



S.A.No.653 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.653 of 2009

and

M.P.No.1 of 2009

1.Krishnammal
2.G.Rajaraman

... Appellants

vs.

K.Murugesan

... Respondent

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 17.10.2008 in A.S.No.31 of 2007 passed by the learned Sub Ordinate Judge, Tirupur, confirming the judgment and decree dated 17.11.2006 in O.S.No.210 of 2003 passed by the learned District Munsif, Tirupur.

For appellants : Mr.S.Kingston Jerold

For respondent : Mr.P.Santhose

for Mr.K.Govi Ganesan

J U D G M E N T

The defendants 1 and 2 are the appellants herein. The plaintiff is



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the respondent herein.

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2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which gave rise to the instant Second Appeal, are as follows:

3. According to the plaintiff, he was the absolute owner of the suit property by virtue of the registered sale deed dated 09.11.1998. Further, he had mortgaged a portion of the property to one Gomathi, wife of Rengaraj, after receiving a sum of Rs.55,000/- by way of usufructuary mortgage. According to the plaintiff, the second defendant used to advance loan and the plaintiff had borrowed a sum of Rs.25,000/- from the second defendant in the month of January 2000. Apart from that, he had also borrowed another sum of Rs.25,000/- in the month of May 2002. The plaintiff had discharged a sum of Rs.10,000/- towards the said loan and the balance sum of Rs.15,000/- has to be paid from December 2002. However, the defendants demanded a sum of Rs.1,30,000/- with



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penal interest. It was also the contention of the plaintiff that the defendants 1 and 2 obtained signed in blank papers and that the plaintiff had never executed any document in favour of the defendants 1 and 2 much less document to transfer the property. It was also the contention of the plaintiff that he had been in possession and enjoyment of the suit property. Hence, he came up with the suit for permanent injunction restraining the defendants from disturbing his peaceful possession and enjoyment of the property.

4. The said suit was resisted by the defendants by contending that the plaintiff had executed a sale agreement on 05.01.2000 and that 3 years period had been fixed as time for performance, and that on the verge of the performance period, the plaintiff had executed a power of attorney dated 22.05.2000. On the basis of the said power of attorney, the second defendant had executed a sale deed in favour of the first defendant on 18.10.2002. Therefore, it was the case of the defendants that the suit property, as on date, belongs to the second defendant and that the plaintiff cannot maintain the suit for permanent injunction.



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5. Before the Trial Court, on behalf of the plaintiff, the plaintiff was examined as P.W.1 and one more witness viz., Thiagarajan was examined as P.W.2 and 9 documents were marked as Exs.A1 to A9. On behalf of the defendants, the first and second defendants were examined as D.W.1 and D.W.2, respectively and two more witnesses were examined as D.W.3 and D.W.4 and 11 documents were marked as Exs.B1 to B11.

6. The Trial Court, after having considered the oral and documentary evidence, has found that the plaintiff has been in possession and enjoyment of the property and disbelieved the alleged sale agreement as well as power of attorney said to have been executed by the plaintiff, and ultimately, decreed the suit.

7. Aggrieved by the same, the defendants 1 and 2 preferred an appeal. The First Appellate Court has also concurred with the finding of the Trial Court.

8. Not satisfied with the judgment of the First Appellate Court, the defendants 1 and 2 approached this Court by way of this Second



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Appeal.

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9. This Court, at the time of admission on 06.08.2009, formulated the following substantial questions of law:

“1. Whether the judgment and decree of the Courts below are vitiated by its failure to consider the provisions of Section 92 of the Indian Evidence Act with regard to letting oral evidence contrary to the recitals in the registered documents Ex.B3 dated 22.05.2002?

2. Whether Ex.B3 is required to be proved as found by the Courts below especially when the execution of the registered document have not been denied by the respondent in the plaint?

3. Whether the judgment and decree of the Courts below are vitiated by its failure to consider the recitals in the registered documents Exs.B3 and B6 in the light of the pleading that the transaction between the appellants and the respondent is a loan transaction?”

10. The learned counsel for the appellants/defendants would vehemently contend that when the plaintiff has executed a registered documents such as sale agreement and power of attorney, by virtue of



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Section 92 of the Indian Evidence Act, 1872, the plaintiff cannot turn around and deny the recitals of the those documents. It is also contended by the learned counsel for the appellants/defendants that in pursuance of the power of attorney executed by the plaintiff, and consequent sale deed in favour of the D1, the plaintiff who is not at all the owner of the property, cannot maintain the suit. It is also contended by the learned counsel for the appellants/defendants that the plaintiff has not at all proved his defence of loan transaction. Further, the learned counsel would submit that the other findings of the Trial Court as well as the First Appellate Court are beyond the scope of the suit. Hence, he prayed to interfere with the judgment of both the Courts below.

