



SA.No.1652 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1652 of 2008

and

MP.No.1 of 2008

Gopal Gounder
S/o.Budda Gounder

... Appellant

- Vs -

1. Krishnan
2. Kamala
3. Shankar
4. Velu
5. Vijaya
6. Vasantha

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Subordinate Judge, Tiruppathur (Vellore District) dated 31.03.008 in A.S.No.69 of 2006 reversing the Judgment and Decree of the learned District Munsif, Tiruppathur (Vellore District) dated 21.08.2006 in O.S.No.88 of 1997.

For Appellants : Mr.T.M.Hariharan

For Respondents : Mr.R.Ramachandran
for M/s.V.Jeevagiridharan for R1 & R2
R3 to R5 – NDW vide Order dated
16.04.2021
R6-Served-No Appearance



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JUDGMENT

The instant Second Appeal has been filed at the instance of the plaintiff.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts, which give rise to the instant second appeal is as follows:-

3. According to the plaintiff, the defendants 1 to 3 and Unnamalai are the owners and they have jointly executed a Sale Agreement on 26.04.1990 agreeing to sell the suit property for a sale consideration of Rs.500/-. It is also the submission of the plaintiff that on the date of the sale agreement, the possession of the property has been handed over to the plaintiff. In the meanwhile, the said Mrs.Unnamalai died on 03.03.1996 leaving behind the defendants 4 to 6 as her legal heirs. The plaintiff further submits that the defendants 1 to 6 in unlawful collusion with the defendants 7 and 8 have dishonestly attempted to create an unlawful sale of the suit property with a view to infringe the plaintiff's legal rights. The plaintiff also caused a legal



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notice dated 26.09.1996 requesting the defendants 1 to 6 to come and execute the sale deed. Since the defendants failed to execute the sale deed, he come forward with a suit for specific performance.

4. The said suit was resisted by the 7th defendant by filing the written statement stating that the suit property and other properties were originally belongs to one Unnamalai and others, and they were in a possession and enjoyment of the same. It was the further submission of the defendants that they have agreed to sell the said property to the defendants 7 and 8 for a sum of Rs.64,000/- on 10.08.1988 and received an advance of Rs.500/- and delivered possession of the suit property and other properties. There was also a partition in their family and in that partition, S.F.Nos.453/2, 452/1, 453/1 and the Well, 5 HP Electric motor and pump set fell into the share of one Sankar and after partition, he was in possession and enjoyment. It is the submission of this defendant that, the said Sankar in pursuance of the agreement of sale has executed a sale deed in favour of the defendants 7 and 8 on 24.05.1997 and delivered possession of the same. From the date of the agreement, these defendants 7 and 8 are in possession of the entire properties including the suit properties, and after sale, they became the absolute owners



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and they are in possession and enjoyment of the property. These defendants dispute the sale agreement dated 26.04.1993 and would submit that the said sale agreement is subsequent to the agreement of sale, which was made in the year 1998. Hence, this defendant prayed to dismiss the suit.

Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, the plaintiff examined 3 witnesses as PW1 to PW3 and marked as many as 10 documents as Exs.A1 to A10. On behalf of the defendants, 4 documents have been marked as Exs.B1 to B4 and 3 witnesses have been examined as DW1 to DW3. As a Court document, 2 documents have been marked as Exs.C1 and C2.

6. The Trial Court, after gone into various aspects has ultimately decreed the suit. Aggrieved with the said order, when the defendants 7 and 8 preferred an appeal, the First Appellate Court reversed the finding on the ground that Ex.A1-Sale Agreement is not at all a sale agreement and that the First Appellate Court found the Sale deed executed by one Sankar in favour of the defendants 7 and 8 valid and proper, hence while allowing the First Appeal dismissed the suit for specific performance. Aggrieved with the same, the plaintiff is before this Court.



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Substantial Question of Law:-

7. At the time of admission on 18.12.2008, this Court has formulated the following substantial question of law:-

“a) Whether the finding of the Appellate Court that Ex.A1 does not amount to an Agreement of Sale in law is not erroneous, especially when no such plea is raised by the respondents?

b) Whether the Appellate Court is right in holding Ex.B1 agreement as true when the attestors are not examined and without considering the specific findings of the trial Court based on evidence?

c) Whether the Appellate Court has not misdirected itself in not framing proper issues for determination when complicated questions of facts and law arise for consideration?”

