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S.A.No.457 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2023

Coram :

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Second Appeal No. 457 of 2023

and

C.M.P.No.13719 of 2023

D. Radhakrishnan

.. Appellant

Versus

1.E.Kasthoori

2.The Sub-Registrar

Vallam,

Villupuram District-605 206

.. Respondents

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 14.12.2021 made in A.S. No. 3 of 2021 on the file of I Additional District Judge, Tindivanam, confirming the judgment and decree dated 27.04.2019 made in O.S.No.2 of 2017 on the file of Suoprordinate Judge, Gingee.

For Appellant : Mr. Ganapathy Thangavel

For 2nd Respondent : Dr. S. Suriya,
Additional Government Pleader

JUDGMENT

The unsuccessful plaintiff, who lost his case before the trial Court as well as lower appellate Court, has filed the present second appeal.



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2. For the sake of convenience, the parties are referred to as they are

arrayed in the original suit.

3. The case of the appellant/plaintiff is as under:-

The suit schedule property situated at Villupuram District, Gingee Taluk, Modaiyur Village, to an extent of 4.13 cents in Survey No.278/2 was acquired by the plaintiff through a settlement deed executed by his father late Dhanapal Naidu on 30.09.1987 which was registered as Document No.1543/1987 in the office of the Sub-Registrar, Vallam. From that date, the said property was under the possession and enjoyment of the plaintiff without any encumbrance. That apart, the plaintiff is also the owner of the lands comprised in Survey No.251/2 and 251/3A. Due to financial crisis, the plaintiff mortgaged the said property on 09.04.2012 by executing a mortgage deed registered in favour of one Manikandan as document N0.1029/2012. The plaintiff further submits that to meet his urgent requirement, he intended to sell a part of the property in Survey No. 251/2 to an extent of 0.14 cents along with the punja land in survey No.251/3A to an extent of 0.83 cents, measuring a total extent of 0.97 cents for a consideration of Rs.2,61,000/- and the first defendant has made partial payment of Rs.2,20,000/- towards the sale consideration accepting to pay the balance amount of R.41,800/- after



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deed on 11.02.2013 registered as document No.261/2013 in favour of the first defendant, but the first defendant has not paid the balance consideration of Rs.41,800/-. Thereafter, the plaintiff had knowledge about fraudulent inclusion of 1.42 cents in the schedule property in Survey No.278/2A, which has already been mortgaged by the plaintiff in favour of Manikandan and hence, the plaintiff made a complaint with the jurisdiction police station at Gingee against the first defendant in CSR No.315/2015 dated 26.08.2015 for necessary action. Thereafter, the plaintiff filed the suit in O.S. No. 2 of 2017 on the file of Subordinate Judge, Gingee, for grant of permanent injunction restraining the first defendant from any way of alienating, encumbering or transferring the suit schedule property and to cancel the sale deed registered at the office of SRO, Vallam, as Doc.No.261/2013 dated 11.02.2013 executed by the plaintiff in favour of the first respondent in respect of Item No.3 to an extent of 1.42 cents alone as null and void and for costs.

4. Denying the averments made in the plaint, the first defendant/first respondent has filed the written statement. It is stated that the plaintiff had executed the sale deed in respect of S.No.278/2A to an extent of 1.42 cents with other two items of the properties in favour of the first defendant on 11.02.2013 for a sale consideration of Rs.2,91,300/- and the sale deed was



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plaintiff has pleaded that the land in S.No.251/12 to an extent of 0.14 cents and S.No.251/3A to an extent of 0.83 cents totaling to 0.97 cents only was executed in favour of the first defendant, which is not true. The sale consideration amount was fixed as Rs.1100/- per cent for the land in S.No.251/12 to an extent of 0.14 cents and for the land in S.No.251/3A to an extent of 0.83 cents totaling to 0.97 cents and Rs.1300/- per cent for the land in S.No.278/2A measuring an extent of 1.42 cents. The sale amount was handed over to the plaintiff at the time of registration of the sale deed and signed by the plaintiff, his wife and son. The first defendant has not wrongly included the suit schedule property in the sale deed, as alleged. Though the cause of action arose on 11.02.2013, the plaintiff has not filed the suit within the limitation period. After execution of sale deed, the first defendant got patta on 04.03.2013 in Patta No.4742 and joint patta No.4741 and the property tax was levied and paid by him. Therefore, it is stated that the suit is belated and prayed to dismiss the suit.

5. On the above pleadings, the Trial Court framed the following issues:-

1. Whether the first defendant has fraudulently included the land in S.No.278/2A to an extent of 1.42 acres in document No.261 of 2003 dated 11.02.2013?
2. Whether the document No.261 of 2003 dated 11.2.2013 is



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liable to be cancelled?

3. Whether the plaintiff is entitled for permanent injunction as prayed for?

4. To what other reliefs the plaintiff is entitled?

6. Before the Trial Court, the plaintiff examined himself as PW1 and marked Exs.A1 to A7 in support of his case. On the side of the defendants, the first defendant himself examined as DW1 and one Elumalai and Chitra were examined as DW2 and DW3 respectively and marked Exs.B1 to B7.

7. On scrutiny of the oral and documentary evidence, the trial Court dismissed the suit with costs by judgment dated 27.04.2019. Challenging the same, the appellant/plaintiff has filed A.S. No.3 of 2021 before the I Additional District Court, Tindivanam. The first appellate Court, by judgment dated 14.12.2021, confirmed the judgment and decree of the trial Court and dismissed the appeal suit. Questioning the correctness of the judgment and decree made by both the Courts below, the appellant/plaintiff has filed the present second appeal.

