



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.11.2021  
PRONOUNCED ON: 11.03.2022

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CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.366 of 2017

|               |    |                           |
|---------------|----|---------------------------|
| 1.Siva        |    |                           |
| 2.Govindammal |    | ... Appellants/Defendants |
|               | Vs |                           |
| Subha Ramesh  |    | ... Respondent/Plaintiff  |

Prayer:- This Appeal Suit has been filed, under order XLI Rule 1 r/w Section 96 of CPC, against the judgement and decree, dated 27.04.2016, made in OS.No.100 of 2014, by the III Additional District Court, Salem.

|                |   |                       |
|----------------|---|-----------------------|
| For Appellants | : | Mr.D.Anandraja        |
| For Respondent | : | Mr.G.Suriya Narayanan |

JUDGEMENT

- 1.This Appeal Suit has been filed, against the judgement and decree, dated 27.04.2016, passed by the III Additional District Court, Salem, in OS.No.100 of 2014.
- 2.The suit was filed for specific performance of the sale agreement, dated 09.11.2012 and for permanent injunction and also for declaration of the gift settlement deed, dated 29.11.2013 executed, by the 1st Defendant in favour of the 2nd Defendant, as null and void and for costs.
- 3.The case of the Plaintiff is that the 1st Defendant had entered into a sale agreement, dated 09.11.2012, with the Plaintiff, in respect of suit property, for a total sale consideration of Rs.20,00,000/- and an advance of Rs.17,00,000/- was paid and possession and the documents were handed over to the Plaintiff. It was agreed that the sale should be completed within two years. Since the husband of the Plaintiff died on 19.07.2013, the sale could not be completed immediately. Taking advantage of the same, the 1st Defendant had executed a gift settlement deed, dated 29.11.2013, in favour of the 2nd Defendant. The Plaintiff has been ready and willing to perform her part of the contract. Since the 1st



Defendant has been evading to complete the sale, a legal notice, dated 02.04.2014 was issued and a reply dated 09.04.2014, with false allegations, was sent. Since on 08.04.2014, the Defendants attempted to interfere with the possession of the Plaintiff, the suit had been filed, seeking the reliefs as stated above.

4. The case of the Defendants is that the averments regarding the execution of the alleged sale agreement dated, 09.11.2012 and the receipt of advance amount are false. The entire documents relating to the suit properties were handed over to the Auditor Ramesh, who is the husband of the Plaintiff, for filing IT Returns, along with the signed blank stamp papers, which were misused. The suit sale agreement is a forged one. The Defendants, by a reply notice, had asked the Plaintiff to furnish a copy of the sale agreement dated, 09.11.2012 to send a full fledged reply, but the Plaintiff failed to do so. The Plaintiff is not in possession and enjoyment of the suit property. In such circumstances, the suit is liable to be dismissed.
5. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A19 were marked and PW.1 and PW.3 were examined. On the side of the Defendants, Ex.B1 to Ex.B10 were marked and DW.1 was examined. The Trial Court had decreed the suit in part, thereby directing the Defendants to execute the sale deed in favour of the Plaintiff as per the sale agreement, dated 09.11.2012, after receiving the balance sale consideration of Rs.3 lakhs and granting permanent injunction as prayed for and declaring the gift settlement deed dated 29.11.2013, as null and void and dismissing the suit in respect of the relief of refund of advance amount and permanent injunction in respect of the possession. Aggrieved against the same, this Appeal Suit has been filed by the Defendants.
6. This Court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellants has submitted that the 1st Defendant never executed any sale agreement with the Plaintiff and that the original title deeds in respect of the suit property, along with the signed blank stamp papers, handed over for the purpose of filing IT Returns were misused. He would further contend that no sale consideration was passed on and that the suit sale agreement is an unregistered document and that the Respondent had no sufficient means to pay the advance amount and that the suit property was already divided





13.A perusal of Ex.A1 reveals that possession was handed over to the Respondents on the same day.

14.Section 17(1A) of the Registration Act reads as under:-

17(1A). The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

15.Section 53A of the Transfer of Property Act reads as under:-

"53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

16.In 2013 3 CTC 477 (Palaniammal and others Vs. KRC Anbalagan and others), it was held as follows:-

"23. As per section 17(1-A) of the Registration Act, an agreement for sale relating to any immovable property, for



24. In the case on hand, the 1st plaintiff claimed benefit under [section 53-A](#) of the Transfer of Property Act. The plaintiffs have sought for the Relief of permanent injunction restraining the defendants from interfering with the 1st plaintiff's peaceful possession and enjoyment of the properties which he got under Exs.A1 and A3 documents. When the 1st plaintiff sought for protection claiming benefits under [section 53-A](#) of the Transfer of Property Act, under [section 17\(1-A\)](#) of the [Indian Registration Act](#), Exs.A1 and A3 documents must have been registered. Since both the documents viz., Exs.A1 and A3 were not registered, the plaintiffs cannot rely upon these documents. If the plaintiffs had not claimed benefits under [section 53-A](#) of the Transfer of Property Act seeking for protection with regard to possession which they got under Exs.A1 and A3 documents, in that case, the registration is not mandatory. But in the case on hand, since the 1st plaintiff had sought for a prayer for permanent injunction restraining the defendants from interfering with his possession and enjoyment of the suit property based on Exs.A1 and A3 documents. Therefore, the documents must have been registered under [section 17\(1-A\)](#) of the [Registration Act](#). Since Ex.A1 was not registered, the plaintiffs cannot rely upon the said document. Similarly, in the case of Ex.A3 assignment deed, it was



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alleged that possession was handed over to the 1st plaintiff by the 2nd plaintiff under the said document. As already stated, since the 1st plaintiff had sought for the relief of permanent injunction, in respect of his possession based on Ex.A3 assignment deed, the document must have been registered under [section 17\(1-A\) of the Registration Act](#). Since the document was not registered, the 1st plaintiff cannot rely upon the said document and file the suit for specific performance based on the said document. Therefore, even if Exs.A1 and A3 are true and genuine documents, the said documents cannot be relied upon by the plaintiffs for the reason tat they were not registered under [section 17\(1-A\) of the Indian Registration Act](#). Therefore, the provision of [section 49](#) of the Registration Act are not applicable to the present case."

The above said decision is squarely applicable to the facts of this case.

17.In this case, PW.1 in her evidence has stated that at the time of execution of the sale agreement, possession was handed over to her. Therefore, the Plaintiff cannot seek any remedy under the unregistered document i.e. Ex.A1. Therefore, the lower court miserably failed to appreciate this aspect. The judgement of the lower court is an erroneous one and liable to be set aside and this Appeal Suit is to be allowed.

18.In fine, this Appeal Suit is allowed. No costs.

Sd/-  
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

Srcm  
To

1. The III Additional District Court, Salem.
2. The Section Officer,  
VR Section, Madras High Court.

+lcc to Mr.D.Anandraj, Advocate SR.No.16745

AS.No.366 of 2017

PM(CO)  
GN(30/05/2022)