



S.A.No.290 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE **G.ARUL MURUGAN**

S.A.No.290 of 2012

and

M.P.No.1 of 2012

1.Chan Bi

2.K.Chinnakannu

3.G.Geetha

... Appellants

vs.

Vijaya

...Respondent

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.08.2011 in A.S.No.11 of 2011 passed by the learned Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 28.07.2010 in O.S.No.107 of 2007 passed by the learned District Munsif, Krishnagiri.

For appellants : Mr.V.Nicholas

For respondent : No appearance

J U D G M E N T

The defendants 1 to 3 in the suit are before this Court, as appellants in this Second Appeal.



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2. This Second Appeal has been filed challenging the judgment and decree dated 30.08.2011 in A.S.No. 11 of 2011 on the file of the Principal Sub Court, Krishnagiri, confirming the judgment and decree dated 28.07.2010 in O.S.No.107 of 2007 on the file of the District Munsif Court, Krishnagiri.

3. For the sake of convenience, the parties will be referred to as per the ranking before the Trial Court.

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

4. According to the plaintiff, the suit properties originally belonged to Bakuthan, Marikolan and others, which were sold in favour of the first defendant in the year 1990. Thereafter, the first defendant had sold the suit property in favour of the plaintiff on 13.09.1994. From the date of purchase, the plaintiff had been in possession and enjoyment of the suit property by paying necessary kist to the Government and all the Revenue records have been mutated in the name of the plaintiff. However, the first defendant, with a *mala fide* intention, once again, sold



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the same suit properties in favour of the 2nd and 3rd defendants herein.

Even when the first defendant had no right, title or interest over the suit property, the sale deeds had been executed by the first defendant in favour of the 2nd and 3rd defendants fraudulently with the only intention to cheat the plaintiff and to defraud her.

5. Based on the strength of the fraudulent sale deeds executed, the defendants 2 and 3 attempted to interfere with the possession of the plaintiff on 28.07.2006. However, the plaintiff resisted the attempt and filed the suit to declare the sale deed executed in favour of the defendants 2 and 3 as null and void, to declare the title of the suit property in favour of the plaintiff, for permanent injunction and for mandatory injunction, to direct the 4th defendant to cancel the sale deed executed in favour of the defendants 2 and 3.

6. The first defendant resisted the suit by filing a written statement disputing the sale deed executed in favour of the plaintiff on 13.09.1994. According to the first defendant, her husband took her to the Office of Sub Registrar, Krishnagiri on 13.09.1994 and asked her to affix



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her signature on the stamp papers stating that her signatures were required for the purpose of preparing mortgage deed in the name of the plaintiff in order to discharge the amount borrowed by him from the husband of the plaintiff. The first defendant was not aware of the full details and without knowing the contents, she simply signed in the stamp papers and affixed her thumb impression and only subsequently, she learnt that the sale deed was taken by her husband in the name of the plaintiff in respect of the suit property. No consideration was paid and the sale deed never came into force and also she continued to be in possession of the suit property and therefore, she alienated the suit properties in favour of the 2nd and 3rd defendants. The 1st defendant had issued a legal notice to the plaintiff and her husband, for which, there was no reply. Further, the suit is barred by limitation and prayed for dismissal of the suit.

Evidence and documents:

7. During trial, the plaintiff examined herself as P.W.1 and her brother K.Sivakumar as P.W.2 and marked Exs.A1 and A2. On the side of the defendants, the defendants examined themselves as D.W.1 to



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D.W.3, respectively and one Thiruppathy as D.W.4 and marked Exs.B1 to B9.

Findings of the Courts below:

8. The Trial Court, after analysing the documents and evidence, decreed the suit. The Trial Court found that since the first defendant had sold the suit property in favour of the plaintiff on 13.09.1994 in Ex.A1, she did not have any right to further convey the suit property again to the defendants 2 and 3. Further, when the first defendant disputed the sale, she had not chosen to challenge the sale executed in favour of the plaintiff, on the contrary, she went ahead with the further sale in favour of the defendants 2 and 3. The Trial Court also found that the defendants 1 to 3 are not in possession of the suit property and the plaintiff, as the purchaser, is in possession of the suit property.

9. Aggrieved by the judgment and decree passed by the Trial Court, the defendants 1 to 3 filed appeal in A.S.No. 11 of 2011 on the file of the Principal Sub Court, Krishnagiri. The Lower Appellate Court, after re-appreciating the evidence, dismissed the appeal.



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10. Aggrieved by the concurrent finding of fact, the defendants 1 to 3 are before this Court in this Second Appeal.

11. This Court, by order dated 11.04.2012, ordered only notice of motion.

Submission on both sides:

12. The learned counsel for the appellants argued that since the first defendant was not aware of the contents in the sale deed in Ex.A1, her husband had made her believe that it is only a mortgage deed to be executed in favour of the plaintiff for the loan borrowed by him and therefore, the sale deed in Ex.A1 was never intended to be a sale.

