IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 299 of 2021

S.Narayanan
Prop. Guru Foundation .. Appellant

Vs

1. G.Balaji

2. Devi

3. The Federal Bank Limited,
   Vadapalani Branch,
   Chennai-600 026.

4. State Bank of Mysore,
   Whites Road Branch,
   Chennai-600 014. ... Respondents

PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 Rule 1 of Civil Procedure Code, praying to set aside the judgment and decree dated 14.10.2019 passed by the learned XVI Addl. City Civil Court, Chennai in O.S.No.1963 of 2014 (C.S.No.880 of 2007).

For Appellant : Mr.L.Chandrakumar

JUDGEMENT

The appellant herein is the plaintiff in the suit in C.S.No.880 of 2007 in O.S.No.1963 of 2014, on the file of XVI Addl. City Civil Court at Chennai, who filed the said suit for the relief of declaration to declare the sale deed dated 31.01.2005 executed by him in favour of 1st defendant vide registered document No.293 of 2005 at S.R.O., Anna Nagar as sham and nominal and the same was not acted upon along with other consequential relief of injunction against the defendants 1 to 4/respondents 1 to 4. The defendants 1 and 2 remain exparte before the trial court as well as 4th respondent bank also remain exparte. The 3rd respondent alone contested the suit as well as the appeal.

2. For the sake of convenience, parties are referred as per the ranking in the suit.

3. The learned counsel for plaintiff would submit that as a promoter of residential Flats, he was approached by the 1st defendant to purchase the said flat that was being build in Plot No.221, Door No.1, 6th Main Road, Sri Ayyappa Nagar, Chennai and the 1st defendant represented that in order to avail a loan, he is in need of sale deed. Accordingly, the plaintiff executed a sale deed of undivided share 522 sq.ft. with valid consideration of Rs.1,67,040/- on 31.01.2005 and also executed a construction agreement of 1065 sq.ft. value of Rs.13,22,085/-. For that, a sum of Rs.5000/- was paid as token advance and there was a balance of Rs.13,17,085/-. Since the sale of undivided share is only a sham and nominal document, the payment will be adjusted after construction of the flat, but the cheque issued by the 1st defendant was returned on account of "insufficient funds". On enquiry, the plaintiff found that the 1st defendant cheated him. The plaintiff after due deliberation, he agreed to hand over the title deed as well as balance payment, but possession was not handed over to him by the plaintiff. Subsequently, the plaintiff came to know that defendants 1 and 2 forged

his signature and created a document in the name of plaintiff and mortgaged the property with the Federal Bank, 3rd defendant herein and obtained loan of Rs.11,56,916/-. Thereafter, 1st defendant created another set of mortgage loan with different bank and obtained another loan of Rs.10,00,000/-. Thus, as on date, two mortgage deeds were created based on the fabricated document and the same would not bind the plaintiff. To safeguard his interest in the suit property, the plaintiff approached the court to declare the sale deed executed in favour of 1st defendant on 31.01.2005 as sham and nominal and also consequential relief not to cause interference with the possession and enjoyment of property as described in the plaint schedule.

4. Before the trial court, except the 3rd defendant bank, all the three defendants remain exparte. Both plaintiff and 3rd defendant adduced their oral and documentary evidence. Based on that, the trial court framed issues and finally held that the plaintiff failed to prove that the sale deed stands in the name of 1st defendant is sham and nominal document nor he is entitled to give possession of the property. As per the evidence

rendered by 3rd defendant bank, payment also made by 1st defendant on various dates. Therefore, the trial court declined to declare the sale deed as null and void, as such sham an nominal and also not granted interim injunction stating that the plaintiff is not entitled to possession of the property after receipt of entire sale consideration, thereby the suit was dismissed. Aggrieved over the findings, the plaintiff preferred this appeal.

5. The learned counsel for plaintiff would submit that the trial judge failed to take note of the fact that the 1st defendant, against whom the sale deed executed and as on date, 1st defendant has not raised any objection for the relief claimed by the plaintiff even after receipt of notice in the suit, without which, the trial court erroneously concludes that the plaintiff not proved his case as such is unjust and liable to be set aside. Further, the trial court failed to accept that even assuming that sale deed is true, till date, possession is with the plaintiff, which itself clearly denotes that the said sale deed was not acted upon, inspite of that, the relief of injunction not granted in favour of plaintiff by considering his

possession as such is totally unfair and liable to be set aside. The learned counsel for plaintiff would also submit that already based on a complaint given by plaintiff, F.I.R. was registered against the 1st defendant and his wife in Crime No. 286 of 2007 under Sec.420 I.P.C. itself sufficient to conclude that the 1st defendant fabricated the document and obtained a loan from the bank without his consent. But those facts have not been properly appreciated by the trial judge. Hence, he prayed to set aside the findings of trial judge by allowing this appeal.

