



WEB COPY



S.A.No.360 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.360 of 2019 &
C.M.P.No.5262 of 2019

1.Marcellin Mari Christian
2.Anne Marie Anita
3.Francis Domini ... Appellants/defendants

-Versus-

1.K.Rajendiran ... 1st respondent/plaintiff
2.Rita Lerne ... 2nd respondent/4th defendant

Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 24.09.2018 passed in A.S.No.18 of 2016 on the file of the Additional Sub Judge at Puducherry reversing the judgment and decree dated 12.12.2016 passed in O.S.No.60 of 2013 on the file of the Principal District Munsif, Puducherry.

For Appellants : Mr.A.Tamilvanan

*For Respondent 1 : Mr.N.Natarajan for
Mr.R.Thiyagarajan*

JUDGEMENT

This second appeal arises out of the judgment and decree of the Court of the learned Additional Subordinate Judge at Puducherry in A.S.No. 18 of 2016,



S.A.No.360 of 2019

dated 24.09.2018 in reversing the Judgment and Decree of the Court of the

Principal District Munsif at Puducherry in OS.No.60 of 2013 dated 12.12.2016.

2. The appellants before me are the defendants 1 to 3 in the suit.

3. O.S.No.60 of 2013 was presented by the plaintiff for the relief of declaration that

(a) the sale deed dated 31.05.2004 for the suit B schedule mentioned property executed by the fourth defendant in favour of the first defendant and registered on the file of the Oulgaret Sub Registrar in document No.3921 of 2004 is void, in operative and incapable of creating any right or title in favor of the first defendant;

(b) the settlement deed executed by the first defendant in favour of the second defendant on 05.09.2007 for the suit C schedule mentioned property and registered in document No.4840 of 2007 is void and inoperative;

(c) permanent injunction restraining the defendants, their men, agents and subordinates from interfering with the plaintiff's peaceful possession of suit A schedule mentioned



S.A.No.360 of 2019

WEB COPY

property; and

(d) for injunction restraining the defendants 1 and 2 and their subordinates from alienating or encumbering the suit schedule mentioned properties on the basis of the aforesaid documents in favour of third party in any manner.

4. The case of the plaintiff is that suit A schedule mentioned property belongs to him. He had purchased the same from the fourth defendant for valuable consideration, and he is in enjoyment. There are a total of 4 plots which belonged to the fourth defendant. The plaintiff had purchased the plot Nos.1 and 4 as per the sale deed dated 14.05.2004. The first defendant had purchased plot No.2 from the fourth defendant. The subject matter of the present litigation is plot No.3.

5. The plaintiff alleged that the defendants 1 to 3 attempted to trespass into the suit schedule mentioned property by claiming that they had purchased the property on 31.05.2004 from the fourth defendant. This property is shown as B schedule mentioned property. The plaintiff alleged that even before the purchase made by the first defendant, the plaintiff had purchased a portion of the property to an extent of 967 sq. ft., denoted as A schedule mentioned



S.A.No.360 of 2019

property, from the fourth defendant.

WEB COPY

6. The plaintiff further alleged that on the strength of the fraudulent sale deed dated 31.05.2004, the first defendant alienated the property in favour of the second defendant by executing a registered settlement deed on 05.09.2007. As the defendants were taking steps to interfere with the possession of the plaintiff and also since they were trying to alienate the property, he lodged a complaint with the Reddiyarpalayam Police Station. Since no action was taken by the police, the plaintiff filed a suit in OS.No.60 of 2013 before the Principal District Munsif Court at Puducherry.

7. Summons were issued to the defendants. The third defendant filed a detailed written statement. This was adopted by the defendants 1 and 2.

8. The case of the defendants 1 to 3 is that the alleged document dated 14.05.2004 is said to have been purchased by the plaintiff in itself is a fabricated document. The document does not contain a proper resurvey or cadastre number, and it does not correlate with the revenue records. They would state that there is no survey number in the suit properties bearing cadastre No.133/2/2. They asserted that the first defendant had purchased the B schedule mentioned property for valuable consideration on 31.05.2004. The



S.A.No.360 of 2019

written statement proceeds to plead that the first defendant was in peaceful possession and enjoyment of the B schedule property, and thereafter, it was settled by the first defendant in favour of the second defendant on 05.09.2007. They would state that the second defendant is in possession of the B schedule mentioned property.

