



A.S(MD).Nos.75 of 2019 and 192 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S(MD).Nos.75 of 2019 and 192 of 2021
and C.M.P(MD).No.3819 of 2023

A.S(MD).No.75 of 2019

P.R.Subramaniya Raja

...Appellant/1st Defendant

Vs.

1.K.Pandaram

2.P.Annamalai Ammal

...Respondents 1 and 2/Plaintiffs

3.The Branch Manager,
Life Insurance Corporation of India,
Tirunelveli Branch,
Palayamkottai,
Tirunelveli-2.

...3rd Respondent/2nd Defendant

Prayer:First Appeal filed under Section 96 of C.P.C, to set aside the judgment and decree dated 23.11.2018 passed in O.S.No.22 of 2012 on the file of the Additional District Court (Fast Track Court), Tenkasi.



A.S(MD).Nos.75 of 2019 and 192 of 2021

WEB COPY

For Appellant : Mr.R.J.Karthick
For Respondents : Mr.A.Balaji
for R1 and R2
Mr.Shanmugaraja Sethupathi
for R3

A.S(MD).No.192 of 2021

The Branch Manager,
Life Insurance Corporation of India,
Tirunelveli Branch,
Palayamkottai,
Tirunelveli-2.

...Appellant/2nd Defendant

Vs.

1.K.Pandaram

2.P.Annamalai Ammal

...Respondents 1 and 2/Plaintiffs

3. P.R.Subramaniya Raja

...3rd Respondent/1st Defendant

Prayer:First Appeal filed under Section 96 of C.P.C, to set aside the judgment and decree dated 23.11.2018 passed in O.S.No.22 of 2012 on the file of the III Additional District Court (Fast Track Court), Tenkasi, so far as imposing cost on the appellant/2nd defendant is concerned.

For Appellant : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.A.Balaji
for R1 and R2
Mr.R.J.Karthick



WEB COPY



A.S(MD).Nos.75 of 2019 and 192 of 2021

for R3

COMMON JUDGMENT

These first appeals are filed challenging the judgment and decree passed by the III Additional District Court (Fast Track Court), Tenkasi, in O.S.No.22 of 2012.

2. A.S.No.75 of 2019 has been filed by the first defendant against the judgment and decree of the trial Court in respect of declaration and consequential direction to pay the arrears of rent by the second defendant.

3. A.S.No.192 of 2021 is filed by the second defendant challenging the cost imposed by the trial Court in depositing the arrears in time.

4. Brief facts leading to filing of these first appeals are as follows:

(i) The plaintiffs had purchased a property from the first defendant for a sale consideration of Rs.37,00,000/- (Rupees Thirty Seven Lakhs



A.S(MD).Nos.75 of 2019 and 192 of 2021

only). The consideration has been paid through the cheques of the Tamil Nadu Mercantile Bank. The sale was registered on 22.12.2011 and the possession was also handed over to the plaintiffs. However, the second defendant, who was in possession of the property as tenant, despite notice, has not paid the arrears of rent. Hence, the suit has been filed.

(ii) The first defendant took a stand that he never intended to sell the property. He received a sum of Rs.37,00,000/- (Rupees Thirty Seven Lakhs only) from the plaintiff only towards loan transaction and has also started in making the payment, since he has not intended for selling the property and it is only a loan transaction. The sale deed was executed towards the said loan amount. The contention of the plaintiffs that the first defendant has sold the property to them, has been disputed by the first defendant. The further contention is that though signature of the first defendant was found on the backside of the cheques, he has not received any consideration. The second defendant filed a statement to the effect that on 04.01.2011, he has received a communication from the first defendant



A.S(MD).Nos.75 of 2019 and 192 of 2021

that he has pledged the said property to the plaintiffs as security for a period of three months and within the said period, he will recover the property and has directed the second defendant to pay the rent to the first defendant. Based on the above pleadings, the following issues were framed by the trial Court:

(i) whether the plaintiff are entitled for declaration that the plaintiff's are the absolute owners of the suit schedule property?

(ii) whether the plaintiff are entitled for a consequential permanent injunction restraining the 1st defendant, his men, agents etc., not to disturb the peaceful possession and enjoyment of the plaintiff's over the plaint scheduled property in any manner?

