IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.04.2024

PRONOUNCED ON: 24.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.92 of 2013

Rajasekaran ...Appellant

-Vs-

1. Chandra Devi Jhabak
2. V. Azhagu Siren Mani
3. G.Susan Rabacca
4. Prem John Edward ...Respondents

Prayer: Appeal Suit is filed under Section 96 of Civil Procedure Code under Order 41 Rule 1 of C.P.C. against the against the Judgment and Decree made in OS No.121 2010 on the file of the II Additional District Court at Thiruvallur Poonamallee dt.15.12.2012.

For Appellant : Mr.K.M.Subramaniam

For Respondent-1	:	Mr.L.OM.Magesh
For Respondent-2	:	Not ready in notice
For Respondent-3	:	Mr.A.Thirumaran
For Respondent-4	:	Served – No Appearance

JUDGMENT

The third defendant, who remained *ex-parte* in the trial Court, is the appellant before this Court.

2. The facts that have culminated in filing of this first appeal are briefly set out herein below. For the sake of easy understanding, the parties are referred to in the same ranking as before the trial Court.

3. The plaintiff had filed the suit O.S.No.121 of 2010 on the file of the II Additional District Judge, Tiruvallur at Poonamalle seeking the following reliefs:

(i) (a) that the sale deed dated 6.3.2006 under document No.1339/2006

registered with the SRO Avadi by the 2nd defendant in the capacity of the power agent of 1st defendant in favour of the 4th defendant by forging the signature of the 2nd defendant is null and void,

(b) that the sale deed dated 1.11.2006 under document No.9304/2006 executed by the 4th defendant on the strength of created sale deed dated 6.3.2006 under document No.1339/2006 in favour of the 3rd defendant as null and void, and also praying.

(c) the vacant possession of A' schedule property to the plaintiff,

(d) a permanent injunction against the 3rd defendant from in any manner alienating or encumbering the suit properties to any parties.

(e) a mandatory injunction directing the defendants to hand over all the original deeds pertaining to the suit schedule properties.

(f) a sum of Rs.1,80,000/- as damages for user and occupation of the schedule mentioned properties at the rate of Rs.5,000/-per month from 17.7.2006 till the date of filing of the suit.

(g) that the defendants have to pay a sum of Rs.60,000/- towards

compensation for a period of one year from the date of suit and future compensation at the same rate till the property is delivered to the plaintiff,

(h) praying a sum of Rs.5,00,000/- as damages for mental agony suffered by the plaintiff

(ii) and in case if this court is not able to grant the reliefs prayed in para No.l, 'a' to 'h' and without prejudice to the claim of the plaintiff in para No.1, plaintiff is praying that the defendants have to refund a sum of Rs.4,50,000/-which the plaintiff has paid to the 2nd defendant as consideration and also praying a sum of Rs.62,000/- towards registration charges and also praying a sum of Rs.12,30,000/- as compensation for breach of contract as alternative reliefs and also praying the cost of the suit.

4. The following is the property in question:

SCHEDULE -"A"

Item No.1

All that Ground/land and building bearing Door No.18, 7th Street, Kamaraj Nagar, situate in Paleripattu Village, comprised in Survey No.1/1 Poonamallee Taluk, Trivellore District, measuring 1,600 sq.ft. (tax assessment No.5120) bounded on

North by : Govindammal Plot

South by :7th Cross Street

East by: Ponnuswamy's House & Land and

West by: Land belonging to Sivaraman

4. PLAINTIFF'S CASE:

(i) It is the case of the plaintiff that the first defendant was the owner of the "A" schedule property under two registered Sale deeds both dated 03.09.1988. The first defendant had appointed the second defendant as her Power of Attorney Agent under a registered Power of Attorney bearing Document No.30/2000 on the file of the Sub Registrar Office, Avadi dated 19.01.2000.

(ii) It is the further case of the plaintiff that she was approached by the second defendant with an offer that the "A" schedule property was up for sale. Under a registered Sale deed dated 17.07.2006, the plaintiff has purchased the property from the first defendant through her Power of Attorney Agent, the second defendant for a total sale consideration of Rs.4,50,000/-.

