



WEB COPY



A.S.No.866 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.866 of 2012
and M.P.No.1 of 2012

Balamurugan @ Aravindan

.. Appellant

Versus

1. G.Umapathy @ Ponnurangam

2. Kala

.. Respondents

Prayer : Appeal Suit filed under Order XLI Rule 1 r/w Section 96 of Civil Procedure Code to set aside the decree and judgment, dated 20.07.2011 made in O.S.No.13 of 2009 on the file of the II Additional District Court, Pondicherry.

For Appellant : Mrs.P.V.Rajeswari

For Respondents : Mr.T.P.Manoharan, Senior Counsel
Assisted by Mr.T.M.Naveen



A.S.No.866 of 2012

JUDGMENT

WEB COPY

A. THE APPEAL SUIT :

This Appeal Suit is directed against the judgment and decree on the file of the II Additional District Judge, Pondicherry, dated 20.07.2011 in O.S.No.13 of 2009, in and by which, the suit, filed by the respondents / plaintiffs for declaring themselves to be the absolute owners of the suit property and directing the appellant / defendant to deliver the possession of the suit property and for permanent injunction restraining the appellant / defendant from creating any lease or license or mode of transfer with reference to the suit property and to pay mesne profits and for costs of the suit, was decreed. Hereinafter, in this judgment, the parties are referred to as per their array in the Original Suit.

B. THE CASE OF THE PLAINTIFFS :

2. The case of the plaintiffs is that the defendant is the owner of the suit property and the defendant offered and the first plaintiff accepted to purchase the suit property at Rs.820/- per Sq.ft and an agreement of sale was entered into on 21.03.2000 and duly registered as Doc.No.1251/2000 at the office of the Registrar, Puducherry. Thereafter, the defendant received a



A.S.No.866 of 2012

WEB COPY

sum of Rs.55,000/- from the first plaintiff on 04.03.2003 and made an endorsement on the reverse of the agreement of sale. The defendant executed a sale deed on 24.07.2003 in respect of a portion of the suit property and the same was registered as Doc.No.3384/2003. Again, the defendant executed another sale deed on 05.01.2005 for yet another portion of the property which was registered as Doc.No.34/2005. Finally, the balance sale consideration was received and an irrevocable Power of Attorney, dated 05.01.2005 was executed by the defendant which was registered as Doc.No.6/2006. By virtue of the power conferred on him, the first plaintiff executed a sale deed in favour of the second plaintiff on 31.08.2006 which was registered as Doc.No.5164/2006. The plaintiffs, thus, became the owners of the suit property by virtue of the above three sale deeds. When the plaintiffs requested the defendant to hand over the possession of the suit property, he wanted six months time as he had to shift his residence and even after the expiry of the said time, the defendant did not vacate the suit property. On the contrary, the defendant filed a suit in O.S.No.199 of 2007 for permanent injunction and by a judgment in the said suit, the learned III Additional District Munsif, Puducherry gave a finding regarding the title of the plaintiffs and their legal right to take possession of



A.S.No.866 of 2012

the suit property, however in accordance with law and therefore the present suit, inter *alia*, for recovery of possession.

C. THE CASE OF THE DEFENDANT :

3. The case of the defendant is that the suit property is the ancestral property of the defendant and the plaintiffs being family friends, he used to borrow amounts from the plaintiffs as hand loans and wanted to create a security / mortgage of the suit property for the amount borrowed and he executed some documents before the Sub-Registrar, Puducherry with an idea that they are mortgage deeds. But, however, suddenly, on 21.04.2005, the first plaintiff came with henchmen to evict him and it was prevented by the defendant. Thereafter, since repeated attempts were made and legal notices were also issued, the defendant filed O.S.No.199 of 2007 for permanent injunction and it was decreed. The documents are registered by the plaintiffs with undue influence and fraud. The defendant only obtained loan to a tune of Rs.5,00,000/- that too on various occasions and not on a single date. The plaintiffs got the property by fraud. The suit is not properly valued. The plaintiffs are estopped from filing the suit as the subject matter of the present suit is same as that of O.S.No.199 of 2007.



A.S.No.866 of 2012

WEB COPY

D. THE ISSUES :

4. On the said pleadings, the Trial Court framed the following issues:-

- 1. Whether the suit is maintainable?*
- 2. Whether the plaint schedule property description is correct?*
- 3. Whether the suit is under valued for the purpose of court fees?*
- 4. Whether the plaintiffs are entitled for permanent injunction?*
- 5. Whether the plaintiffs are entitled for judgment and decree?*
- 6. To what other reliefs the parties are entitled?*

E. THE TRIAL :

5. On the said issues, the parties let in evidence. The first plaintiff examined himself as **P.W.1** and **Exs.A-1** to **A-8** were marked on behalf of the plaintiffs. The defendant examined himself as **D.W.1** and two of his friends namely, *V.Balaraman* and *Muralidharan* were examined as **D.Ws.2** and **3**. No documents were marked on behalf of the defendant.



