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S.A.No.628 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.628 of 2023
and
C.M.P.No.19699 of 2023

1. Krishnaveni (Died)

2. Suseela

3. Vijaya

... Appellants

(Appellants 2 & 3 brought on record as legal heirs of deceased sole appellant vide order of this Court dated in C.M.P.Nos.5948 & 5949 of 2022 in S.A.SR.No.77806 of 2019)

Vs.

E.Kumar

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree dated 07.08.2018 passed in A.S.No.299 of 2016 by the learned VII Additional Judge, City Civil Court, Chennai, confirming the Judgement and Decree made in O.S.No.4219 of 2010 dated



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19.07.2016 on the file of the learned XV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Kulandaivelu
For Respondent : Mr.R.Babu
for Mr.A.N.Sivaprakasam

JUDGMENT

The second appeal has been filed against the Judgement and Decree dated 07.08.2018 passed by the learned VII Additional Judge, City Civil Court, Chennai. in A.S.No.299 of 2016, confirming the Judgement and Decree passed by the learned XV Assistant Judge, City Civil Court, Chennai in O.S.No.4219 of 2010 dated 19.07.2016.

2. Legal heirs of the unsuccessful plaintiff are the appellants herein. The plaintiff has filed the Suit seeking the relief of declaration that the Sale Deed in Document No.2872 of 2008 registered in Sub Registrar Office, Mylapore, Chennai dated 17.12.2008 by fraud, coercion and cheating as null and void and also cancel the said Sale Deed, for permanent injunction restraining the defendant, his men,



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agents, servants or anybody who is authorized or claiming under him from any way interfering with the plaintiff's peaceful possession and enjoyment of the property except under due process of law. The suit was dismissed and the same was confirmed by the first appellate Court. Aggrieved against the same, this present Second Appeal has been filed.

3. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.

4. The case of the plaintiff is as under:-

4.1. The plaintiff and her daughter Susheela have been residing in the suit property bearing door No.185/198 situated in K.V.B. Garden, Raja Annamalaipuram in S.No.4259/3 for the past 40 years. The plaintiff's daughters Susheela and Vijaya developed a super structure measuring 59 sq.meter in the suit property.

4.2. The suit property originally belonged to Tamil Nadu Slum Clearance Board. The plaintiff's husband Ramakrishnan had purchased the property from the Tamil Nadu Slum Clearance Board out of his own



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earnings by way of a registered sale deed in Doc. No.3514 of 2003 dated 24.12.2003 and later, he had settled the property on the plaintiff through a settlement deed dated 23.01.2004 registered in the Sub Registrar Office, Mylapore, Chennai vide Document No.369 of 2004.

4.3. When the plaintiff was in peaceful possession and enjoyment of the suit property without any encumbrance, the defendant, who is the son of one Elumalai, the younger brother of the plaintiff's husband along with one Irussappan, the defendant's wife Kavitha, and the plaintiff's sister's son Kuppusamy and his wife Kanagavalli, had forced the plaintiff to register the property in their name, whereas, the plaintiff had expressed that she had no intention to sell the property, since she wanted to gift the property to her daughters and grandchildren.

4.4. Whiles, on 17.12.2008 the defendant along with his relatives took the plaintiff in an autorickshaw, under the guise of getting patta for the suit property, had obtained her thumb impression in a Document, without reading out the contents in the Document. Further, they have threatened her not to disclose the incident and out of fear, she did not disclose the incident and later informed to her daughter about the same. On



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enquiry, she came to know that the Document came to be registered in Doc. No.2872 of 2008 as if the plaintiff has sold a portion of the property to the defendant.

4.5. Later, on a direction issued by this Court in Crl.O.P.No.421 of 2009 , dated 27.01.2009 an FIR was registered against the defendant in Cr.No.369 of 2009 under section 384, 417 and 420 IPC. The plaintiff had not received the sale consideration and the sale deed was a fabricated one and there was no necessity for the plaintiff to sell the property. Hence, the plaintiff has filed the suit.

