BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 05.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.122 of 2017
and
C.M.P(MD)No.2047 of 2017

1.Gurusamy
2.G.Saradha ... Appellants/Appellants/Defendants

Vs.

A.1362, Meenakshi Co-operative Building Society Ltd.,
Through its Secretary Su.Sivasankaran,
S/o.Sundararajan,
D.No.1, 2 Dhanappamudali Street,
Madurai. ... Respondent/Respondent/Plaintiff

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 23.04.2015 made in A.S.No.21 of 2013 on the file of the IV Additional District Judge, Madurai, confirming the judgment and decree dated 21.01.2013 made in O.S.No.126 of 2007 on the file of the I Additional Sub Judge, Madurai and to allow this appeal.

For Appellants : Mr.M.Karthikeya Venkitachalapathy
For Respondent : Mr.B.Muneeswaran

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 23.04.2015 passed in A.S.No.21 of 2013 on the file of the learned IV Additional District Judge, Madurai, confirming the judgment and decree dated 21.01.2013 passed in O.S.No.126 of 2007 on the file of the learned I Additional Sub Judge, Madurai.

2. The appellants are the defendants and the respondent is a plaintiff in O.S.No.126 of 2007 on the file of the I Additional Sub Court, Madurai. The respondent/plaintiff filed the suit for declaration that the plaintiff is the absolute owner of the suit property and for permanent injunction restraining the defendants from interfering with the possession of the suit property by the plaintiff in alternative directing the defendants to hand over possession of the suit property to the plaintiff.

3. For the sake of convenience, the parties are referred as plaintiff and defendants as arrayed in O.S.No.126 of 2007 on the file of the I Additional Sub Court, Madurai.

4. **Case of the plaintiff:**

The plaintiff is the A.1362 Meenakshi Cooperative Building Society Limited, which was registered in the year 1939 and at present it is registered under the Tamil Nadu Cooperative Societies Act, 1983. One L.A.Ramamoorthy was the Director/Honorary Secretary of the society. For the activities of the society, he purchased the property in larger extent in S.No.136/4 measuring 95 cents of Perungudi village from Karuppiah Thevar and Salai Karuppa Thevar through the registered sale deed, dated 15.02.1962 under document No.976/1962 and property in S.No.136/4 measuring 1 Acre 24 cent and in S.No.134/4 measuring 12 cents of same village from Vellaisamy Thevar through registered sale deed, dated 19.04.1962 under document No.2101/1962. The said L.A.Ramamoorthy resigned his post of Director/Honorary Secretary on 15.04.1986 due to his ill health. Thereafter, the post of Director/Honorary Secretary was abolished and Special Officers were appointed to administer the society activities. In the year 1999, the plaintiff society came to know that some persons created fake and forged documents and sold out the society's property. On perusal of a copy of the sale deed, dated 31.01.1996, the plaintiff society came to know that one Navanathan as if the power of attorney of L.A.Ramamoorthy through power deed, dated 02.08.1995, the society's properties were sorted as housing plots in the name of O.V.R.Mohan Nagar and sold plot Nos.85 and 86 to the defendants. The said Navanathan had no title over the suit property. Upon criminal complaint, the alleged thumb impression of L.A.Ramamoorthy was found forged. From the date of purchase, the suit properties with a larger extent have been in the possession and enjoyment of the plaintiff society. The property was purchased in the name of society, not in the individual name of L.A.Ramamoorthy. As per bye-law, the property of the plaintiff society can be sold only to its members. The defendants are not members of the society and the alleged sale deed stands in their name, will not bind the society. Hence, the plaintiff society filed the suit seeking declaration and injunction with alternative relief of recovery of possession.

5. Case of the Defendants:

The defendants purchased the suit property by virtue of a registered sale deed dated 28.02.1996 from the plaintiff society. It is wrong to state that the plaintiff society's property would be sold only to its members. After purchase, a person can register himself as a member of the society. The defendants are always ready to join members of the plaintiff society. The defendants are bona fide purchasers by paying due sale consideration. The defendants presented application for membership, but due to misunderstanding among executive committee members, it was delayed. So, the suit is liable to be dismissed.