6. The 3rd defendant/3rd respondent herein contested the Suit stating that there might have collusion between the plaintiff and 1st defendant, thereby fabricated a fake document in order to avail loan from the bank by depositing some title deed, for which the bank already gave a complaint against the 1st defendant. After that, the plaintiff gave a complaint as if he was not aware of any of the facts, but in fact the 1st defendant obtained loan from this bank and paid the same to the plaintiff on various dates, for which, receipts also issued towards the sale consideration of suit property from 12.01.2005 to 11.03.2005 for around

Rs.14,90,000/- and all the transactions are made through federal bank and ICICI bank. To that effect, the dates and events was made by them in the written statement. Now, in order to escape from the clutches of law as well as with regard to cheating the bank, the plaintiff and the 1st defendant colluded and filed the suit, which was rightly appreciated by the trial judge by dismissing the suit. Hence, he prayed to dismiss the appeal as no merit.

7. Considering both side submissions and on perusal of records, it would reveals that the plaintiff filed a suit to declare the sale deed stands in the name of 1st defendant dated 31.01.2005 as sham and nominal document. The 1st defendant remain exparte. The 3rd defendant bank alone contested the suit. The plaintiff was examined as P.W.1. Senior Manager of Federal Bank was examined as D.W.1. Now, the point is to be decided whether the sale deed stands in the name of 1st defendant executed by the plaintiff is sham and nominal document or is there any collusion between the parties to defraud the bank?

8. Admittedly, the plaintiff Narayanan is a promoter and running the business under the name and style of Guru Foundation. The defendants 1 and 2 are husband and wife, who approached the plaintiff to purchase a flat. Accordingly, the plaintiff executed the sale deed of undivided share measuring an extent of 522 sq.ft. in favour of 1st defendant and in respect of construction, measuring an extent of 1650 sq.ft., for the value of Rs.13,22,085/-, a construction agreement was executed between them. Both agreement and sale deed are admitted by the plaintiff while he was examined as P.W.1. But, with regard to payment of balance sale consideration for the construction of flats, the plaintiff submits that he was not aware of bank loan particulars, which was filed by the 1st defendant with the 3rd defendant bank. While filing written statement, in para 5 of that statement, 3rd defendant mentioned the date of payments made by him on various occasions to the plaintiff through demand drafts and cheque as well as cash payment, which comes around Rs.14,90,000/-. If at all, the plaintiff not received those amounts, he ought to have denied those payments by filing reply statement, but the

plaintiff not filed any such statement. While the Senior Manager of the 3rd defendant bank was examined as D.W.1, he deposed that while obtaining the loan, he gave a fake sale deed. Hence, he gave a complaint, however, the complaint given by plaintiff was registered in Crime No.286 of 2007 against 1st defendant. Considering the evidence of D.W.1, the plaintiff totally denied that he was not aware of the particulars found in the written statement and he was not aware of the complaint given by the 3rd defendant bank against the 1st defendant. After that, he also gave a complaint against the 1st defendant. Both the criminal cases are pending as on date.

9. As discussed above, payments were received by the plaintiff from the 1st defendant for the sale consideration and the same was not disputed by the plaintiff by adducing any contra evidence, which itself clearly shows that the sale deed is supported with the consideration. Hence, the claim of plaintiff stating that the sale deed is sham and nominal document and not acted upon is totally false and the same was rightly appreciated by the trial judge while deciding the issue Nos.1

and 2. However, the plaintiff himself admits that after receipt of sale consideration, flat was completely constructed, but he has not handed over the possession, which would show that with an ulterior motive, he approached this court. Having admitted the execution of Ex.A2, now the plaintiff has no locus standi to contend that it is sham and nominal document. Ex.A2 is a registered document, against which, the plaintiff is not entitled to give oral evidence as per Sec.92 of Evidence Act, which was rightly appreciated by the trial judge, which needs no interference. Thus, the conduct of both plaintiff as well as 1st defendant clearly probablise that both of them colluded in filing the said suit in order to defraud the bank claim. Accordingly, both issues are answered, thus Appeal Suit is dismissed as no merit. No costs.

05.10.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
XVI Addl. Judge, City Civil Court,
Chennai.

T.V.THAMILSELVI, J.

rpp

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