



S.A.(MD) No.212 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) No.212 of 2007

Jeyalakshmi

... Appellant

-VS-

1.P.Sivasubramanian (died)

2.Rasu Gounder alias P.Nataraj

... Respondents

(First Respondent died and second Respondent is brought on record as L.R. of the deceased first respondent vide Court Order, dated 30.07.2024, made in S.A.(MD) No.212 of 2007)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 31.01.2006, passed in A.S.No.20 of 2004 on the file of Sub-Court, Palani, confirming the judgment and decree, dated 24.03.2004, passed in O.S.No.232 of 1994 on the file of District Munsif Court, Palani.

For Appellant : Mr.T.Lenin Kumar

Respondent 1 : Died



S.A.(MD) No.212 of 2007

WEB COPY

For Respondent 2 : Mr.T.R.Rajagopalan,
Senior Counsel,
for Mr.P.Thiagarajan

JUDGMENT

The plaintiff in the suit is the appellant. The suit was for recovery of possession of A-Schedule property with an alternative prayer for partition of B-Schedule property and also with another alternative prayer to enforce security against B-Schedule property under a sale deed, dated 28.04.1982. The suit was dismissed by the trial Court in respect of the prayers for possession and partition. However, the suit was decreed in respect of the third prayer - alternative prayer for enforcing security. Aggrieved by the dismissal of the suit in respect of the first and the second prayers, the plaintiff preferred an appeal in A.S.No.20 of 2004 on the file of Sub-Court, Palani. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings against her, the plaintiff has come by way of this Second Appeal.

2. According to the appellant/plaintiff, the property with an extent of 4.7 acres in Survey No.403/2 originally belonged to defendants 1 and 2 and there was an oral partition among them, allotting the northern half share to



S.A.(MD) No.212 of 2007

WEB COPY

first defendant. On 28.04.1982, the first defendant sold 68 cents of land allotted to him in the above mentioned survey number to the plaintiff for a sale consideration of Rs.2000/-. The first defendant also offered the property described as B-Schedule in the sale deed as security. When the plaintiff and her husband went to the property for the purpose of preparing the same for construction, the defendants joined together and prevented the plaintiff from enjoying the same. The defendants also trespassed into the suit properties with an intention to deprive the plaintiff of her right over the same. It was also claimed by the plaintiff that the first defendant created a sale deed on 10.06.1982 as if he sold the entire property allotted to him in Survey No. 403/2A in favour of the second defendant. It was specifically averred that the document was created on 10.06.1982 with old stamp papers as if it was executed earlier. The plaintiff issued a legal notice to the defendants on 14.02.1992 and the same was evaded by the first defendant. The second defendant issued a reply notice containing false allegations. Therefore, the plaintiff was constrained to file a suit seeking possession of suit A-Schedule property, which she purchased under the sale deed, dated 28.04.1982. The plaintiff also sought for partition of suit B-Schedule property in case the Court came to the conclusion that the transaction between the defendants 1 and 2 was not proved. Alternatively, the plaintiff sought for a decree for enforcing



S.A.(MD) No.212 of 2007

the right against the property offered as security under B-Schedule to sale deed, dated 28.04.1982.

3. The defendants filed a written statement and contended that the first defendant sold his share in the suit survey number to the second defendant by a sale deed, dated 14.04.1982, and, therefore, he had no right to sell the suit property to the plaintiff subsequently on 28.04.1982. The defendants denied the allegation in the plaint as if the sale in favour of the second defendant by the first defendant was ante-dated. The defendants also claimed that subsequent to purchase, the second defendant developed the property and laid a road along with adjacent owners of the property and, therefore, the allegation in the plaint as if the plaintiff enjoyed the property was also denied.

4. Before the trial Court, the plaintiff was examined as P.W.1 and 7 documents were marked on her side as Exs.A-1 to A-7. The second defendant was examined as D.W.1. The attesor to the sale deed executed by the first defendant in favour of the second defendant, marked as Ex.B-1, was examined as D.W.2. Yet another witnesses was examined as D.W.3. On behalf of the defendants, 8 documents were marked as Exs.B-1 to B-8.



S.A.(MD) No.212 of 2007

WEB COPY

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the first defendant sold the suit property to the second defendant under Ex.B-1 on 14.04.1982 and, therefore, he had no right to sell the very same property to the plaintiff on 28.04.1982 and, accordingly, dismissed the suit in respect of the prayer for possession as well as partition. However, the trial Court granted a decree, permitting the plaintiff to enforce her right against the property offered as security by the first defendant. Aggrieved by the same, the plaintiff preferred an appeal and the first appellate Court affirmed the findings of the trial Court. Hence, the plaintiff is before this Court.