6. Reply Statement of the plaintiff:-

The plaintiff society purchased the suit property in the year 1961, 1962 and it has paid property tax regularly. The said Navanathan alleged to have obtained power of attorney from one Lalli Anumanthair Ramamoorthy, who has not connected to the society and its property. The ex-secretary of the society is one Lottia Anumanthair Ramamoorthy, who died two years back. The defendants claim title through forged documents and they do not have any right over the suit property.

7. During trial, on the plaintiff's side one witness was examined as P.W.1 and marked exhibits as Ex.A.1 to Ex.A.25. On the defendants' side, one witness was examined as D.W.1 and no document was marked.

8. After hearing both, the learned I Additional Sub Judge, Madurai decreed the suit in O.S.No.126 of 2007 by passing judgment and decree dated 21.01.2013. Aggrieved by the judgment and decree, the defendants preferred the Civil Appeal in A.S.No.21 of 2013 before the IV Additional District Court, Madurai. The first Appellate Court after hearing both passed judgment dated 23.04.2015 dismissing the appeal and confirmed the judgment and decree passed in O.S.No.126 of 2007.

9. Challenging the judgment and decree of the First Appellate Court, the defendants have preferred this Second Appeal and the same has been admitted for file on 03.03.2017 on the following substantial questions of law:-

> *i) Whether the appellants/defendants are liable to discharge the burden of proving the allegation of fraud made by the respondent/plaintiff in the purchase of the suit schedule plots by the appellants/defendants?*
>
> *ii) Whether the appellants/defendants are not entitled to protection as bonafide purchasers for value under the Transfer of Property Act?*
>
> *iii) Whether the purchase of the suit schedule plots by the appellants/defendants are not valid in law*

due to the fact that they were not members of the respondent/plaintiff society?

10. Heard both sides and perused the records in this Second Appeal. Both sides have filed their respective written submissions.

11. The learned counsel for the appellants/defendants has argued that the defendants purchased the suit property through registered sale deeds dated 28.02.1996 executed by Navanathan as the power of attorney of L.A.Ramamoorthy, which are marked as Ex.A.10 and Ex.A.11. The plaintiff states that the society has not executed sale deed in favour of the defendants and the sale deeds got executed by impersonation or fraud because the suit property with larger extent was purchased in the name of society, not in the individual name of L.A.Ramamoorthy. So, it is the burden on the plaintiff to prove that the sale deeds were executed by impersonation. The plaintiff has not impleaded the said L.A.Ramamoorthy and Navanathan as a party to the suit. It is the onus of proof on the part of the plaintiff to prove the said impersonation or fraud. The trial Court decreed the suit on the basis of the criminal case filed against Navanathan and the forensic report filed in that case. The trial Court wrongly concluded that the criminality stood proved on

the basis of a copy of criminal complaint. The said criminal case was closed as abated. The observation of Courts below that the burden is on defendants to prove the sale deeds are valid is not correct. The plaintiff has not prayed for cancellation of sale deeds, which are alleged fraud or impersonation. The plaintiff states that L.A.Ramamoorthy is Lottia Anumandhair Ramamoorthy where in the sale deed it is mentioned as Lalli Anumandhair Ramamoorthy, so he was impersonated. It is not disputed that the suit property with a larger extent was purchased by L.A.Ramamoorthy, and so the plaintiff cannot state that the said Ramamoorthy has no authority to sell the property. As per Section 43 of the T.P.Act, the purchase of the property is valid one and also the defendants are bonafide purchasers for valuable sale consideration. The plaintiff has not proved the impersonation and no issue was framed by the trial Court in that respect. The suit itself is not maintainable under the Limitation Act as the suit is filed beyond the period of limitation. Whenever a document is registered the date of registration becomes the date of deemed knowledge. In this case, the sale deeds were executed in the year 1996, the suit is filed in the year 2007, beyond the limitation period. As per Article 58 of the Limitation Act, the suit has to be filed within three years and hence the suit is hit by the Limitation Act. The property was purchased as Meenakshi

Nilaiyam and with the same name the defendants purchased the property. Whether the person involved in sale deeds has power to execute sale deed or not, is the indoor management of the society, it is not for the defendants, who are bonafide purchasers. The Courts below erred in deciding the case which is not barred by limitation and the sale deeds are executed by fraud.