A.S.No.866 of 2012

F. THE FINDINGS OF THE TRIAL COURT :

WEB COPY

6. On the said evidence, the Trial Court proceeded to consider the case of the parties and by the judgment dated 20.07.2011 found that **D.W.1** himself, in his cross-examination, admitted about the execution of the sale agreement and the sale of the property and therefore, his case that he executed the documents thinking that they are only the mortgage deeds, cannot be believed and the Trial Court found favour with the case of the plaintiffs in view of the findings in the earlier suit in O.S.No.199 of 2007, in which, the plaintiffs were only directed to take steps to evict the defendant in accordance with law and decreed the suit as prayed for. In respect of mesne profits, as against the claim made by the plaintiffs, the Trial Court decreed the suit only for a sum of Rs.500/- per month. Feeling aggrieved, the defendant is on appeal before this Court.

G. THE SUBMISSIONS :

7. Heard *Mrs.P.V.Rajeswari*, learned Counsel for the appellant and *Mr.T.P.Manoharan*, learned Senior Counsel for the respondents.



A.S.No.866 of 2012

WEB COPY

7.1. *Mrs.P.V.Rajeswari*, the learned Counsel for the appellant, taking this Court through the plaint, sale agreement and the sale deeds, submitted that it is the clear-cut case of the plaintiffs that there was a sale agreement entered into between the parties agreeing for the sale of the property at Rs.820/- per Sq.ft. But, in the written statement filed in the earlier suit, the plaintiffs admitted the previous loan / mortgage transactions. The amount of sale consideration shown in the two sale deeds themselves are not in consonance with the agreement and the plaintiffs' case has to fail by itself. The defendant, on the contrary, by his pleading and evidence, has established that the plaintiffs being family friends, were in the habit of advancing loan to the defendant periodically and only thinking that the transactions were only mortgage and that the plaintiffs will not assert any right over the property and that the loans can be repaid, the documents were executed by the defendant. When there is no *consensus ad idem* between the parties that they are entering into a transaction of sale, even if there are sale deeds executed, they cannot be construed as documents of sale vesting title in the plaintiffs.



A.S.No.866 of 2012

WEB COPY

7.2. *Mrs.P.V.Rajeshwari*, the learned Counsel also relied upon the judgment of the Hon'ble Supreme Court of India in ***Bishundeo Narain Rai (Dead) by LRs. and Ors. Vs. Anmol Devi and Ors.***¹, more specifically relying upon the paragraph Nos.11, 14 and 15 to contend that the transactions projected by the plaintiffs are not sale transactions and therefore, the suit cannot be decreed. The learned Counsel would also submit that even the description of the property in the various sale deeds are not clear and categorical and any real purchaser will not execute such sale deeds without even earmarking clear boundaries. When the defendant is residing in the suit property, no bonafide purchaser would purchase the rear or middle portion of the house without making arrangements as to the pathway.

7.3. The learned Counsel further submits that as far as the third transaction is concerned, admittedly, it is only a Power of Attorney. As per the document, the Power of Attorney is not supported with any consideration. It is not the case of the defendant that after the sale deed, sale consideration was paid to the defendant. In view thereof, the third sale deed is *ex facie* illegal and the plaintiffs' suit should fail.

¹ (1998) 7 SCC 498



A.S.No.866 of 2012

WEB COPY

7.4. Per *contra*, Mr.T.P.Manoharan, learned Senior Counsel for the respondents would submit that firstly in this case, there was an earlier suit in O.S.No.199 of 2007. It is the defendant who filed a suit for permanent injunction taking the very same ground that he got loans from the plaintiffs and executed some documents with an idea that they are mortgage deeds. The said suit was resisted by the plaintiffs by filing a detailed written statement as to the sale transactions. On the pleadings in the earlier suit, a specific issue was framed as to whether the plaintiff therein is a permissive occupier of the suit property? Between the same parties, a competent Court has framed the issue and answered the issue in paragraph No.10 of the said judgment finding that (i) the transactions are sale transactions; (ii) the defendant herein has parted with his title; (iii) the transactions are not mortgage transactions; and (iv) the defendant had no legal right to be in possession. However, the Court, on the earlier occasion, granted permanent injunction only for three months and gave liberty to the plaintiffs herein to file a suit for recovery of possession and accordingly, the present suit is filed. Therefore, there is no issue which is left open to be agitated in the present suit. All the issues are decided by the Court of competent



A.S.No.866 of 2012

WEB COPY

jurisdiction and they have become final as the defendant has not filed any appeal whatsoever against the said judgment.

