



AS. No.291 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04. 2024

CORAM:

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

AS. Nos. 291 of 2023 & 485 of 2016

B.Abdul Rahman (died)

1.A.Waheeta Banu

2. R.Rafique Ahmad

3.R.Thanveer Ahmad

...Appellant in A.S No. 291 of 2023, Respondents in A.S No. 485 of 2016

Vs.

K.Abdul Muneer

...Respondent in A.S No. 291 of 2023, Appellant in A.S No. 485 of 2016

PRAYER IN AS No. 291 of 2023 : This appeal suit filed under Section 96 of Civil Procedure Code, to set aside the judgement and decree made in O.S No. 13832 of 2010 dated 12.09.2015 on the file of the learned VII Additional Judge City Civil Court, Chennai.



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PRAYER IN AS No. 485 of 2016 : This appeal suit filed under Section 96 of Civil Procedure Code, to set aside the judgement and decree passed in O.S No. 163 of 2005 dated 12.09.2015 by the Hon'ble VII Additional Judge, City Civil Court Chennai.

For Appellants : Mr. K.Raja
(in A.S No. 291 of 2023 and respondents in A.S No. 485 of 2016)

For Respondents : Mr. N.Subbarayalu
(in A.S No. 291 of 2023 and appellants in A.S No. 485 of 2016)

COMMON JUDGMENT

The appeal in A.S No. 291 of 2023 has been filed to set aside the judgement and decree made in O.S No. 13832 of 2010 dated 12.09.2015 on the file of the learned VII Additional Judge City Civil Court, Chennai and another appeal in A.S No. 485 of 2016 has been filed to set aside the judgement and decree passed in O.S No. 163 of 2005 dated 12.09.2015 by the VII Additional Judge, City Civil Court Chennai.

2. The suit in O.S No. 163 of 2005 was filed by K.Abdul Muneer/respondent herein to direct the defendants to vacate and hand over



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the vacant possession of premises bearing No.1, Pensioners III lane, Ground Floor, Old Washermanpet, Chennai- 1 and also for claiming damages from the defendants/appellants herein. On the other side, the appellants herein filed suit in O.S No. 13832 of 2010 to declare the said deed dated 15.09.2003, bearing document No. 2647 of 2003 registered on the file of SRO Royapuram, Registered in favour the defendant/Appellants herein as null and void, non-est in the eye of law and also to direct the defendant to hand over the vacant possession of the suit property enjoying by the defendants to the plaintiffs and for other consequential relief.

3. Considering the submissions on either side, the Trial Court dismissed the suit filed by both the parties. Challenging the same, both parties files these appeals.

4. The points to be decided is whether the sale deed stands in the name of the plaintiff/Abdul Muneer is valid one or the defendant are entitled for the relief ?

5.For the sake of convenience Abdul Muneer is referred as Appellant



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and Waheeta Banu is referred as Respondent.

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6. The learned counsel for the appellant/ Abdul Muneer, submitted that the appellant purchased the suit property for valid consideration of Rs.15,00,000/- from one Abdul Rahman who is the husband of the Waheeta Banu/respondent herein. Thereafter, the appellant leased out the suit property to the respondent's husband Abdul Rahman for a period of 11 months and obtained a sum of Rs.1,50,000/- as security. After expiry of lease period the respondent refused to vacate the premises. Subsequently, the appellant issued notice to the respondent's husband to vacate the premises but the respondent's husband refused. Hence, the appellant herein filed the suit in O.S No. 163 of 2005 against the Abdul Rahman/respondent's husband. Thereafter, the said Abdul Rahman Died.

7. The Respondent Waheeta Banu along with her minor sons/legal heir of Abdul Rahman filed a suit before this Court and the same was transferred re-numbered as O.S No. 13832 of 2010, wherein, she disputed the appellant's ownership of the suit property and there was a balance in sale consideration of Rs.11,26,000/- and therefore, the question of the vacating the suit property does not arise and the sale deed was obtained by fraud.



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But, she never disputed the lease agreement dated 25.02.2003. The respondent main allegation is there a balance in payment of sale consideration to the tune of Rs.11,26,000/-. Hence, she prayed to declare the sale deed dated 15.09.2003 as null and void and non est in the eye of law and to directt the appellant herein/Abdul Muneer to hand over the vacant possession of the suit property and for permanent injunction. In the said case, the Waheeta Banu's/respondent's claim is that the appellant herein/Abdul Muneer obtained the sale deed from his husband/Abdul Rahman while he was in drunken mood and also without giving sale consideration to her husband/Abdul Rahman. Further, allegation is that total sale consideration was fixed as Rs.25,00,000/- and balance consideration of Rs.11,26,000/-. Further, the appellant/Abdul Muneer obtained so many signatures in empty stamp papers, pro notes and blank cheques for the purpose of filing several cases against his husband. Therefore, she wanted to declare the sale deed deed dated 15.09.2003 as null and void. Further, the learned counsel submitted that the Trial Court failed to consider that the suit is to be filed within three years but in the present case the alleged sale deed was of the year 2003 but the plaintiff filed suit in the year 2008. Hence, the suit filed by the respondent is barred by limitation. Further, the



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learned counsel for the appellant/Abdul Muneer submitted that the Trial Court failed to take note of the fact that the the possession of the suit property was handed over to the purchaser by the vendor, after taking possession of the suit property the ground floor was leased out to the defendant/Abdul Rahman and he was the lessee as per/Ex.A1 he is ceased to be a owner of the suit property after registered sale deed and handed over the possession of the suit property. Further, in the written statement filed by the deceased Abdul Rahman/husband of respondent herein in O.S No. 163 of 2005 he did not disputed the lease agreement dated 25.12.2003 executed between the appellant and himself, and the allegation of the Abdul Rahman is that there was a balance consideration of Rs.11,26,000/- hence the sale deed obtained was void. Therefore, appellant is not liable to vacate the ground floor of the suit property. But no where said in the written statement that not stated what is the sale consideration was fixed. As per the agreement, sale consideration was fixed Rs.15,00,000/- but the Trial Court failed to note all the outstanding arrears of electricity charges, property tax, metro water and sewerage tax paid by the purchase, the statutory payments are liable to be paid by the vendor a sum of Rs.93,154/- due to the suit property. Hence, he prays to allow this appeal.



