IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2023

PRONOUNCED ON :13.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.325 of 2017
CMP.No.7800 of 2017

Mohammed Usman Sahib (Late)

1.Abdul Salam
Son of Late Mohammed Usman Sahib,
Madhagondapally Village and Post,
Denkanikotta Taluk,
Krishnagiri District.

2.Shafiulla
3.Akila

...Appellants

Vs.

1.Chand Basha
2.Mahaboob
3.Yasim ...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.12 of 2016 on the file of the Subordinate Judge, Hosur, dated 20.02.2017 in reversing the well considered judgment in O.S.No.205 of 2006 dated 10.02.2016, on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai.

For Appellants : Mr.V.Raghavachari
Senior Advocate
for M/s.B.S.Mitraneshaa
for M/s.V.Srimathi

For Respondents : Mr.G.Vigneshwar
for M/s.V.Nicholas
for R1 to R3

JUDGMENT

The respondents herein filed a suit for declaration of title and for permanent injunction restraining the appellants from interfering with their peaceful possession and enjoyment of the suit property. The trial Court dismissed the suit and aggrieved by the same, the respondents preferred the First appeal. The First appellate Court reversed the findings of the trial Court and decreed the suit as prayed for. Aggrieved by the same, the defendants are before this Court.

2. According to the respondents the suit property originally belonged to one K.Abdhul Sathar Sahib. He died leaving behind three sons and one daughter. In the family partition the suit property was allotted to the share of first defendant viz., Mohammed Usman Sahib. Thus the first defendant in the suit Mohammed Usman Sahib became owner of the suit

properties. He in order to meet the marriage expenses of his daughter and to discharge sundry debts had sold the suit properties in favour of his brother original plaintiff in the suit viz., Abdul Ajeez under a registered conditional sale deed dated 01.09.1980 for a sale consideration for Rs.1,500/-. As per the recitals of the said conditional sale deed, if the first defendant failed to pay back Rs.1,500/- to the deceased original plaintiff within a period of five years from the date of execution of the sale deed, the conditional sale shall be construed as absolute sale in favour of plaintiff. It was claimed by the original deceased plaintiff, inspite of several request, the first defendant failed to pay back the amount to him. Hence, from 01.09.1985 onwards plaintiff became absolute owner of the suit property and he had been in possession and enjoyment of the suit property. It was also claimed that on account of close relationship between the parties, plaintiff did not choose to pay land tax to the Government and there was no mutation of revenue records. It was claimed that due to escalation of the land prices, the first defendant started acting against the interest of the plaintiff and hence a legal notice was issued on 12.09.2006 calling upon first and fourth defendant not to interfere with the peaceful possession and enjoyment of the plaintiff over the suit properties. The first and fourth defendant evaded the receipt of the legal notice and caused the same to be returned. It was also claimed that the first defendant executed a sham and nominal gift deed in favour other defendants settling the suit properties in their favour. In such circumstances, the original plaintiff deceased Abdul Ajeez filed a suit for declaration and injunction as mentioned above.

3. The appellants herein filed a written statement and resisted the suit on the ground that the document dated 01.09.1980 was not a conditional sale deed but it was a mortgage by conditional sale. It was contended by them that the said document could not be treated as absolute sale deed. It was also contended by the appellants/defendants that the first defendant borrowed a sum of Rs.1,500/- from plaintiff and mortgaged the suit property. Later on, he paid back the entire amount of Rs.1,500/- to the plaintiff on 15.11.1986 and acknowledging the same, plaintiff also executed a Marukirayam agreement in favour of first defendant and returned the original so called conditional sale deed 01.09.1980. Thus the defendants pleaded discharge of the mortgage debt. It was also claimed that plaintiff himself acknowledged receipt of Rs.1,500/- on 15.11.1986 and executed re-conveyance agreement and hence he was estopped from contending that the first defendant had not repaid the said

amount. It was also claimed that the plaintiff had never exercised any right of ownership in respect of the suit property. The appellants also claimed that the possession of the suit property remained with the first defendant and he in his capacity as the owner of the suit property executed a registered gift deed dated 29.09.2006 in favor of 4th defendant settling portion of the suit property in his favour. It was also contended that remaining portion of the suit property was settled in favour defendants 2 and 3 and the same was accepted by the beneficiaries. The defendants also claimed that they had no knowledge about the pre-suit legal notice issued by the plaintiff. Thus by asserting their title as well as possession over the suit property, the appellants/defendants sought for dismissal of the suit.

