IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

AS.No.299 of 2017
and
CMP.Nos.11250 of 2017, 5392 of 2018, 5393 of 2018,
21119 of 2022 and 14155 of 2023

Sarojini William .. Appellant

[Mrs.J.S.N.Nimmu Vasanth allowed to appear as Power of Party-in-Person on behalf of the petitioner Sarojini Williamm vide order of this Court dated 31.01.2018 made in CMP.No.20804 of 2017 in AS.No.299 of 2017.]

Versus

1. S.William Immanuel Anbarasu @ William Singaram
2. R.Sureshkumar
3. Vedha Srinivasan .. Respondents

PRAYER: First Appeal filed under Order 41 Rule 1 r/w Section 96 of CPC against the judgment dated 20.01.2017 made in O.S.No.163 of 2011 on the file of the learned Principal District Court, Kanchipuram District at Chengalpet.

For appellant	:	Mr.D.Gurusamy
For respondents		
for R1	:	Ms.V.Anuradha
for R2	:	Mr.Thyagarajan
for R3	:	Ms.R.V.Gayathri for M/s.P.B.Ramanujam Associates

JUDGMENT

[Judgment of the Court was delivered R.SUBRAMANIAN, J]

The plaintiff is on appeal aggrieved by the dismissal of the suit for declaration and partition and the grant of money decree in her favour.

2. The facts that leading to the filing of the suit are as follows:

i) The first defendant is the husband of the plaintiff. They were married in the year 1986 and even from the very beginning of the marital life there was discord amongst them. However, the plaintiff chose to ignore it for the sake of family.

ii) It is the claim of the plaintiff that she got jobs in Saudi Arabia and Muscat and worked there for a few years. While doing so, she had taken loan and sent monies to the husband to buy properties in Chennai. The plaintiff worked overtime to clear the loans. According to the plaintiff many properties were purchased in the name of the plaintiff and her husband from and out of the money earned by her and one such property is the suit property situated at Sholinganallur.

iii) It is also claimed that the plaintiff wanted to take a job in U.K., but she got job in Australia. With the approval of the first defendant, the entire family, including their son, migrated to Australia and they started living in Australia. It is claimed that the first defendant compelled the plaintiff to buy a property in Australia in both their names. After doing so, he left Australia in January 2008 and settled in Chennai, leaving the plaintiff and her son in Australia. After several attempts to patch up failed, she approached the Federal Magistrate Court, Melbourne seeking divorce. The said proceedings ended in a compromise on 29.03.2010, in and by which, it was agreed that the property, which is the subject matter of the present suit, should be sold by the first defendant and to facilitate such sale, the plaintiff would execute a power of attorney in favour of the first defendant. Accordingly, the plaintiff also executed the power of attorney in favour of the first defendant on 01.10.2010 and the same was registered on 21.10.2010. Using the said power, the first defendant sold the property on 27.04.2011 to the second defendant.

3. It is the contention of the plaintiff that the first defendant did not receive any sale consideration and the sale executed by him in favour of the second defendant itself is a sham and nominal document. In order to buttress the contention, the plaintiff relys upon the fact that the first defendant as the power agent of the second defendant had executed a sale deed in favour of the third defendant on 01.08.2011. Though it is claimed that the third defendant executed settlement deed in favour of the second defendant on 13.05.2013, that appears to be a mistaken impression due to identity of names. The third defendant had executed the settlement deed in favour of her son, who is also a Sureshkumar.

4. The plaintiff attempts to correlate those documents to contend that the sale deed executed by the first defendant in favour of the second defendant on 27.04.2011 itself is vitiated and therefore it has to be declared as null and void. Therefore, she should be given a half share in the property.

5. The suit was resisted by the defendant contending that the plaintiff cannot question the sale and all that the plaintiff would be entitled to is $114,475 Australian dollars as decided by the Melbourne Court under the compromise order and nothing more. The plaintiff cannot assail the sale deed.

