01,000/- was accounted for even on the date of agreement and for the remaining consideration of Rs.59,000/-, the plaintiff has taken a stand that she was ready and willing to pay this amount as on 23.02.2004 itself, which was well within the time fixed under the agreement and hence both the Courts below concurrently held in favour of the plaintiff with regard to the issue of readiness and willingness on the part of the plaintiff to perform her part of the contract.

13. Insofar as the stand taken by the second and third defendants to the effect that they are bonafide purchasers for value and hence the sale agreement cannot be put against them, both the Courts below found that there was a mortgage deed, which was a registered document and which covered the entire property. When this document is reflected in the encumbrance certificate, as bonafide purchasers, the second and third defendants ought to have enquired and checked upon the encumbrance before the property was purchased. If this minimum requirement has not been fulfilled by the second and third defendants, they can never claim to be bonafide purchasers for value. The findings of both the Courts below on this issue also does not suffer from any perversity.

14. The learned counsel for the appellant brought to the notice of this Court the fact that the plaintiff had purchased 1/4th share of first defendant's mother through a registered sale deed on 11.03.2005 and this was not revealed before the Courts below. In the considered view of this Court, the said document will not have any bearing in the present case since the suit pertains to the agreement that is said to have been executed by the first defendant for an extent of 17 cents and for the enforcement of the same. The mother of the first defendant selling her share in the property may not have any bearing while deciding the suit.

15. In the considered view of this Court, the findings of both the Courts below are based on assessment/marshalling of the oral and documentary evidence that was available on record. This Court does not find any perversity in those findings and hence does not warrant any interference of this Court in the



second appeal. In any event, no substantial questions of law are involved in both the second appeals. Insofar as the possession of the property is concerned, sufficient safeguard is given in the judgment of the Appellate Court at Paragraph No.15 of the judgment and it has been stated that the appellant in A.S.No.28 of 2011 will be evicted from the property only after following due process of law.

16. In the result, both the second appeals are dismissed. Consequently, connected miscellaneous petition is closed. Considering the facts and circumstances of the case, there will be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Judge, Cuddalore.

2.The II Additional Subordinate Judge, Cuddalore.

+1 CC Mr.A. Malathi Devaperiyam, Advocate sr 17848

+2 Ccs to Mr.T.S.Baskaran, Advocate sr 17204.

S.A.No.577 & 578 of 2012
and
M.P.No. 1 of 2012

AD(CO)
SP(20/04/2022)