9. The specific allegation of the defendants is that the plaintiff had obtained the sale deed from the fourth defendant on 09.06.2004 and registered the same on that date. For the purpose of the case, the sale deed was fabricated with the date as 14.05.2004. It was further pleaded that the sale deed dated 31.05.2004 had been executed for valuable consideration and that both documents dated 31.05.2004 and 05.09.2007 are valid. Hence, they sought dismissal of the suit.

10. The fourth defendant was served with summons and not surprisingly, did not enter appearance.

11. On the basis of these pleadings, the learned Principal District Munsif framed the following issues::

“1. Whether the sale deed dated 31.05.2004



S.A.No.360 of 2019

executed by the fourth defendant in favour of the first defendant is valid and binding on the plaintiff?

2. Whether the plaintiff is entitled to the declaration that sale deed dated 31.05.2004 for B schedule property executed by the fourth defendant in favour of the first defendant is null and void?

3. Whether the plaintiff is entitled to the declaration that impugned settlement deed dated 05.09.2007 for C schedule property executed by the first defendant in favour of the second defendant is null and void?

4. Whether the plaintiff is entitled to permanent injunction against the defendants restraining them from interfering with plaintiffs absolute and peaceful possession and enjoyment of the suit property?

5. Whether the plaintiff is entitled to permanent injunction restraining the defendants 1 and 2 and their men from alienating or encumbering suit properties on the basis of the sale deed dated 31.05.2004 and settlement deed dated 05.09.2007?

6. To what relief the plaintiff is entitled?"

12. The parties went to trial. On the side of the plaintiff, he examined himself as PW1, the attesting witnesses to the sale deed as PW2 and PW3 and the Sub Registrar as PW4. The Sub Registrar was summoned to the court. The plaintiff marked Ex.A1 to Ex.A18. On the side of the defendants, the third



S.A.No.360 of 2019

defendant examined himself as DW1 and two other witnesses as DW2 and DW3. On the side of the defendants, Ex.B1 to Ex.B6 were marked. PW4 produced 4 documents which were received in court as Ex.X1 to Ex.X4.

13. On the basis of the oral and documentary evidence that was let in before the court, the Learned District Munsif came to the conclusion that the original of Exhibit A1 had been tampered with. He held that the copy maintained by the Sub Registrar had been marked as Ex.X2 viz., the certified copy of the sale deed. He returned a finding that the date given in Ex.A1 as 14.05.2004 is an insertion and does not tally with the records that had been produced by PW4 under Ex.X2.

14. The Learned District Munsif further concluded that the effect of registration commences from the date of presentation of the document for registration, and therefore, the sale deed under Ex.B3 having been presented for registration on 31.05.2004, the fact that the registration was completed on 18.08.2004 does not affect the title of the first defendant. Consequently, he held that the sale deed dated 31.05.2004 is true and genuine, and the settlement deed dated 05.09.2007 executed by the first defendant in favour of the second defendant is also valid. He also held that Ex.A4 and Ex.A5 do not relate to the suit schedule properties, and as the defendants 1 to 3 are having better title to



S.A.No.360 of 2019

the suit properties, he dismissed the suit.

WEB COPY

15. Aggrieved by the said judgment and decree, the plaintiff preferred an appeal in A.S.No.18 of 2016. The learned appellate judge confirmed the findings of the trial judge that Ex.A1, the original sale deed executed by the fourth defendant in favour of the plaintiff, is a tampered document. She confirmed the findings of the trial judge that the document on the basis of which the plaintiff claims title had in fact been registered on 09.06.2004. However, referring to the judgment of the Supreme Court reported in ***Har Narain vs. Mam Chand and others, (2010) 13 SCC 128***, the learned appellate judge allowed the appeal and decreed the suit as prayed for.

16. As against the reversal of the judgment, the present second appeal has come up before this Court.

17. On 04.03.2019, this court ordered notice regarding admission and granted interim stay of the decree of the lower appellate court.

