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S.A.Nos.529 & 530 of 2013
and M.P.No.1 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE **T.V.THAMILSELVI**

S.A.Nos.529 & 530 of 2013

and

M.P.No.1 of 2013

Smt.Indira Kanagaraj

...Appellant in both appeals

Vs.

1.Smt.Parvatham

... Respondent in S.A.No.529/2013

1.Smt.Parvatham

2.K.S.Shanmugam

3.C.Selvaraj

... Respondents in S.A.No.530/2013

Common Prayer : Second Appeals filed under Section 100 CPC, 1908 against the decree and judgment dated 17.11.2012 passed in A.S. Nos.47 & 49 of 2011, on the file of the IV Additional District and Sessions Court, Coimbatore, upholding the decree and judgment dated 01.03.2011 passed in O.S. Nos.304 & 110 of 1997, on the file of the I Additional Subordinate Court, Coimbatore.



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In both appeals :

For Appellant : Mr.L.Mouli
For Respondents : Mr.V.G.Sureshkumar

COMMON JUDGMENT

The appellant herein is the defendant in O.S.No.304 of 1997 on the file of the I Additional Subordinate Court, Coimbatore, filed by the respondent/plaintiff herein for the recovery of possession and damages with regard to 'B' schedule suit property with an extent of 253 sq.ft. with calicut tiled structure (Door No.4C, Kurichi Village, Coimbatore). On considering both oral and documentary evidence the trial Court decreed the suit in favour of the plaintiff as she prayed for.

2. The defendant herein has already filed a suit in O.S.No.110 of 1997 against the plaintiff, praying to cancel the sale deed dated 05.08.1996 stands in the name of this plaintiff. Both the suits are tried separately and ended against this defendant.



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3. Aggrieved over the findings of the trial Court in both the suits, the defendant preferred the appeals in A.S.No.47 of 2011 and 49 of 2011 before the IV Additional District and Sessions Court, Coimbatore.

4. The learned Appellate Judge on considering the fact that the parties and suit properties are one and same in both the suits, taken up both the suits together and disposed of by way of common judgment. Accordingly, both the appeals filed by the defendant dismissed by confirming the trial Court findings.

5. Challenging the said findings of the lower appellate Court, the defendant preferred the present appeals with regard to the findings rendered in A.S.No.47 of 2011 arising out of the suit in O.S.No.304 of 1997.

6. For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their ranking in



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the present appeal would also be indicated.

7.The case of the plaintiff in nutshell is as follows:

The suit 'B' schedule property with an extent of 253 sq.ft. with calicut tiled structure in Kurichi Village, Coimbatore, originally belongs to the defendant / Indira Kanagaraj along with others. This is admitted fact. According to the plaintiff, the defendant residing in her locality and they known each other, while so, the defendant approached her in the year of 1996 and informed that due to unforeseen circumstances she incurred the debts and to maintain her two sons aged about 23 & 21 years she is in need of money, hence, she persuaded the plaintiff to purchase the suit properties. Accordingly, the plaintiff entered into an agreement of sale with her on 08.07.1996 for a sum of Rs.1,00,000/- to purchase the properties belonged to the defendant through a sale deed dated 21.08.1991 as described in the 'A' schedule property and on the same date, she paid a sum of Rs.60,000/- as advance and possession was also delivered to her. Her two sons attested the agreement. One year period was agreed between



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the parties to perform their parts, i.e. to pay the balance sale consideration by the plaintiff and to execute the sale deed after receipt of the balance sale consideration by the defendant. The defendant also informed that the original documents of the property is in the hands of one Ponnammal and promised to get the documents before the registration. On 05.08.1996, the balance amount was paid by the plaintiff. However, at that time, the defendant demanded another sum of Rs.15,000/- as additional consideration and the same was also paid and made an endorsement to that effect on the back side of the sale deed. Already 'A' schedule property was under the possession of the defendant, but a month later the plaintiff approached her and requested to permit her to reside in the portion of the 'A' schedule property ('B' schedule property herein) but failed to handover to the original title deed. Though at the instigation of one Chellammal, the defendant refused to handover the original document as well as, she filed a suit in O.S.No.110 of 1997 for the cancellation of the sale deed for unsustainable grounds and due to said misunderstanding, the plaintiff advised the defendant to evict from 'B' schedule property but she refused,



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hence, she filed the suit.

