



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM:

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

S.A. No.909 of 2013 and M.P.No. 1 of 2013

1. Rangasami (deceased)
2. Periammal
3. Krishnamoorthi
4. Jeyaraman
- 5.Narayansaamy

... Appellants

(Appellants 2 to 5 brought on record as LR's of the deceased
1st appellant
vide order of court dated 29.09.2015 in MP No.1/2014 in SA
No.909/2013.

Versus

- 1.Chinnathambi Mooper
- 2.Kulundi Ammal
- 3.Solai
- 4.Kalian
- 5.Angammal
- 6.Arunachalam
- 7.Manimegalai

(R.1 to R.4 were given up)

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.423 of 1996 dated 21.09.2012 on the file of Sub Court, Kallakurichi, confirming the judgment and decree dated 04.03.1991 in O.S.No.1039 of 1981 on the file of Principal District Munsif Court, Kallakurichi.

For Appellants : Ms.R.Meenal

For R5 to R7 : Mr. S.Mukunth for
M/s. Sarvabhauman Associates

For R1 to R4 : Given up



JUDGMENT

The fourth defendant is the appellant in the present second appeal. One Pichakara Moopar filed a suit in O.S.No.1039 of 1981 for the relief of Specific Performance and also for the relief of permanent injunction against the defendants on the ground that he has entered into a registered agreement of sale dated 31.08.1981 along with the first defendant and his elder brother late Arunachala Moopar and as per the said agreement, they agreed to convey the suit property for a total sale consideration price of Rs.3,500/- and they also received an advance of Rs.2,000/-.

2. The further case of the said Pichakara Moopar is that he was also put in possession of the suit property in part performance of the agreement. He further contended that he was ready and willing to perform his part of contract by paying the balance sale consideration. However, the defendants 1 to 3, with an intention to defraud the said Pichakara Moopar, executed a sale deed in favour of the fourth defendant on 02.12.1981 and the sale deed was executed inspite of the fact that there was a registered agreement of sale standing in the name of the said Pitchaikkara Moopar. Aggrieved by the same, the said Pitchaikkara Moopar filed a suit in O.S.No.1039 of 1981 seeking for the relief of specific performance and for permanent injunction against the defendants.

3. The said suit was not contested by the defendants 1 to 3 and they were set ex-parte. The suit was effectively contested by the fourth defendant, who filed the written statement and took a stand that the agreement of sale dated 14.07.1981, marked as Ex.B.2, was executed in his favour and ultimately, a sale deed dated 02.12.1981, marked as Ex.B.1, was executed in his favour and thereby, he became the absolute owner of the suit property and he was also put in possession of the property. The fourth defendant also took a stand that the so called agreement of sale relied upon by the plaintiff cannot be acted upon and sought for the dismissal of the suit.

4. The trial court, by taking into consideration the facts and circumstances of the case and also on appreciating the oral and documentary evidence available on record, found that the sale agreement dated 31.08.1981, marked as Ex.A.1 in favour of the plaintiff, was a genuine document and that Ex.B.2 sale agreement was an invalid document, which was prepared under suspicious circumstances. Consequently, the trial Court held that the sale deed dated 02.12.1981 executed in favour of the



fourth defendant will not bind the plaintiff. The trial court, by judgment and decree dated 04.03.1991 in O.S.No.1039 of 1981 decreed the suit as prayed for.