13. The learned counsel further argued that since no consideration was paid for the sale deed executed in Ex.A1, the first defendant continued to be in possession of the suit property and only on the strength of the same, she had executed the sale deeds in favour of the



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defendants 2 and 3 by conveying the suit property. The learned counsel further contended that the sale deed in Ex.A1 was not properly valued and pursuant to the sale deed executed by the first defendant in favour of the defendants 2 and 3, they are in possession of the suit property.

14. The learned counsel further argued that the plaintiff had not questioned the sale in favour of the defendants 2 and 3 within the prescribed period and hence, the suit is not maintainable as it is beyond the period of limitation. As the sale deed in favour of the plaintiff in Ex.A1 was executed by misrepresentation, the same will not give any right or title in favour of the plaintiff. As such, the learned counsel contended that both the Courts below have arrived at a finding of fact, which is not based on the materials available on record and therefore, perverse and sought for allowing this Second Appeal.

15. Though notice to the respondents has been served and their names are printed in the cause list, no one has entered appearance and there is no representation.



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Analysis of the submissions:

16. Admittedly, the first defendant had purchased the suit properties from Bakuthan, Marikolan and others through a sale deed dated 19.12.1990. Thereafter, the first defendant had executed the sale deed on 13.09.1994 in Ex.A1 in favour of the plaintiff. As per the contents of the sale deed in Ex.A1, the sale deed had been executed for valuable consideration and the plaintiff was put in possession of the suit property. As the first defendant had sold the suit property in favour of the plaintiff through Ex.A1, pursuant to the same, she had no right or interest in the suit property to execute any further sale.

17. It is seen from the records that the first defendant went ahead and executed the sale deeds in favour of the defendants 2 and 3 through sale deed dated 01.09.1995 and 12.09.1995 in Exs.B5 and B6 respectively. It is the case of the first defendant that even though she had signed and executed the sale deed in Ex.A1, the sale deed was never intended as a sale, however, the first defendant's husband had taken her to the Sub Registrar's Office stating that it is only a mortgage deed



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executed in favour of the plaintiff for the loan, which he had availed from the plaintiff's husband. The first defendant claimed that she was not aware of the contents of the sale deed in Ex.A1 and therefore, the sale in Ex.A1 had been obtained by misrepresentation. The sale deed in Ex.A1 was not supported by consideration as no valid consideration was paid and as it was not a sale, the first defendant continued to be in possession of the suit property.

18. In fact, the first defendant had issued a legal notice in Ex.B3 to the plaintiff stating that the sale deed in Ex.A1 is not intended to be a sale and therefore, she was taking steps to cancel the sale deed in Ex.A1 executed in favour of the plaintiff. Having issued the legal notice in Ex.B3, the first defendant had not challenged the sale deed in Ex.A1 executed in favour of the plaintiff, on the contrary had gone ahead and executed the sale deeds in Exs.B5 and B6 in favour of the defendants 2 and 3, respectively. As such, on the date of the subsequent sale in favour of the defendants 2 and 3, they were aware from the encumbrance that the suit property had already been conveyed in favour of the plaintiff and the first defendant had no manner of right or interest to sell it again



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through the sale deeds in Exs.B5 and B6. Even when the first defendant contended that the sale deed executed in favour of the plaintiff in Ex.A1 is not a sale and also she had issued a notice categorically stating that she was taking steps to cancel the document, she did not proceed to challenge the document in Ex.A1 and further, if it is a mortgage deed as claimed by her, no steps have been taken by her for redemption of the suit property.

19. When the first defendant is a party to the sale deed and having executed the sale deed in favour of the plaintiff in Ex.A1, she cannot give any oral evidence contrary to the registered document, as per Sections 91 and 92 of the Indian Evidence Act, 1872. When admittedly the first defendant has not taken any proceedings challenging the sale deed executed in favour of the plaintiff, the subsequent sale deeds that have been executed in favour of the defendants 2 and 3 conveying the suit property, which has already been sold in favour of the plaintiff, are void.

20. From the evidence of D.W.3, it has been found that they were not even aware of the nature of the suit property and also it has



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been admitted that the defendants 2 and 3 are not in possession of the suit property. From the documents filed by her and the evidence adduced, both the Courts below have arrived at a finding of fact that the plaintiff is in possession of the suit property and also has established her title to the suit property. Therefore, the finding of fact arrived at by the Courts below are based on materials available on record and there is no illegality and perversity.

21. This Court does not find any substantial question of law involved in this Second Appeal for consideration.

22. In the result, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11.03.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Principal Subordinate Judge, Krishnagiri.
2. The District Munsif, Krishnagiri.



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3.The Section Officer, V.R.Section, High Court, Madras.

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G.ARUL MURUGAN,J

apd

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