4. The parties went to the trial on these pleadings. Before the trial Court, the plaintiff was examined as PW.1 and his son was examined as PW.2. The attestor to exhibit A1 conditional sale deed was examined as PW.3. Yet another witness was examined as PW.4. On behalf of plaintiffs seven documents were marked as Ex.A1 to A7. On behalf of defendants, the son of first defendant namely the second defendant was examined as DW.1. A clerk working in Tahsildar's office was examined as DW.2. The attestor to Ex.B1 re

conveyance agreement was examined as DW.3. Yet another witness was examined as DW.4. On behalf of defendants eight documents were marked as Exs.B1 to B8.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that plaintiff was not entitled to declaration of title and injunction and consequently dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.12 of 2016, on the file of Subordinate Court, Hosur. The First Appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the defendants are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by order dated 05.06.2017:

> *(i) Whether the Lower Appellate Court, has taken into consideration the fact that the property was only mortgaged under Section 53(c) of Transfer of Property Act, thus effecting only an obstensible sale of the property?;*
>
> *(ii) Whether the Lower Appellate Court has noted the fact that the original copy of the deed is not*

with the respondents herein and the same has been returned to the appellants herein for putting an end to the mortgage?

7. The learned Senior counsel appearing for the appellants elaborating the substantial questions of law formulated at the time of admission submitted that the Ex.A1 alleged conditional deed shall be treated as a mortgage by conditional sale and hence the respondents/plaintiffs are not entitled to seek declaration of title and injunction. The learned counsel submitted that the first defendant borrowed a sum of Rs.1,500/- to meet marriage expenses of her daughter and executed mortgage by conditional sale in respect of the suit property. Therefore, the original plaintiff Abdul Ajeez under whom the respondents are claiming title was only a mortgagee under Ex.A1 and he could not claim absolute title over the suit property. The learned counsel further submitted that if there is a dispute whether a particular document is a mortgage deed by conditional sale or sale with option for repurchase, the same shall not be decided based on the title to the document but it has to be decided based on the recitals found in the document and other attending circumstances. The learned counsel submitted that the original document dated 01.09.1980 relied on by the plaintiff was produced by the

defendants from their custody and marked as Ex.B2. Since the first defendant discharged the mortgage debt, the original document was handed over to him. Further the learned senior counsel submitted that even after the execution of 01.09.1980 document, the revenue records continued to be in the name of first defendant and he had been paying kist to the Government. In view of these attendant circumstances Ex.A1 document shall be construed only as a mortgage by conditional sale. In such circumstances, the respondents are not entitled to claim absolute title over the suit property.

8. In support of his contention, the learned counsel appearing for the appellant relied on following judgments:

(i) Patel Ravjibhai Bhulabhai (dead) through legal representatives Vs. Rahemanbhai M.Shaikh (dead) through legal representatives and others reported in ***(2016) 12 SCC 216;***

(ii) S.Gopinathan Vs. Mannangatti Pillai reported in (***1998) 1 LW 173;***

(iii) Munimalaiyan and others Vs. Chennammal reported in ***Manu/TN/1208/1998;***

(iv) P.L.Bapuswami vs. N.Pattay Gounder reported in ***(1966)***

SC 902;

(v) Vishwanath Dadoba Karale Vs Prisa Shantappa Upadhye (D) th.LRs. Reported in ***Manu/SC/1179/2008***

9. The learned counsel appearing for the respondents/plaintiffs submitted though appellants/defendants pleaded that the entire mortgage debt was discharged by first defendant, they failed to prove the same by leading any acceptable evidence. The learned counsel submitted that first defendant failed to enter the box and the same is fatal to the case of the appellants. He further submitted that though the appellants/defendants produced Ex.B1-re-conveyance agreement the same was an unregistered one. Therefore, the Court cannot rely on that document as an evidence for re-conveyance. Further, in order to prove execution of re-conveyance arrangement of Ex.B1 and repayment of Rs.1,500/- by first defendant, the attestor to Ex.B1 was examined as DW.3. However, his evidence was not at all useful to the defendants. In such circumstances, the plea of discharge and execution of re conveyance deed by the plaintiff pleaded by the defendants were not proved and consequently, the First appellate Court rightly came to the conclusion, based on registered conditional sale document marked as Ex.A1

that plaintiff was entitled to declaration of title and injunction. The learned counsel further submitted Ex.A1, the registered document was styled as a sale deed and therefore, it should be treated only as a sale deed with option for re-purchase. In the absence of evidence to show re-purchase by registered document, the plaintiff is entitled to declaration of title and injunction on the strength of Ex.A1 document.

