



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S. (MD) No. 141 of 2019

and

C.M.P. (MD) No. 9781 of 2021

Rengaraj ... Appellant / Plaintiff / Respondent

Vs.

1. Chellasamy ... 1st Respondent / 1st Defendant

2. Anitha ... 2nd Respondent / 2nd Defendant/
Counter Claimant

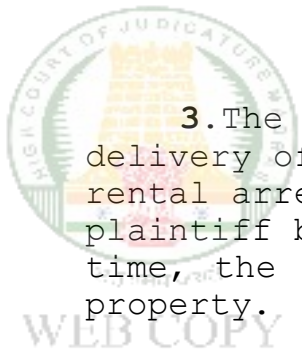
PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree passed in O.S. No. 44 of 2018 and counter claim in O.S. No. 48 of 2018 dated 30.04.2019 on the file of the III Additional District Judge, Tiruchirapalli, (FAC).

For Petitioner : Mr.H.Arumugam
for Mr.A.Balaji
For Respondents : Mr.V.Meenakshi Sundaram
for Mr.K.Arunraj

J U D G M E N T

This appeal has been preferred challenging the common judgment of the learned III Additional District Judge, Tiruchirapalli dated 30.04.2019 made in O.S. No. 44 of 2018 and the counter claim in O.S. No. 48 of 2018.

2. Though the appellant has filed a single appeal, it is stated that he has paid the Court fee for challenging the composite decree passed in respect of both the suit and the counter claim. The plaintiff is the appellant in O.S. No. 44 of 2018. The plaintiff has filed a suit for permanent injunction restraining the defendants from interfering with his possession either by demolishing the construction in the suit property or by making any attempts to evict him illegally, till the plaintiff pays Rs.1,00,00,000/- (Rupees One Crore Only) and gets a sale deed executed in his favour by the second defendant.

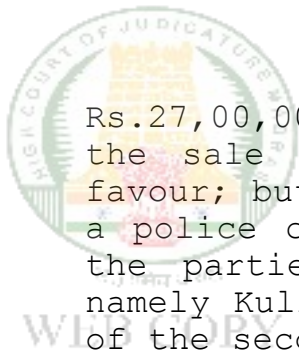


3.The second defendant has filed a counter claim seeking delivery of possession of the suit property and also for recovery of rental arrears of Rs.80,000/- (Rupees Eighty Thousand Only) from the plaintiff besides for a direction to pay the rental amount till such time, the counter claimant should be put in possession of the suit property.

4.The facts of the plaintiff's case run as under:

One Nallusamy is the owner of the suit property; he borrowed a sum of Rs.1,75,000/- (Rupees One Lakhs and Seventy Five Thousand Only) from Nagaraj and Paackiyam; by way of security, Nallusamy executed a sale agreement on 21.07.2008 in favour of Nagaraj and Packiyam; thereafter, Nallusamy could not repay the loan and hence, he decided to sell the property; the plaintiff agreed to purchase the same for a total sale consideration of Rs.27,50,000/- (Twenty Seven Lakhs and Fifty Thousand Only) and paid an advance amount of Rs.3,00,000/- (Rupees Three Lakhs Only); to that effect, a registered sale agreement was also executed on 20.02.2009; the time for performance was fixed at six months. Out of the advanced amount paid, the loan in favour of Nallusamy and Packiyam was discharged and the sale agreement dated 21.07.2008 was also cancelled by a cancellation deed dated 20.02.2009; the possession of the suit property was handed over to the plaintiff in pursuance of the sale agreement dated 20.02.2009; the plaintiff started a Mutton Stall in the name and style of 'Mysore Mutton Stall' in the western side of the suit property and was running his business there; the plaintiff was not able to complete the sale transaction, since he did not have any funds. In order to raise funds for the sale price, he borrowed a sum of Rs.17,00,000/- (Rupees Seventeen Lakhs Only) from one Krishnan; however, Krishnan insisted him to execute a sale deed in his favour by way of security for the amount advanced by him; accordingly, Nallusamy and his family members executed the sale deed in favour of Kullammal, W/o.Krishnan on 08.10.2009; the said Krishnan assured that he would re-convey the suit property in favour of the plaintiff, when he repaid the loan and interest; subsequent to the above said sale deed executed in favour of Kullammal, the earlier sale agreement dated 20.02.2009 between Nallusamy and the plaintiff got canceled and to this effect, a cancellation deed was also executed on 10.08.2009; subsequently, the plaintiff borrowed another sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) from Krishnan and subsequently, the plaintiff was made to execute a document as if he was the tenant under Kullammal in the suit property at a monthly rent of Rs.2,000/- (Rupees Two Thousand Only) between the period from 01.08.2013 to 31.07.2015; accordingly, Kullammal was receiving a sum of Rs.2,000/- as a rent.