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8. Heard the submissions made by the either side.

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9. Originally suit property was belonged to the Abdul Rahman who purchased the same through Ex.B1 on 12.09.1989. Admittedly, the case of the appellant is that the said Abdul Rahman/husband of the respondent entered into lease agreement with the appellant on 25.12.2003 by paying a sum of Rs. 1,50,000/- as security for a period of 11 months. But, the said Abdul Rahman refused to vacate the premises in spite of that notice. Hence the appellant filed suit in OS No.163 of 2005 for delivery of possession. But at the same time, original vendor Abdul Rahman filed written statement in the suit stating that the appellant has not paid a balance sale consideration of Rs. 11,26,000/- and disputed the ownership of the appellant and refused to vacate the suit property. But not denied the alleged lease agreement, the said suit was filed by the plaintiff in the year 2005. While so, the said Abdul Rahman was died in the year 2006. Thereafter, his legal heirs Waheet Banu and her minor sons filed a suit in O.S No. 183 of 2008 before this Court praying for declare the sale deed as null and void as the sale agreement was not executed by her husband with full sum nor received the sale consideration. Thereafter, the said suit was transferred and renumbered as



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O.S No. 13832 of 2010. Further, as per the written statement submitted by the original vendor Abdul Rahman, he has not denied the execution of the the sale deed, his objection is that the appellant has not paid a balance sale consideration of Rs. 11,26,000/-. Thereafter, respondent also contended that the sale consideration was fixed as Rs. 25,00,000/- but it was not paid by the appellant to her husband who was always under the influence of the alcohol. The payment of balance sale consideration is the main objection on the side of the respondent. Therefore, the appellnat is bound to prove that he was confer with valid title through Ex.B3/sale deed and also payment of sale consideration. As per the evidence of R.W.1, the total consideration was fixed as Rs. 15,00,000/- not Rs. 25,00,000/- as alleged by the respondent and to prove the same he relied the recitals of the sale deed in which, a sum of Rs.15,00,000/- was fixed as sale consideration. The relevant portion of the sale deed extracted below:

Now this deed of sale witnesswith that in pursuance of the above agreement and covenants contained in these presents and in consideration of a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) paid by the purchaser to the vendor in manner following:

10. Admittedly at the time of execution of the sale deed,



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D.W.1/Waheeta Ban/wife of the Abdul Rahman was not having cordial term with her husband so she went away from the matrimonial home, so she was not aware of the facts and circumstances, at the time of execution of the sale deed. Irrespective of that the plaintiff is bound to prove his case independently on his own evidence with regard to payment of sale consideration, the plaintiffs relied the evidence of C.W.1 who is manager of HDFC bank where he availed loan from the said bank, the Demand Draft was directly sent to the Muthialpet benefit fund limited where the Abdul Rahman/Wahetta Banu's husband obtained mortgage loan for a sum of Rs.8,50,000/- to which pay order 10.09.2003. Further, the appellant also paid a another balance sale consideration of Rs.6,30,000/- directly to the defendant but those amount was denied by the D.W.1 stating that her husband not fully paid with sale consideration thereby sale deed is not valid one.

11. By way of reply the appellant submitted that D.w.1 was not aware of the execution of the sale deed as well as payment of sale consideration. On the other hand, he contend that entire sale consideration of Rs.15,00,000/- was paid by him and the same was established through evidence of bank official as well as document Ex.A2. Admittedly, the case



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in hand as per the recitals of the sale deed a sum of Rs.15,00,000/- was fixed as sale consideration and it was paid by the purchaser and possession also handed over to him. But, the main objection on the side of the responden/wife of the Abdul Rahman is that the entire sale consideration was not paid, further she relied the written statement filed by the Abdul Rahman where he stated about the non payment of balance sale consideration. Even during the life time of the original vendor there was dispute between the Abdul Muneer and Abdul Rahman with regard to payment of sale consideration however there is no direct proof on the side of defendant. As discussed above, out of Rs.15,00,000/-, the appellant paid 8,50,000/- and same was proved by him through bank manager but there is no direct evidence to prove the payment of balance sale consideration of Rs.6,50,000/-. Hence, in order to protect the interest of the respondent, this Court direct the appellant/Abdul Muneer to pay a sum of Rs. 6,50,000/- to the respondent/Waheeta Banu and his sons at the rate of of 15% interest from the date of sale deed till the date of realisation and also appellant/Abdul Muneer is directed to return a advance amount of Rs.1,50,000/- to the respondent within three months from the date of receipt of this Order. Accordingly, the findings of the Trial Court is set aside.



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WEB COPY 12. In the result, the Appeal in A.S No. 485 of 2016 is allowed and

A.S No. 291 of 2023 is dismissed. No cost.

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T.V.THAMILSELVI,J.

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To

1. VII Additional Judge City Civil Court, Chennai
- 2.The Section Officer,
V.R Section.

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