10. In support of his contention, the learned counsel for the respondents relied on the following judgment in ***Vanchalabai Raghunath Ithape (dead) by LR. Vs. Shankarrao Baburao Bhilare (dead) by Lrs. And others*** reported in ***(2013) 7 SCC 173.***

11. The learned counsel further submitted that the factual conclusion reached by the First Appellate Court cannot be interfered with by this Court, while exercising jurisdiction under Section 100 in the absence of any substantial question of law. In support of the said submission he relied on following judgments:

(i) Nazir Mohamed Vs. J.Kamala and others reported in (2020) 19 SCC 57;

(ii) Hero Vinoth Vs Seshammal reported in (2006) 5 SCC 545.

12. The respondent/plaintiff has come to the Court with a specific pleading that first defendant sold the suit property in favour of plaintiff under registered conditional sale deed dated 01.09.1980 marked as Ex.A1. The suit was mainly resisted by the appellants/defendants on the ground that the document dated 01.09.1980 was not a sale deed with condition for re-purchase but it was a mortgage by conditional sale. Therefore, the main question that has to be decided in this case is whether Ex.A1 document is a sale deed with provision for reconveyance or mortgage by conditional sale. In order to decide the question, the recitals in the documents have to be considered in the light of attendant circumstances. When there is ambiguity with regard to the nature of the document, Court has to gather the real intention of the parties thereto and come to the conclusion, whether the document can be treated as a sale with condition for reconveyance or mortgage by conditional sale. In this regard, it would be appropriate to refer to the judgment of the Apex Court in Patel Ravjibhai Bhulabhai (dead) through legal representatives Vs. Rahemanbhai M.Shaikh (dead) through legal representatives and others (2016) 12 SCC 216. The relevant observation of the Apex Court reads as follows:

> *"In C.Cheriathan vs. P. Narayanan Embranthiri [4], the principle relating to interpreting of document as to whether*

the sale is mortgage by conditional sale or sale with a condition to repurchase was discussed, and this Court held as under:

"12. A document, as is well known, must be read in its entirety. When character of a document is in question, although the heading thereof would not be conclusive, it plays a significant role. Intention of the parties must be gathered from the document itself but therefor circumstances attending thereto would also be relevant; particularly when the relationship between the parties is in question. For the said purpose, it is essential that all parts of the deed should be read in their entirety".

13. In the case at hand the document in question (Exh. 23) contains the condition as under: -

"In this deed condition is that the said amount of Rs.10,000.00 when we pay back to you within five years from today, you shall give back the said property to us with possession. And in the same manner, we shall have no right to ask back the same after expiry of the time limit."

14.The above condition in Exh.23 that if the plaintiffs (respondents) make repayment of Rs.10,000/- within *a period of five years, the defendants shall handover the possession of property in suit back to the plaintiffs, reflects that the actual transaction between the parties was of a loan, and the relationship was of debtor and creditor existed, as such, we are of the view that the High Court has rightly held that the deed in question Exh.23 read with Exh. 37 is a mortgage by way of conditional sale and the decree passed in favour of the plaintiffs does not require to be interfered with. Needless to say, since the possession of the land was handed over to the mortgagee, no interest was charged. It has also come on record that the defendants leased the land to third parties, after possession was given by the plaintiffs in 1960. In the circumstances, after perusal of the evidence on record, we agree with the view taken by the High Court.*

13. In P.L.Bapuswami vs. N.Pattay Gounder reported in AIR (1966) SC 902, while considering a similar question, the Apex Court observed as follows:

5. *By s. 58(c) of the Transfer of Property Act a mortgage by conditional sale is defined as follows :*

"58. (c) Where the mortgagor ostensibly sells the mortgaged property-

on condition that on default of payment of the mortgaged-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale."