Submission of either side counsel:-

8. The learned counsel for the plaintiff would submit that the sale agreement-Ex.A1 was executed by the defendants 1 to 3 and Unnamalai after receipt of the sale consideration of Rs.500/- and also they have handed over the possession to them. Therefore, contended that they have already performed their obligations, whereas the defendants failed to come forward



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to execute the sale deed. The learned counsel would also contend that in respect of sending notice, in the year 1996, the defendants did not come forward to execute the sale deed. It is also the submission of the learned counsel for the plaintiff that the sale deed executed by the 2nd defendant/Sankar in favour of the defendants 7 and 8, who are the appellants therein, is sham and nominal transaction and will not bind the plaintiff as it was executed by one among the joint owners. Therefore, argued that the said sale deed will not bind the plaintiff.

9. Per contra, the learned counsel appearing on behalf of the respondents would submit that, only based upon the partition, the property was devolved upon one Sankar, therefore, the sale deed, which was executed by Sankar in favour of the defendants 7 and 8 is valid and binding. It was further contended that the sale agreement of the defendants 7 and 8 (Appellants therein) was prior in point of time to the sale agreement of the plaintiff. The learned counsel would also contend that Ex.A1 viz., the document, which is pleaded by the plaintiff as Sale Agreement is not at all the sale agreement, where there is no promise or undertaking to execute the sale deed. Hence, prayed to dismiss the Second Appeal by confirming the order of the First Appellate Court.



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10. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

11. The sum and substance of the learned counsel for the appellant is that the very Ex.A1 is a sale agreement. However, while seeing the order of the Lower Appellate Court, the Lower Appellate Court elaborately extracted the recitals of Ex.A1-Sale Agreement. Wherein it refers about the handing over the possession and also refers about the extinctment of the right of the executor. Based upon the said recitals in Ex.A1-Sale Agreement, the Lower Appellate Court found that the same appears like a Sale deed, and observed that could not find any semblance to draw an inference that the said agreement as the Sale Agreement. This Court is in full agreement with the findings recorded by the Lower Appellate Court. Apart from the above findings, even this Court while reading Ex.A1-Sale Agreement, independently could not find any undertaking or promise from the defendants 1 and 2 to execute the sale deed.

12. Apart from that, when the plaintiff has paid the full sale consideration and having obtained the possession of the property his long waiting for a period of more than 6 years to file a suit, would indubitably



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project a suspicion over the conduct of the plaintiff. Therefore, this Court is of the firm opinion that Ex.A1-document cannot be termed as Sale Agreement.

13. Coming to the next aspect viz., whether the finding of fact recorded by the Lower Appellate Court based upon Ex.B1-Agreement is valid and proper, this Court while perusing the written statement, the 7th defendant has categorically pleaded that there was a family arrangement between the defendants 1 to 3 and that the suit property was allotted to Sankar. It was further pleaded that subsequent to the agreement and only based on the said family arrangement, Sankar has executed the Sale Deed in favour of the defendants 7 and 8. Therefore, would contend that the sale agreement is valid.

14. The Lower Appellate Court in it's detail analysis has extracted the endorsement made in Ex.B1 at page no.2. Wherein the other sharers of the property have recorded their no objection in favour of Sankar to execute the Sale Deed. Therefore, this Court finds that the finding of fact recorded by the First Appellate Court that Ex.B2-Sale Deed executed by Sankar in favour of the defendants 7 and 8 was based upon Ex.B1-Sale Agreement is valid and binding. Therefore, the finding of fact recorded by the First Appellate



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Court is based upon the material and in accordance with law. This Court could not find any perversity over the finding of the First Appellate Court.

15. In view of the above discussion, the substantial question of law are answered in favour of the respondents. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected MP is also closed.

22.11.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Subordinate Judge,
Tiruppathur,
Vellore District.
2. The District Munsif,
Tiruppathur,
Vellore District..



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C.KUMARAPPAN,J

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