



S.A.No.269 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.02.2024	Pronounced on: 15.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.269 of 2018
and CMP. Nos.6811 of 2018
and 903 of 2024

Vijaya

...Appellant

Vs.

1.Kathirvel
2.Kesavan

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree in A.S. No.11 of 2016 dated 12.12.2017 on the file of the II Additional Subordinate Judge, Villupuram reversing the Judgment and Decree in O.S. No.53 of 2011 dated 31.08.2015 on the file of the II Additional District Munsif, Tirukoilur.

For Appellant : Mr.N.Suresh

For Respondents : Ms.R.Gururaj for R1



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No Appearance for R2

JUDGMENT

The plaintiff in a suit for permanent injunction having succeeded before the trial Court and having suffered a reversal finding before the First Appellate Court, is the appellant herein.

2. The parties are described as per their litigative status before the trial Court.

3. The material facts that are necessary to decide the present Second Appeal are as follows:

4. The plaintiff sought for the relief of permanent injunction. It is the specific case that the property was originally owned by one Ramakrishnan, who had mortgaged the property on 16.02.1998 for borrowing a sum of Rs.31,000/-; the said Ramakrishnan has appointed one Krishnamoorthy as his power agent; on 30.06.2006, the said power agent



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sold the suit property to the second defendant on 03.07.2006; the second defendant having purchased the suit property executed a power of attorney in favour of first defendant on 27.07.2009 and the first defendant thereafter, as agent of the second defendant, sold the suit property to the plaintiff; the plaintiff has been in possession and enjoyment of the property and since there was an attempt to interfere with his possession, the plaintiff instituted the suit seeking the relief of bare injunction.

5. The suit was resisted by the 2nd defendant on the ground that the 2nd defendant was in possession and he had executed the power of attorney in favour of the first defendant, only as a security for a sum of Rs.47,000/-, alleged to have been borrowed by him. Therefore, the said power of attorney was a sham and nominal document and the sale deed executed by the power agent, viz., first defendant in favour of the plaintiff was invalid. According to the 2nd defendant, he was in possession of the suit property and it is further contended that suit for bare injunction was not maintainable, without a relief of declaration.



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6. Before the trial Court, the first defendant remained exparte. The trial Court, after assessing the oral and documentary evidence adduced by the parties, found that the plaintiff was in possession and decreed the suit as prayed for. However on Appeal, the First Appellate Court reversed the findings of the trial Court and dismissed the suit.

7. Aggrieved by the reversal findings rendered by the First Appellate Court, the plaintiff has preferred the present Second Appeal. On 26.06.2018, the above Second Appeal has been admitted on the following substantial questions of law:

“ (a) Whether the first Appellate Court is right in reversing the Judgment and Decree of the trial Court when admittedly the 2nd defendant has executed power of attorney deed in favour of 1st defendant and on the basis of the same, the 1st defendant has executed a sale deed in favour of plaintiff under Ex.A5?

b) Whether the Court below is right in giving findings regarding validity of the documents and that too in respect of Ex.A5 sale deed in favour of plaintiff in a suit for bare injunction?”

8. I have heard Mr.N.Suresh, learned counsel for the appellant and Mr.R.Gururaj, learned counsel for the first respondent.



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9. The learned counsel for the appellant would state that the plaintiff has established valid purchase of the suit property and admittedly, the 2nd defendant had admitted to the execution of the power of attorney in favour of the first defendant and it is not open to him to claim that the said power of attorney was sham and nominal. Further, the learned counsel for the appellant would also state that despite filing of the suit, the second defendant has not chosen to challenge the sale deed in favour of the plaintiff. The learned counsel for the appellant would also state that by production of patta, kist and adangal receipts, the plaintiff has established lawful possession of the suit property. Moreover, Ex.A2, sale deed is also for lawful consideration and there was no necessity for seeking relief of declaration. He would also attack the findings of the First Appellate Court on the ground that the First Appellate Court has taken into consideration extraneous factors, wholly irrelevant for deciding the relief of permanent injunction and he would therefore, pray for the Second Appeal being allowed, restoring the relief of permanent injunction granted by the trial Court.



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WEB COPY 10. Per contra, the learned counsel for the first respondent Mr.R.Gururaj, would submit that the plaintiff is none else than the step daughter of the first defendant and therefore, it is a clear case of collusion as rightly found by the First Appellate Court and he would also state that even on the date of purchase by the plaintiff under Ex.A5, sale deed, the 2nd defendant gave his objection to the Sub Registrar and within two weeks the general power of attorney was also cancelled vide Ex.B11.

11. It is the further case of the learned counsel for the first respondent, that a sum of Rupees one lakh said to have been borrowed, has not been discharged till date and though the sale deed reflects a consideration of Rs.1,02,000/-, no money had also been paid to the principal nor has the mortgage been discharged. The learned counsel for the first respondent states that in order show that the second defendant alone is in possession, sugar cane planting and cutting orders have been exhibited. He would also further state that the suit for bare injunction without a prayer for declaration was not maintainable and further contend that in view of Section



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91 of the Indian Evidence Act, 1872, the second defendant was entitled to claim that the power of attorney was not intended to be used for sale of the property and he would also state that the plaintiff has not approached the Court with clean hands having suppressed the factum of the second defendant objecting to the sale deed executed in favour of the plaintiff and he would therefore, pray for the First Appellate Court's judgment and decree being confirmed.