The proviso to this clause was added by Act 20 of 1929. Prior to the amendment there was a conflict of decisions on the question whether the condition contained in a separate deed could be taken into account in ascertaining whether a mortgage was intended by the principal deed. Legislature resolved this conflict by enacting that a transaction shall not be deemed to be a mortgage unless the condition referred to in the clause is embodied in the document which effects or purports to effect the sale. But it does not follow that if the condition is incorporated in the deed effecting or purporting to effect a sale a mortgage transaction must of necessity have *been intended. The question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and mortgagee, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the period specified. The distinction between the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the document viewed in the light of surrounding circumstances. If the language is plain and unambiguous it must in the light of the evidence of* *surrounding circumstances be given its true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts.*

6. We consider that in the present case there are several cir- cumstances to indicate that Ex. B-1 was a transaction of mortgage by conditional sale and not a sale with a condition for, retransfer. In the first place, there is the important circumstance that the condition for repurchase is embodied in the same, document. In the second place, there is the significant fact that the consideration for Ex. B-1 was Rs. 4,000/-, while the real value of the property was, according to the Munsif and the Subordinate Judge, Rs. 8,000/-. The High Court has dealt with this question and reached the finding that the value of the property was Rs. 5,5001-, but it is submitted by Mr. Ganapathi lyer on behalf of the appellant that the question of valuation was one of fact and the High Court was not entitled to go into the question in the second appeal. The criticism of learned Counsel for the appellant is justified and we must proceed on the basis that the valuation of the property was Rs. 8,000/- and since the consideration for Ex. B-1 was *only Rs. 4,000/- it was a strong circumstance suggesting that the transaction was a mortgage and not an out right sale. In the third place, there is the circumstance that the patta was not transferred to the 1st defendant after the execution of Ex. B-1 by Palani Moopan. It appears that defendant no. I did not apply for the transfer of patta and the patta admittedly continued in the name of Palani Moopan even after the execution of Ex. B-1. Exhibits A-6 and A-7 are certified copies of thandal extract of patta for the years 1945-54 and they prove this fact. These exhibits also show that the plaintiff had obtained patta for the land on the basis of Ex. A-2. The registered deed of transfer of patta was executed by the sons of Palani Moopan in favour of the plaintiff. There is also the circumstance that the, kist for the land was continued to be paid by Palani Moopan and after his death, by the sons of Palani Moopan. Lastly, there is the important circumstance that the consideration for reconveyance was Rs. 4,000/-, the same amount as the consideration for Ex. B-1. Having regard to the language of the document, Ex. B-1 and examining it in the light of these circumstances we are of the opinion that the transaction under Ex. B-1 was mortgage by conditional sale and the view taken by the High Court with regard to the legal effect of the transaction must be reversed. It follows, therefore, that the plaintiff is entitled to a preliminary decree for redemption under 0. 34. r. 7, Civil Procedure Code, for taking* *accounts and for declaration of the amounts due to the 1st defendant under Ex. B-1.*

14. In Chennammal Vs. Munimalaiyan and others reported in (2005) 13 SCC 71, the Apex Court observed as follows:

"13. The above judgment, in our opinion, squarely applies to the facts and circumstances of the case on hand. They are:
1) the transaction in question is a mortgage by conditional sale;
2) the condition for re-purchase of 3 years was embodied in the same document;
3) the consideration for the transaction was Rs.3,000/- while the real value of the property was Rs.12,500/-;
4) patta was not transferred to the defendant after the execution of the document;
5) as per the evidence available on record, the kist for the land was continued to be paid by the plaintiff Munimalaiyan;
6) the consideration for re-conveyance was only for Rs.3,000/-;
7) the appellant was given liberty to have the patta transferred and also to enjoy the property absolutely after the period of 3 years expired;
8) the trial Court granted a preliminary decree which was reversed by the lower Appellate court and again interfered with by the High Court.

14. We have considered all the attendant *circumstances to cover the intention of the parties. The intention is explicitly expressed in the document itself. There is, therefore, no scope for looking at the attendant circumstances. There is no relationship of the debtor and the creditor. This Court also in Tamboli Ramanlal Motilal (dead) by L.Rs. vs. Ghanchi Chimanlal Keshavlal (dead) by L.Rs. and Another, AIR 1992 SC 1236 has pointed out that the Court should be guided by the terms of the document alone without much help from the case law. Viewed from any angle, we are of the opinion that the document in question is a mortgage by conditional sale.*

15. In Vanchalabai Raghunath Ithape (dead) by LR. Vs. Shankarrao Baburao Bhilare (dead) by Lrs. And others, reported in (2013) 7 SCC 173, the Apex Court observed as follows. The Apex Court after extract in Section 58 of Transfer of Property Act, observed as follows:

