



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1093 of 2011 and
M.P.No.1 of 2011

A.Subramani

... Appellant / Plaintiff

Vs.

1.Venkatammal
2.Rani
3.Anbazhagan
4.Annamalai
5.Usha
6.Amudha
7.Indra
8.Sathiya
9.C.Madhesan

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Lower Appellate Court in A.S.No.8 of 2010 on the file of the Principal Subordinate Court, Krishnagiri, dated 23.12.2010 in reversing the judgment and decree in O.S.No.236 of 2007 on the file of the District Munsif Court, Krishnagiri dated 14.08.2009.

For Appellant : Mr.C.Saikrishna for
Mrs.V.Srimathi

For Respondents : Mr.G.Vigneswar for
M/s.V.Nicholas



JUDGMENT

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This Second Appeal has been filed to set aside the judgment and decree of the Lower Appellate Court in A.S.No.8 of 2010 on the file of the Principal Subordinate Court, Krishnagiri, dated 23.12.2010 in reversing the judgment and decree in O.S.No.236 of 2007 on the file of the District Munsif Court, Krishnagiri dated 14.08.2009.

2. Heard Mr.C.Saikrishna, learned counsel for the appellant and Mr.G.Vigneswar, learned counsel for the respondents and perused the materials available on record.

3. The appellant is the plaintiff. The plaintiff has filed a suit for specific performance against the defendants. The Trial Court had decreed the suit as prayed. The First Appeal filed by the defendants was allowed by reversing the judgment and decree of the Trial Court by dismissing the suit. Aggrieved over that, the plaintiff has filed this Second Appeal.

4. The short facts pleaded in the plaint are as follows:

The suit property was originally belonged to one Malayan who is the husband of the first defendant. The plaintiff's mother has got an agricultural



land in the south and north of the suit property. For the convenient sake, the plaintiff during the year 1983-84 had purchased the suit property from Malayan for a sum of Rs.4250/-. However, the sale deed was not registered. The plaintiff has also taken possession of the suit property. During UDR Survey scheme, the patta was also issued in favour of the plaintiff based upon his possession. So long as Malayan was alive, there was no difficulty and after his death, the relationship between the plaintiff and the legal heirs of Malayan got soured. By taking advantage of the absence of the sale deed, and at the instigation of the 9th defendant, the plaintiff's possession was disturbed by the defendants. At the intervention of the Panchayatars and village elders, a sale agreement was executed in favour of plaintiff in respect of 9 cents by Nanjundan (son of Malayan) along with the first defendant who is the wife of Malayan. The plaintiff had given up his remaining claim in respect of 15 cents in S.No.174/2.

4.1. The suit sale agreement was executed on 28.03.2006. In the sale agreement, the first defendant had affixed her thumb impression and the deceased Nanjundan had affixed his signature. The sale price was fixed at Rs.11,250/- and a sum of Rs.6,250/- has been paid as an advance. The



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period for executing the sale agreement has been agreed at six months. On 17.04.2006, the plaintiff had approached Nanjundan to receive the balance sale consideration, for which, it was stated that Nanjundan was suffering from kidney ailment and that he would execute the sale deed after two months. However, Nanjundan died in the Month of August, 2006 leaving behind the defendants 1 to 3 as his legal heirs. During his lifetime, Nanjundan along with the first defendant had created a sale deed in favour of 9th defendant on 05.05.2006 with a view to defeat the plaintiff's right over the suit property.

4.2. The plaintiff came to know about the sale deed dated 05.05.2006 only after he got a certified copy of the same. As the plaintiff was all along willing to perform his part of contract and the defendants had defaulted to perform their part of contract, the plaintiff had issued a legal notice on 20.09.2006 to the defendants 1 and 2 and 9th defendant. The 9th defendant alone issued a reply by stating that the suit agreement was created by forgery with the help of old stamp papers.



5. The averments made in the written statement filed by the defendants are as follows:

The 9th defendant filed a written statement and that has been adopted by the other defendants. The defendants deny the execution of the suit agreement in favour of the plaintiff. There is no good relationship between the plaintiff's family and the 9th defendant's family. The suit agreement is also a forged one. The plaintiff never approached Nanjundan for giving the remaining sale consideration of Rs.5,000/- as alleged. There is no mention about the oral sale in the suit sale agreement. There is no explanation given by the plaintiff why he did not get the regular sale deed. It is false to state that the 9th defendant has created the sale deed with a view to defraud and he is the bonafide purchaser of the suit property together with an additional extent of 15 cents in S.No.170/2. The 9th defendant has issued a suitable reply to the plaintiff for his legal notice. The suit sale agreement is not a real and genuine one.