5. Aggrieved by the judgment and decree of the trial court, the fourth defendant filed an appeal in A.S.No.423 of 1996 before the Sub Court, Kallakurichi. During the pendency of the appeal, the original plaintiff viz., Pichakara Moopar died and his legal representatives were brought on record. The lower appellate court, once again, re-appreciated the entire oral and documentary evidence and found that there is no ground to interfere with the findings of the trial court. The lower appellate court also found that Ex.B.2 has come about under suspicious circumstances and in fact, it was executed only by one of the owners viz., the first defendant and the other owner of the property was not even a party to the sale agreement. The lower appellate court found that Ex.A.1 sale agreement had come into existence even before the sale deed was executed in favour of the fourth defendant on 02.12.1981 and the sale deed itself would show that there was no sale agreement in existence in favour of the fourth defendant and there is no mention about the said agreement in the sale deed marked as Ex.B.1. Ultimately, the appeal in A.S. No.423 of 1996 was dismissed by judgment and decree dated 21.09.2012. Aggrieved by the same, the present second appeal was filed before this Court.

6. Learned counsel for the appellant submitted that both the courts below had found the sale agreement dated 14.07.1981 as an invalid document without any basis. The learned counsel, in order to substantiate her submissions, points out the fact that the agreement was signed by the first defendant and the other owner of the property, who was unwell at the relevant point of time, had also subscribed his thumb impression and stood as a witness to the document. It was further submitted that this document was ultimately acted upon and the sale deed was executed in favour of the fourth defendant on 02.12.1981. Learned counsel, therefore, submits that the courts below ought not to have rendered a finding to the effect that Ex.B.2 is an invalid document. It was further submitted that Ex.A.1 will not have legs to stand after the owner of the property had already conveyed the property in favour of the fourth defendant and the equitable relief of specific performance ought not to have been granted in favour of the plaintiff.

7. This Court carefully considered the submissions made by the learned counsel for the appellant and also carefully perused the oral and documentary evidence available on record.



This Court also carefully went through the findings rendered by both the courts below.

8. It is seen that both the courts below have separately dealt with Exs.B.1 and B.2 on the one hand and Ex.A.1 on the other. While dealing with Ex.B.2 sale agreement, both the courts below have found that this agreement was executed by the first defendant alone in favour of the fourth defendant when admittedly the property belonged to the first defendant as well as one Arunachala Moopar. It was further found that just because Arunachala Moopar had subscribed his thumb impression as a witness in Ex.B.2 sale agreement, that cannot be construed to the effect that he had also executed the sale agreement in favour of the fourth defendant. The courts below also found that if really Ex.B.2 sale agreement was executed in favour of the fourth defendant, it would have definitely found a place in the sale deed that was executed in favour of the fourth defendant through Ex.B.4. In Ex.B.1 sale deed, there is absolutely no mention about the so called sale agreement Ex.B.2

9. Both the Courts below also took into consideration the evidence of D.W.1 and D.W.2 in this regard. On appreciation of their evidence along with the surrounding circumstances and considering the relevant documents, both the Courts concurrently found that Ex.B.2 is shrouded with suspicion and that Ex.A.1 is a valid registered sale agreement. In view of this finding, both the courts below found that the subsequent sale deed executed in favour of the fourth defendant through Ex.B.1 will not in any way bind the plaintiff who already had a registered sale agreement in his favour dated 31.08.1981.

10. In the considered view of this Court, both the courts below have rendered their findings on appreciation of oral and documentary evidence. This Court, in exercise of its jurisdiction under Section 100 of Code of Civil Procedure can neither re-appreciate the evidence nor reverse the findings just because the evidence available on record is capable of being given a different meaning or it is capable of a different interpretation. The only area of interference insofar as the facts are concerned is when the findings rendered by the courts below is found to be perverse. This Court, on carefully going through the findings, does not come to a conclusion that the findings rendered by the courts below are perverse.

11. In view of the same, there is no scope for interference with the findings of the courts below. This Court does not find any substantial question of law involved in the



present second appeal.

12. In the result, the second appeal is 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(CS-VI)

// True Copy //

Sub Assistant Registrar

sr/rgi

To

1. The Subordinate Judge, Kallakurichi
2. The Principal District Munsif, Kallakurichi
3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Ms.R.Meenal, Advocate SR.No.8610

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.8453

S.A.No.909 of 2013

SR(CO)
CB(21/03/2022)