From a perusal of the aforesaid provisions especially, Section 58(c), it is evidently clear that for the purpose of bringing a transaction within the meaning of `mortgage by conditional sale', the first condition is that the mortgagor ostensibly sells the mortgaged property on the condition that on such payment being made, the buyer shall transfer the property to the seller. Although there is a presumption that the transaction is a mortgage by conditional sale in cases where the whole transaction is in *one document, but merely because of a term incorporated in the same document it cannot always be accepted that the transaction agreed between the parties was a mortgage transaction.*

16. A close scrutiny of the above mentioned judgments of the Supreme Court would make it clear the title given to a document is not conclusive one to decide the nature of the document, the real intention of the parties has to be inferred by taking into consideration the recitals of the documents with other attendant circumstances when there is an ambiguity. A perusal of Ex.A1 would suggest the document was styled as a conditional sale by the parties. The vernacular extract of the relevant portion of the sale deed is extracted below:

வாதிகள் தரப்பு வா.சா.ஆ,1 ஆவணத்தில், மொகம்மத் உஸ்மான் சாகிப் எழுதி வைத்துக் கொடுத்த கண்டிஉின் கிரய பத்திரம் என்னவென்றால் என் குமார்த்திக்கு மாரோனி கல்லியாணம் செலவுகளுக்கும், இதன் கீழ் விவரம் படி காட்டி உள்ள புஜ்சை நிலத்தை நான் உனக்கு ரூ.1,500 பெற்றுக்கொண்டு கண்டிஉின் கிரய பத்திரம் எழுதிக் கொடுத்துள்ளேன். இன்று முதல் 5 வருட காலத்திற்குள் மேற்படி தொகையை உனக்கு செலுத்தி மறு கிரய பத்திரமாக பாவித்துக்கொள்ளவேண்டியது. அதன் சொத்துக்கு வாய்தா ஆனபிறகு நீர் சர்வ சுத்த பத்திரமாக அனுபவித்துக்கொள்ளலாம்.

17. A perusal of the document would suggest there is a recital in

the document as if a conditional sale deed was executed by the first defendant to the plaintiff for a sale consideration of Rs.1,500/-. However, the document proceeds to say that the seller would repay very same consideration within five years and get reconveyance. In case of his default the purchaser can enjoy the property as absolute owner after expiry of the five years period. Therefore, it is clear the conveyance of title is postponed by five years. The document does not create any interest in favour of purchaser *in praesenti*. Only in case of default of the seller to repay the amount and get the reconveyance deed, the purchaser shall be deemed to be the absolute owner and become entitled to enjoy the property as such. Though under the document possession was said to have been handed over to the purchaser, the absolute right to enjoy the property as owner was postponed by five years. Therefore, the recitals found in the document creates a genuine doubt, whether it could be treated as a sale deed, when no interest is created *in praesenti* under the document. When conveyance of absolute ownership is postponed by five years (i.e., till default by the seller), we cannot safely come to the conclusion that the document was a sale deed with condition for reconveyance, even though it was styled as conditional sale deed. Hence, from the very reading of document we are not in a position to come to a definite conclusion as to whether it could be treated as a sale deed as an ambiguity is created on the face of it. In such circumstances, it is for the Court to take into consideration the various attendant circumstances.

18. Firstly, the provision for reconveyance is mentioned in the document itself. Therefore, it is covered by proviso to Section 58 (c) of Transfer of Property Act. Secondly as per the document sale consideration was mentioned as Rs.1,500/-. However, when original plaintiff was examined as PW.1. He admitted at the time of execution of Ex.A1, the market value of the suit property was Rs.10,000/-. When market value of the suit property was Rs.10,000/- what was the necessity for the first defendant to sell the same to plaintiff for Rs.1,500/- was not explained. When property was sold for meagre sum well below the market value, it certainly leads to a conclusion that the transaction was a mortgage. Thirdly, even as per the admitted case of plaintiff even after execution of Ex.A1 in the year 1980 till the filing of suit in the year 2006, nearly for 26 years there was no mutation of revenue records. The revenue records like patta, adangal etc., continued to be in the name of first defendant as seen from the revenue documents marked on behalf of the defendants. It is also seen that first defendant continued to pay tax to the Government in his own name for all these years. All these attendant facts

coupled with the recitals in the document that the purchaser could enjoy the property absolutely only in case of default by the seller to repay the amount compels this Court to come to a conclusion that the parties intended to treat Ex.A1 as a mortgage transaction and the same cannot be treated as a sale deed with condition for reconveyance even though, it was styled as conditional sale. The questions of law framed at the time of admission are answered in favour of the appellants and against the respondents.