(ii) The plaintiff would submit that on the date of the execution of the sale deed, the second defendant had informed her that the original documents were misplaced and that she would trace and handover the said documents to the plaintiff.

(iii) The plaintiff would further submit that "A" schedule property was occupied by tenants and the second defendant had undertaken to vacate the tenants and handover the vacant possession of the suit schedule property to her. Since the same had not been complied with, the plaintiff had visited the property to inform the tenants to vacate. At that point of time, the third defendant was in occupation of the property and he had informed the plaintiff that he was the owner of the property having purchased the same from the fourth defendant under a registered Sale Deed dated 01.11.2006. The third defendant had further stated that the fourth defendant has purchased the property from the second defendant, the Power Agent of the first defendant under a registered Sale Deed dated 06.03.2006.

(iv) Shocked by the above statement, the plaintiff had approached the second defendant and she informed her that except for the plaintiff, she had not executed a sale deed in favour of any other person. The plaintiff would submit that the fourth defendant is none else than the husband of the second defendant and that there were some difference of opinion between the two. Taking advantage of the above situation, the fourth defendant and the third defendant colluded together and prepared fraudulent documents. The second defendant assured the plaintiff that she would take necessary action against defendants 3 and 4. However, the said assurance was not translated into action. Hence, this suit.

4. The written statement of the second defendant:

(i) The second defendant would deny the statement made by the plaintiff that it was she who had approached the plaintiff regarding the sale of the "A" schedule property. On the contrary, she would submit that it was the plaintiff who had approached her. The second defendant would submit that she had married the fourth defendant on 05.08.1986 and out of the wedlock, a daughter and a son were born. Unfortunately, her son passed away. She would contend that marriage fissures developed in their relationship as the fourth defendant was an abusive husband. Therefore, the second defendant was forced to move out of the matrimonial home. Thereafter, she had initiated proceedings on the file of the District and Principal Sessions Court, Chengalpet in I.D.O.P. No.156 of 2005 for divorce, which had later been transferred to District and Principal and Sessions Court at Thiruvallur and renumbered as I.D.O.P.No.39 of 2006.

(ii) On 06.08.2007 when the second defendant had taken the plaintiff to the suit property, they found that the third defendant has been put in occupation of the property on the strength of a sale deed. The third defendant had stated that he had purchased the property for a total sale consideration of Rs.9,20,000/-. It is then that the second defendant had come to know that the fourth defendant had forged her signature and fabricated documents. Immediately, a complaint was lodged by her with the Commissioner of Police, Greater Chennai on 28.08.2007, who in turn had forwarded the same to the Deputy Commissioner of Police, Avadi and later to the Assistant Commissioner of Police, Avadi. Ultimately, the complaint reached the hands of the Inspector of Police, T6, Avadi Police Station. He, however, did not register the complaint given by the second respondent and insisted on her giving a fresh complaint, omitting details given in the earlier complaint dated 28.08.2007. When she had approached the Inspector of Police, T-6, Avadi Police Station, she was threatened and forced to sign the complaint under duress. Consequently, an F.I.R was registered for lighter offences. Therefore, the second defendant had lodged a complaint against this highhanded action of the Inspector of Police to the Commissioner of Police on 28.09.2007. Since no action was taken, she had filed an application in Crl.O.P.No.31856 of 2007 to transfer the investigation from the file of the Inspector of Police to CBI. She had also sought for transferring her original complaint to CBI. During the course of the investigation by the Inspector of Police T-6, Avadi, the second defendant had come to know that the fourth defendant had arranged someone to impersonate her and forging this defendant's signature in respect of yet another property of the second defendant. She had once again lodged a complaint with the

Commissioner on 24.09.2007. Since no action was taken, the second defendant had filed Crl.O.P.No.31812 of 2007 before this Court and this Court had directed the Inspector of Police, Central Crime Branch, Chennai to register an F.I.R. Following this, the fourth defendant was placed under judicial custody in Crime No.1642 of 2007. However, he was enlarged on bail on 03.10.2007 by the learned Judicial Magistrate-II, Poonamallee. The second defendant also sought for cancellation of the bail.