12. In support of his arguments, the learned counsel for the appellants/defendants relied on the following citations:

(i) **(2006) 4 MLJ 1067 (Chinnanan /v/ Paranimalai and Others),** wherein it is held in paragraph Nos.9 and 12 as follows:

> *"9. The learned counsel appearing for the appellant/4th defendant would submit that the sale deed executed by the plaintiff under Ex.A.2 is not void and if at all it is only voidable at the instance of the erstwhile minor, being a party to the document and if that should challenged, there should be a prayer for cancellation of the said document, paying proper court-fee.*
>
> *12. ……..to support the above position, the learned counsel for the appellant drew my attention to a Full Bench decision of this Court in SANKARANARAYANA PILLAI AND ANOTHER /V/ KANDASAMIA PILLAI (1956)II MLJ 411) wherein*

while answering the points that if the minor is eo nominee party to a sale deed, is it necessary for him to sue for the cancellation of the document, or is it suffice, if he files the suit for declaration, excluding the sale, as such, the Full Bench has arrived at an uniform conclusion and had held as follows:

> "*Where a minor is eo nomine a party to a sale deed or other document of alienation by a guardian which he seeks to set aside, it is not enough for him to merely sue for possession and pay court-fee under section 7(v) of the Court Fees Act, but he must sue for the cancellation of the document and pay court-fee under section 7(iv-A) of the Act. It makes no difference whether sale deed is executed by the guardian of the minor as guardian or as manager of the joint family. In either case, the document has to be set aside. It is not open to the minor to ignore the transaction and seek possession of the property.*"

(ii) **(2017) 1 MLJ 153 (M.Panneerselvam /v/ Susseella and Others),** wherein it is held in paragraph No.21 as follows:

> *"21. ....Therefore, all the above facts seen cumulatively, would go to disclose that though the plaintiffs are aware of the sale deed dated 27.08.1987*

> *and despite having knowledge about the same, as rightly put forth by the defendants counsel, the plaintiffs have not instituted the suit within 3 years period of time. It is thus evident that the suit laid by the plaintiffs for the relief of declaration as such, is barred by limitation. The argument that the plaintiffs suit for declaration could be construed as the relief of setting aside the sale deed dated 27.08.1987, even if accepted, it could be seen that the lis filed by the plaintiffs would be out of time as per Article 59 of the Limitation Act."*

(iii) **Judgment, dated 04.04.1997 delivered by the Hon'ble Supreme Court** in the case of **Harshad J Shah & Anr. /v/ LIC of India & Ors.,** wherein it is held in page Nos. 6 and 7 as follows:

> *"The authority of the agent is apparent where it results from a manifestation made by the principal to third parties. The doctrine of apparent authority involves the assumption that there is in fact no authority at all. It is the authority of an agent as it appears to others. Under this doctrine where a principal represents, or is regarded by law as representing, that another has authority, he may be bound as against a third party by the acts of that other person within the authority which that persons appears to have though he had not in fact given that*

person such authority or had limited the authority by instructions not made known to the third party. The notion of apparent authority is essentially confined to the relationship between principal and third party. ....

The only question is whether the LIC can be held liable on the basis of the doctrine of apparent authority. Shri Mathur has invoked the said doctrine and has replied upon section 237 of Indian Contract Act. He has urge that, by its conduct in receiving the premium through his agents, the LIC had induced the policyholders to believe that acts of the agents in receiving the premium from the policyholders were within the scope of the agents' authority. …….We are, therefore, unable to hold that the doctrine of apparent authority underlying section 237 of the Indian Contract Act can be invoked in the facts of this case especially when the LIC has been careful in making an express provision in the Regulations/Rules, which are statutory in nature, indicating that the agents are not authorised to collect any moneys or accept any risk on behalf of the LIC and they collect so only if they are expressly authorised to do so.

