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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.NO.775 OF 2017

Angappan

.. Appellant / Appellant / Defendant

Vs.

S.M.Subramani

.. Respondent / Respondent / Plaintiff

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.01/2015 dated 19.12.2016 passed by the learned IV Additional Judge, District Court, Bhavani, Erode, in confirming the judgment and decree made in O.S.No.36/2005 dated 11.11.2014 on the file of the Subordinate Judge, Bhavani, Erode.

For Appellant : Mr.T.Murugamanickam
Senior Counsel for
Mr.M.P.Thangavel

For Respondent : Mr.M.Guruprasad

JUDGMENT

- (1) The defendant in the suit in O.S.No.36/2005 before the learned III Assistant Judge, Sub Court, Bhavani, Erode is the appellant in the above second appeal.
- (2) The plaintiff as respondent herein, filed the suit in O.S.No.36/2005 for a declaration that the plaintiff 's Sale Deed dated 20.01.2000 bearing Document No.128/2000 registered on the file of Sub-Registrar Office, Bhavani is genuine, valid, and binding on the defendant with the consequential prayer directing the defendant to deliver vacant possession of the suit properties to the plaintiff.
- (3) The case of the respondent in this appeal, in the plaint, is that the defendant had entered into a registered written agreement of sale dated 15.02.1999 with one C.Chinnasamy and P.Jayaraj in respect of the suit properties and agreed



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to sell the same for the sale consideration of Rs.1,75,000/-. It is further stated that the defendant had received a sum of Rs.1,50,000/- as advance from the agreement holders. It is further stated that the defendant on the same date i.e, 15.02.1999 executed a registered General Power of Attorney in favour of one K.R.Chinnasamy authorising the agent to sell the suit properties. It is further stated that on the same date, the defendant had received the balance of sale consideration from the said K.R.Chinnasamy and executed a declaration and Vardhamana letter in his favour. It is stated that the defendant had acknowledged the agreement of sale in the Vardhamana letter and the receipt of entire sale consideration of Rs.1,75,000/- received by the defendant. After the aforementioned sale agreement, the General Power of Attorney of C.Chinnasamy and P.Jayaraj sold the suit properties to the plaintiff for a sale consideration of Rs.1,75,000/- under a registered Sale Deed dated 20.01.2000 bearing Doc.No.128/2000 registered in Sub-Registrar Office, Bhavanai. According to the plaintiff mutation of the revenue records has been effected and the patta was also issued to the plaintiff. The defendant requested the plaintiff to permit him to reside in the suit property for a period of six months after the sale which would enable the defendant, to find an alternative place to shift his residence. It is further alleged in the plaint that the defendant refused to deliver possession of the suit properties within the time granted to him earlier by the plaintiff. Seeing the conduct and the attitude of defendant changed, the plaintiff contended that he was constrained to file the suit in O.S.No.36/2005.

- (4) The suit was resisted by the appellant/defendant specifically denying the execution of the previous Sale Agreement, Power of Attorney Deed and Vardhamana letter. The subsequent Sale Deed executed by the Power of Attorney agent of the defendant was also denied in the written statement. In paragraph 11 of the written statement, it is contended by the appellant as follows:

"11.This defendant humbly submits that the plaint mentioned persons namely K.R.Chinnasamy, C.Chinnusamy and Jayaraj are the partners of Tharani Raja Finance, a partnership firm located and doing financial business at Door No.227, Veerabadra Street, Erode. The defendant has borrowed a sum of Rs.1,80,000/- from the aforesaid Tharani Raja Finance on 22.9.2994 to purchase a lorry bearing Registration No.TN-37-Z-1166 in the name of his wife. Actively



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venturing on transport business, the defendant out of hard earnings has discharged the borrowed amount with exorbitant rate of interest to the aforesaid K.R.Chinnasamy and others. After discharge of entire loan amount on 28.11.1997 the defendant has borrowed second loan from the aforesaid same persons. In course of repaying the second loan, the partners of Tharani Raja Finance namely K.R.Chinnasamy, C.Chinnasamy and Jayaraj have obtained signatures of the defendant and his wife in blank stamp papers and concur papers alleging that those were obtained by them only as security for the repayment of balance due of 2nd loan amount. They assured and promised to return those papers after discharge of the entire amount of 2nd loan. Even thereafter strenuously the defendant has discharged the entire 2nd loan amount with interest prevailed in custom."

