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S.A. No.627 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.627 of 2024

and

CMP.No.19906 of 2024

Panjalai

... Appellant

Vs

1.Mariammal

2.Magendran

3.Magesh

4.Parimala

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 04.11.2023 made in A.S.No.29 of 2019 passed by the learned III Additional District Judge, Kallakurichi, Villupuram District, confirming the decree and judgment dated 01.11.2019 in O.S.No.267 of 2014 passed by the learned Subordinate Judge, Kallakurichi.

For Appellant : Mr.R.Ganesh Kumar

JUDGMENT



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The appellant has filed this Second Appeal against the judgment and decree passed by the learned III Additional District Judge, Kallakurichi, Villupuram District, in A.S. No. 29 of 2019 dated 04.11.2023, confirming the decree and judgment passed by the learned Subordinate Judge, Kallakurichi, in O.S. No. 267 of 2014, dated 01.11.2019.

2. Challenging the concurrent findings of the Courts below, the appellant has preferred this second appeal.

3. For the sake of convenience, the parties are referred to as they were ranked in the suit.

4. Before the trial court, the plaintiff filed a suit for specific performance, directing the respondents/defendants to execute the sale deed as per the sale agreement dated 31.08.2010. The respondents contested the suit, stating that the alleged agreement made by the plaintiff was not true and invalid. They claimed that it was executed merely as a security to help get a job for her son Mahendiran in Singapore as a supervisor in a



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manpower supply company owned by the plaintiff's husband. According to the respondents, the sale agreement came into effect on 31.08.2010 solely for this purpose. The defendants denied the execution of the sale based on these facts.

5. Additionally, they argued that the value of the property exceeded Rs. 15 lakhs, but the agreement mentioned only Rs. 3 lakhs, significantly undervaluing the property. They maintained that the agreement was for security purposes only.

6. Both parties presented oral and documentary evidence before the trial court, and issues were framed by the learned trial judge. After considering the evidence, the trial court held that the sale agreement, marked as Ex.A1, was not a valid agreement between the parties. It was deemed to have been created as security for the job provided to the 1st defendants' son in Singapore by the plaintiff's husband.

7. Furthermore, the trial court observed that although the agreement was dated 2010, the plaintiff issued notice only in 2014, after a delay of three years, which indicated a lack of bona fides on the part of the plaintiff.



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The court also observed that the testimony of P.W.1 revealed that she did not enter into the agreement as a bona fide purchaser.

8. Consequently, the trial court declined the relief sought by the plaintiff. Aggrieved by this, the plaintiff preferred an appeal in A.S. No. 29 of 2019 before the learned III Additional District Judge, Kallakurichi, Villupuram District. The learned First Appellate Judge, after reviewing the evidence, held that the agreement was not genuine. Additionally, the plaintiff failed to prove that she was ready and willing to perform her part of the contract within the stipulated time, nor was there any proper explanation for the inordinate delay.

9. Relying on the principles laid down by the Hon'ble Supreme Court in 1997, the appellate court held that the agreement was not valid and dismissed the appeal, confirming the findings of the trial court. Challenging these findings, the appellant has now filed the Second appeal.

10. The learned counsel for the appellant submitted that the Courts below failed to appreciate the evidence presented by the plaintiff, P.W.1, in



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proving Ex.A1, the sale agreement, which was a registered document and should have been given proper consideration. He further contended that the witnesses—P.W.2 and P.W.3—who were the scribe and attesting witnesses, respectively, had corroborated Ex.A1, but their testimony was not properly appreciated by the Courts below.

11. Upon considering the entire evidence on record, it becomes clear that P.W.1 and P.W.2 are husband and wife. P.W.1's evidence reveals that while they entered into the sale agreement, she was not aware of the details related to the property or the terms of the agreement, as she relied solely on her husband. P.W.2's testimony shows that the plaintiff runs a business in Singapore, where the defendants' son, Mahendran, was employed. Subsequently, disputes arose regarding the payment of his salary, which led to the filing of the suit.

12. P.W.1's evidence clearly indicates that the sale agreement in question was not a valid contract of sale but rather a security arrangement related to the job given to the defendants' son. Additionally, the property, which is currently worth over Rs. 10 lakhs, was undervalued at Rs. 3 lakhs



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in the agreement. Based on these facts, the defendants' argument was that the plaintiff had not approached the Court with clean hands and was not entitled to equitable relief is sustainable one. Therefore, the findings of the courts below are confirmed.

13. Accordingly, this Second Appeal is dismissed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

19.09.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The III Additional District Judge, Kallakurichi, Villupuram District.
2. The Subordinate Judge, Kallakurichi.
3. The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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