(iii) whether the plaintiff are entitled for mandatory injunction directing the 2nd defendant to pay the rent to the plaintiff's until the 2nd defendant deliver the possession of the property to the plaintiff's?



WEB COPY



A.S(MD).Nos.75 of 2019 and 192 of 2021

(iv) to what other reliefs the plaintiffs are entitled?

5. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A20 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B17 were marked.

6. The learned counsel for the appellant in A.S(MD).No.75 of 2019 would submit that though the sale deed was executed in favour of the plaintiffs, the first defendant had never intended to sell the property, deed has been executed for loan transaction. However, he has not received any consideration and the consideration was also not proved. The trial Court has not appreciated the evidence fully.

7. The learned counsel for the appellant in A.S(MD).No.192 of 2021 would submit that the trial Court ought not to have imposed costs on the second defendant without making any specific reference or finding in the judgment as to how the appellant is responsible



A.S(MD).Nos.75 of 2019 and 192 of 2021

for paying cost to the plaintiffs, especially, when there was no default attributable on the appellant.

8. The learned counsel appearing for the respondents 1 and 2 in both appeals would submit that except mere denial of sale, no material was brought on record. Hence, the defendants cannot go against the contents of the documents.

9. In the light of the above submissions, the following points arise for consideration:

“(i) Whether the first defendant has discharged his burden of proof in establishing the stand of the loan transaction?”

(ii) Whether the sale is not supported by any consideration? and

(iii) Whether the cost imposed on the second defendant is proper?”



A.S(MD).Nos.75 of 2019 and 192 of 2021

WEB COPY

10. It is the specific contention of the plaintiffs is that the first defendant has sold the property on 22.12.2011 for a sale consideration of Rs.37,00,000/- (Rupees Thirty Seven Lakhs only) and the payments were made through the cheques which have been encashed. The execution of the sale deed is not in dispute for a consideration of Rs.37,00,000/- (Rupees Thirty Seven Lakhs only). Though it is stated that the signature of the first defendant was found on the backside of the cheques, the sale consideration has not been received by him. D.W.2, Branch Manager was examined and his examination would clearly show that the cheques have been encashed and the signature is found on the backside of the cheques. Further, the fact remains that the first defendant has admitted the execution of the sale deed. The contention of the first defendant is that though the sale deed is executed by him, he had no intention to sell the property and it is only a loan transaction. But, it is the specific contention of the second defendant that the first defendant has informed the second defendant to pay the arrears of rent for three months to the plaintiffs. If really there was no sale in favour of



A.S(MD).Nos.75 of 2019 and 192 of 2021

the plaintiffs, there was no necessity for the first defendant to inform the second defendant to pay the rent to the plaintiffs for a period of three months. Having admitted the execution of the sale deed, now it cannot be said that it is only a mere loan transaction. Even to establish the same, no other evidence or material was brought on record. Therefore, once the execution of a sale deed is admitted, the first defendant now cannot take different stand that it is loan transaction. Once he has taken such plea, onus lies on him to establish the said transaction. No contra evidence was also brought on record except mere denial. Hence, the point Nos.1 and 2 are answered against the first defendant.

11. As far as the cost imposed on the second defendant is concerned, this Court is of the view that the Lower Court ought not to have imposed the cost. Admittedly, there was some dispute between the plaintiffs and the first defendant with regard to execution of document. Merely because of delay in payment, the cost imposed by the trial Court on the second defendant is not proper and hence, the cost imposed on the second



A.S(MD).Nos.75 of 2019 and 192 of 2021

defendant, namely, the appellant in A.S.No.192 of 2021 is set aside.

12. Accordingly, A.S.(MD).No.192 of 2021 is allowed and A.S.(MD).No.75 of 2019 is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

03.04.2023

ssb

Index:Yes/No

Internet:Yes/No

To

Additional District Court (Fast Track Court), Tenkasi.



WEB COPY



A.S(MD).Nos.75 of 2019 and 192 of 2021

N. SATHISH KUMAR, J.

ssb

A.S(MD).Nos.75 of 2019 and 192 of 2021

03.04.2023