



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 19.04.2022

Pronounced on : 29.04.2022

WEB COPY

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD)No.30 of 2019

N.Vaidyanathan.

Represented by his Power Agent,

V.Narayanaswamy

... Appellant/Plaintiff

Vs.

1.V.Anantha Krishnan

R.Nagarajan (Died)

2.N.Parimala

3.Minor.N.Roshan Reddy

4.Minor.Rohith Reddy

... Respondents/Defendants

(R3 and R4 are represented by their Mother and
Guardian N.Parimala)

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code,
against the judgment and decree of the learned I Additional District
Judge (PCR), Tiruchirappalli in O.S.No.141 of 2013 on 31.07.2018.

For Appellant : Mr.R.Sundar Srinivasan

For Respondents: No appearance

JUDGMENT

This Appeal Suit has been preferred challenging the judgment
and decree of the learned I Additional District Judge (PCR),
Tiruchirappalli, dated 31.07.2018 made in O.S.No.141 of 2013.

2.The appellant is the plaintiff; the plaintiff has filed the
suit for declaration to declare the sale deed dated 30.05.2011 bear-
ing Document No.1460 of 2011 on the file of Sub Registrar Office,
Srirnagam executed by the plaintiff in favour of the first defendant
as null and void and to cancel the sale deed; he also sought the
relief of declaration to declare the sale deed dated 26.08.2011 exe-



cuted by the first defendant in favour of the second defendant as null and void and for cancellation of the same along with a direction to remove all the constructions and hand over possession to the plaintiff; a relief of permanent injunction also prayed to restrain the second defendant for alienating the suit property; the suit property along with its larger extent measuring 4 acres was originally owned by V.Narayanasamy, he executed a settlement deed dated 02.02.2010 in favour of the plaintiff; the plaintiff leased out the same to a public trust where Aged persons were maintained; on 29.05.2011 at around midnight, seven people came to the residence at Tambaram claiming that they were police officials of Central Crime Branch, Trichy; they took the father of the plaintiff for interrogation in connection with a case filed against him; he was tortured and threatened by the police and later he was confined on 30.05.2011 at Room Nos.129 and 130 of Sangeetha Residency Hotel at Luz Corner, Mylapore Chennai; the plaintiff's mother gave a complaint against one J.Vaidyanathan, K.Vaithisubramanian and Ramajayam by email to the Commissioner of Police and Chief Minister's cell on 30.05.2011; they threatened the plaintiff's father about the sum Rs.50,00,000/- obtained by him as per the direction of the Madras High Court in Crl.O.P.(MD) No.12983 of 2010 in respect of the larger extent of the suit property and title deed; as they could not get the same from the plaintiff's father, they conducted illegal search in the plaintiff's house; during at course they found the title deeds of the suit property; then they coerced the plaintiff and his father to come to Trichy to execute a sale deed in favour of the first defendant in respect of the suit property; despite the plaintiff had examination on 30.05.2011, they did not heed to it; the plaintiff and his parents were kidnapped by the first defendant with the assistance of police and made them to execute the sale deed; the mother of the plaintiff was taken away to a different place and was confined there; the plaintiff was threatened by them that only if they execute the sale deed, they could see his mother; because of such coercion and threat, the sale deed was signed without receiving any consideration; the first defendant illegally evicted the trust which was housed in the suit property; the first defendant colluded with the second defendant and got another sale deed executed on 26.08.2011; hence, the plaintiff has come forward with the suit.

3.The first defendant resisted the suit by stating the sale deed was executed by the plaintiff for a valid consideration; there is no coercion or threat as alleged by the plaintiff; plaintiff's father was the Managing Director of a company by name M/s.Dhanush Technologies Ltd, Chennai; he was in requirement of financial assistance for his company; one Vaidyanathan and Vaithisubramanian supported the plaintiff's father in his business; Vaidyanathan mortgaged his property and raised funds for plaintiff's father and to enable him to discharge a loan availed by him; since the loan in respect of Vaidyanathan was not paid, the bank issued final notice and



took possession of the property; a complaint was given in this connection by Vaidyanathan and Vaithisubramanian and a case was registered in Crime No.16 of 2011; during enquiry, plaintiff's father voluntarily came forward to direct the plaintiff to execute the sale deed in favour of the first defendant in consideration of money owed by him to Vaidyanathan and that would amount to Rs.35,00,000/-.