8. Mr.Ganapathy Thangavel, learned counsel appearing for the appellant, would submit that the Courts below erred in simply accepting the



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resulted in mis-carriage of justice. He would further submit that the trial Court failed to consider the vitality of the pleading taken by the appellant/plaintiff before framing issues. He would also submit that when item No.3 of the suit schedule property is under mortgage duly registered on 09.04.2012, the trial Court ought not to have taken note of the execution of sale deed dated 11.02.2013, which was executed by suppressing the existence of mortgage and that too, in respect of very same property unlawfully. Therefore, it is his contention that the said sale deed is not enforceable in the eye of law. He would further submit that the Courts below fully relied upon the interested witnesses of the first respondent, accepted it and dismissed the suit filed by the plaintiff. He would also submit that inclusion of item No.3 of the suit schedule property was brought to the knowledge of the plaintiff only in the year 2015 and therefore, the cause of action to file the suit emanates only from that date. While so, the suit filed on 10.01.2017 is well within the stipulated period under the law. However, the Courts below failed to analyse the said issue and erroneously held as if the suit is barred by limitation and hence, the second appeal has to be allowed.

9. Per contra, Dr. S. Suriya, learned Additional Government Pleader

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appearing for the second respondent, would only submit that the suit was filed



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only for declaration and injunction. In the suit, the plaintiff has averred that in the sale deed executed by him, the first defendant has included certain properties, which he has not inclined to sell at all. The fact remains that the plaintiff, with open eyes, has signed the sale deed and got it registered in favour of the first defendant. The sale deed is a registered sale deed and it partakes the character of a valuable and enforceable instrument. The Plaintiff is the executor of the sale deed and he cannot feign ignorance that he had signed the dotted lines without knowing as to what are the properties included therein. In any event, it is not the case of the plaintiff that the second defendant - registering authority, has erroneously entertained the sale deed executed by him for registration. Therefore, the plaintiff ought not to have impleaded the second defendant as a party to the suit. The second defendant is not a proper and necessary party for adjudication of the *inter se* dispute between the plaintiff and the first defendant. The Plaintiff also has not sought for any relief as against the second defendant in the plaint. Therefore, the learned counsel for the second defendant prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the parties and perused the judgments of the courts below in the light of the question of law raised by the Appellant.



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11. It is the case of the plaintiff that while executing the sale deed in favour of the first defendant, the suit schedule property, which was not intended by him for sale, has been included. It is further stated that already the suit property has been mortgaged on 09.04.2012 at Sub Registrar, Vallam in Doc. No.1029/2012 in favour of one Manikandan and the mortgage deed has been marked as Ex.A2. While so, the first defendant had whimsically included the suit property in the sale deed. The Plaintiff came to know about the inclusion of the suit property in the sale deed much later and therefore, he sought for cancellation of the sale deed in document No.241/2013 dated 11.02.2013 in so far as it relates to the land measuring an extent of 1.42 acres in Item No.3.

12. Though in the plaint the plaintiff has stated that the sale consideration with the first defendant was fixed at Rs.2,61,000/- and the first defendant has only paid Rs.2,20,000/- leaving the balance sale consideration of Rs.41,000/- unpaid, during his cross-examination as P.W.1, the plaintiff stated that the total sale consideration was Rs.1,07,000/-. He has also admitted that he received Rs.1,00,000/- in excess towards sale consideration. But in quick succession, the plaintiff had stated that he had knowledge about receipt of excess payment only after three months. When the plaintiff had admitted



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deed itself and also admitted receiving excess amount of Rs.1,00,000/- during cross examination, he cannot plead that the execution of sale deed is not valid in law. The plaintiff has also failed to examine the witnesses to the sale deed to prove that fraud has been committed by the first defendant. The Plaintiff has consciously executed the sale deed in the presence of witnesses and received excess sale consideration as well from the first defendant, while so, it is too big a pill to be swallowed by the first defendant to assert that the first defendant had whimsically included the suit property in the sale deed without his knowledge or consent. Having considered the fact that the plaintiff had voluntarily executed the sale deed dated 11.02.2013 in favour of the first defendant, this Court finds that both the Courts below have analysed in depth while considering the enforceability of the sale deed and held it is a valid one. Therefore, the contention of the learned counsel for the appellant that the sale deed is unenforceable in law and it is liable to be cancelled in so far as it relates to inclusion of suit property therein is hereby rejected.

13. With respect to limitation, the plaintiff in his cross-examination itself had admitted that he had knowledge about the inclusion of the property only after three months from the date of sale, i.e., on 11.05.2013. It is also very clear that the plaintiff had attempted to save the limitation by lodging a



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himself had admitted about the knowledge of inclusion of the property within three months of execution of the sale deed, he ought to have filed the suit within a period of three years as contemplated under Article 59 of the Limitation Act. Whereas, the suit was laid by the plaintiff only on 10.01.2017. Therefore, both the Courts are wholly justified in holding that the suit is barred by limitation.

14. Having carefully analysed the materials available on record including the judgments of both the Courts, this Court is of the view that the Courts below have dismissed the suit on law and facts. This Court finds that there is no question of law much less substantial question of law involved in the appeal requiring admission.

15. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surrender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the



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conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

16. In view of the above, no question of law much less substantial question of law arises for consideration, the Second Appeal fails and the same is dismissed at the admission stage itself. No costs. The connected Miscellaneous Petition is closed.

10.07.2023

raa

To

1.The Subordinate Judge,
Ginjee.

2.The I Additional District Judge,
Tindivnam.

3.The record Keeper,
V.R Section, High Court, Madras.



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A.D.JAGADISH CHANDIRA,J.

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