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S.A(MD)No.13 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 25.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.13 of 2023

and

C.M.P(MD)Nos.3628 and 368 of 2023

Balaguru

... Appellant/Defendant

Vs.

1.Pandiyani

2.Vijayapandi

... Respondents/Plaintiffs

PRAYER in S.A(MD)No.13 of 2023:-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 30.11.2021 passed in A.S.No.48 of 2020 on the file of the Subordinate Judge, Thirumangalam, confirming the judgment and decree of the trial Court, dated 28.08.2020 passed in O.S.No.576 of 2014 on the file of the District Munsif-cum- Judicial Magistrate, Peraiyur and to allow the Second Appeal.

PRAYER in C.M.P(MD)No.3628 of 2023:-

This Civil Miscellaneous Petition is filed under Order 41 Rule 27 & Section 151 of C.P.C., to receive the document as additional evidence in the Second Appeal.



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For Appellant : Mr.K.K.Balaram
For Respondents : Mr.S.Ramu

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 30.11.2021 passed in A.S.No.48 of 2020 on the file of the Sub Court, Thirumangalam, confirming the judgment and decree dated 28.08.2020 passed in O.S.No.576 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Peraiyur.

2. The appellant is the defendant and the respondents are plaintiffs in O.S.No.576 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Peraiyur. The respondents/plaintiffs filed the suit for specific performance and permanent injunction. The appellant/defendant filed the counter claim in that suit for declaration that the suit property belonged to the appellant/defendant.

3. For the sake convenience, the parties are referred as plaintiffs and defendant in O.S.No.576 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Peraiyur.



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4. It is the case of the plaintiffs that the suit property is bearing Door No.5-6/113/91 in Plot No.24 in S.No.83/3 measuring 3 cents out of large extent acre 4 cents 22, T.Kunnathur Village, Peraiyur Taluk & Sub-District, Madurai South. The house was constructed by Sri Murugan Weavers Cooperative Society, T.Kunnathoor in the year 1993 and allotted to the defendant. The defendant approached the plaintiffs and entered into unregistered sale agreement, dated 15.05.2002 in respect of suit property for a sale consideration of Rs.50,000/- and handed over the suit property to the plaintiffs. The defendant promised that he would register the sale deed after he gets full rights official from the society. The plaintiffs are in possession of the suit property by paying house tax, water tax and electricity consumption charges. The defendant got a registered sale deed on 11.06.2014. When the plaintiffs asked for execution of sale deed, the defendant refused. Hence, the plaintiffs sent a legal notice dated 30.06.2014 and since there was no reply, the plaintiffs filed the suit.

5. It is the case of the defendant that the suit property originally belonged to Sri Murugan Weavers Cooperative Society, T.Kunnathoor and it was allotted to the defendant under hire purchase agreement, dated



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01.06.1990. As per that agreement, the defendant has to repay the loan on monthly installments. Since the defendant faced a financial crisis, he was unable to pay monthly installments. Hence, the defendant permitted the plaintiffs to reside in the suit house allotted to the defendant and asked them to pay monthly EMI to the society on behalf of the defendant and hand over the same to the defendant on getting a registered sale deed from the society. Accordingly, the plaintiffs are residing in the suit property on permissive possession by monthly EMI as rent. Taking advantage of the same, the plaintiffs falsely changed the record in their name. The defendant got a registered document only on 10.06.2014 in his name. But, the plaintiffs failed to hand over the property to the defendant. The plaintiffs are now trespassers. Therefore, the defendant filed the counter claim that the suit property belonged to the defendant.

6. During trial, on the side of the plaintiffs, five witnesses were examined as PWs 1 to 5 and marked 10 exhibits as Ex.A.1 to Ex.A.10. On the side of the defendant, one witness was examined himself as D.W.1 and marked 2 exhibits as Ex.B.1 and Ex.B.2.



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7. After hearing both sides, the District Munsif-cum-Judicial Magistrate Court, Peraiyur decreed the suit in O.S.No.576 of 2014 and dismissed the counter claim by passing judgment and decree dated 28.08.2020. Aggrieved by the judgment and decree, the defendant preferred the Civil Appeal in A.S.No.48 of 2020 before the Sub Court, Thirumangalam. The First Appellate Court after hearing both passed judgment dated 30.11.2021 dismissing the appeal and confirmed the judgment and decree passed in O.S.No.576 of 2014.