(iii) The second defendant would submit that she has been harassed and threatened by the fourth defendant and his friends and that apart, amounts deposited in her savings bank account had also been taken away. The fourth defendant had taken away several cheques in respect of the savings bank account that the second defendant had with Vijaya Bank. As soon as the second defendant had come to know about the same, she had issued instructions for "stop payment". She had also informed the fourth defendant about the same vide her letter dated 16.08.2004. It also appears that these cheques have been forged by the fourth defendant and two petitions under Section 138 of the N.I.Act were initiated against her. Therefore, it is the contention of the second defendant that she had taken all steps to get the sale deed executed by the fourth defendant in his favour cancelled and allegations to the contrary in the complaint are absolutely false and misleading. The defendant would also state that the suit was bad for non joinder of necessary parties, since the Sub Registrar, Avadi who was hand in glove with defendants 3 and 4 to usurp the suit property has not been impleaded. She would submit that she is neither a proper nor necessary party to the suit, since her principal is already on record and further, she is not liable to pay any damages or compensation to the plaintiff. Therefore, she sought for dismissal of the suit.

5. Written Statement of the 4th defendant:

The fourth defendant had filed a written statement in which, apart from denying the contentions in the plaint, he would submit that the second defendant had signed the sale deed in favour of the fourth defendant on the compulsion of the first defendant. Since the second defendant was not executing the sale deed, the fourth defendant had approached the first defendant, who in turn compelled the second defendant to execute the sale deed in favour of the fourth defendant. After executing the same, the second defendant has now colluded with the plaintiff and created a Sale Deed in respect of the suit "A" schedule property. He therefore sought for dismissal of the suit.

4. TRIAL COURT.

The trial Court had originally framed the following issues:

(1)Whether the plaintiff is entitled to declare the sale deed dated 6.3.2006 Doc.No.1339/06 SRO Avadi said to be executed by the 2nd defendant in the capacity of the power of attorney agent of the 1st defendant to and in favour of 4th defendant as null and void for the reason that the signature of 2nd defendant was forged by the 4th defendant?

(2)Whether the plaintiff is entitled to declare the sale deed dt., 1.11.2008 Doc.No.9304/06 executed by the 4th defendant on the strength of sale deed dt. 6.3.2006 Doc. No. 1339/06 in favour of the 3rd defendant as null and void?

(3) Whether the plaintiff is entitled for vacant possession of the suit schedule 'A' property?

(4) Whether the plaintiff is entitled to permanent injunction restraining the 3rd defendant from alienating or encumbering the suit schedule 'A' property to any other third party?

(5)Whether the plaintiff is entitled to mandatory injunction directing the defendants to hand over all the original title deeds pertaining to the suit schedule 'A' property more fully described in the 'B' schedule property?

(6)Whether the plaintiff is entitled to pay a sum of Rs.1,80,000/- as damages for use and occupation of

the suit schedule 'A' property at the rate of Rs.5000/- p.m from 17.7.2006 till the date of plaint?

(7)Whether the plaintiff is entitled to pay a sum of Rs.60,000/- towards compensation for a period of one year from the date of plaint and future compensation from that date till the date of handing over the possession?

(8)Whether the plaintiff is entitled to pay a sum of Rs.5,00,000/- as damages for the mental agony and torture?

(9)Whether the plaintiff is entitled to get back Rs.4,50,000/- which was paid by the plaintiff to the 2nd defendant alone with Rs.62,000/- towards cost at the time of execution of sale deed?

(10)Whether the plaintiff is entitled for Rs.12,30,000/- towards compensation?

(11)Whether the plaintiff is entitled for exemplary cost?

(12)To what relief the plaintiff is entitled to?