6. The learned counsel appearing for the appellant vehemently contended that Ex.B-1 was an ante-dated document, prepared on 10.06.1982. The learned counsel submitted that the stamp papers for Ex.B-1 were purchased from Oddanchatram and the serial numbers in the stamp papers were missing. The learned counsel also submitted that the presumption available under Section 47 of the Registration Act, 1908, got rebutted by various suspicious circumstances surrounding the document and, therefore, the Courts below committed a serious error in pressing into service Section 47



S.A.(MD) No.212 of 2007

WEB COPY

of the Registration Act and holding that Ex.B-1 was a valid document. In support of his contention, the learned counsel relied on a decision of this Court in **Prithiviraj v. A.Muneeswaran, 2023 (3) CTC 593**.

7. The learned Senior Counsel appearing for the respondents, by taking this Court to the findings of the Courts below, submitted that both the Courts below, on proper appreciation of oral and documentary evidence available on record, came to the conclusion that Ex.B-1 was a valid document and the said factual conclusion need not be interfered with.

8. The plaintiff claims right over the suit property under Ex.A-2, sale deed, executed by the first defendant in her favour, dated 28.04.1982. A xerox copy of Ex.A-2 has been produced before this Court. A perusal of the same would suggest that though Ex.A-2, sale deed, was dated 28.04.1982, it was registered only on 03.07.1982. Ex.B-1 is a sale deed, executed by the first defendant in favour of the second defendant, conveying his interest in the suit survey number in favour of the second defendant. A copy of Ex.B-1 is also produced before this Court. A perusal of the same would suggest that the document was executed on 14.04.1982 and registered on 11.06.1982. Once the document is registered by virtue of operation of Section 47 of the



S.A.(MD) No.212 of 2007

WEB C

Registration Act, it will come into effect from the date of execution i.e., 14.04.1982. Therefore, both the Courts below held that when the first defendant sold his entire interest in suit survey number, including suit property, in favour of the second defendant under Ex.B-1, he had no right whatsoever to convey the suit property to the plaintiff on 28.04.1982 under Ex.A-2.

9. In order to prove proper execution of Ex.B-1, the defendant examined one of the attestors to Ex.B-1 as D.W.2. He deposed that the first defendant borrowed a sum of Rs.5000/- from him and he repaid the said amount after selling the suit property under Ex.B-1 out of sale consideration. The discharged promissory note in favour of D.W.2 has been marked as Ex.B-4. In his cross-examination, he deposed that payment was made to him on the date of registration of the document. As mentioned earlier, Ex.B-1 was executed on 14.04.1982 and registered only on 11.06.1982. The payment to D.W.2 was made two months after execution of Ex.B-1 i.e., on the date of registration. The learned counsel for the appellant, by taking this Court to the cross-examination of the witness, submitted that in his cross-examination, he deposed as if he attested the document in the registration office and, therefore, he could not have attested the document on the date of execution. A close scrutiny of Ex.B-1 would suggest that D.W.2 not only attested the document



S.A.(MD) No.212 of 2007

WEB COPY

on the date of execution, but he also identified the executant of the document before the Sub-Registrar at the time of registration. Therefore, the submission made by the learned counsel as if the attesor signed the document only at the time of registration is not acceptable. An ordinary witness may not know the distinction between the signature as identifying witness and the signature as attesor to the document. Therefore, I am not impressed by the submission made by the learned counsel for the appellant in this regard.

10. In *Prithviraj's* case, cited supra, this Court held that presumption with regard to the execution of the document as reflected in the face of the document is very weak and in cases where the document is registered on a subsequent date, it is for the purchaser to show that why the document was not registered on the date of execution, by examining the attestors to the document.

11. In the case on hand, the attesor to Ex.B-1 was examined and he clearly deposed about the execution of the document and registration of the same two months after the execution. It is also pertinent to mention that the sale deed in favour of the plaintiff was executed on 28.04.1982 and registered only on 03.07.1982. The plaintiff has not explained the delay in registration,



S.A.(MD) No.212 of 2007

WEB COPY

by examining the attester to the document. In these circumstances, the Courts below, by taking into consideration the entire evidence available on record, came to the conclusion that Ex.B-1 was a valid document, by relying on Section 47 of the Registration Act. I do not find anything to interfere with the said factual finding arrived at by the Courts below, which is based on proper appreciation of evidence available on record. Hence, there is no substantial question of law involved in this Second Appeal and, as a consequence, the Second Appeal stands dismissed, confirming the judgment and the decree passed by the Courts below. No costs.

30.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

(2/2)

dixit



S.A.(MD) No.212 of 2007

WEB COPY

To:

- 1.Subordinate Judge,
Palani.
- 2.District Munsif,
Palani.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



WEB COPY



S.A.(MD) No.212 of 2007

S.SOUNTHAR, J.

dixit

S.A.(MD) No.212 of 2007

(2/2)

30.07.2024