



S.A.(MD).Nos.303 and 304 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).Nos.303 and 304 of 2017

and

C.M.P.(MD)No.4151 of 2019

S.A.(MD).No.303 of 2017:

N.Kamaraj

... Appellant/Appellant/Plaintiff

/Vs./

1.C.Devaraj @ Thiyagarajan

2.R.Mamundi

...Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 23.11.2016 made in A.S.No.40 of 2014 on the file of Principal District Court, Dindigul, Dindigul District confirming the judgment and decree dated 30.04.2010 made in O.S.No.344 of 2004 on the file of Additional Sub Court, Dindigul, Dindigul District.

S.A.(MD).No.304 of 2017:



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N.Kamaraj

... Appellant/Appellant/1st Defendant

/Vs./

1.R.Mamundi

...1st Respondent/1st Respondent/Plaintiff

2.Meenambal

3.C.Devaraj

4.C.Ganesan

...2 to 4 Respondents/2 to 4 Respondents/
2 to 4 Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 23.11.2016 made in A.S.No.44 of 2010 on the file of Principal District Court, Dindigul, Dindigul District confirming the judgment and decree dated 30.04.2010 made in O.S.No.208 of 2005 on the file of Additional Sub Court, Dindigul, Dindigul District.

(In Both Second Appeals):

For Appellant	: Mr.G.Gomathi Sankar
For R-1	: Mr.S.Balaji
For R-2	: No Appearance



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COMMON JUDGMENT

The plaintiff namely N.Kamaraj had filed the suit in O.S.No.344 of 2004 for specific performance of the sale agreement, dated 13.12.2003 which was entered into between the plaintiff / N.Kamaraj and the first defendant namely Devaraj@Thaigarajan. The suit was dismissed by the Trial Court. The plaintiff / N.Kamaraj has filed A.S.No.40 of 2014 and the same was dismissed confirming the judgment and decree passed by the Trial Court. As against the same, the present S.A.(MD)No.303 of 2017 has been filed. The plaintiff / N.Kamaraj is the appellant in S.A. (MD)No. 303 of 2017

2. The plaintiff, namely R.Mamundi has filed the suit in O.S.No. 208 of 2005 for declaration of title and consequently for recovery of possession of the suit property from the first defendant. The suit was decreed by the Trial Court and as against the same, the first defendant namely N.Kamaraj had filed A.S.No.44 of 2010 and the same was dismissed. As against the same, the present S.A.(MD)No.304 of 2017 is filed by the first defendant / N.Kamaraj.



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3. The brief facts as stated in O.S.No.208 of 2005 is that the suit property originally belonged to one Chellaiah Pillai and as per partition, 'C' schedule property was allotted as the share to the said Chellaiah Pillai and his wife. Thereafter, their daughter and sons inherited the said property and they are also arrayed as parties i.e. Meenambal as second defendant, C.Devaraj as third defendant and C.Ganesan as fourth defendant. The case of the plaintiff / R.Mamundi is that, the defendants 2 to 4 had agreed to sell their property to the plaintiff / R.Mamundi and entered into sale agreement dated 29.09.2003 and the sale price was fixed at Rs.92,400/- and the plaintiff has paid Rs.25,000/- towards advance and it was agreed that the remaining sale price of Rs.67,400/- will be paid in six months period. Accordingly, within the stipulated period, the plaintiff has paid the balance sale price on 23.12.2003 and the sale deed was registered with the Dindigul Nagal Naickenpatti Sub-Registrar Office in Document No.3417 of 2003. The first defendant / N.Kamaraj was running a grocery shop in the suit property for a monthly rent of Rs. 1600/- per month. The plaintiff / R.Mamundi had informed about the proposed purchase of the suit property. The first defendant / N.Kamaraj had admitted that he is the tenant and he would vacate the property on



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expiry of the lease period. At that time, the first defendant / N.Kamaraj did not inform about the existence of any agreement in his favour. The first defendant / N.Kamaraj requested the plaintiff / R.Mamundi to grant one month time for vacating the suit property after the sale deed dated 24.12.2003, for which the plaintiff / R.Mamundi directed the first defendant / N.Kamaraj to pay the rent for that period. The first defendant / N.Kamaraj had contested the same and stated that there is no rental agreement between the plaintiff / R.Mamundi and the first defendant / N.Kamaraj either in oral or in writing. Later, the first defendant / N.Kamaraj had sent a Lawyer notice dated 29.12.2003 to the plaintiff / R.Mamundi and also to the third defendant / C.Devaraj alleging that after negotiation, he had agreed to purchase the suit property for sale price of Rs.1,80,000/- from his owner namely third defendant / C.Devaraj and after the payment of amount to the tune of Rs. 32,300/- towards advance, the remaining sale price will be paid within one year period and he has entered into sale agreement on 13.12.2003 with the third defendant / C.Devaraj. The plaintiff / R.Mamundi after the receipt of the said notice on 30.12.2003, had sent a reply dated 08.01.2004. The plaintiff / R.Mamundi learnt that the defendants 1 and 3