8. Challenging the judgment and decree of the First Appellate Court, the appellant/defendant has preferred this Second Appeal and the same has been admitted for file on 19.07.2023 on the following substantial questions of law:-

i) Is it now wrong for the lower appellate Court to alter the legal position regarding rule of “Nemo dat quid non habet” by holding that a person having no title can pass title to another.

ii) Is it not wrong that the lower appellate Court refers section 115 of Evidence Act which does not fit or apply to this case since Ex.A.10



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and admission of the plaintiffs' show that the defendant never induced by claiming himself the real owner of the suit property and also when no such pleading advanced by plaintiff or mentioned in evidence?

iii) Is it not wrong that the lower appellate Court in applying the principle of ostensible owner as per Section 41 of Transfer of Property Act?

iv) Is it not wrong that the lower appellate Court wrongly applied and understood Section 115 of the Indian Evidence Act 1872, Section 41 of Transfer of Property Act and Section 14 of the Indian Contract Act 1872 which do not fit the case and citing these above mentioned sections of law and coming to the conclusion that defendant claim is barred by estoppel?

v) Is not the Courts belong went wrong in ordering specific performance of contract when there is no mention of schedule of property or extent of land or mention of four boundaries in Ex.A.10 the alleged agreement to sell and as such void for uncertainty as per Section 29 of Contract Act?



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vi) Is it not wrong for the Court below in not holding that as per Section 20 of the Contract Act, 'Agreement is void when both parties under a mistake as to mater of fact' since here both plaintiff and defendant knew very well that defendant is not the owner or title holder of the suit property on the date of Ex.A.10 i.e., 15.05.2002?

vii) Is it correct for the lower Appellate Court instead of finding whether the original Court findings on issues are correct or not but has given judgment on new proposition of law on non-framed issues like fraud, coercion, misrepresentation and mistake or in respect of Ostensible owner and Section 115 of Evidence Act?

9. Along with the Second Appeal, the defendant filed the petition in C.M.P(MD) No.3628 of 2023 to receive additional document.

10. The learned counsel for the appellant/defendant has argued that the suit property originally belonged to the Sri Murugan Weavers Cooperative



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Society, T.Kunnathoor and the suit property was allotted to the defendant as he was a weaver as per agreement, dated 25.07.1990. As per agreement, the defendant cannot transfer or assign any interest of the suit property to any third person other than a weaver member of the society. Moreover, as per agreement the defendant has to repay the monthly installments for 21 years. Due to financial difficulty, the defendant asked the plaintiffs to be in the suit property and pay the rent towards EMI payable to the society. But, the plaintiffs taking advantage of the same created a false document as sale agreement dated 15.05.2002, which is not valid in the eye of law. The defendant does not have title over the property and only after completing the EMI, the sale deed would be registered in favour of the defendant and accordingly the sale deed was registered only on 10.06.2014 under Ex.B.2. The plaintiffs cannot deny the same. Hence, the defendant who has no title over the property cannot convey and enter into any agreement with anybody, even if for the sake of argument, if it is done the agreement is not valid in the eye of law. Even in the alleged sale agreement there is no specific mention about the property in the schedule and on that score also the sale agreement is not valid. The Courts below have not considered settled propositions of law and passed the judgments in favour of the plaintiffs. In support of his



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argument, the counsel for the defendant relied on the following citations:

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(1) (2019) 7 MLJ 216 (P.M.Thangavel Vs. M.Ramamoorthy and Ors.)

(2) AIR 2010 Andhra Pradesh 99 (S.Kanaka Durga Manikyhamba & Ors. Vs. Ramapragada surya Prakasa Rao & Ors.)

(3) Judgment of the Hon'ble Supreme Court in the case of 'Thangappan /v/ P.Padmavathy, dated 24.08.1999.

(4) AIR 1978 Supreme Court 1062 (Balai Chandra Hazra Vs. Shewdhari Jadav)

11. Per contra, the learned counsel for the respondents/plaintiffs has contended that the plaintiffs and the defendant entered into a sale agreement dated 15.05.2002 in respect of the suit property for a sale consideration of Rs.50,000/- and the entire sale consideration was paid on the same day and the possession of the property was also handed over to the plaintiffs. It was a specific condition that after obtaining necessary documents from the society, the defendant would execute the sale deed in favour of the plaintiffs. The defendant got a registered sale deed on 10.06.2014 and on the next day 11.06.2014 the plaintiffs approached the defendant for execution of sale deed



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as agreed, but the defendant refused to do so. The courts below correctly appreciated the evidence adduced on either side and correctly passed judgment and decree in favour of the plaintiffs. Therefore, this Second Appeal may be dismissed.