7.5. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in ***Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Anr.***², more-fully relying upon the paragraph No.26 of the said judgment to contend that the present suit is barred on the principles of *estoppel* and *res judicata*. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court of India in ***Omprakash Verma and Ors. Vs. State of Andhra Pradesh and Ors.***³, more specifically relying upon the paragraph Nos.76, 77 and 78 to contend that the present contentions are deemed to have been raised in the earlier suit and deemed to have been answered by the earlier round and therefore, cannot even be raised in the present suit once again.

7.6. The learned Senior Counsel further submitted that while taking a feeble defence of loan, when the sale deeds are to the knowledge of the defendant herein atleast from the date of the suit, he neither filed any

² (1999) 5 SCC 590

³ (2010) 13 SCC 158



A.S.No.866 of 2012

WEB COPY

counter claim nor he prayed any relief against the sale deeds in the earlier suit. No separate suit is also filed. The period of limitation for questioning the sale deeds is three years from the knowledge. In an identical situation, the Hon'ble Supreme Court of India in ***Ramti Devi (Smt) Vs. Union of India***⁴, more specifically in the paragraph No.2, has held that when such an exercise is not done and when the sale deed remained unquestioned, then even the defence raised by the defendant cannot be permitted to be raised when the sale has become valid and therefore, the plaintiffs are entitled to the relief as prayed for.

7.7. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court of India in ***Vimal Chand Ghevarchand Jain and Ors. Vs. Ramakant Eknath Jadoo***⁵, more specifically relying on the paragraph No.34 of the said judgment to plead that having sold the property, the defendant is bound to deliver the title. The learned Senior Counsel further brought to the notice of this Court that when stay was granted by the Court on condition to pay the mesne profits, the defendant did not even comply with the conditional order and the stay was vacated. When the

4 (1995) 1 SCC 198

5 (2009) 5 SCC 713



A.S.No.866 of 2012

WEB COPY

plaintiffs herein have filed Execution Petition in the teeth of the decree of permanent injunction, the defendant has also executed a sham and nominal sale deed in favour of a third party, thereby, creating obstruction in the Execution Petition for delivery of property and the matter is pending at that stage. Therefore, he would pray that the Appeal Suit be dismissed.

H. THE POINTS FOR CONSIDERATION:

8. I have considered the rival submissions made on either side and perused the material records of the case. Upon consideration thereof, the following points arise for consideration in the instant case :-

(i) Whether the transactions by which the plaintiffs claim title to the property, are loan transactions and not valid sale?

(ii) Whether or not the issues raised in the present suit by the defendant herein can be permitted to be raised in view of the judgment in O.S.No.199 of 2007?

I. Point No.i :-

9. In this case, the plaintiffs claimed title to the property by virtue of *Exs.A-3, A-4 and A-5*, sale deeds. As opposed to the sale deeds, which



A.S.No.866 of 2012

WEB COPY

...speak for itself, it is the case of the defendant that he only borrowed monies periodically from the plaintiffs and he executed some documents thinking that the same were mortgage deeds. Firstly, the said pleading itself is not clear and categorical as to on what date he borrowed the monies and how much exactly was the amount borrowed and whether he is willing to repay the same. Thus, on the face of it, is dishonest and half-hearted. Secondly, even in case of such a defence, the defendant did not make any counter claim nor filed any comprehensive suit for setting aside the sale deeds on such ground that he did not have *consensus ad idem* while executing the sale deeds, especially when he filed a suit against the plaintiffs for permanent injunction. Therefore, the ratio laid down in **Ramti Devi's** case (cited *supra*) is squarely applicable to this case. It is useful to extract the paragraph No.2 of the said judgment which reads as follows :

" 2. The question is whether the suit is within limitation. In the evidence, it was admitted that she had knowledge of the execution and registration of the sale deed on 29-1-1947. Initially a suit was filed in 1959 but was dismissed as withdrawn with liberty to file fresh suit. Admittedly, the present suit was filed on 30-7-1966. The question, therefore, is whether the suit is within limitation. Article 59 of the Schedule to the Limitation Act, 1963, relied on by the appellant herself, postulates that to cancel or set aside an instrument or decree or for the