18. On service of summons, Mr.R.Thiyagarajan entered appearance on behalf of the respondents.

19. I heard Mr.A.Tamilvanan for the Appellants and Mr.N.Natarajan for



S.A.No.360 of 2019

the Mr.R.Thiyagarajan for the respondents.

WEB COPY

20. I admitted and heard the second appeal on the following substantial questions of law:

“a) Whether the appellate court has rightly appreciated the scope of the Section 47 of the Indian Registration Act on to the facts of the case?

b) Whether the appellate court was right in holding the sale deed in favour of the plaintiff is prior in date, when the date of the execution of the Ex.A-1 (09.06.2004) was found to be later at point of time than that of the Ex.B3 (31.05.2004) under which the first defendant claims title, as evidenced in Ex.X2 marked through PW-4 Sub Registrar?

c) Whether the approach of the appellate court in not appreciating the vital material alteration / fabrication made in the date of the Ex.A1 and not determining the said issue by giving sufficient reasons while reversing the judgment of the Trial Court, was valid in the eye of law?

d) Whether the appellate court was right in declaring the title of the suit property in favour of the plaintiff when the Cadastre Number for the corresponding Resurvey number, of the suit property is



S.A.No.360 of 2019

found to be incorrect?

WEB COPY

21. Mr.A.Tamilvanan would submit that the appellants had purchased the property on 31.05.2004 after paying valid consideration to the fourth defendant. The fourth defendant had also executed a sale deed, which was presented for registration on the same date. However, on account of the fact that there were some queries regarding the deficit stamp duty that has to be paid by the defendants 1 to 3, the document came to be registered only on 18.08.2004. Relying upon Section 47 of the Indian Registration Act of 1908, Mr.A.Tamilvanan would state that the sale deed having been executed on 31.05.2004, the purchase made by the plaintiff on 09.06.2004 is invalid.

22. Mr.N.Natarajan, the counsel for the first respondent/plaintiff, would submit that Section 47 creates a legal fiction of relation back. He would state that Section 47 should be read subject to Section 61 of the Registration Act and therefore, the title passes only on completion of the registration. He would state that in the meantime, as the fourth defendant had executed the sale deed in favour of the plaintiff on 09.06.2004, the plaintiff had become the absolute owner of the property. He would further plead that it was the third defendant, who entered the witness box and the first defendant had not filed a separate



S.A.No.360 of 2019

written statement or deposed before the court. Therefore, he would plead that

the court should draw adverse inference against the defendants/appellants.

23. Mr.N.Natarajan would state that the findings of the court below that there has been tampering of the date is erroneous, and even if there was tampering, the sale deed, having been presented on 09.06.2004 and registered on the same date by virtue of Section 61 of the Registration Act, the plaintiff gets absolute right to the property. He would further draw the attention of the court to Ex.A18 and state that the 4th defendant had given a letter on 09.06.2004 stating that he had executed the sale deed on 14.05.2004 and therefore, the court should place reliance upon Ex.A18.

24. In response, Mr.A.Tamilvanan would submit that as the plaintiff had tampered with the document and approached the court with unclean hands, he is not entitled to any relief, much less the discretionary relief under Section 34 of the Specific Relief Act.

25. I have carefully gone through the records and I have applied my mind to the submissions made by the learned counsel on either side. Some preliminaries are necessary before I dwell into the merits of the case.



S.A.No.360 of 2019

WEB COPY 26. There is no dispute between the parties that the fourth defendant was the owner of the larger extent of the property, of which the suit schedule mentioned properties is a part thereof. The fourth defendant had laid out plots over this land and had marked them as plots Nos.1 to 4. The plaintiff had purchased the properties in plot Nos.1 and 4. The first defendant had purchased the property in plot No.2. The dispute now relates only to plot No.3. The total extent of plot No.3 is about 1993 sq.ft. Out of this 1993 sq.ft, the plaintiff claims to have purchased 967 sq.ft., on 14.05.2004.

27. It is the case of the defendants that the first defendant had purchased 1993 sq.ft., on 31.05.2004 vide document No.3921 of 2004 and she had settled the entire extent in favour of the second defendant by way of a settlement deed 05.09.2007 vide document No.4880 of 2007.

28. Though several issues have been argued before the court, a point that has to be answered by the court is whether Section 61 of the Registration Act binds the legal fiction created by virtue of Section 47.