(iv) **Judgment, dated 08.02.2019 delivered by the Hon'ble Supreme Court in Civil Appeal No.1575 of 2019 (Tanu Ram Bora /v/ Promod Ch.Das),** wherein it is held in paragraph No.8 as follows:

> *"8. An identical question came to be considered by this court in the case of Ram Pyare (supra). In the aforesaid decision, on considering the Section 43 of the Act, it is observed and held by this Court that as the sale deed in favour of the vendee was result of an erroneous representation of the vendor, thereafter, the sons of the vendor, cannot claim to be transferees in good faith and therefore their suit for cancellation of the sale deed would not be maintainable."*

(v) **2023-2 Law Weekly 229 (G.V.Films Limited /v/ M/s Prabhaudas Gurumukh Singh & Ors.),** wherein it is held in paragraph Nos.18 and 19 as follows:

> *"18. In the present case also the said "Doctrine of Indooor Management' or Turquand's Rule can be applied. This Court does not find any malafides or lack of bonafides on the part of the 1st respondent/plaintiff. The plaintiff/1st respondent had all reasons to believe the representations of the Chairman and Managing*

Director of the appellant/1st defendant. The "Doctrine of Indoor Management" has been followed in various judgments of the Hon'ble Apex Court as well as this Court. In this case also this Court deem it fit to apply said Doctirne and holds that the plaintiff/1st respondent cannot be made to suffer because of the internal transaction that are now put against the plaintiff/1st respondent to defeat the suit claim.

19. This Court has already found that the Chairman and Managing Director has represented himself only on behalf of the appellant/1st defendant company. The mere fact that there was no resolution or authorisation for the said M.G.Venkateswaran to borrow monies from the plaintiff cannot be put against the 1st respondent/plaintiff in order to defeat their lawful entitlement of the monies borrowed from them.

13. Per contra, the learned counsel for the respondent/plaintiff has contended that the suit property with a larger extent was purchased in the name of society through its then Secretary Lottiya Anumandhair Ramamoorthy. The defendant admitted in their written statement that the suit property belonged to the plaintiff's society. As per terms and bye-law, the

society has to sell its property to its members alone. The defendants are not members of the society and the same is also admitted. The defendants evasively denied the averments, they have not denied them specifically and so it should be taken to be admission of plaint averments as per Order 8 Rule 5 of the Civil Procedure Code. When the plaintiff raised the plea that the defendants' sale deed got executed by fraud and impersonation, it is for the defendants to discharge the basic duty to produce the document to support his contention according to Order 8 Rule 1A of the Civil Procedure Code, here, the defendants have not produced any piece of document in support of their stand. The alleged power of attorney executed by Lalli Anumandhair Ramamoorthy is a non-existing person. The then Secretary of the plaintiff's society is Lottiya Anumandhair Ramamoorthy. The thumb impression of the said Lottiya Anumandhair Ramamoorthy was examined by the forensic department and found that the thumb impression in the power of attorney deed is not that of Lottiya Anumandhair Ramamoorthy. So, the alleged power of attorney deed is a fraud document, which was executed by impersonation. The defendants purchased the suit properties through the fraud power of attorney deed. Hence, the said sale deeds are also not valid in the eye of law.