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have colluded with themselves with ulterior motive to cheat the plaintiff / R.Mamundi. Since the plaintiff / R.Mamundi had purchased through sale on 24.12.2003 on the basis of the sale agreement dated 29.09.2003, the plaintiff / R.Mamundi is the bonafide purchaser. The first defendant / N.Kamaraj with intention to retain possession of the suit property and to create cloud on the bonafide purchase made by the plaintiff / R.Mamundi, had threatened and initiated various proceedings. The relationship of tenant and landlord between the plaintiff / R.Mamundi and the first defendant / N.Kamaraj came to end on 24.11.2003 and one month agreement entered into between the plaintiff / R.Mamundi and the first defendant / N.Kamaraj also came to end on 25.01.2004. The first defendant / N.Kamaraj has absolutely no interest in the suit property and hence he is liable to vacate the suit property and handover the possession. Since the first defendant / N.Kamaraj has not vacated the suit property, he is liable to pay mense profits of Rs.2000/- per month. Since the action of the first defendant / N.Kamaraj and third defendant / C.Devaraj created cloud on the title of the plaintiff / / R.Mamundi, the plaintiff / R.Mamundi has no other option but to file the suit for declaration that the plaintiff / R.Mamundi is the owner of the suit



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property and for consequential recovery of possession directing the first defendant / N.Kamaraj to hand over the possession to the plaintiff / R.Mamundi.

4. The defence of the first defendant / N.Kamaraj in O.S.No.208 of 2005 is that the third defendant / C.Devaraj has leased out the said property to the first defendant / N.Kamaraj and the same is known to the plaintiff / R.Mamundi who is the neighbour of the first defendant / N.Kamaraj. In the lease agreement entered into between the first defendant / N.Kamaraj and the third defendant / C.Devaraj, the other defendants had also signed as witnesses. Since the first defendant / N.Kamaraj was in the enjoyment as a tenant, the third defendant / C.Devaraj has requested the first defendant / N.Kamaraj to take sale of the suit property and he agreed for the same and entered into the sale agreement on 13.12.2003 for the sale price at Rs.1,80,000/- and the third defendant / C.Devaraj had received Rs.32,300/- towards advance from the first defendant / N.Kamaraj. It was further agreed that the first defendant / N.Kamaram had to pay the balance sale price within one year.



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The defendants 2 to 4 with collusion with the plaintiff / R.Mamundi had created the sale agreement, to stop the sale transaction between the first and third defendants and cheated by getting Rs.32,000/-, which was paid towards as advance. Subsequently, they had entered into a sale deed dated 23.12.2003, but the said sale is not true and the said document is created. No consideration has been passed and the sale is only sham and nominal. After knowing about the same, the first defendant / N.Kamaraj had sent a notice to the plaintiff / R.Mamundi and the third defendant / C.Devaraj to execute the sale deed as per the sale agreement. The third defendant / C.Devaraj after receipt of the notice had not sent any reply. The plaintiff / R.Mamundi had sent a reply with false allegations. The plaintiff / R.Mamundi has no right to claim possession from the first defendant / N.Kamaraj.

5. The Original Suit in O.S.No.344 of 2004 is filed by N.Kamaraj for specific performance of the sale agreement dated 13.12.2003 entered into between the N.Kamaraj and C.Devaraj. The case of the N.Kamaraj is that the said C.Devaraj has leased out the suit property to him for a



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period of 3 years from 24.11.2000 on a monthly rent of Rs.1600/- and executed the lease agreement which are signed by the first defendant's sister and brothers and thereafter the said C.Devaraj had approached him and requested to take sale of the suit property, for which he had agreed. The sale agreement dated 13.12.2003 was entered between the N.Kamaraj and the said C.Devaraj, by fixing the sale price at Rs. 1,80,000/- and after the payment of Rs.32,300/- towards advance which includes Rs.30,000/- paid on 24.11.2000 as advance and cash of Rs. 2300/- paid on 13.12.2003 and agreed to pay the remaining balance sale price within a year and the first defendant / C.Devaraj agreed to receive the balance sale price and execute the sale deed in favour of the N.Kamaraj or his nominee. The said N.Kamaraj as per the sale agreement was ready and willing to execute the sale. The second respondent / R.Mamundi is fully aware of the sale agreement entered into between the N.Kamaraj and C.Devaraj, but in order to cheat the N.Kamaraj, the C.Devaraj along with other had created a nominal sale deed dated 24.12.2003 and the said sale is legally not valid and the same does not bind the N.Kamaraj's rights. Hence, the plaintiff / N.Kamaraj sent a lawyer notice dated 29.12.2003 for cancelling the sale deed and the