(ii) The plaintiff had examined herself as P.W1 and one G.P.Ramesh, S.Geetha and Vasantha Sundari as PWs. 2 to 4. The plaintiff had marked Exs.A1 to A17. The first defendant had examined himself as D.W1 and no documents were marked on his side.

(iii) Ultimately, the learned Judge had observed that the sale deed, which is purported to have been executed by the first defendant through the second defendant in favour of the fourth defendant, was a rank forgery as the signatures of the second defendant contained in the sale deed was fabricated by Iruthyamery, who was also an accused in a criminal proceedings and she had also impersonated as the second defendant before the Sub Registrar's Office.

5. POINTS FOR CONSIDERATION:

The points that arise for consideration in the above first appeal are as follows:

> *(1) Whether the third defendant is the* bonafide *purchaser and his title and possession is therefore to be protected?.*

> *(2) Whether the Judgment of the trial Court is liable to be set aside.?*

6. The parties have adduced their oral submissions in the form of written submissions.

7. Submissions of the learned counsel for the appellant

The points that have been canvassed by the appellant are herein below, set out in points.

a) The third defendant is a *bonafide* purchaser of the suit property. The encumbrance certificate in respect of the suit property reflected the sale in favour of the fourth defendant and all the original documents were handed over by the fourth defendant to the third defendant. This sale was prior in point of time.

b) The framing of the suit with reference to the relief is improper, as the relief of declaration and the recovery of possession has not been filed in a proper manner.

c) The suit prayer is so couched that the plaintiff has pleaded that if there is no chance of getting the reliefs of declaration and recovery, then the plaintiff should be compensated.

d) The plaintiff has entered into the sale transaction without even verifying as to whether the original documents were with the second defendant, which itself would prove that the sale in favour of the plaintiff was not a bonafide sale.

e) The second defendant, being a Central Government employee, with a view to safeguarding her position, has colluded with the plaintiff.

f) The police have not included the name of the second defendant as a co-conspirator.

g) The suit filed without seeking the relief of declaration of title of the plaintiff is liable to be rejected.

h) The suit is barred by limitation since it was filed more than three years after the plaintiff has come to know about the sale in favour of the third defendant. Therefore, the appellant prayed that the appeal be allowed and the judgment and decree of the trial Court be set aside.

i) The learned counsel for the appellant has also relied upon a judgment of the Hon'ble Supreme Court in **S.A.No.798 of 2019** in the case of ***R.Vijaya Vs. A. Vijayal,*** dated 11.01.2022.

8. Submissions of the learned counsel for the first respondent/plaintiff

The learned counsel for the plaintiff, on the other hand, would submit that the documents which has been produced, especially Exs.A11 and A12, would clearly show that the signatures contained in the disputed documents does not tally with the admitted signature of the second defendant. That apart, P.W4 has clearly and categorically submitted that the signatures contained in Ex.A3 Sale Deed is not the signatures of the second defendant. In Ex.A11-Finger print report, it has been stated that the signatures contained in Ex.A3 belonged to one

Iruthayamery who is an accused in C.C.No.245 of 2010 on the file of the Judicial Magistrate No.1, Thiruvallur. He would submit that once the signature in Ex.A3 is found to be the signature of some other person and not the signature of the second defendant, who is the registered Power of Attorney Agent of the first defendant, the sale deed does not confer any title upon the fourth defendant. The fourth defendant, who did not have valid title to the suit property, cannot convey a better title to the third defendant. The claim of the third defendant that he is the *bonafide* purchaser cannot be countenanced and therefore, he sought to have the appeal dismissed and the judgment and decree of the trial Court confirmed. The learned counsel for the first respondent/plaintiff has also relied upon a judgment of the Hon'ble Supreme Court reported in ***2014 SCC Online P & H 6527 [Gurcharan Kaur Vs. Smt.Balwant Kaur and Another]***

9. Heard both learned counsels on either side and perused the

materials available on record.