5. The crux of the written statement filed by the defendant is as under :-

5.1. Plot No.265, Door No.185/198 measuring 59 sq.mtr was allotted to the defendant's paternal uncle Ramakrishnan, as per the orders of the Tamil Nadu Slum Clearance board vide a lease cum sale deed dated 01.10.1982 and that it was sold to him on 24.12.2003. The suit property measuring 158 sq.ft is a part of 59 sq.mtr of the property and that his paternal uncle Ramakrishnan had put up construction.



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5.2 The plaintiff was married to one Subramani 40 years ago and she had given birth to two daughters namely Susheela and Vijaya. The defendant's paternal uncle Ramakrishnan married one Angammal, who predeceased his uncle. The plaintiff's husband Subramanian deserted the plaintiff and thereby, she entered into the suit premises of the said Ramakrishnan as a tenant cum servant maid and thereafter, she had developed a illegal relationship with the defendant's uncle Ramakrishnan for her survival.

5.3. During such time, the plaintiff, without the knowledge of the relatives, had managed to secure a registered settlement deed on 23.01.2004 from Ramakrishnan, within 30 days from the date of sale deed dated 24.12.2003 executed by the Tamil Nadu Slum Clearance Board in favour of Ramakrishnan. After the demise of Ramakrishnan, the plaintiff had voluntarily called upon her married daughter Susheela and her husband to reside in the said property, in support of the plaintiff's illegal activities and with a view to grab the said property from the legal heirs and the relatives of late Ramakrishnan.



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5.4. Later, the plaintiff from 2004, attempted to claim the right and ownership over the said property in a calculated manner under the guise of Family Settlement Deed dated 23.01.2004, which she managed to get in her favour as she was the wife of late Ramakrishnan. Later, the relatives of late Ramakrishnan smell foul play committed by the plaintiff and her daughters, over late Ramakrishnan in getting a void family settlement deed absolutely in her favour by undue influence of her illegal intimacy and revealed to challenge the void settlement deed in the Court of law.

5.5. During such time, the plaintiff begged to arrive at compromise with the relatives of late Ramakrishnan. Accordingly, the defendant had purchased a portion measuring about 158 sq.ft of land out of 635 sq.ft with a superstructure consisting of ground floor, first floor and second floor for valuable sale consideration of Rs.3,00,000/- and that the remaining major portion will be settled in favour of her daughters. The defendant had paid the entire sale consideration of Rs.3,00,000/-, by way of cash, in the presence of two witnesses, at the time of execution of sale deed to the plaintiff, who in turn had acknowledged the receipt of the same in the sale deed. Hence, the sale deed dated 17.12.2008 was executed by the



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plaintiff and registered as Document no. 2872/2008 at SRO, Mylapore, after receipt of the entire sale consideration.

5.6. Later, after a period of one year, the plaintiff had sent a legal notice dated 12.10.2009 to the defendant and the defendant had sent his reply dated 29.10.2009. The defendant had contended that the suit was filed with a view to blackmail the defendant. The plaintiff had also filed a false complaint on him and on enquiry, it was found that the entire sale consideration was paid.

5.7 The suit is bad for non joinder of necessary party and it was not properly valued and thus, it is liable to be dismissed.

6. The trial Court framed the following issues:

1. Whether the plaintiff is entitled for the relief of declaration as prayed for?
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
3. Whether the suit is bad for non joinder of necessary parties?
4. Whether the suit is barred by limitation?
5. To what other relief the plaintiff is entitled?



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7. During trial, on the side of plaintiff, PW1 to PW4 were examined and Ex.A1 to A9 were marked. On the side of the defendant, DW1 and DW2 were examined and Ex.B1 to Ex.B3 were marked.

8. The trial Court, after considering the oral and Documentary evidence, found that the plaintiff, after receiving the due sale consideration had registered the sale deed in the favour of the defendant and thereby, dismissed the suit. Aggrieved against the judgement and decree made in O.S.No.4219 of 2010 dated 19.07.2016, the plaintiff has preferred the first appeal in A.S.No.299 of 2016 on the file of the learned VII Additional Judge, City Civil Court, Chennai.

9. In the Appeal Suit, it was contended by the plaintiff that she had no intention to sell the property and that the contents of the Documents were not read over to her and due consideration was not paid. The first appellate Court, based on the grounds of appeal, had framed the following points for determination.