6. The Trial Court after framing necessary issues accepted the defence and concluded that the plaintiff cannot assail the sale deed. The Trial Court further found that the plaintiff would be entitled to a decree of money for $114,475 Australian dollars or its equivalent value as on 27.04.2011 with interest at 7.5% per annum from 01.05.2011 till realisation. Aggrieved over the same, the plaintiff is on appeal.

7. Heard Mr.D.Gurusamy, learned counsel for the appellant, Ms.V.Anuradha, learned counsel for the first respondent, Mr.Thyagarajan, learned counsel for the second respondent and Ms.R.V.Gayathri, learned counsel for the third respondent and perused the materials available on record.

8. Mr.D.Gurusamy learned counsel for the appellant would vehemently contend that from the facts it is clear that the purchaser under Ex.A4 sale deed dated 27.04.2011 has chosen to appoint the vendor viz., first defendant as power agent and the first defendant as power agent of the second defendant had sold the property to the third defendant on 08.08.2011, which would demonstrate that the sale deed dated, 27.04.2011

is not supported by any consideration. He would also fault the first defendant for not having tendered money.

9. Contending contra, Ms.V.Anuradha, learned counsel appearing for the first respondent would submit that various correspondence that are available would go to show that the first defendant had, in fact, offered money but the plaintiff had not responded.

10. Be that as it may, we find that the very suit as framed is defective and the prayers made therein cannot be granted. The consent order passed by the Federal Magistrate Court of Melbourne is very clear. It requires the plaintiff to execute the power of attorney in favour of the first defendant permitting the first defendant to deal with the property and requires the first defendant to pay a fixed sum which is non negotiable to the plaintiff towards her share of the property. Once the share of the plaintiff is determined as a fixed sum, the plaintiff cannot question the wisdom of the first defendant in selling the property either for a lower or a higher price. Whatever price that the property is sold, the plaintiff would be entitled to get her share, which has been quantified as $114,475 Australian dollars. Even assuming that the first defendant had not received any consideration for the

sale deed, the plaintiff cannot question the same. We are not for a moment concluding that the sale deed is without consideration. The sale deed is a registered instrument it contains endorsements made by the Registrar under Section 58 and Sub-section 2(60) of the Act, creates presumption as to the correctness of the endorsements. Of course, the said presumption is a rebuttable presumption and unless there is an evidence to rebut the said presumption, the Court has to accept and act on the presumption. The evidence of the plaintiff is totally insufficient to conclude that the plaintiff has tendered enough evidence to rebutt the presumption as she had examined herself only. Admittedly, she was residing in Australia at the relevant point of time and therefore, she has no competence to speak about the happenings in the Registrar's office at that time. Mere fact that the purchaser chose to appoint the first defendant as an agent to deal with the property, and the first defendant as an agent of the second defendant had sold the property to the third defendant in August 2011 will not by itself lead to the presumption that the sale deed dated 27.04.2011 is without consideration or it is invalid. The Trial Court has rightly concluded that the sale deed is valid.

11. The Trial Court has however invoked the principles of equity and granted money decree in favour of the plaintiff for the value of $114,475

Australian dollars as on 27.04.2011 with interest at the rate of 7.5% per annum till realization. The Court also directed the plaintiff to pay Court Fee. This Court finds no reason to interfere with the conclusions of the Trial Court.

12. Though earnest effort was made by the learned counsel for the appellant to project the case of deceit on the part of the first defendant, in the absence of any evidence and in view of the fact that the consent order of the Court at Federal Magistrate at Melbourne is so clear, we do not think we can interfere with the conclusions of the Trial Court. The appeal therefore fails and accordingly dismissed. It is open to the plaintiff to pay Court Fee and seek execution of the decree. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M.J.) **(R.K.M.J.)**
26.07.2023

Index : No
Speaking order: Yes
pvs

To
The Section Officer,
VR Section High Court, Madras.

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

pvs

AS.No.299 of 2017

26.07.2023