8.The defendant admits that she was the owner of the 'A' schedule property herein but denied the execution of the sale deed as stated by the plaintiff. She submits that as she was left by her husband and the plaintiff used to lend money whenever she is in need of the same and she used to repay the borrowed amounts then and there. After purchase of the property in the year of 1991, she was in peaceful possession and enjoyment, but for the family needs, she entered into the sale agreement with one Selvaraj when the family incurred debts, the plaintiff advised to enter into sale agreement with her in respect of a portion and they agreed to settle a sum of Rs.70,000/- to one Selvaraj and others, hence, she entered into the sale agreement. Subsequently, she promised to pay another sum of Rs.1,00,000/-, so they went to Registrar Office to register the sale agreement. After receiving the notice from the plaintiff, she came



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to know that the sale deed executed in favour of her fraudulently, hence, sale deed dated 05.08.1996 is void and no title is preferred, hence, she filed suit in O.S.No.110 of 1997 to cancel the sale deed thereby she totally denied the execution of the sale deed in favour of the plaintiff as well as permissive possession as contended by the plaintiff.

9.While deciding the suit in O.S.No.304 of 1997, the trial Judge framed four issues and on considering the evidence and rival submissions on both sides, the trial Judge concluded that both the sale agreement and sale deed (Ex.A1 & Ex.A2) are executed by the defendant with her full knowledge and accordingly, as per that the plaintiff is the owner of the property and in respect of 'B' schedule property, the permission granted to her was cancelled by the plaintiff thereby directing the defendant to vacate the premises within two months by decreeing the suit. The suit filed by the defendant to cancel the sale deed in O.S.No.110 of 1997 also dismissed as she has not proved her claim. Against which, A.S.Nos.47 & 49 of 2011 appeals were preferred by the defendant, in which the Lower Appellate



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Judge independently analyzed the facts and circumstances and delivered the common judgment by dismissing the appeals, confirming the trial Court findings. Hence, these appeals.

10.The Second Appeals are admitted on the following substantial questions of law.

S.A.No.529 of 2013:

- 1) "Whether the Courts below is correct in holding that for the purpose of invoking the provisions of Rent Control Act, the relationship between the parties must be admitted?
- 2) Whether the Courts below erred in holding that suit is maintainable by dis-regarding the evidence of P.W.1 who had pleaded the appellant is a tenant?
- 3) Whether the Courts below erred in holding that the respondent is entitled for the recovery of possession after recording finding that the nature of possession has not been properly established?"

S.A.No.530 of 2013:

- 1) "Whether the Courts below erred in holding that the



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sale deed dated 05.08.1996 is a valid document without considering admissible evidence on record?

- 2) Whether the Courts below in correct in holding that the appellant has failed to prove the doctrine of non-est factum by misconstruing the evidence on record?
- 3) Whether the Courts below erred in findings in holding that the conduct of the appellant looks bonafideness without any evidence on record?"

Issue No.1 : Whether the Courts below is correct in holding that for the purpose of invoking the provisions of Rent Control Act, the relationship between the parties must be admitted?

Issue No.2 : Whether the Courts below erred in holding that suit is maintainable by dis-regarding the evidence of P.W.1 who had pleaded the appellant is a tenant? in S.A.No.529 of 2013

11.Learned counsel for the appellant argued that the Courts below failed to appreciate the defence taken by the husband of the respondent that there is a relationship of landlord and tenant between the parties but respondent filed the suit for recovery of possession as such as



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is not maintainable but without appreciating this legal aspect, the learned Appellate Judge erroneously confirmed the findings of the trial Court directing the defendant to vacate the premise as untenable and prays this Court to set aside the findings as illegal and unwarranted one.