14. The learned counsel for the plaintiff further contended that the plaintiff proved its case before the trial Court. The defendants have to prove that they purchased the suit property from authorized person. At the time of alleged sale deeds - Exs.A.10, 11, one Sivasankaran was the Secretary of the society, the L.A.Ramamoorthy was not the Secretary of the society. It is also pertinent to mention that for fraudulent activities made by the defendants along with other persons, an enquiry under Section 81 of the Tamil Nadu Cooperative Society Act was ordered in which L.A.Ramamoorthy denied the execution of any power of attorney in favour of said Navanathan. In power of attorney executed in favour of Navanathan by one Lalli A.Ramamoorthy. The real name of L.A.Ramamoorthy is Lottiya A.Ramamoorthy, this would alone suffice that the alleged power of attorney is created one. The defendants could not be taken the plea of the ostensible owner since the plaintiff is the original owner who lodged a criminal complaint against the said Navanathan and 3 others and a charge sheet was also filed against them. The plaintiff has filed the suit for recovery of possession based on the title under Article 65 of the Limitation Act, so the limitation would not arise. The plaintiff proved its case before the trial Court and the same was confirmed by

the first Appellate Court. The defendants have not established their case by producing acceptable documents. Even for the sake of argument, the Navanathan & L.A.Ramamoorthy were not added as parties to the suit, the defendants can file a petition to implead them in the suit. The failure on their part to implead the said Navanathan & L.A.Ramamoorthy is also inferred against the defendants that the defendants have no valid case. The Courts below correctly appreciated the evidences adduced on either side and correctly passed judgment and decree in favour of the plaintiffs. Therefore, this Second Appeal may be dismissed.

15. It is the case of the plaintiff that the suit property with a larger extent belonged to the plaintiff A.1362 Meenakshi Co-operative Building Society Limited, Madurai. The property was purchased by the society through the then Secretary one L.A.Ramamoorthy for the affairs of the plaintiff society in the year 1962 and subsequently, the society sorted housing plots and sold the same to the society members. The plaintiff came to know that in the year 1996, the defendants purchased the suit property from one Navanathan, who is the alleged power of attorney of L.A.Ramamoothy. It is the specific case that during the year 1996,

L.A.Ramamoorthy was not the Secretary, one Sivasankaran was the secretary and the defendants purchased the suit property by impersonation and fraud. Moreover, the alleged sale deeds stands in the name of the defendants shows that one Lalli Anumandhair Ramamoorthy (L.A.Ramamoorthy) through power of attorney Navanathan sold the property. In fact, L.A.Ramamoorthy denotes Lottiya Anumandhair Ramamoorthy. The society lodged a criminal complaint and in the criminal case, it was revealed that the alleged thumb impression of L.A.Ramamoorthy found in the Power of Attorney deed is not matched with the thumb impression of L.A.Ramamoorthy. In Section 81 of the Tamilnadu Co-Operative Societies Act enquiry, L.A.Ramamoorthy categorically stated that he never sold the suit property to the defendants. So, the plaintiff filed the suit.

16. It is the case of the defendants that they are bonafide purchasers and it is the onus of proof on the plaintiff to prove that the sale deeds were executed by impersonation and fraud. The plaintiff failed to implead the said L.A.Ramamoorthy and Navanathan as parties to the suit. The trial Court erred in coming to the conclusion on the basis of the criminal case filed against Navanathan and the forensic report filed in that case. The

observation of courts below that the burden on defendants to prove the sale deeds are valid is not correct.

17. The Hon'ble Supreme Court in a reported decision in **2004 (9) SCC 468 in Krishna Mohan kul Alias Mani Charan Kul and anr /v/ Pratima Maity and others** observed that

> *"When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bonafide.... this principle has been engrained in section 111 of Indian Evidence Act, 1872....The transaction is not necessarily void ipso facto, nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast*

> *upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other.*"

It is settled that the High Court has no jurisdiction to entertain the Second Appeal on the ground of erroneous finding of fact however gross the error may be. Bar is erected under Section 100 of the Civil Procedure Code forbidding the High Court to interfere in a finding of fact in the Second Appeal. It is also a settled position that fraud in civil cases need not be proved beyond a reasonable doubt, it is sufficient to conclude based on preponderance of probabilities.