12. I have carefully considered the rival submissions advanced by the learned counsel on either side.

13. At this juncture, CMP. No.903 of 2024, which has been filed by the appellant under Order 41 Rule 27 CPC, to produce additional documents viz., (i) the full satisfaction memo and the endorsement on the reverse in O.S. No. 85 of 2010 dated 27.08.2019 and (ii) the suit register in O.S. No.85 of 2010 on the file of the learned District Munsif, Thirukoilur, is taken up for consideration.



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14. The said Application has been taken out to mark the above two documents on the ground that when the suit property had been purchased by the first respondent through power agent on 03.07.2006, the first respondent undertook to discharge the mortgage amount of Rs.31,000/- along with interest to the mortgagee, Visalakshi Ammal. As the first respondent had failed to discharge the mortgage Visalakshi Ammal, the mortgagee had filed a suit in O.S. No. 85 of 2010, arraying not only the appellant but also both the defendants in the said suit. The appellant has paid the money pursuant to which, full satisfaction memo has also been filed. It is the case of the appellant that the documents are necessary for deciding the Second Appeal and it is also stated that the second defendant has admitted to the factual aspects with regard to these documents in cross examination.

15. Though the learned counsel for the first respondent herein has not filed any counter in the said application, he has contended that though there is no bar to receive additional documents in the Second Appeal, unless the documents are required to decide the main dispute between the parties in the Second Appeal, the same cannot be received and he would also state that the



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mortgage being settled subsequently was of no avail as it was only to create evidence in favour of the appellant.

16. Under Order 41 Rule 27 CPC, apart from a party seeking to file additional documents and subject to satisfying the conditions set out under Order 41 Rule 27 CPC, additional documents can be received even at the appellate stage. This apart, the Court is also empowered to receive any additional documents if it thinks it fit that such valuable documents would lend assistance to decide the actual dispute between the parties or for doing substantial justice.

17. In view of the above and considering the fact that the documents that are now sought to be produced viz., the full satisfaction memo which is dated 27.08.2019 in O.S. No.85 of 2010, though the same is subsequent to the filing of the Second Appeal and in my opinion, it has some material bearing on the final decision of the Second Appeal. The other document is only the suit register in respect of the very same matter. Hence, I feel that the said documents would be required to decide the Second Appeal especially, in the light of the rival contentions between the parties revolving



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around the discharge/failure to discharge of the mortgage. Thus CMP.

No.903 of 2024 is allowed and the documents viz., (i) the full satisfaction memo and the endorsement on the reverse in O.S. No. 85 of 2010 dated 27.08.2019 and (ii) the suit register in O.S. No.85 of 2010 on the file of the learned District Munsif, Thirukoilur, have marked as Ex.A13 & Ex.A14 respectively.

18. With regard to the suit for injunction, I find that the plaintiff has filed material documentary besides satisfactory oral evidence, including patta Ex.A6, kist A7, and Adangal for fasli year 1419 to 1422, (corresponding years 2009 to 2012) vide Ex.A9 to Ex.12 and has established the factum of being in physical possession of the suit property. To negate that the plaintiff is not in possession but only the second defendant who is in possession, the second defendant has filed sugar cane planting and cutting orders which according to the learned counsel for the first respondent clearly establishes possession being with the second defendant only and not the plaintiff. However, from the documents exhibited by the defendants, I find that the said records do not reflect that



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they were pertaining to the suit property. Therefore, I am unable to place reliance on the said exhibits to dethrone the substantial evidence adduced by the plaintiff to establish his possession.

19. Moreover, it is not the case of the 2nd defendant that he has discharged the mortgage and in view of the additional documents also coming on record, it has become very clear that the plaintiff has discharged the mortgage. Moreover, the second defendant, till date has not challenged the sale deed in favour of the plaintiff. Without adverting to these material and relevant factors, the First Appellate Court has proceeded to non suit the plaintiff, applying extraneous and irrelevant factors like, the plaintiff being step daughter of the first defendant and therefore, it was a case of collusion and further Ex.A5 came to be registered subsequently, much later than the date of presentation. Admittedly, even according to the second defendant, they have objected to the registration of the sale deed on the date of presentation. Therefore, the sale deed was not registered on the same day but subsequently. Therefore, the reasoning of the First Appellate Court to reverse the well merited and well considered findings of the trial Court are



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improper, perverse and highly unsatisfactory.

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20. For all the above reasons, I am constrained to interfere with judgment and decree of the First Appellate Court and I answer the substantial questions of law in favour of the appellant and consequently, this Second Appeal is allowed. Accordingly, the judgment and decree passed by the First Appellate Court in A.S. No.11 of 2016 dated 12.12.2017, is set aside and the judgment and decree passed by the trial Court in O.S. No.53 of 2011 dated 31.08.2015 is hereby restored. CMP. No.903 of 2024 is allowed and CMP. No.6811 of 2018 is closed. There shall be no order as to costs.

15.03.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
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To

- 1.The II Additional Subordinate Judge, Villupuram.
- 2.The II Additional District Munsif, Tirukoilur.



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P.B.BALAJI, J.

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