- (5) The appellant/defendant has denied the receipt of any consideration for the sale agreement or the Sale Deed. It was further contended that the plaintiff is not entitled to the relief as he has come forward with the false case suppressing these material facts. It is also stated in the written statement that the suit property was worth more than few lakhs and that the plaintiff has come forward to grab the suit property from the defendant for a paltry sum as indicated in the sale agreement, the genuineness of which he never admitted.
- (6) The Trial Court after framing necessary issues found that the previous Sale Agreement, Power of Attorney Deed and the Vardhamana letter under Ex.A2, A3 and A4 have been executed by the defendant and that the Sale Deed is a genuine document of conveyance, the Trial Court also observed that all the documents under Ex.A1 to Ex.A4 are supported by consideration and therefore, the Sale Deed under Ex.A5 dated 20.01.2000 executed by the Power of Attorney agent of the defendant is binding on the defendant. Since, the title on the basis of the Sale Deed obtained by the plaintiff was upheld by the Trial Court, the Trial Court granted a decree for recovery of possession of the suit property holding that the plaintiff has established his title. After deciding all the issues in favour of the plaintiff the suit in O.S.No.36/2005 was decreed as prayed for. Aggrieved by the judgment and decree of the Trial Court, the defendant preferred an appeal in AS.No.01/2015 on the file of the IV Additional District Court, Erode.



(7) The Lower Appellate Court confirmed the findings of the Trial Court after independently considering all the issues.

(8) As against the judgments and decrees of the Courts below, the above Second appeal is preferred by the appellant / defendant.

(9) The appellant has raised following substantial questions of law in the Memorandum of Grounds of Appeal.

1. When the plaintiff has not proved the execution of Exhibits A2 and A3 in a manner known to law, whether he is entitled to a decree for declaration and recovery of possession?

2. When the plaintiff has not discharged the initial burden of execution of documents, whether the Courts below are correct in placing burden upon the defendant?

3. When the plaintiff has not proved his case upon his strength, whether the Courts below are correct in decreeing the suit by picking holes in the case of the defendant?

(10) The learned senior counsel appearing for the appellant/defendant referring to the documents pointed out that the Sale Deed in favour of the plaintiff/respondent is a fraudulent and shady transaction by referring to the sale agreement under Ex.A2, Power of Attorney under Ex.A3, Vardhamana Letter under Ex.A4 which were all executed on the same day on 15.02.1999. The learned senior counsel submitted that since these transactions were fraudulent, the Sale Deed obtained by the plaintiff can not be accepted as genuine and the plaintiff is not entitled to have the suit decreed as prayed for as the documents in Ex.A2 to A4 have not been proved to be true in a manner known to law.

(11) This Court finds that the Courts below have concurrently held that the previous Sale Agreement and the Power of Attorney Deed under Ex.A2 and A3 are proved. Similarly, the concurrent finding of the Lower Courts on the genuineness of the Vardhamana Letter under Ex.A4 only supports the finding that the defendant had indeed agreed to sell the suit property as per terms under Ex.A2 and authorised his power agent by Ex.A3 to execute the Sale Deed infavour of the plaintiff.



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- (12) When the execution of the document under Ex.A2 and A3 is proved in the manner known to law and accepted by the Courts below concurrently the appellant has failed to let in any evidence to disprove the genuineness of the transaction under Ex.A2 to A4. The appellant has not filed any suit or counter claim to set aside or cancel the document of sale in favour of the plaintiff.
- (13) Having regard to the findings of facts supported by evidence let in by the plaintiff, the defendant/appellant cannot now resist the suit by referring to the previous Sale Agreement, Power of Attorney Deed and Vardhamana Letter as if they were executed by undue influence taking advantage of his situation. None of the documents under Ex.A2 to A4 were challenged on this ground before the Lower Courts. The defendant/appellant has not filed a suit or counter claim challenging the documents under Ex.A2 to Ex.A4 by pleading fraud or undue influence or misrepresentation. When the Power of Attorney Deed is a registered document and after conveyance based on Registered Power of Attorney Deed, the Sale Deed in favour of the plaintiff cannot be invalidated alleging fraud against third parties who are not parties to the suit. When the defendant/appellant has not specifically pleaded to invalidate the transaction not let in any evidence to support of his case, this Court cannot entertain such grounds at this stage.
- (14) In the absence of counter claim or suit to set aside the document of sale under Ex.A5 dated 20.05.2000, the Courts below are perfectly right in granting a decree in favour of the respondent / plaintiff in the suit. Since, all the issues are decided based on the documentary and oral evidence by the Courts below, this Court while exercising jurisdiction under Section 100 of CPC is unable to interfere with the concurrent findings of the Courts below. The learned senior counsel is unable to demonstrate before this Court any perversity in the findings of the Courts below.
- (15) In the result, the Second Appeal is devoid of merits and hence, dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

cda



To

1. The IV Additional Judge,
District Court, Bhavani, Erode

2. The Subordinate Judge,
Bhavani, Erode.

3. The Section Officer,
V.R. Section,
High Court, Chennai.

+1cc to M/s.MA.P.Thangavel, Advocate, S.R.No.21430

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.20831

S.A.No.775 of 2017

EV(CO)
RLP(29/04/2022)