6. During the course of the trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A7 were



marked. On the side of the defendants, two witnesses have been examined as D.W.1 and D.W.2 and Ex.B1 and Ex.B2 were marked.

7. At the conclusion of the trial and considering the evidence on record, the Trial Court has decreed the suit. However, on the First Appeal preferred by the defendants, the First Appellate Court has reversed the judgment and decree of the Trial Court by allowing the First Appeal. Aggrieved over the same, the plaintiff has filed this Second Appeal by raising the following substantial question of law:

"Whether the Lower Appellate Court was right in holding that the appellant failed to prove the agreement of sale?"

8. The learned counsel for the appellant submitted that the appellant / plaintiff has a valid sale agreement, but the First Appellate Court has misled itself as though the plaintiff has not proved the sale agreement. The plaintiff has examined the scribe of the sale agreement as P.W.2 whose evidence would confirm the fact the sale agreement was executed as alleged by the plaintiff.



8.1. The first defendant had simply denied the execution of the sale agreement and consequently denied her thumb impression on the same. Nanjundan who is the son of Malayan had also signed the sale agreement. Until the death of the first defendant's husband Malayan, there was no problem in enjoying the suit property by the plaintiff as its owner. But all the problems started only subsequent to his death. That is the reason why the sale agreement has been subsequently executed on 28.03.2006. Subsequent to the sale agreement, the 9th defendant had purchased the suit property on 05.05.2006 despite knowing that the patta for the suit property stands in the name of the plaintiff in view of his enjoyment over the suit property. So the 9th defendant is not a bonafide purchaser. Hence, he cannot derive any title in respect of the suit property.

8.2. The plaintiff had issued a legal notice to the defendants on 20.09.2006 through which the 9th defendant had come to know about the UDR patta which was standing in the name of the plaintiff even prior to the existence of the sale agreement dated 28.03.2006 (Ex.A1). Despite the Trial Court has appreciated the said fact on proper evidence, the First Appellate



Court misdirected itself and allowed the First Appeal filed by the defendants on erroneous reasons.

9. The learned counsel for the respondents submitted that the sale agreement does not have any recitals as to the earlier oral sale as alleged by the plaintiff. Despite the plaintiff has issued notice calling upon the defendants to execute the sale deed on 20.09.2006 and the 9th defendant has given a reply on 23.09.2006, the plaintiff has filed the suit only in the year 2007. Hence, the plaintiff has not proved that he was ready and willing to perform his part of contract. The UDR patta has been obtained by the plaintiff without any document.

9.1. The plaintiff did not prove the genuineness of Ex.A1 even though it is denied by the defendants that the sale agreement was not executed by the first defendant and her son Nanjundan. Ex.A2 patta cannot be considered as a document of title and on that basis, the plaintiff cannot get any title. The plaintiff also has not proved his readiness and willingness as he has not come to Court immediately after receiving the reply notice from the 9th defendant. The First Appellate Court has rightly reappraised the



evidence on record and arrived at a conclusion that the plaintiff has not proved the execution of the sale agreement. Hence, the judgment and decree of the First Appellate Court does not require any interference and there is no question of law will arise as the plaintiff alleged.

10. The contention of the appellant is that the First Appellate Court without considering the evidence of P.W.2 had chosen to give a finding that the genuineness of the sale agreement has not been proved. So, the substantial question of law that would arise for consideration in this Second Appeal would be as below:

"Whether in law the First Appellate Court is right in arriving at a conclusion that the sale agreement Ex.A1 has not been proved by the plaintiff without considering the evidence of P.W.2?"

11. P.W.2 is the person who is said to have written Ex.A1 sale agreement and as a scribe, he has been examined as a witness on the side of the plaintiff. P.W.2 has stated in his evidence that he has written the sale agreement and had obtained the attestation from the first defendant and signature from the son of Malayan viz., Nanjundan. In the cross



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examination, he has stated that after having typed the sale agreement, he asked his assistant to get the thumb impression from the first defendant and it is his assistant who have obtained the thumb impression and had written LTI.