12. But the facts reveal that originally the suit property belongs to the defendant and same was purchased by the plaintiff, therefore sale deed marked as Ex.A2 through which the plaintiff claimed absolute right over the property and in turn in respect of 'B' schedule property the plaintiff contended that at the request of the defendant she permitted her to occupy the said portion for a monthly rent and subsequently, she failed to pay the rent, hence she canceled the permission and directed her to vacate the premises. The defendant totally denied the said permissive occupation as well as the payment of rent in her written statement and even during the evidence also, she has not accepted her relation with the plaintiff as landlord and tenant. But taking advantage of the evidence given by the husband of the plaintiff that her occupation is only as tenant, now the defendant took new defence that the rent control proceedings alone could



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be initiated against her instead of that the suit as such filed by this plaintiff is not maintainable. But as rightly pointed out by the plaintiffs' counsel that she neither admitted the permissive occupation nor she enjoyed the property as tenant. On the other hand, she claimed her occupation in the suit property is on her own right and ownership and the same is pleaded in Para 9 mentioned in her written statement, hence, to invoke the Rent Control Act, the defendant must accept the plaintiff as her landlord but she failed to do so. Hence, the Courts below rightly observed that to invoke the rent control proceedings, there must be a jural relationship of the landlord and tenant between the parties when the defendant failed to prove the same she is not entitled to invoke the rent control proceedings and this legal aspect is rightly appreciated by the Courts below which does not require interference. Accordingly, substantial questions of law 1 & 2 are answered in S.A.No.529 of 2013.

Issue No.3: Whether the Courts below erred in holding that the respondent is entitled for the recovery of possession after recording a finding that the nature of possession has not been properly established?

13.The learned counsel for the defendant further contended that



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the plaintiff approached the Court for recovery of possession, but not properly established how she inducted the defendant into the 'B' schedule property in permissive occupation? But both the Courts below failed to appreciate this aspect and granted the relief in their favour is unsustainable one. By way of reply, the learned counsel for the respondent submits that before execution of the sale deed the sale agreement was executed between the parties and after one month the sale deed was executed and possession also handover, to that effect the recitals also mentioned in sale deed / Ex.A1 was follows :

"d;Nw mbapy; ,Uf;Fk; nrhj;ij cq;fSf;F fpuaKk; J;thjPdKk;
nra;JnfhLj;Js;Nshk;"

So as per the recital of the sale deed, possession was handover on the date of the execution of the sale deed / Ex.A1. The defendant now contended that as absolute owner she is in possession and enjoyment of the entire 'A' schedule property. Under Section 92 of the Indian Evidence Act, a party to a document who admits the same, not permitted to give evidence contrary to the written recitals unless contrary is established. To that effect, the ratio laid down in (2009) 8 MLJ -337 - RajeshwariAmmal Vs Arunachalam and others - "Sale - setting aside - Fraud and misrepresentation alleged - pleading not



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been amended - very specific case of the parties is that the document executed is a sale deed when a Court comes to the conclusion based upon the materials available on record. A decree can be passed on that basis - when a party alleges undue influence and fraud, the onus is on the party to prove the same - admission by the plaintiff that she has received the amount as mentioned in sale deed - plaintiff has not discharged the onus to prove fraud, misrepresentation and influence by the defendants - sale not liable to be set aside - Appeal dismissed." The said authority supports the case of the plaintiff.

"Moreover an admission made by the party is the best form of evidence."

Thus the law does not permit the defendant to adduce contrary evidence against the written recital of the document and the same is rightly appreciated by the Courts below which caused no interference. Though the plaintiff not specifically stated when she permitted the defendant to occupy the portion of the property, but in the sale deed it clearly proves that the possession was taken by the plaintiff on the date of sale deed itself. Thereafter, the defendant was inducted in possession and the same is rightly



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appreciated by the Courts below which caused no interference by this Court.

Accordingly, issue no.3 is answered in S.A.No.529 of 2013.