Section 47 of the Registration Act and operation of a registered document



S.A.No.360 of 2019

29. Section 47 falls under Chapter X of the Registration Act. It deals with the effects of registration and the non registration. The first Section in that chapter is Section 47. Section 47 reads as follows:

“47. Time from which registered document operates - *A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”*

30. The purpose of this Section is that in case a document does not require registration, then it will operate from the time it had been executed, and in case of a registered document, by the operation of doctrine of relation back a legal fiction is created, and thereby, the document on registration will come into force from the date of its execution.

31. The Registration Act of 1908 was preceded by 6 previous legislations. They are Registration Act 1 of 1843, 19 of 1843, Registration Acts of 1864, 1866, 1871 and 1877. The marked difference between the first two legislations and the subsequent 4 legislations is as follows:

(a) under Registration Acts I and XIX of 1843, a registered document would operate only from the date of



S.A.No.360 of 2019

registration.

WEB COPY

(b)Whereas under the subsequent legislations of 1864, 1866, 1871, 1877 and 1908, a registered document operates from the date of its execution and not from the date of its registration.

32. The gist of the argument of Mr. N.Natarajan is that the sale deed executed by the 4th defendant in favour of the first defendant, though presented for registration on 31.05.2004, was registered only on 18.08.2004 and therefore, it is that date on which the document had come into effect. He would very vehemently submit that since the respondent/plaintiff had, by the time of 09.06.2004, purchased the property, the subsequent sale deed is of no value.

33. If I were to accept this argument, I would literally be taking the law back by two centuries to the position as it existed under the Registration Acts of 1843. The colonial legislature, as pointed out above, held under those legislations that it is the date of the registration which matters and not the date of execution. All the subsequent Registration Acts as set forth above and the present one by virtue of Section 47 holds that a registered document operates



S.A.No.360 of 2019

from the date of execution and not from the date of its registration.

WEB COPY

34. The interpretation of Section 47 is no longer *res integra*. As early as 1965, the Supreme Court had an occasion to deal with this issue in ***K.J.Nathan vs S.V.Maruthi Rao and other, AIR 1965 SC 430***. That was a case where a mortgage had been created by the deposit of title deeds on 05.07.1947. However, it came to be registered only on 23.06.1948. The mortgagor, in the meantime, had executed another mortgage in favour of a third party on 10.10.1947. It was argued before the Supreme Court, as has been argued by Mr. N.Natarajan before me, that the mortgage created on 10.10.1947 prevails over the mortgage dated 05.07.1947 as the latter had been registered only on 22.06.1948. Rejecting this argument, the Supreme Court held that, on the basis of Section 47 of the Registration Act, a registered document operates from the date of its execution and not from the date of its registration.

Scope of Section 61 of the Registration Act

35. Mr.N.Natarajan seems to have been emboldened to make a submission that it is the date of registration which matters and not the date of execution on the basis of Section 61 of the Registration Act. Section 61 of the Registration Act does not fall within the same Chapter as Section 47. It falls



S.A.No.360 of 2019

under Part XI of the Registration Act which does not deal with the effects of registration or non registration, but declares the duties and powers of a registering officer.

36. Under Section 61 of the Act, a registration is deemed to be completed when an endorsement and certificate, as required under Sections 59 and 60, are filed in Book I. This chapter merely describes as how the process of registration is to be done. It does not deal with the operation of the registered document.

**Section 61 does not affect the operation of Section 47 of the
Registration Act**

37. This brings me to the two judgments which have been referred to by Mr.N.Natarajan. They are *Ram Saran Lall vs Domini Kuer and others, AIR 1961 SC 1747* and *Har Narain vs. Mam Chand and others, (2010) 13 SCC 128*. On the strength of these two judgments, Mr.N.Natarajan would submit that the sale is not completed till its registration and therefore, Section 47 would be inapplicable. In fact, the lower appellate court, as discussed supra, had effectively held in favour of the defendants 1 to 3, but on the strength of the judgments alone held that the date of registration matters and not the date of execution. The judgment of the Constitution Bench in *Ram Saran Lall* was



S.A.No.360 of 2019

merely followed in **(2010) 13 SCC 128**. Therefore, I will turn my attention to the Constitution Bench Judgment in **Ram Saran Lall's case**.