WEB COPY



A.S.No.866 of 2012

rescission of a contract, the limitation is three years and it begins to run when the plaintiff entitles to have the instrument or the decree cancelled or set aside or when the contract rescinded first became known to him. As seen, when the appellant had knowledge of it on 29-1-1949 itself the limitation began to run from that date and the three years' limitation has hopelessly been barred on the date when the suit was filed. It is contended by Shri V.M. Tarkunde, learned Senior Counsel for the appellant, that the counsel in the trial court was not right in relying upon Article 59. Article 113 is the relevant article. The limitation does not begin to run as the sale deed document is void as it was executed to stifle the prosecution. Since the appellant having been remained in possession, the only declaration that could be sought and obtained is that she is the owner and that the document does not bind the appellant. We are afraid that we cannot agree with the learned counsel. As seen, the recitals of the documents would show that the sale deed was executed for valuable consideration to discharge pre-existing debts and it is a registered document. Apart from the prohibition under Section 92 of the Evidence Act to adduce oral evidence to contradict the terms of the recital therein, no issue in this behalf on the voidity of the sale deed or its binding nature was raised nor a finding recorded that the sale deed is void under Section 23 of the Contract Act. Pleading itself is not sufficient. Since the appellant is seeking to have the document avoided or cancelled, necessarily, a declaration has to be given by the court in that behalf. Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit



A.S.No.866 of 2012

necessarily has to be laid within three years from the date when the cause of action had occurred. Since the cause of action had arisen on 29-1-1947, the date on which the sale deed was executed and registered and the suit was filed on 30-7-1966, the suit is hopelessly barred by limitation. The courts below, therefore, were right in dismissing the suit. The appeal is accordingly dismissed with costs."

9.1. Further, when the plaintiffs have marked the sale deeds duly executed and registered, the onus is on the defendant to disprove the transactions. The defendant has not done anything to prove the same except his own oral evidence and to examine **D.Ws.2** and **3** who are only his friends to contend that periodically loans were obtained from the plaintiffs. This is coupled with the admission made by himself in the cross-examination about the sale agreement and atleast about the first sale deed. Therefore, his case, that the entire transaction was not a sale transaction, and that he was only executing mortgage deeds remained falsified.

9.2. The next contention made on behalf of the appellant is that the sale deeds and the sale agreements are not in tandem. Even if parties have entered into a sale agreement for selling the entire property in portion at a particular rate, thereafter, even if the sale is only portion by portion and at



A.S.No.866 of 2012

WEB COPY

varied sale considerations and by taking earlier loan amounts, that by itself will not vitiate the sale as if both parties to contract have by subsequent contract varied or modified the original contract, such varied / modified terms will be binding on them and will not invalidate the transaction. Therefore, the contention of the defendant fails miserably and I answered the point that the plaintiffs have got title over the suit property by virtue of *Exs.A-3, A-4 and A-5*, sale deeds and therefore, the point is answered accordingly.

J. Point No.ii :-

10. It may be seen that in respect of the very same cause of action, the defendant herein had filed a suit for permanent injunction restraining the plaintiffs herein from interfering with the peaceful possession and enjoyment of the defendant over the schedule mentioned property. The said suit is taken on file as O.S.No.199 of 2007. The pleadings were identical. On the said pleadings, a specific issue has been framed as to whether the plaintiff therein is a permissive occupier of the suit property? On the said issue, considering the evidence on hand in the paragraph No.10 of the said judgment, the Court has concluded that all the three transactions were sale



A.S.No.866 of 2012

transactions. There was no mortgage transaction. It was further concluded that the defendant herein had no right to be in possession. Only on the ground that even a trespasser may be evicted only by due process of law, the Trial Court decreed the suit in part by granting permanent injunction in favour of the defendant herein for a period of three months and given liberty to the plaintiffs herein to file a suit for recovery and possession. Therefore, each and every contention raised in the present suit is already raised or deemed to have been raised in the earlier suit and answered by the Court and the said judgment has become final.

11. In view thereof, the present suit is also barred by the principles of *res judicata* and the judgments relied upon by the learned Senior Counsel for the respondents (cited *supra*) would squarely apply to the facts and circumstances of the case and therefore, this point is also answered against the appellant and in favour of the respondents / plaintiffs.

K. THE RESULT:



A.S.No.866 of 2012

WEB COPY

12. In the result, this Appeal Suit fails and is dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.06.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

1. The II Additional District Court,
Pondicherry.
2. The Section Officer,
V.R. Section,
High Court of Madras.



WEB COPY



A.S.No.866 of 2012

D.BHARATHA CHAKRAVARTHY, J.,

grs

A.S.No.866 of 2012
and M.P.No.1 of 2012

13.06.2023