14.S.A.No.530 of 2013 filed against the findings rendered in O.S.No.110 of 1997 and the substantial questions of law to be decided is whether the Courts below erred in holding that the sale deed dated 05.08.1996 is a valid document without considering admissible evidence on record? The learned counsel for the appellant/defendant submits that the plaintiff fraudulently obtained the sale deed from her on 05.08.1996 at the time her sons who signed as witness in the sale deed are minors, without her knowledge the document was obtained, but the Courts below failed to appreciate this aspect.

15.Per contra, the plaintiff contended that for valid consideration the property was purchased by her and even additional amount of Rs.15,000/- was paid to the defendant at the time of execution of the sale deed and her sons were attested, but she was not aware that they are minors. The burden is on the defendant to prove that the document was obtained fraudulently as per the contention of the defendant that she had a loan transaction with the plaintiff and without her full knowledge the sale deed



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was fraudulently obtained from her. Admittedly, she is an educated women and employed as clerk in a private concern and her sons are aged about 21 & 23 years at the time of execution of the sale deed, the defendant has not denied the aspect having employed in office and admittedly she was prudent lady with common sense. Accordingly, the Courts below gave finding with her full knowledge she signed the document. But there is no contrary evidence on the side of the defendant to establish the fact that the sale deed was fraudulently obtained from her. Furthermore, if her sons are minor she was bound to inform the purchaser and there is no fault on the side of the plaintiff and this aspect also rightly appreciated by the Courts below which caused no interference by this Court. Hence, the defendant failed to establish that the document was obtained fraudulently from her. Hence, the suit filed by her in O.S.No.110 of 1997 was dismissed by the Courts below is sustainable which caused no interference by this Court. Accordingly, issue no.1 is answered in S.A.No.530 of 2013.

16.As discussed above, at the time of execution of the sale deed, she was employed in private hospital and her sons are grown up children, all were went to the registrar office and received balance sale consideration.



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Apart from that additional amount of Rs.15,000/- was received and the same was endorsed in the sale deed itself, which proves that with her full knowledge she executed the sale deed in favour of the plaintiff by receiving a valid consideration with her sons. Though one of her son was a minor but both were signed as witness and these two witnesses also attended the registrar office. Therefore, the entire family members known the sale transaction with the plaintiff. Thus, the facts and circumstances clearly establish that the sale deed was executed by the defendant in favour of the plaintiff with her full knowledge. On the other hand, the defendant failed to prove her defence and the sale deed was obtained by the plaintiff fraudulently. When she plead that the sale deed is void and non est law, the duty is casted upon her to prove the doctrine of non est factum even through circumstantial evidence the defendant failed to prove the misrepresentation and fraud committed by the plaintiff herein. There is no independent witness on the side of the defendant to prove the misrepresentation and fraud. On the other hand, the execution of the sale deed and passing of the consideration as well as handover the possession proved by the plaintiff through Ex.A1/sale deed and the Courts below rightly appreciated this aspect and dismissed the



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suit filed by the defendant in O.S.No.110 of 1997 is valid. Accordingly, issue no.2 & 3 are answered in S.A.No.530 of 2013. Hence, in all aspect the plaintiff proved that for valid consideration she purchased the suit properties from the defendant and the portion of the property ('B' schedule property) was given occupation to the defendant, now she cancelled the permission. On the other hand the defendant failed to establish that the sale deed was obtained fraudulently and also occupied the property as absolute owner the Courts below rightly appreciated both the law and facts and dismissed the appeal filed by the defendant herein which needs no interference.

17. Accordingly, both the appeals are dismissed and the findings of the Courts below are confirmed. The suit filed by the plaintiff in O.S.No.304 of 1997 is decreed as prayed for. The suit filed by the defendant in O.S.No.110 of 1997 is dismissed as no costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
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Speaking/Non-Speaking order
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T.V.THAMILSELVI, J.
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To

- 1.The IV Additional District and Sessions Court, Coimbatore.
- 2.The I Additional Subordinate Court, Coimbatore.
- 3.The Section Officer, VR Section, High Court, Madras.

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