4.The second defendant filed the written statement by stating that he is a bonafide purchaser for valuable consideration; he did not know the earlier criminal complaints before purchasing the property; he mutated the revenue records in his name in the year 2012 itself; after taking possession of the property, he put up construction to an extent of 2400 sq.ft after getting building plan approval; the construction work was also completed during September 2013; despite Crl.O.P.Nos.22592 and 22694 of 2012 were said to have been filed subsequent to the purchase of the suit property by him, he was not impleaded as a party; the plaintiff has filed the suit just to extract money from the defendants.

5. Basing of the above pleadings, the learned trial Judge framed the following issues:-

"1.Whether the sale deed dated 30.05.2011 bearing Doc.No.1460/2011 executed by the plaintiff in favour of the 1st defendant is null and void and the plaintiff is entitled for declaration as prayed for?

2.Whether the plaintiff is entitled for declaration that the sale deed dated 26.08.2011 bearing Doc.No.2406/2011 executed by the 1st defendant in favour of the 2nd defendant is null and void and the plaintiff is entitled for order of removal of constructions made by the defendants and for possession of the property along with original patent documents?

3.Whether the plaintiff is entitled for permanent injunction against the second defendant, his men, agents, servants of anybody acting on his behalf, as prayed for?

4.To what reliefs?"

6. During the course of trial, on the side of the plaintiff, the plaintiff's power agent was examined as P.W.1 and Exs.A1 to A12 were marked. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and Exs.B1 to B4 were marked.



7. At the conclusion of the trial and on considering the evidence available on record, the learned trial Judge dismissed the suit in entirety. Aggrieved over that, the plaintiff has preferred this Appeal suit.

WEB COPY

8. The learned counsel for the appellant submitted that the passing of consideration in respect of Exs.A4 and A6/sale deeds were not proved; the plaintiff is entitled to challenge the sale deeds on the grounds of fraud, undue influence and misrepresentation; the defendants are estopped to plead any other consideration than the consideration mentioned in Exs.A4 and A6, in terms of Sections 91 and 92 of the Indian Evidence Act; in the judgment of the Honourable Supreme Court in **Civil Appeal Nos.6869 to 6992 of 2021 (Kewal Krishan Vs. Rajesh Kumar and Others)**, it is held that if the purchaser failed to prove the passing of consideration, the sale deed will become void; the plaintiff was having his exam on the alleged date of execution of the sale deed; e-mails were exchanged at odd hours of 30.05.2011 and an order was passed indicting the police officials that false recitals were made as to the passing of sale consideration; the above circumstances were not considered by the learned trial Judge while evaluating the evidence; the second defendant was very much aware of the earlier police complaint, as he was also an accused in that case; the trial Court had misled itself by setting the standard of proof beyond reasonable doubt instead of preponderance of probability; since the plaintiff proved his case through preponderance of probability, the appeal should be allowed.

9. Though notice was served on the respondents, there is no appearance on their behalf.

10. Point for consideration:-

"Whether the judgment and decree of the learned trial Judge in dismissing the suit is fair and proper?"

11. The fact that the suit property was originally belonged to the appellant's father and thereafter it was settled in favour of the appellant is admitted. The suit has been filed by the plaintiff through his power of attorney/father. Even during the trial, the power of attorney alone was examined as P.W.1 and the appellant did not come to the box. Most of the averments made in the plaint are about certain incidents alleged to have taken place on 30.05.2011. The father of the appellant was examined as P.W.1 in his capacity as power agent for the appellant. The evidence of P.W.1 would reveal that Vaidyanathan and Vaithisubramanian are known to P.W.1 and they were connected to PW-1's business also. The company namely M/s.Dhanus Technologies Ltd., run by the plaintiff's father has



availed loan from UCO Bank. P.W.1 also admitted about the contribution of Vaidyanathan in discharging the monetary liability of his sister concern by Name Sri Stella Limited, for which PW1 was the Managing Director. Since the loan was not repaid to the Bank, the property was dealt under SARFAESI Act.

12. When the appellant pleaded that his father was illegally taken by the first defendant and his men, he was threatened to tell about the whereabouts of the money and title documents. P.W.1 has stated in his evidence that he was asked to give away the gold coins and money. The property of the appellant's father was taken under SARFAESI Act. The same was released subsequent to the payment of the dues. The cross examination of P.W.1 would further reveal that on the day, when he was taken to Sub Registrar Office, he was accompanied by his son and wife in a car. But the appellant had pleaded that his mother was taken to a far away place and himself and his father were threatened to execute the sale deed in order to get back his mother safely. The sale deed/Ex.A4 was executed by the appellant and in which the appellant's father himself attested as a witness. When both the father and son were present for executing the sale deed, there cannot be any other intention other than the intention to execute the sale deed. P.W.1 has further stated that his advocates by name Subramanaian and Selvam were also contacted by him. The evidence of P.W.1 would show that there are contradictions in his evidence and the pleadings in the plaint with regard to the pressing circumstances in which Ex.A4/sale deed was executed. Despite that, the plaintiff has not subjected himself for examination or for giving clarification about the contradictions.

