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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.628 OF 2015

AND

M.P.NO.1 OF 2015

K.Shanthi

...Appellant/Defendant

Vs.

1.K.Guru @ Gurumurthy

2.Manjula

... Respondents/Plaintiffs

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree of the learned IInd Additional Judge, City Civil Court, Chennai made in A.S.No.502 of 2011 dated 17.12.2014 in confirming the judgment and decree of the learned XIII Assistant Judge, City Civil Court, Chennai made in O.S.No.1419 of 2003 dated 13.07.2011.

For Appellant : Mr.N.S.Sivakumar

For Respondents : Mr.N.Umapathi

JUDGMENT

The defendant is the appellant in the Second Appeal.

2.The respondents/plaintiffs filed a suit seeking for a declaration to declare the cancellation deeds executed by the defendants as null and void and not binding on the plaintiffs and for a permanent injunction restraining the defendant from interfering with the possession and enjoyment of the property.

3.The case of the plaintiffs is that the defendant was the owner of a plot in Plot No.225 which was allotted by the Tamil Nadu Slum Clearance Board with an extent of 600 Sq. ft.



Thereafter, the Sale Deed was also executed in the favour of the defendant on 31.08.1995. There were three shops that were constructed in the property and two of the shops were leased to the plaintiffs in the year 1994.

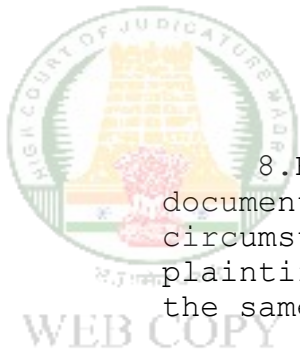
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4.The further case of the plaintiffs is that the defendant offered to sell the two shops and this offer was also accepted by the plaintiffs. Accordingly, registered Sale Deeds dated 06.03.2000, marked as Exs. A2 and A3 were executed by the defendant in favour of the plaintiffs after receiving the sale consideration.

5.The grievance of the plaintiffs is that later they came to know that the defendant through Cancellation Deeds dated 28.07.2000 and 01.08.2000, marked as Exs. A4 and A5 had cancelled the Sale Deeds unilaterally. Consequently, the plaintiffs filed the suit against the defendant seeking for the relief mentioned supra.

6.The defendant filed the written statement and took a stand that they were in need of money for the medical treatment of the defendant's son and hence, the husband of the defendant approached the 1st plaintiff to arrange for financial assistance. Accordingly, a sum of Rs.1,50,000/- was borrowed and promissory note was also executed by the husband of the defendant. It is the further case of the defendant that the 1st plaintiff insisted the defendant through her husband to execute two sale deeds by way of security for the due repayment of the loan amount with interest. According to the defendant, there was no intention to sell the suit property and no sale consideration passed on. The document was executed with a clear understanding that after the loan amount is settled, the property will be re-conveyed by the plaintiffs to the defendant.

7.It is stated that the entire loan amount was repaid with interest on 15.07.2000. After the discharge of the loan, the husband of the defendant approached the plaintiffs and sought for the re-conveyance of the property. It was evaded and consequently the defendant proceeded to cancel the Sale Deeds. The defendant has taken a stand that the Sale Deed was never acted upon and she continued to be in possession and enjoyment of the property by was paying the Corporation tax and other statutory charges. That apart, the plaintiffs continue to be the tenant in the property and they stopped paying the rents and committed willful default in payment of the rents. In view of the same, the defendant has given justification for the cancellation of the Sale Deeds and has sought for the dismissal of the suit.



8.Both the Courts below after considering the oral and documentary evidence and on considering the facts and circumstances of the case, concurrently held in favour of the plaintiffs and the suit was decreed as prayed for. Aggrieved by the same, the defendant has filed this Second Appeal.

9.When the Second Appeal was admitted, the following substantial questions of law were framed:

(a) Having regard to scope and ambit of Section 54 of the Transfer of Property Act and read with Sections 91 and 92 of the Indian Evidence Act and having regard to facts and circumstances of the present case, whether in law, the Ex.A2 and Ex.A3 so called deeds are intended to be acted upon and are not sham and nominal documents since the same are came into existence only for security towards the loan transactions and that no consideration was passed on and as such the judgment and decree of the Courts below is sustainable in eye of law?

(b)Under the provisions of Specific Relief Act, whether in law mere introduction of relief of declaration by way of amendment of plaint, merely to declare the cancellation of sale deeds under Ex.A4 & A5 alone is sufficient to maintain the suit in the absence of efficacious relief of declaration of the plaintiffs title itself?

(c) Whether in law and in the light of Sections 17 & 58 of Indian Evidence Act in particular, the vital admission of PW1 with regard to material particulars such as loan transaction, no wherewithal for sale consideration, mode of alleged payment, purchase of stamp paper by defendant's husband, possession of original title deeds by the defendant and etc..., are not fatal and going against very root of the plaintiffs own case and hence the judgments under appeal ignoring such vital admission is countenanced in law and on facts?

10.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

11.This Court carefully went through the pleadings and also the findings rendered by both the Courts below based on the evidence available on record.