4.1 On 06.03.2015, Krishnan attempted to trespass and encroach the suit property; so the plaintiff tried to repay a sum of



Rs.27,00,000/- (Rupees Twenty Seven Lakhs Only) to Krishnan and get the sale deed in respect of the suit property executed in his favour; but Krishnan refused to execute the sale deed. Subsequently, a police complaint was given; some civil suits were also filed by the parties for claiming various reliefs; the wife of Krishnan namely Kullammal had executed the sale deed on 22.06.2015 in favour of the second defendant in respect of the suit property; thereafter, the defendants started to demand a huge sum in order to get the sale deed executed in his favour; though the plaintiff offered to pay Rs.1,00,00,000/- (Rupees One Crore Only), the defendants did not execute the sale deed in his favour and started to disturb his possession in his suit property; hence, the plaintiff has filed a suit for the relief of permanent injunction restraining the defendants from interfering with the possession and from demolishing the construction in the suit property till the plaintiff gets the sale deed executed in his favour.

4.2 The second defendant being the purchaser from Kullammal, W/o.Krishnan has claimed that she has a lawful interest over the suit property by virtue of the above sale; the second defendant has also filed a counter claim for the relief of recovery of possession; the written statement filed by the defendants to the suit filed by the plaintiff also only on these lines.

5.On the basis of the pleadings made by the respective parties, the trial Judge framed the following issues:

(i) Whether the plaintiff is entitled for the relief of permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession over the suit schedule property till the plaintiff pays the balance sale consideration and gets the sale deed executed in his favour?

(ii) Whether the second defendant is entitled for recovery of possession of suit schedule property as claimed by the defendant's counter claim?

(iii) Whether the defendant is entitled for relief of recovery of Rs.80,000/- towards rental arrears and for a direction to the plaintiff to pay future rents till she is put in possession of the suit schedule property?

(iv) For what other reliefs?

6.During the course of the trial, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and Exs.A1 to A25 were marked. On the side of the defendants, one witness was examined as DW1 and Exs.B1 to B15 were marked. The Commissioner's report and plan were marked as Exs.C1 and Ex.C2.



7. After the conclusion of the trial and on considering the evidence on record, the learned trial Judge dismissed the suit in O.S. No. 44 of 2018 and allowed the counter claim in O.S. No. 48 of 2018. Aggrieved over that, the plaintiff has preferred this appeal.

WEB COPY

8. The learned counsel for the appellant submitted that the plaintiff being the agreement holder with the original owner Nallusamy had discharged his loan and his right to get the sale deed executed in his favour is not extinguished; the sale deed in favour of Kullammal is only by way of security for the loan amount availed by him from her husband Krishnan and hence Kullammal has got no right to execute the sale deed in favour of the second defendant; only because the appellant got a subsisting right to get the sale deed executed in his favour, he was allowed to remain in possession of the suit property; the learned trial Judge omitted to appreciate the above facts and dismissed the suit and allowed the counter claim and hence, the common judgment should be set aside.

9. The learned counsel for the respondents submitted that subsequent to the execution of sale deed by Nallusamy and his family members, in favour of Kullammal, W/o. Krishnan, the sale agreement between Nallusamy and the plaintiff got cancelled; in fact, the cancellation deed was also executed on 10.08.2009; since Kullammal, who got the title in respect of the suit property, had conveyed the same in favour of the second defendant and thus the second defendant has become the lawful owner of the property; by virtue of the said sale, the second defendant is entitled to get the recovery of possession and the trial Judge has rightly appreciated the evidence on record and allowed the counter claim after dismissing the suit.