12. Heard the arguments of both and perused the material records of the case. Both side counsels argued at length pointing out their respective cases. On hearing both and on perusal of records, the defendant contends that the defendant was a weaver to the society in question and the suit property was allotted to him under hire purchase agreement. As per the agreement, the defendant could not convey or transfer any interest of the suit property to third party other than a weaver member of the society. The defendant wants to produce the original agreement entered into between the defendant and the society dated 25.07.1990. Though the plaintiffs filed objections against the petition for receiving additional document, they have not questioned the authenticity of the document, as the document filed is original. So, for proper adjudication of the case, the said document is a vital document and hence, this Court is inclined to permit the defendant to produce the same and the document is received as additional exhibit, marked as Ex.B.3 on the side of the defendant.



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13. As the additional document namely the agreement dated 25.07.1990 entered into the defendant and the society wherein the defendant undertook the conditions as follows:

“I shall not transfer or assign my interest in the site and house or otherwise pass on the house or in any manner to any person other than a weaver member of the society and even to a weaver member without the prior approval in writing of the society and or Government and subject to such conditions as they may deem fit to impose.”

On perusal of records and on perusal of evidence, it is not the case that the plaintiffs are weaver members of the society and they entered into agreement after getting prior approval of the society. No evidence let in or adduced to substantiate the same on the plaintiffs' side.

14. It is reiterated well settled principle of law that a person who has no title over the property cannot transfer the title to any third person. Such transfer is not valid in the eye of law. The Hon'ble Supreme Court in several decisions and even the latest decision, dated 15.11.2023 in the case of **“Munishwappa /v/ Rama Reddy”** an agreement to sell does not transfer



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ownership or confer any title. Admittedly on the date of sale agreement dated 15.05.2002, the defendant is not the owner of the property, only he is hire purchaser of the property from the society. Only after due repayment, the society could execute a sale deed in favour of the defendant, that was done on 10.06.2014. While so, on the date of alleged agreement of sale dated 15.05.2002 the defendant is not full owner of the property. As stated supra, based on the sale agreement title or ownership cannot be transferred. The citations relied on by the defendant side are applicable to the facts of this case.

15. Considering the facts and evidence adduced by both sides, this Court holds that the alleged sale agreement is not valid in the eye of law and the Courts below have not properly appreciated the evidence taking into consideration the legal settled principles in this regard. Hence, all the questions of law raised in this Second Appeal are answered in favour of the appellant/defendant. Thus, this Second Appeal succeeds.

16. However, though the Sale Agreement - Ex.A10 is not valid in the eye of law, the payment of money of Rs.50,000/- by the plaintiffs to the



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defendant has been proved. The plaintiffs' side witnesses P.W.3, P.W.4 and P.W.5 also deposed about the payment of Rs.50,000/- by the plaintiffs to the defendant. Hence, the plaintiffs are entitled for that amount. However, there is no evidence regarding interest. Moreover, the plaintiffs are in possession of the suit property from the date of the alleged sale agreement. So, the plaintiffs are not entitled for any interest on the said sum.

17. In the result, the C.M.P(MD) NO.3628 of 2023 is allowed and the document is received and marked as Ex.B.3.

18. In the result,

(i) The Second Appeal is allowed by setting aside the judgment and decree dated 30.11.2021 passed in A.S.No.48 of 2020 on the file of the Sub Court, Thirumangalam, confirming the judgment and decree dated 28.08.2020 passed in O.S.No.576 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Peraiyur.

(ii) The suit in O.S.No.576 of 2014 is dismissed.

(iii) The counter claim filed by the defendant in O.S.No.576 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Peraiyur is



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allowed and thereby declared that the suit property absolutely belongs to the defendant and the defendant is entitled to recovery of possession.

(iv)The defendant is directed to return a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the plaintiffs within a period of two months from the date of receipt of a copy of this judgment.

(v) Thereafter, three months time is granted to the plaintiffs to vacate the suit property and hand over the possession to the defendant without any let or hindrance.

(vi) Parties have to bear their own costs. Consequently, connected C.M.P(MD)No.368 of 2023is closed.

25.03.2024

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

- 1.The Subordinate Judge,
Thirumangalam.
- 2.The District Munsif-cum- Judicial Magistrate,
Peraiyur.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
S.A(MD)No.13 of 2023
and
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