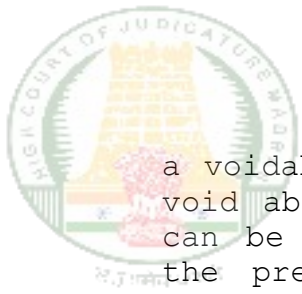


12. In the present case, there is no dispute with regard to the fact that the defendant was originally the owner of the suit property. There is also no dispute with regard to the fact that the plaintiffs were tenants in two of the shops constructed by the defendant. It is further not disputed that the defendant was in need of money to attend to a medical emergency of her son and accordingly had borrowed a sum of Rs.1,50,000/- from and through the plaintiffs. The stand taken by the defendant is that the Sale Deeds were executed by way of security to ensure the repayment of the loan with interest and with a specific understanding that the property will be re-conveyed after the entire loan is settled. Whereas, the plaintiffs have taken a stand to the effect that the Sale Deed was executed consciously by the defendant and the sale consideration also passed on to the defendant. Therefore, according to the plaintiffs, the defendant ought not to have unilaterally canceled the Sale Deed through Exs. A4 and A5.

13. Both the Courts below found that the unilateral cancellation of the Sale Deeds were illegal and it does not have the backing of law. In view of the same, both the Courts concurrently held that the plaintiffs are entitled for the relief of declaration to declare the Cancellation Deeds as null and void and non est in the eye of law. Such finding given by the Courts below has the backing of the Full Bench judgment of this Court in *Latif Estate Line India vs. Hadeeja Ammal and others* reported in 2011 2 CTC 1. This Full Bench judgment has been subsequently followed consistently and it has been categorically held that unilateral cancellation of a Sale Deeds is impermissible and a Sale Deed can be canceled only by way of filing a suit.

14. Whatever may be the justification on the side of the defendant to cancel the Sale Deeds, the same can never be done unilaterally and defendant ought to have approached the Court of law and sought for the cancellation of the Sale Deeds. Hence, this Court does not find any ground to interfere with the findings of both the Courts below in this regard.

15. In the present case, if the defendant had filed a counter claim or a cross suit and had challenged the validity of Exs. A2 & A3, there will be scope to go into the validity of these documents. The defendant is challenging these documents on the ground that it was given only by way of a security and no consideration passed on from the plaintiffs. Unfortunately, there is no scope to go into the validity of these Sale Deeds, since they have not been put to challenge by the defendant. Even if the stand taken by the defendant is taken as it is, at the best, the execution of Exs. A2 and A3 can be categorized only as



a voidable transaction. It is only in cases where a document is void ab initio, a party need not seek for a declaration and it can be disregarded even in collateral proceedings. However, in the present case, the defendant takes a stand that no sale consideration passed on from the plaintiffs. This is a subject matter of evidence and it can only be independently gone into if the sale deeds are put to challenge before the Court of law. Unfortunately, the defendant did not even challenge the Sale Deeds by filing a counter claim at least after the plaintiffs filed the present suit. Therefore, it is a case of missed opportunity for the defendant which cannot be repaired at this point of time.

16. In view of the above, this Court cannot at the stage of Second Appeal now go into the validity of Exs. A2 & A3 which are claimed to be sham and nominal documents by the defendant, since these documents were never put to challenge. The first substantial question of law is answered accordingly.

17. The title of the plaintiffs is derived from Exs. A2 and A3. These documents have not been challenged and it remains intact. In view of the same, it was enough for the plaintiffs to challenge the cancellation of the Sale Deeds and they need not seek for declaration of title. The second substantial question of law is answered accordingly.

18. Insofar as the third substantial question of law is concerned, the reasons that have been assigned for answering the first substantial question of law will equally apply. At the risk of repetition, it must be once again stated that the present case does not pertain to the validity of Exs. A2 and A3 and it pertained to only the validity of the unilateral cancellation of Sale Deeds through Exs. A4 and A5. While undertaking this exercise, Exs. A2 and A3 cannot be set aside or held to be illegal, since the defendant has not come forward with such a relief. If both the Courts below had gone in to the validity of Exs. A2 & A3 in the suit filed by the plaintiffs, they would have traveled beyond the scope of this suit. Hence, both the Courts below were right in confining the discussion with regard to the validity of the Cancellation Deeds, marked as Exs. A4 and A5. In any case, both the Courts below have also satisfied themselves with respect to the genuineness of the Sale Deeds, marked as Exs. A2 and A3. The third substantial question of law is answered accordingly.

19. The upshot of the above discussion, leads to the only conclusion that there are no grounds to interfere with the judgments of both the Courts below. Both the Courts below have rendered their findings based on the evidence available on



record. All the substantial questions of law are answered against the appellant.

20. In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

ssr

To

1. The II Additional Judge,
City Civil Court, Chennai.
2. The XIII Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.N.S.Sivakumar, Advocate, S.R.No.14558

+1cc to M/s.N.Umapathi, Advocate, S.R.No.14566

S.A.No.628 of 2015
and M.P.No.1 of 2015

KK(CO)
RLP(04/04/2022)