11. Per contra, the learned counsel for the respondent/plaintiff would submit that the Trial Court as well as the First Appellate Court has considered the pleadings of either side and arrived at a right conclusion that there was no dispute about the signature found in the sale agreement as well as the power of attorney. It is also the contention of the respondent/plaintiff that those documents have been obtained by the defendants in view of the loan transaction. Therefore, it is the contention



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of the respondent/plaintiff that Section 92 of the Indian Evidence Act, 1872, will, in no way, bar the pleadings. It is also the contention of the respondent/plaintiff that by virtue of the oral and documentary evidence, the plaintiff has demonstrated the falsities over the defendants' case. It is further contended that there is no perversity in the judgment of both the Courts below, and this Court cannot interfere with the well-merited judgment.

12. I have given my anxious consideration to the submissions made on both sides.

13. The first and foremost submission addressed by the learned counsel for the appellants is by relying upon Section 92 of the Indian Evidence Act, and to buttress his submission, he has also relied upon two following judgments:

1. ***The Tehsildar, Urban Improvement Trust & another vs. Ganga Bai Menariya (dead) through LRs & others*** reported in ***CDJ 2024 SC 148***;
2. ***Tamil Nadu Electricity Board vs. N.Raju Reddiar*** reported in ***CDJ 1996 SC 564***.



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According to the learned counsel for the appellant/defendnat when the plaintiff has executed two registered documents such as sale agreement and power of attorney, he cannot turn around and deny such documents.

14. However, both the Courts below found that, notwithstanding the registration of the agreement, the very conduct of the defendant is making the defence put forth by him, become questionable one. According to the plaintiff, he has borrowed loan from the second defendant and admitted that, only as a security, such documents have been given to the defendants.

15. According to the Trial Court, this defence has been fortified by the admission made by D.W.2, wherein, he admitted before the Trial Court that though he entered into sale agreement with the plaintiff, he knew him just a week before. The Trial Court relied on a peculiar circumstances such as when Ex.B5/sale agreement, refers to only landed property, subsequently, the plaintiff, with the knowledge of the defendants, has put up a terrace building.



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16. Apart from that, the Trial Court has also disbelieved the very conduct of the defendants granting three months time for the plaintiff only on the ground to pay the arrears of water tax and building tax. These are also the instances, which were relied on by the Trial Court to disbelieve the case of the defendants. Apart from that, the Trial Court has also found wild contradiction between the written statement and the oral evidence. In the written statement, the sale consideration was stated as Rs.2,55,000/- whereas, D.W.1, during his cross-examination, has stated that the sale consideration was only Rs.2,11,000/-. As rightly contended by the learned counsel for the plaintiff, the above observation made by the Trial Court is based on evidence.

17. At this juncture, while considering the submission of the learned counsel for the appellants/defendants, by relying on Section 92 of the Indian Evidence Act, 1872, this Court is of the view that such argument will, in no way, support the defendants' case. Because the plaintiff admits the signature found in the sale agreement and power of attorney, but plead different transaction qua these documents came into



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existence as security. The defence of security has been believed by the Trial Court, only upon the instances, stated here in above, and has disbelieved the sale agreement. The learned counsel for the appellant has also put forth another argument that the suit for permanent injunction without the prayer of declaration, is not maintainable. But, this Court is not in a position to agree with the said submission made by the learned counsel for the appellants/defendants, for the simple reason that according to the defendants, the plaintiff was the owner of the suit property and only by virtue of the sale deed and power of attorney, the property was transferred in the name of the first defendant. However, the Trial Court, by the conduct of the defendants, has disbelieved Exs.B2 and B5. In such circumstance, this Court could not find any infirmity in seeking the mere relief of the permanent injunction. Apart from that, the defendants cannot dispute the possession of the plaintiff over the suit property and even according to the defendants, the plaintiff has been in possession and enjoyment of the suit property.

18. In view of the above discussion, this Court is of the firm



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view that this Court could not find any perversity in the judgment of both the Courts below.

19. In the result, this Second Appeal is dismissed by confirming the judgment of both the Courts below. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd

To

1. The Subordinate Judge, Tirupur.
2. The District Munsif, Tirupur.
3. The Section Officer, V.R.Section, High Court, Madras.



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C.KUMARAPPAN,J.

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