10. On the basis of the rival submission, the following points for consideration are found to be relevant for the purpose of this appeal.

(i) Whether the suit filed by the plaintiff for the relief prayed by him is maintainable?

(ii) Whether the common judgment of the trial Judge which dismissed the suit and allowed the counter claim is fair and proper?

11. The fact that the property was originally owned by one Nallusamy was not denied. The sale agreement dated 21.07.2008 entered into between Nagaraj and Packiyam is also not in dispute. Though it is a sale agreement, the plaintiff has stated that the intention is to offer it as a security for the loan amount of Rs.1,75,000/- availed by Nallusamy from Nagaraj and Paackiyam. The

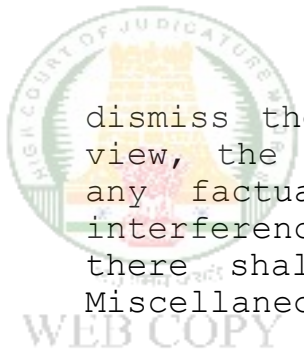


plaintiff sale agreement with Nallusamy on 20.02.2009 by paying the sale advance of Rs.3,00,000/- was also not disputed. The sale consideration at that point of time was agreed at Rs.27,50,000/- and the time for completion is six months. Subsequent to that, the appellant / plaintiff could not raise the funds to meet out the sale price and hence thought of arranging the funds by way of borrowing loan from one Krishnan. However, Krishnan insisted to execute the sale deed in respect of the suit property in his favour. It is to be noted that immediately after the earlier sale agreement between the appellant and Nallusamy, the appellant was put into possession of the suit property and he was conducting his Mutton Stall Business therein. As per the demand made by the Krishnan, the plaintiff allowed Nallusamy and his family members to execute the sale deed in favour of Kullammal.

12. Though the appellant / plaintiff claimed that the above said sale deed was a security document, in reality it is a registered sale deed which would fortify the purchaser with all right of title over the property. In fact, immediately after the execution of the sale deed in favour of Kullammal on 10.08.2009, the earlier sale agreement between the plaintiff and Nallusamy would come to an end. Plaintiff himself had obliged to execute the cancellation deed dated 10.08.2009 to cancel the earlier sale agreement dated 20.02.2009. With his participation in all the above executions, the plaintiff had openly and knowingly relinquished his right to purchase the suit property.

13. Subsequently, Kullammal, who is the lawful owner of the suit property, by virtue of sale deed, dated 10.08.2009, has chosen to sell the same in favour of the second defendant, for a valuable consideration on 22.06.2015. It was not the case of the appellant / plaintiff that the earlier sale transaction in favour of Kullammal or the cancellation of the sale agreement dated 20.02.2009 were all fraudulent. Neither had he filed any suit to declare those said transactions null and void.

14. The plaintiff's possession over the suit property has also been considered as a tenancy agreement between himself and Kullammal. The appellant / plaintiff himself has admitted that he has been paying the monthly rent of Rs.2,000/- to Kullammal. In such circumstances, the appellant / plaintiff has no legal right to get any relief of permanent injunction on the basis that he has an existing interest to get the sale deed in respect of the suit property in his favour. The learned trial Judge has rightly appreciated the evidence on record and rendered a finding that the case of the appellant / plaintiff is not maintainable and non suited him for the reliefs prayed by him. Since the defendants have proved the counterclaim it is correct for the learned trial judge to



dismiss the suit and allowed the counter claim. In my considered view, the common judgment of the trial Court does not suffer from any factual or legal infirmity and it does not require any interference. In the result, this appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vji

To

1.The III Additional District Judge,
Tiruchirapalli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to Mr.K.ARUNRAJ, Advocate (SR-12557)

**A.S. (MD) No. 141 of 2019
and**

**C.M.P. (MD) No. 9781 of 2021
14.03.2022**

SVS(CO)

GC(05.04.2022) 6P 5C