12. As a scribe, he is not a person who is known to the parties to the agreement. His evidence alone may not be sufficient to prove the execution of the sale agreement as alleged by the plaintiff. It is the categorical case of the plaintiff that he is entitled to the suit property as its owner in pursuant to the completed sale transaction with the original owner Malayan, but without getting the sale deed executed. So according to the plaintiff, it is only a completed oral sale and not a registered sale through which, he is said to have acquired title over the suit property. It is stated by the plaintiff that he has been in enjoyment of the suit property right from the year 1984 by way of purchase. The suit property is an immovable property for which the petitioner is said to have paid a sale consideration of Rs.4,250/- to Malayan. Transfer of any immovable property exceeding the value of Rs.100/- ought to have been registered in accordance with Section 17 of the Registration



Act and hence, the oral sale in respect of the suit property cannot be accepted as a valid conveyance.

13. The very contention of the plaintiff that he had already got the suit property through sale in the year 1983-84 for a sale consideration of Rs.4,250/- from Malayan cannot be proved in the absence of a sale deed. The further contention of the plaintiff is that he has been in enjoyment of the suit property and even the patta has been transferred in his name and only because of the legal heirs viz., wife of Malayan (first defendant) and his son Nanjundan have been causing trouble to the enjoyment of the plaintiff over the suit property, the plaintiff was compelled to get the sale deed from the first defendant and her son on Panchayat resolution.

14. When the first defendant stoutly denies the execution of the sale agreement, the plaintiff has got an obligation to prove that the sale agreement is genuine by examining atleast any of the Panchayatars or attestors who has signed the sale agreement. Even prior to the issuance of the legal notice by the plaintiff through Ex.A4, the sale agreement in favour of 9th defendant came into existence. The plaintiff claims that he came to



know about the sale deed in favour of 9th defendant only after obtaining certified copy and then, he prompted to issued a legal notice on 20.09.2006.

In fact, the 9th defendant has sent a reply notice on 23.09.2006 itself by denying the claim of the plaintiff. But still, the plaintiff had filed a suit only in the year 2007.

15. The learned counsel for the appellant submitted that he has come to the Court within a period of limitation and he has been all along ready and willingness to perform his part of contract and the 9th defendant cannot take such a plea because all along he has been denying the very execution of the sale agreement. Even though the 9th defendant might deny the execution of the sale agreement, it is a specific case of the plaintiff that the sale agreement was very much in existence and that he was all along ready and willing to perform his part of contract. Even when it is denied on the part of the defendants, the plaintiff has got a duty to prove that the sale agreement is not only true, he has also been ready and willing to perform his part of contract. But the materials on record would only reveal that the plaintiff has issued notice as early as in the month of September, 2006. But he has filed a suit in a relaxed manner despite knowing that the registered sale has been



executed in favour of the 9th defendant by causing trouble to his alleged interest over the suit property.

16. Much thrust was made on the basis of Ex.A2 patta standing in the name of the plaintiff. It is trite law that patta cannot establish title. The very contention of the appellant is that he has obtained patta in his capacity as the owner of the suit property and he has been inducted into possession of the same by Malayan subsequent to the completion of the oral sale. No significance can be attached to Ex.A2 patta as the plaintiff claims that the patta in his favour would enhance his claim for title even prior to the execution of Ex.A1. The Trial Court got convinced with the evidence of the scribe of Ex.A1 and arrived at a conclusion that the sale agreement has been proved.

17. The learned counsel for the respondents submitted that even bare eye examination of the admitted thumb impression of the first defendant along with Ex.A1 sale agreement would show that the sale agreement is a created document and the first defendant has not attested her thumb impression on the same. When the plaintiff is exposed to such a risk, it



would have been worthwhile, had he taken steps either to examine the attestors or the Panchayatars on whose behalf, the sale agreement has been executed. The First Appellate Court had gone into the merits of the case by properly appreciating the evidence and arrived at a right conclusion that the plaintiff has not proved the very execution of Ex.A1 and allowed the First Appeal.

18. As the contentions now raised by the appellant is purely on facts and it has been already appreciated elaborately by both Courts by taking into consideration the evidence of P.W.2, I do not find any question of law much less a substantial question of law arising in favour of the appellant.

19. In the result, this Second Appeal is dismissed and the judgment and decree of the Lower Appellate Court in A.S.No.8 of 2010 on the file of the Principal Subordinate Court, Krishnagiri, dated 23.12.2010 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

19.12.2024

Speaking order / Non Speaking Order
Index : Yes / No



Neutral Citation : Yes / No
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To

1.The Principal Subordinate Court,
Krishnagiri.

2.The District Munsif Court,
Krishnagiri.



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R.N.MANJULA, J.

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