7. DISCUSSIONS:

(i) The admitted fact in the above case is that the suit “A” schedule property belongs to the first defendant. It is also admitted that the first defendant had executed a registered General Power of Attorney in favour of the second defendant authorizing her to deal with the “A” schedule property. The plaintiff's case is that the second defendant had executed a sale deed in her favour on 17.07.2006 and the sale deed had been registered as Document No.5543 of 2006 on the file of the Sub Registrar Office, Avadi and the document has been marked as Ex.A1. The plaintiff's case is that the original documents had not been handed over to him at the time of sale, since the second defendant had stated that she had misplaced the same and had undertaken to handover the said documents as soon as she laid her hands on it. The further contention of the plaintiff is that there were tenants in the property and the second defendant had assured that she would vacate the tenants from the property within a period of six months. The said fact has not been denied by the second defendant. It transpired that both the plaintiff and the second defendant had visited the suit property after the sale on 06.03.2006. It was then that they found that the third defendant was in possession of the suit schedule property and they have come to know about the sale executed by the fourth defendant in favour of the third defendant-Ex.A2. The fourth defendant in turn claims to have purchased the property from the first defendant through the second defendant under Ex.A3-registered Sale Deed dated 03.09.1988.

(ii) The second defendant had denied her signature in Ex.A3. To prove the fact that the signature contained therein does not belong to her, she had initiated criminal proceedings against the fourth defendant and in the course of the investigation, it has come to light that the signature contained therein is that of one Irithuyamary and the left thumb impression affixed to the document is also that of Irithuyamary. Ex.A11 is the finger print report and Ex.A12 is the signature report, which sets out the above fact. The said Irithuyamary is the second accused in a criminal proceedings before the Judicial Magistrate-1, Thiruvallur. P.W4-Finger Print Expert has been examined in the suit and the above exhibits have been marked through her. Her evidence has not been rebutted in cross. Therefore, it is crystal clear that Ex.A3-Sale Deed does not contain the signature of the second defendant and on the contrary, it is the signature which has been made by some other person. Not only has the signature been forged, but there has also been an impersonation of the second defendant before the Sub Registrar Office. Therefore, Ex.A3 is the document tainted with fraud and cannot be looked into for any purpose and no right or title would flow from the same. The third defendant has purchased the property from the fourth defendant. He would get only the title that his vendor has.

Considering the fact that the sale deed in favour of the fourth defendant has been found to be a forged and fabricated document and since no title passes to the fourth defendant, Ex.A2-sale deed in favour of the third defendant would not confer on him any right, title or interest to the “A” schedule property. Therefore, the first point for consideration is answered against the third defendant.

(iii) The fourth defendant, who claims to have purchased the property from the first defendant through the second respondent for a total sale consideration of Rs.8,72,000/-, has not produced any document to show that the money had been paid by him either to the first defendant or to the second defendant, particularly when the execution of the sale deed itself is denied by the second defendant. The fact that the document is found to be a forged document and the fact that as the defendants have not been able to prove passing off consideration, the defendants 3 and 4 cannot claim title or interest over the suit property under Exs.A2 and A3.

(iv) Taking note of the admitted case of both parties that the second defendant is the power of attorney agent of the first defendant and also the fact that the second defendant has executed the sale deed for and on behalf of the first defendant in favour of the plaintiff, the plaintiff has proved title to the property. Therefore, the judgment and decree of the trial Court is very much in tune with the evidence that has been produced on the side of the plaintiff. The argument that the forensic report alone has been given much weightage in this case is totally erroneous, since it is not only the criminal proceedings but also the evidence adduced by the handwriting expert before the trial Court that has been considered to arrive at a conclusion that the property has been sold only to the plaintiff by the 2nd respondent as Power Agent of the 1st respondent and therefore, the plaintiff's title to the property has been proved. Hence, the second point for consideration is also answered in favour of the plaintiff.

(iv) In fine, the first appeal is dismissed. There shall be no order as to costs.

24.07.2024

Index: Yes/No
Speaking order/non-speaking order
srn
To

The II Additional District Court at Thiruvallur
Poonamallee

P.T.ASHA, J.,

srn

A.S.No.92 of 2013

24.07.2024