38. A reading of paragraph 8 of the said judgment shows that Section 47 of the Registration Act does not deal with the situations where the sale is complete. It simply states that once a document is registered, it will operate from the earlier date as provided under Section 47.

39. I need not strain myself too much to ascertain the interpretation and application of the Constitution Bench Judgment as it has been answered by the Supreme Court in **Kanwar Raj Singh vs. Gejo, (2024) 2 SCC 416**. The Supreme Court held in paragraph 11 as follows:

“11. Every sale deed in respect of property worth more than Rs 100 is compulsorily registerable under Section 54 of the Transfer of Property Act. Thus, a sale deed executed by the vendor becomes an instrument of sale only after it is registered. The decision of the Constitution Bench only deals with the question of when the sale is complete; it does not deal with the issue of the date from which the sale deed would operate. Section 47 of the Registration Act does not deal with the completion of the sale; it only lays down the time from which a registered



S.A.No.360 of 2019

document would operate.”

Therefore, the sale deed dated 31.05.2004 would operate from the date of its execution as stipulated under Section 47 of the Registration Act and the completion of Section 61 formalities on 18.08.2004 does not affect the operation of the registered document from the date of its execution on 31.05.2004.

Transfer of title when complete

40. In order to further understand, as to why section 47 of the Registration Act governs the operation of a registered document, one must assess the date on which the transfer of title takes place. The Transfer of title of an immovable property is dealt with under Section 54 of the Transfer of Property Act. Under the said Section, when the parties have received the bargained amount and the document transferring title is executed, if it has a value of more than Rs.100, it is required to be presented for registration. It is the Transfer of Property Act which deals with the transfer of title and not the procedural requirements as enumerated under Sections 59 to 61 of the Registration Act does not govern the matters of transfer of title.

41. If I were to interpret the law as Mr.N.Natarajan wants me to do, then



S.A.No.360 of 2019

it would pave way for the unscrupulous elements to sell the property and present the document for registration, keep it pending registration and thereafter alienate the very same property already sold by them in favour of the third party and create utter confusion in society. I am not willing to fall pray to such a submission.

42. The undisputed facts in this case are that the fourth defendant, who is admittedly the owner of the property, had alienated the same in favour of the first defendant on 31.05.2004. On account of the fact that there were certain demands with respect to the stamp duty, the registration of the sale deed was postponed to another date, namely 18.08.2004.

43. Once the sale deed was registered in terms of Sections 59, 60, and 61 of the Registration Act, the process of registration was completed. On such completion, the effect of the sale deed would relate back, by virtue of Section 47, to the date of its execution. Therefore, the completion of registration on 18.08.2004 took the effect of Section 49 away from the document, and it became valid from the date of its execution, namely 31.05.2004.

44. This is an unfortunate case where the fourth defendant, having executed a sale deed on 31.05.2004, and after receiving the sale consideration had again alienated the property in favour of the plaintiff on 09.06.2004. By



S.A.No.360 of 2019

combined reading of Section 54 of the Transfer of Property Act read with Section 47 of the Registration Act, the title to the property was vested with the first defendant on 31.05.2004. Therefore, the fourth defendant did not have any right, title, or interest over the property to alienate the same in favour of the plaintiff on 09.06.2004.

45. From the above discussion, I hold that the document executed by the fourth defendant in favour of the first defendant took effect from 31.05.2004 and therefore, the purchase made by the plaintiff from the predecessor in the title of the first defendant is of no value.

The relief of declaration is discretionary in nature

46. Now turning to the point of Mr.A.Tamilvanan, the petitioner, having tampered with the document, is not entitled to any relief of declaration. The power of the court to grant the declaratory relief can be traced to the Scottish Courts which were empowered to grant such declaratory relief. This power which was exercised by the Scottish Courts was conferred on the English Courts by virtue of the Chancery Procedure Act, 1852. Under Section 50 of the said Act, the courts in England got the power to grant declaratory decrees. This provision was incorporated into Indian Jurisprudence by virtue of Section 15 of



the Code of Civil Procedure of 1859.