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C.Devaraj after receipt of the said notice on 08.01.2004 has not sent any reply. The second defendant / R.Mamundi has sent reply with false and imaginary allegations. Meanwhile, the second defendant / R.Mamundi has filed a suit with false and imaginary averments before the first Additional District Munsif Court in O.S.No.848 of 2004 against the him (N.Kamaraj) and the first defendant / C.Devaraj and in that suit the plaintiff (N.Kamaraj) has been contesting the same till now. The plaintiff (N.Kamaraj) is in possession and enjoyment of the suit property, since the first defendant / C.Devaraj in collusion with the second defendant / R.Mamundi is disturbing the possession and hence the plaintiff / N.Kamaraj had filed the suit for specific performance.

6. The defence of the first defendant / C.Devaraj is that the averments made by the plaintiff / N.Kamaraj are false. The said N.Kamaraj has been irregular in monthly payment of Rs.1600/- and hence the advance amount was adjusted and thereafter, a sum of Rs. 19,200/- was still due by the said N.Kamaraj to this defendant (C.Devaraj) towards rent for 12 months. Since the first defendant /



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C.Devaraj had several problems in his health and to get continuous treatment, he had approached the second defendant / R.Mamundi and offered the suit property for sale and they have entered into sale agreement dated 29.09.2003. The first defendant / N.Kamaraj has never offered sale of the suit property to the plaintiff / N.Kamaraj, since the said N.Kamaraj was not in position to pay the monthly rent. Since the eyesight of the defendant was reduced, the plaintiff / N.Kamaraj by approaching the defendant (C.Devaraj) for payment of rent had taken some signatures in some papers and only after receipt of the notice in this suit, the said C.Devaraj came to know that the said N.Kamaraj had used the signatures and filled up the papers as a sale agreement. The said N.Kamaraj is fully aware of the sale negotiation between the first defendant / C.Devaraj and second defendant / R.Mamundi and consequent sale deed between them. The said N.Kamaraj had approached the second defendant / R.Mamundi and sought permission to continue as a tenant in the suit property, but the second defendant / R.Mamundi had agreed to give one month time to vacate the property and the said N.Kamaraj has to pay the necessary rent for the said period. The plaintiff / N.Kamaraj by acting against the undertaking given to the



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second defendant / R.Mamundi had created agreement, as if the plaintiff / N.Kamaraj and the first defendant / C.Devaraj had entered into an agreement. Since the agreement is false, the question of the said N.Kamaraj's ever readiness and willingness does not arise. The first defendant / C.Devaraj had sold the suit property to the second defendant / R.Mamundi for proper consideration. But the sale agreement alleged by the plaintiff / N.Kamaraj dated 13.02.2003 is invalid and does not bind the sale deed executed in favour of the second defendant / R.Mamundi. The first defendant / C.Devaraj has sent a reply notice dated 28.01.2004 denying the averments of the said N.Kamaraj's notice dated 23.12.2003. The said N.Kamaraj with ulterior motive to retain possession of the suit property and to evade payment of monthly rent has filed the above suit with evil intention. Since the action of the said N.Kamaraj has created cloud on the title of the second defendant / R.Mamundi, he has filed a suit for declaration and possession and the same is pending in O.S.No.848 of 2004 on the file of Additional Sub Court, Dindigul. Thereafter, the plaintiff / N.Kamaraj has filed the suit for specific performance is vexatious suit.



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7. For the sake of convenience and brevity, the parties hereinafter shall be referred as per the ranking and status as referred by the Trial Court in O.S.No.208/2005.

8. After hearing all the averments made by the parties, this Court had given its anxious consideration.

9. It is the specific defence of the third defendant / C.Devaraj that he and the defendants 2 and 4 (Meeanambal and C.Ganesan) had entered into a sale agreement under Ex.A.1 dated 29.09.2003 with the plaintiff / R.Mamundi and subsequently had executed a sale deed in Ex.A.2 dated 23.12.2003 in favour of the plaintiff / R.Mamundi. Further the first defendant / N.Kamaraj, who is a tenant in the suit property was not regular in payment of rent and since he had defaulted, there was no chance or occasion for them to make any offer to sell the suit property to the first defendant / N.Kamaraj. Though the first defendant / N.Kamaraj had agreed to vacate the suit property within a month after Ex.A.2 sale deed, he had subsequently refused to vacate the property. When the



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tenant is defaulter in paying rent and when the tenant is having arrears of rent, no prudent man would enter into sale agreement with the tenant. Therefore the contention of the 1st defendant / N.Kamaraj that a sale agreement dated was entered into on 13.12.2003 is unbelievable.