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1. Whether the appellant/plaintiff is entitled to the relief as prayed for?
2. Whether the trial Court order is to be set aside?"

10. The first appellate Court, taking into consideration the Documents available on record, confirmed the judgement and decree passed by the trial Court in O.S.No.4219 of 2010 dated 19.07.2016 and dismissed the appeal. Aggrieved against the same, the present Second Appeal has been filed.

11. Learned counsel for the appellants submitted that the payment of sale consideration has to be proved by the respondent/defendant. He further submitted that the respondent/defendant has failed to prove the payment of consideration and the witnesses examined were friends of the respondent/appellant, who are interested in him and thereby, their evidence ought not to have been believed. He also submitted that the plaintiff had no intention to sell the property and she intended to gift the property to her daughters and grandchildren and there was also no necessity for her to sell the property. Thereby, he seeks to allow the present appeal.



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12. Learned counsel for the respondent submitted that the property was allotted to the husband of the plaintiff by the Tamil Nadu Slum Clearance Board and later, by the registered Document, the plaintiff had sold a part of the property measuring about 59 sq.meter to the defendant by a sale deed dated 17.12.2008 registered as Document no.2872/2008 at the Sub Registrar Office, Mylapore. He also submitted that that the trial Court, while dismissing the suit for declaration has confirmed that she is in possession of the property and granted injunction in her favour. He further submitted that both the Courts below, taking into consideration the entire evidence on record, have rightly found that the sale is valid and there is no coercion or undue influence on the plaintiff to execute the sale deed and further, the defendant has also proved the execution of the sale deed by examining the witnesses, who have signed in the sale deed. He also submitted that the trial Court, while upholding the sale, had granted an injunction in favour of the appellant and the defendant has also filed a suit seeking recovery of the possession, which is still pending. He further submitted that absolutely there is no substantial question of law involved in this appeal and thereby, the second appeal is liable to be dismissed.



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13. Heard both sides, perused the judgments of the Courts below and also the grounds raised by the appellants.

14. It is seen that the suit has been filed seeking for a declaration that the sale deed dated 17.12.2008 registered at the Sub Registrar Office, Mylapore vide Document No.2872/2008 is null and void, to cancel the sale deed and for permanent injunction restraining the defendant from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property. It is claimed by the plaintiff that the illiteracy of the plaintiff has been taken advantage by the defendant to obtain the thumb impression of the plaintiff in stamp papers under the guise of applying for patta in respect of the suit property and using the same, the defendant had fabricated the sale deed dated 17.12.2008 and thus, it is liable to be cancelled. The courts below have elaborately dealt with the issues and after analysing the oral and documentary evidence adduced by the parties with regard to the manner of execution of the sale deed, found that the sale deed was a valid one as it was executed in the manner known to law and on payment of sale consideration.



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15. So far as the coercion, fraud and cheating pleaded by the plaintiff, the courts below have taken into consideration the delay on the part of the plaintiff in lodging a police complaint and non-issuance of notice to the Sub Registrar to arrive at a conclusion that the plaintiff has not discharged her burden of proving the case of coercion. On one hand, the plaintiff seeks to justify the delay in lodging the complaint by contending that she was criminally intimidated not to disclose about the coercion to anybody, however on the other hand, it is her case that she had come out with the complaint after four days of execution of the sale deed by contending that she had come to know that a fraud had been played on her by getting her thumb impression under the guise of getting patta in her name for the suit property. Such contradictory stand taken by the plaintiff speaks much about the attitude of the plaintiff and the same has been taken into consideration by the courts below to arrive at a conclusion that the plaintiff has failed to prove that the sale deed came to be executed by the instance of the defendant by playing fraud and coercion.

16. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view



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that there is no illegality or perversity in the findings of the Courts below and no substantial question of law is involved to admit this second appeal.

17. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender 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 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*



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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."

18. In view of the above, when 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, by confirming the concurrent findings rendered by the Courts below. No costs. The connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The VII Additional Judge, City Civil Court, Chennai.
2. The XV Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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