WEB COPY

47. The Privy Council in an appeal, which arises from this Court in ***Strimathoo Moothoo Vija Ragoonadah Rane Kolandapuree Natchiar vs. Dorasinga Tever, (1874-75 2 IA 169)*** held that the interpretation of declaratory relief under Section 15 of the Code of Civil Procedure should be in the same terms as Section 50 of the Chancery Procedure Act, 1852. The Code of Civil Procedure of 1859 was repealed by the Code of Civil Procedure of 1877. Subsequently, by enactment of the Specific Relief Act, 1877, the power to grant declaratory relief stood transferred to that Act. The 1877 Specific Relief Act was replaced by the Specific Relief Act, 1963 and the corresponding provision under the new Act is Section 34 of the Specific Relief Act. The power to grant declaratory relief is not exhaustive under Section 34. Interpreting old Section of 42 of the 1877 Specific Relief Act, which this the current section 34 of the Specific Relief Act, the Supreme Court in ***Vemareddi Ramaraghava Reddy v. Konduru Seshu Reddy, AIR 1967 SC 436*** held as follows:

“Section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the



S.A.No.360 of 2019

plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of Section 42 of the Specific Relief Act. A declaration of this character, namely, that the compromise decree is not binding upon the deity is in itself a substantial relief and has immediate coercive effect. A declaration of this kind falls outside the purview of Section 42 of the Specific Relief Act and will governed by the general provisions of the Civil Procedure Code like Section 9”

48. The fact that the court has the power to grant a declaratory relief does not mean a party is entitled to the relief as of a right. The declaration of a right under Section 34 is discretionary. This too was the subject matter of interpretation of the Privy Council in ***Sreenarain Mitter vs. Kishen Soonduree Dossee, 1873 IA (Supp.) 149***. The Board held:

“It is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not under all the circumstances of the case to grant the relief prayed for. There is so much more danger in India than fear of harassing and vexatious litigation that the Courts in India ought to be most careful that mere declaratory



S.A.No.360 of 2019

suits be not converted into a new and mischievous source of litigation.”

WEB COPY

Section 34 of the Specific Relief Act cannot extend to a plaintiff with unclean hands

49. In fact, the Lahore High Court in the case of *Ajaib Singh and Others vs. Sham Singh and Others*, AIR 1925 LAH 127(1), while interpreting the law of declaratory decrees has held that the declaration prayed for should not be granted where the suit has been brought forth dishonestly or where the intention of filing the suit is fraudulent. In case, the action initiated by a party is fraudulent and the party has withheld a document or has acted in a manner tending to be an abuse of process of court, the Supreme Court in the case of *Khatri Hotels Pvt. Ltd., and Another vs. Union of India and Another*, (2011) 9 SCC 126, had held that the declaratory relief should not be granted in favour of such parties.

50. Applying the law that has been discussed above to the facts of the present case, both the courts below have concurrently come to the conclusion that the document under Ex.A1 projected by the plaintiff had been tampered with. The courts below compared Ex.A1 with Ex.X2. Ex.X2 is a document produced from the proper custody of a public officer having control over the same viz., PW4.



S.A.No.360 of 2019

WEB COPY

51. Under Ex.X2, it had been clearly stated that the date of execution of the document by the fourth defendant in favour of the plaintiff was on 09.06.2004. However, for the purpose of litigation and to steal a march over the first defendant who had obtained the sale deed on 31.05.2004, the plaintiff had corrected not only the date in the document from 09.06.2004 to 14.05.2004, but had also corrected the consideration.

52. As the plea of tampering had been raised in this particular case, I called for the original records by order dated 13.06.2024. The entire documents were placed before me. I went through the original documents and it is clear from a mere perusal of the documents namely Ex.A1 and Ex.X2 that the date of the sale deed had been corrected by the plaintiff. In fact in the original of Ex.A1 at page 5, it is very clear that the sale consideration had also been corrected to Rs.1,10,000/-.

53. The plaintiff had relied upon Ex.A1 for the purpose of presenting the suit. He had, with a dishonest intention, tampered with the documents. Having



S.A.No.360 of 2019

tampered with the documents, he had been motivated to present the suit for the aforesaid declaration. In case, if I were to uphold the decree of the lower appellate court, then I would be doing injustice to the parties. It would be travesty of justice to grant a declaratory relief for a person who is of an atrocious character and persuaded with impious design.