10. The owner of the suit property, especially third defendant has specifically taken the stand that the first defendant / N.Kamaraj has no means to pay the rent. Hence this Court proceed to analyse whether the first / defendant has any means to pay the advance. It is the case of the first defendant / N.Kamaraj that the sale price was fixed at Rs.1,80,000/- and the third defendant / C.Devaraj had received Rs.32,300/- as advance. But the contention of the third defendant / C.Devaraj is that the first defendant / N.Kamaraj had paid Rs.30,000/- as advance for the lease of the house on 24.11.2000. If that is the case then the first defendant / N.Kamaraj had paid an advance of Rs.2300/- paid on 13.12.2003. When the first defendant / N.Kamaraj have arrears of rent, this amount of Rs.2300/- can at the most be treated as payment towards arrears of rent and cannot be taken as advance for sale agreement. Hence this Court is



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of the considered opinion that the first defendant / N.Kamaraj has not paid any amount as advance towards sale agreement and the advance of Rs.30,000/- paid on 24.11.2000 is only an advance for lease of the house.

11. It is seen that the Ex.A.1 agreement is executed by the defendants 2 to 4 in favour of the plaintiff / R.Mamundi. But Ex.B.1 sale agreement is executed only by the third defendant by excluding the defendants 2 and 4 in favour of the first defendant / N.Kamaraj. Hence there is a cloud in the sale agreement executed in favour of first defendant / N.Kamaraj. But the first defendant / N.Kamaraj contended that in a family arrangement between the defendants 2 to 4, the suit property was allotted to the share of the third defendant / C.Devaraj and hence the third defendant is owner of the suit property and the third defendant had executed the sale agreement in favour of the first defendant / N.Kamaraj. This contention of the first defendant / N.Kamaraj cannot be accepted. When the defendants 2 to 4 have executed sale agreement in favour of the plaintiff / R.Mamundi on 29.09.2003 and the sale deed dated 23.12.2003 was executed by the



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defendants 2 to 4 in favour of the plaintiff / R.Mamundi, it is unbelievable how the third defendant / C.Devaraj alone could enter into sale agreement dated 13.12.2003 with the first defendant / N.Kamaraj. The first respondent / N. Kamaraj has neither furnished any particulars nor adduced any evidence regarding the family arrangement or the partition allegedly entered in the family of defendants 2 to 4. Therefore the contention of the first defendant / N.Kamaraj cannot be accepted.

12. The further contention of the first defendant in his written statement is that that alleged lease deed entered into between himself and the third defendant, the other defendants 2 and 4 had signed as witnesses. In fact, he reiterated the same in the plaint filed in O.S.No.344 of 2004. The said contention would not improve the case of the first defendant since the first defendant was very much aware that the suit property belongs to the defendants 2 to 4 jointly. As rightly pointed out by the Learned Counsel appearing for the plaintiff / R.Mamundi that the defendants 2 and 4 had taken part in the Ex.A.1 sale agreement as well as in Ex.A.2 sale deed and their exclusion in Ex.B.1 create a serious doubt



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and hence the Ex.B.1 sale agreement itself is false and created for the sake of case.

13. According to the first defendant, the third defendant's name is Devaraj @ Thiyagarajan, and the third defendant had signed as Thiyagarajan in Ex.B.1 agreement. But the third defendant has specifically disputed the said contention and submitted that he never signs as Thiyagarajan anywhere and at any time and he produced all the relevant records to prove the same. Therefore the alleged sale agreement executed in favour of N.Kamaraj is created and false.

14. Considering the facts and circumstances of the case, since the first defendant had miserably failed to prove the genuineness and validity of Ex.B.1 agreement, the question of considering and deciding the collusion between the plaintiff and the third defendant and the genuineness and validity of Ex.A.1 sale agreement and Ex.A.2 sale deed, does not arise.



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15. For the reasons and observations stated supra, this Court is of the considered opinion that both the Courts are absolutely right in dismissing the suit for specific performance filed by the first defendant / N.Kamaraj. And also both the Courts are right in decreeing the suit for declaration and possession filed by the plaintiff / R.Mamundi. The judgment and decree passed by both the Courts are perfectly in order and the same cannot be found fault with. Therefore, the second appeals filed by the appellant / first defendant / N.Kamaraj are dismissed and the judgment and decree passed by both the Courts below are confirmed.

16. With the above observation, the Second Appeals are dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

18.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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TO:

- 1.The Principal District Court,
Dindigul,
Dindigul District.
- 2.The Additional Sub Court,
Dindigul,
Dindigul District.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Nsr

Judgment made in
S.A.(MD).Nos.303 and 304 of 2017

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