19. In Umar Chand Bubal Vs. Amba Prasad reported in (2004) 13 SCC 718. The Apex Court held, whether a document is sale deed or mortgage deed by conditional sale shall be treated as a substantial question of law. The relevant observation of the Apex Court reads as follows:

> " *Second appeal filed by the appellant has been dismissed by the High Court holding that no substantial question of law is involved there in. Having heard learned counsel for the parties we are of the view that the question whether the deed dated 13-3-1984 was a sale deed or a mortgage deed by conditional sale would be a substantial question of law requiring determination by the High court.*"

20. In Hero Vinoth (minor) Vs. Seshammal reported in (2006) 5 SCC 545, while considering this scope of jurisdiction of this Court under Section 100 of CPC. The Apex Court observed as follows:

The principles relating to Section 100 CPC, relevant for this case, may be summerised thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal

principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence;

(iv) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

21. Therefore, legal effect of terms of the documents is a question of law and construction of a document involving the application of any principle of law is also a question of law. When there is misconstruction of a document or wrong application of any principle of law in construing the document it gives rise to a question of law. If a question of law has got a material bearing on the final outcome of the case it shall be treated as a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. In the case on hand, the first Appellate Court while construing Ex.A1 failed to take into consideration an important recital in the document namely incase of default by seller in repaying the amount, the purchaser shall enjoy the property absolutely. Further various attendant circumstances like very low consideration as against market value, failure to mutate the revenue records, continued payment of land tax by the first defendant to the Government etc., were not taken into consideration. The plaintiff examined attestor to Ex.A1 as PW.3. However, his evidence is not useful to advance the case of the respondent as he never supported the case of the respondent. The defendants also resisted the suit on the ground by pleading the discharge of mortgage debt, in order to prove discharge of

mortgage debt the defendants marked Ex.B1. Ex.B1 is in Telugu and its official translation has not been filed. Further I was told at the time of arguments Ex.B1 recites above reconveyance of the properties after receipt of Rs.1,500/- by the plaintiff and it is an unregistered document. Therefore, it cannot be taken into consideration to prove reconveyance. In order to prove payment of amount under Ex.B1. The defendants examined attestor to Ex.B1 as DW.3. However, he deposed against the defendants. He could not recollect the execution of B1, in such circumstances, the defendant failed to prove discharge of mortgage debt. However, the original document dated 01.09.1980 was marked by defendants from their custody as Ex.B2. The plaintiff who claimed that he purchased the suit property under document dated 01.09.1980 failed to produce the original and he filed only certified copy of Ex.A1. However, the defendants produced original of Ex.A1 from their custody and marked as Ex.B2. The said fact also probabilise, the case of the defendants that he repaid amount to the plaintiff and got the original document.

22. A perusal of Ex.B2 would suggest the stamp papers were purchased in the name of first defendant and not in the name of the plaintiff. If parties intended to treat Ex.A1 as a sale deed with provision for reconveyance,

stamp paper should have been purchased in the name of the purchaser and he should have retained the original with him, here, the stamp papers were purchased in the name of the first defendant and original document was also with the first defendant. The fact revenue records stands in the name of 1st defendant and he continue to pay tax to Government notwithstanding Ex.A1, would suggest possession of property remained with appellants/defendants. In such circumstances, I have no hesitation in coming to the conclusion that parties intended to treat Ex.A1 only as a mortgage by conditional sale not as a pucca sale deed with provision for reconveyance. In view of discussion made earlier the substantial questions of law framed are answered by holding that Ex.A1 was a mortgage by conditional sale and the same was not a sale deed with option for reconveyance. Hence respondents/LRs of original plaintiff not entitled to declaration of title and injunction. Accordingly, the Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court.

23. In nutshell,

a)The Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court;

b) The judgment and decree passed by the trial Court is restored;

c) In the facts and circumstances of the case, there shall be no order as to costs; and

d) consequently, connected Miscellaneous Petition is closed.

13.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Subordinate Judge, Hosur

2. The District Munsif cum Judicial Magistrate Court,
Denkanikottai.

S.SOUNTHAR, J.

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Pre-delivery order made in
S.A.No.325 of 2017

13.12.2023