54. It is expected that the parties come to the court with clean breast and clean hands. If they are tainted or if the entire litigation is motivated, then certainly the court will not come to their rescue. Though it is a concurrent finding of fact that the plaintiff had tampered with the document, in order to satisfy myself on those findings, I called for the originals as stated above. I am satisfied that Ex.A1, the fulcrum of the case of the plaintiff is a tampered one.

55. If a structure is based on improper design with an intention to grab a decree from the Court and if such a design is exposed, the court should not encourage such litigants by granting a decree. On the contrary, it should exercise the discretionary power vested in it under Section 34 of the Specific Relief Act and deny the relief to the plaintiff. I should hasten to add that such exercise of discretion should be based on firm grounds. There might be situations where a party would have projected a document but would not have



S.A.No.360 of 2019

relied upon the same. In such cases, the court can always take a call in favour of the plaintiff if other circumstances exist. However, if the entire case is placed on a document, which after trial is found to be false, then the court should come down heavily on such litigants. The persons knocking the doors of the court should do so honestly. If he exhibits designs similar to that of bandit, he should be given the treatment a bandit deserves.

56. A perusal of the originals constrained me to confirm the findings of the courts below. Therefore, in the light of the above discussion, the plaintiff is not entitled to any of the reliefs that he has sought in the suit. The lower appellate court had ignored the judgment of the Supreme Court in ***AIR 1967 SC 436*** and had misapplied the judgment **(2010) 13 SCC 128** which arose on the application of the doctrine of *lis pendens*. Therefore, this renders the judgments perverse in law and I am constrained to interfere with the same.

Husband is competent to depose on behalf of the wife

57. As a last resort to defend his case, Mr.N.Natarajan would plead that the courts would have to take adverse inference as against the defendants because the first defendant had not entered the witness box and it was only the third defendant who had done the same. To this effect, he would place his



S.A.No.360 of 2019

reliance upon the Supreme Court Judgment in **Vidhyadhar vs. Manikrao and**

another, AIR 1999 SC 1441.

58. I have to immediately point out that the plea of adverse inference was neither raised before the trial court nor before the lower appellate court. It is the legal ingenuity of Mr.N.Natarajan to raise the plea before me. It is too well settled, nonetheless I have to reiterate, that it is not open to a party to raise a new plea in the second appeal which has not been raised before the trial court or the lower appellate court.

59. Apart from that, as discussed from the facts of this case, the purchase had been made by the first defendant of the B schedule property and she had transferred all her rights over the B schedule property in favour of the second defendant which is covered under C schedule property. In fact, B and C schedule properties are the one and the same properties.

60. It is always open to the purchaser to enter the witness box and defend the title of the vendor. It is not unknown that the vendor, having alienated the property, would not enter the witness box as he or she might not have any interest over the property.

61. The third defendant is none other than the husband of the second



S.A.No.360 of 2019

defendant. In terms of Section 120 of the Indian Evidence Act, a husband can depose on behalf of the wife and vice versa. Therefore, the competency of the third defendant to enter the witness box and depose cannot be questioned by the plaintiff. Therefore, even on merits, the plea taken by the plaintiff that the court should draw adverse inference is untenable.

Decision

62. In the light of the above discussion, the second appeal is allowed. The judgment and decree of the court of learned Additional Subordinate Judge at Puducherry in A.S.No.18 of 2016 dated 24.09.2018 is set aside. The judgment and decree of the learned Principal District Munsif at Puducherry in O.S.No.60 of 2013 dated 12.12.2016 is restored. The suit shall stand dismissed with cost throughout. In addition, as the plaintiff has come forward with the false case, I impose an exemplary penal cost of Rs.50,000/-. The connected miscellaneous petition is closed.

25.06.2024

nl

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order



WEB COPY



S.A.No.360 of 2019



WEB COPY



S.A.No.360 of 2019

V.LAKSHMINARAYANAN, J.

nl

To

- 1.The Additional Subordinate Judge at Puducherry
- 2.The Principal District Munsif, Puducherry.

S.A.No.360 of 2019

25.06.2024