18. In this case on hand, there is no dispute that the suit property with a larger extent was purchased in the name of L.A.Ramamoorthy representing the plaintiff society. The plaintiff states that the L.A.Ramamoorthy is Lottia Anumandhair Ramamoorthy where in the sale deed it is mentioned as Lalli Anumandhair Ramamoorthy, so he was impersonated. To prove its stand the plaintiff produced a criminal complaint and investigation report wherein it is stated that the thumb impression of L.A.Ramamoorthy finds in the sale deed

of defendants, differed from the original thumb impression of L.A.Ramamoorthy. Moreover, at the time alleged sale in the year 1996, L.A.Ramamoorthy was not Secretary to the society, one Sivasankaran was the Secretary. On perusal of records, the defendants have not disputed these facts and they did not let in any contra documentary evidence. So, the defendants have not discharged their liability to prove that the transaction was fair one. So, the courts below rightly came to the conclusion that the sale deed of the defendants are fraud one.

19. The defendants further contended that the suit property with a larger extent was purchased by L.A. Ramamoorthy, and so the plaintiff cannot state that the said Ramamoorthy has no authority to sell the property. As per Section 43 of the Transfer of Property Act, the purchase of the property is valid one and also the defendants are bonafide purchasers for valuable sale consideration. The contention is not acceptable. Because the property was purchased by L.A.Ramamoorthy representing the society in the year 1996 and the said L.A.Ramamoorthy was not Secretary, one Sivasankaran was the Secretary. This was not disproved by the defendants. So, the contention of the defendants has no merit.

20. The citation relied on by the appellants/defendants **in 2023-2 LW 229, judgment of the Hon'ble Supreme Court in Civil Appeal No.1575/2019 and judgement dated 04.04.1997** in the case of **Harsad J.Shah & Anr /v/ LIC of India** are not applicable to the facts of the case. In those cases there was elicited indoor management. But, in this case, there is no such mismanagement or misunderstanding between the secretaries. The plaintiff proves that L.A.Ramamoorty resigned his Secretary post and thereafter, on Sivasankaran was the Secretary at the time of sale deed in the year 1996. The defendants have not disproved these facts.

21. Admittedly, the suit property with a larger extent was purchased by the society and the society sold out housing plots to its members. The defendants have not established that they are members of the society. The contention of the defendants that after purchase they can be registered as members is not established by producing sufficient acceptable materials by the defendants.

22. Another contention is that the plaintiff has not sought any prayer to declare the sale deeds as null and void and has not filed the suit within the

limitation period and so, the suit is barred by limitation. The plaintiff seeking relief under Article 65 of the Limitation Act. The Trial Court has correctly framed the issue regarding limitation and correctly arrived conclusion that the plaintiff can be entitled to seek recovery of possession from the defendants, who purchased the property through fraudulent deeds in view of the citation in **AIR 2000 SC 1099**. There is nothing wrong in it. The alleged fraudulent sale deed took place in the year 1996 and the suit was filed in 2007 so, the suit is within the limitation, as protected under Article 65 of the Limitation Act.

23. As stated supra, the Courts below correctly applied and understood Section 111 of the Indian Evidence Act 1872, Sections 41 and 43 of the Transfer of Property Act and correctly came to a conclusion in favour of the plaintiff. Therefore, this Court holds that Ex.A.10 and Ex.A.11 - sale deeds came to be transacted by playing fraud and the defendants are not bona fide purchasers as concluded by the Courts below. The citations relied on by the defendants' side are not applicable to the facts of this case.

24. Considering the facts and evidences 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 properly appreciated the evidences taking into consideration of the legally settled principles in this regard. Hence, all the questions of law raised in this Second Appeal are answered against the appellants/defendants. Thus, this Second Appeal fails.

25. In the result, the Second Appeal is dismissed. The judgment and decree dated 23.04.2015 passed in A.S.No.21 of 2013 on the file of the learned IV Additional District Judge, Madurai, confirming the judgment and decree dated 21.01.2013 passed in O.S.No.126 of 2007 on the file of the learned I Additional Sub Judge, Madurai are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.08.2024

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

To

1.The IV Additional District Judge,
Madurai.

2.The I Additional Sub Judge,
Madurai.

3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in S.A(MD)No.122 of 2017

05.08.2024