13. It is stated by the learned counsel for the appellant that the sale deed is not supported by consideration. On perusal of Ex.A4/sale deed, it is seen that the sale consideration is Rs.20,25,000/-. In the sale deed, it is stated that on the date of execution of the sale deed, sale consideration was received by the vendor, namely the appellant/plaintiff. It is right that no legally enforceable contract can be made without an element of consideration. However, contracts made through registered instruments like sale deeds, the unpaid consideration ought to have been mentioned in the sale deed itself. As per Section 91 of the Indian Evidence Act, when a written document like conveyance is proved by the production of the original document, that would give the benefit of proving its terms to the person who intends to rely on the same.

14. The learned trial Judge has rightly observed that as per Section 25 of the Contract Act, an agreement made without consideration cannot be held as void, if it is registered under the Law or it does not mention about the unpaid consideration. In the case in hand, the sale deed contains recitals like routine sale deed and for which the appellant had affixed his signatures.



15. Under certain exceptional circumstances, listed under the proviso 1 to 5 of Section 92 of the Indian Evidence Act, rebuttal evidence to disprove the terms of a written contract is permissible. The appellant has pleaded fraud, coercion and undue influence and hence he got the liberty to let evidence to disprove the terms of Ex.A4/sale deed. The appellant did not deny its execution or its registration. It has been already observed that though the appellant and his father were placed under certain adverse circumstances, the appellant's father was not confined in a place where he could not establish contacts with others.

16. The learned trial Judge has also rightly observed that the appellant's father/P.W.1 was able to get access through e-mail and mobile phone and he had contacted his friends and lawyers. The erstwhile tenant of the suit property was also seen to be present at the time of the execution of the sale deed. The appellant's father and the appellant might have been placed in some inconvenient/hostile/ compelling circumstances to sell away the suit property in favour of the first defendant. But that can not be construed as threat, coercion or undue influence. Even though the appellant was a college student and for whom there may not be any personal need or necessity to sell the suit property, there may be compelling circumstance for his father/P.W.1 and for which both PW1 and the appellant needed to part away the property. It is quite natural for appellant who was unmarried to be alive for the necessities of his father.

17. The appellant was not able to prove that his father/P.W.1 was abducted and confined in a place where he could not establish contacts with any one or he was put under a coercive circumstances by keeping his mother far away from their sight. In the absence of acceptable rebuttal proof, the sale deed Ex.A4 can not be held as null and void.

18. Even though the original sale deed was not produced by the first defendant, its execution and registration was admitted by the appellant himself. Most importantly, the appellant did not subject himself for examination in order to prove the allegations made in the plaint and about which he had the personal knowledge. The appellant as the original owner of the property had executed Ex.A4/sale deed and for which, his father/P.W.1 stood as a witness and affixed his signature. The learned trial Judge has rightly appreciated the evidence on record and held that the appellant was not able to prove coercion or threat in order to render the sale deed as void under Section 25 of the Contract Act. So I find no reason for interference.

19. Since the first respondent's title in pursuance of Ex.A4/sale deed is not shaken, he has a salable interest to sell the



property to any other person including the second defendant. Once the appellant had parted away his property by way of executing a sale deed in favour of a third party like the first respondent, thereafter he cannot exercise any control over the same. The learned trial Judge has rightly appreciated the facts and applied the law and denied the reliefs claimed by the appellant. Since the judgment of the learned trial Judge does not suffer from any factual or legal infirmity, it does not call for any interference. Thus, **the point is answered accordingly.**

20.In the result, this Appeal Suit is dismissed and the judgment and decree of the learned I Additional District Judge (PCR), Tiruchirappalli, dated 31.07.2018 made in O.S.No.141 of 2013, is confirmed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ias

To:

The I Additional District Judge (PCR),
Tiruchirappalli.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CCToM/s.R.SUNDAR SRINIVASAN, Advocate(SR-22483[F]dated 29/04/2022)

Judgment in
A.S. (MD)No.30 of 2019
29.04.2022

PKP/31.05.2022/7P/5C