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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)NO.581 OF 2023
and
C.M.P(MD)No.13516 of 2023

1.Mounasamy

2.Mahalakshmi :Appellants/Appellants/Defendants
1 and 2

.VS.

1.Thangaraj : Ist Respondent/Ist Respondent/
Plaintiff's

2.Kuthukalvalasai Panchayat Board,
Kuthukalvalasai Village,
Tenkasi Taluk,
through its Special Officer. :2nd Respondent/2nd Respondent/
3rd defendant.

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.49 of 2021, dated 16.12.2021, on the file of the Additional District and Sessions Judge(FTC), Tenkasi, confirming the judgment and decree made in O.S.No.109 of 2019, dated 07.04.2021, on the file of the Principal Sub-Judge, Tenkasi.

For Appellants :Mr.D.Srinivasa Raghavan



JUDGMENT

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Challenging the concurrent judgments of the Courts below in A.S.No.49 of 2021, dated 16.12.2021, on the file of the Additional District and Sessions Judge(FTC), Tenkasi, confirming the judgment and decree made in O.S.No.109 of 2019, dated 07.04.2021, on the file of the Principal Sub-Judge, Tenkasi, this Second Appeal is filed.

2.The first respondent, as plaintiff, filed O.S.No.109 of 2019 seeking the prayer to declare:

(a)the document No.1405 of 2014 executed by the first defendant in favour of the second defendant in respect of Item No.II of the suit properties on 23.04.2014, on the file of Joint Sub-Registrar No.II, Tenkasi, as void and is to be cancelled;

(b)the document No.1404/2014 executed by the first defendant in favour of the third defendant in respect of Item No.3 of the suit properties on 23.4.2014,on the file of the Joint Sub-Registrar No.II, Tenkasi and is to be cancelled;

(c)restraining the defendants from interfering with the peaceful possession and enjoyment of the Item No.1 of the Suit



properties and for costs and other reliefs.

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3.The case of the plaintiff is that the plaintiff had entered into a sale agreement, dated 27.10.2000 with the first defendant as a power of attorney agent of Gopalakrishnan and Arumugasamy in respect of Item No.1 of the suit properties. The Plaintiff paid a sum of Rs.75,000/- as advance on 27.10.2000, Rs.30,000/- on 27.11.2000 and Rs.15,000/- on 06.01.2001. As part performance of the contract of sale agreement, possession of the first item of the suit properties was handed over to the plaintiff. Since the first defendant had not come forward to execute the sale deed, the plaintiff filed a suit in O.S.NO.12/2001 seeking specific performance of the contract of sale. The first defendant remained exparte and therefore the suit was decreed on 18.2.2002. The plaintiff filed E.P.No.97 of 2002. As directed, he deposited the balance sale consideration of Rs.30,000/- into the Court on 17.03.2003. The Court had executed the sale deed in favour of the plainiff in respect of item No.1 of the suit properties. Since then, the plaintiff is in possession and enjoyment of the first item of the suit properties.The plaintiff learnt that the first defendant had executed certain documents in favour of the defendants 2 and 3. He applied for Encumbrance Certificate on 13.02.2009 and came to know that the



first defendant had executed a Settlement Deed in respect of a portion of the property to the third defendant and sold a portion to the second defendant. In such circumstances, the suit was filed for the aforesaid reliefs.

4. In the written statement of the defendants 1 and 2, it is claimed that the suit filed in the year 2019 challenging the documents executed in the year 2014, is barred by limitation. There is contradictory statement from the plaintiff's case with regard to the handing over the possession of the property to the plaintiff. Plaintiff has not taken possession of the suit properties on the basis of the sale deed executed in favour of the plaintiff. No steps have been taken to take possession of the property through Court. Thus the plaintiff is entitled for the relief.

5. During the course of trial, the plaintiff was examined as P.W.1 and Ex.A1 to Ex.A4 were marked. On the side of the defendants, D.W.1 was examined and Ex.B1 and Ex.B2 were marked.

6. The trial Court on the basis of the oral and documentary evidence found that the suit is not barred by limitation, that the



plaintiff is the original owner of the suit property through Court sale.

Finding that the first defendant has no right in the property, he encumbered the suit property by execution of Document Nos. 1405/14 and 1404/14, the trial Court granted the reliefs prayed for by the plaintiff in the plaint. The first appellate Court has also confirmed the findings of the trial Court. In the Second Appeal, it is urged by the learned counsel for the appellant that the suit is clearly barred by limitation but that aspect was not considered by the Courts below. The plaintiff has not taken possession of the suit property and that was also not considered.

7.From the consideration of pleadings, materials produced and submission of the learned counsel for the appellant, it is seen that the suit is filed only for the reliefs aforesaid. No relief with regard to possession is sought for. Even as per the plaint averments, it is claimed that possession of the suit property was handed over, towards part performance of the sale agreement, to the plaintiff. However, possession is not an issue in this case. It is not necessary to consider the aspect of possession.

8.It is not disputed that the plaintiff filed O.S.No.12 of 2001 against the first defendant seeking the relief of specific



performance on the basis of sale agreement executed by the first defendant on 27.10.2000. The suit was decreed on 18.2.2002. In the E.P filed in E.P.No.97 of 2002, sale deed was executed in respect of the first item of the suit properties in favour of the plaintiff on 17.3.2003. The sale deed is produced as Ex.A1. After the sale of the suit property by the Court on 17.3.2003, the first defendant had executed Ex.A3 and Ex.A4 documents namely, sale deed and settlement deed in favour of defendants 2 and 3. Therefore, it is no doubt that Ex.A3 and Ex.A4 documents are illegal and unenforceable documents and they have to be declared as void. Thus this Court is of the considered view that the Courts below have rightly appreciated the evidence and came to the conclusion that the plaintiff is entitled for the reliefs as prayed for in the plaint.

9. In ***Sir Chunilal V. Mehta and Sons .vs. The Century Spinning Co. Limited*** reported in ***AIR 1962 SC 1314***, the Honourable Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so;**



3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or)**;

4. The question is not free from difficulty and calls for discussion of alternative views;

10. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this Second Appeal. Thus this Court finds that there is no cause for interference in the judgments of the Courts below and hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No

vsn

To

1. The Additional District and Sessions Judge (FTC),
Tenkasi.

2. The Principal Sub-Judge,
Tenkasi.



3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
S.A(MD)NO.581 OF 2023
and
C.M.P(MD)No.13516 of 2023**

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