



AS No.19 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 02.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.19 of 2016

1. S.P. Palanisamy
2. Kullapadayachi
3. R.P. Nagaraj

.. Appellants

Versus

1. Alagammal
2. Ramachandran

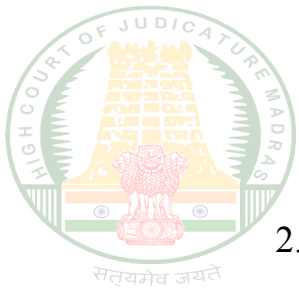
.. Respondents

Appeal Suit is filed under Section 96 of Civil Procedure Code to set aside the Judgment and Decree dated 24.08.2015 passed in O.S. No. 199 of 2012 on the file of the learned II Additional District Judge, Salem.

For Appellants	:	Mr. K. Selvaraj
For Respondents	:	No Appearance

JUDGMENT

This Appeal Suit has been filed to set aside the Judgment and Decree dated 24.08.2015 passed in O.S. No. 199 of 2012 on the file of the learned II Additional District Judge, Salem.



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2. The suit in O.S. No. 199 of 2012 was filed by the Plaintiffs for recovery of the sum of Rs.10,28,500/- together with further interest at the rate of Rs.2/- per Rs.100/- per month from the date of plaint till realisation and to pay further interest till the date of realisation.

3. According to the Plaintiffs, the first Defendant was the owner of the properties which he had purchased through sale deed registered as Document Nos. 618 of 1990 and 805 of 1993. Further, there are some ancestral properties in which the Plaintiffs and his relatives Selvam, Jagathambal and their children are also having a share. All these properties put together were agreed to be sold by the first Defendant and his relatives by entering into an agreement of sale with the Plaintiffs, agreeing to sell it at the rate of Rs.12,250/- per cent. The agreement dated 14.06.2006 was not registered. On the date of execution of the agreement of sale on 14.06.2006, the Plaintiffs paid Rs.5,00,000/- as advance. Subsequently, the Plaintiffs were also put in possession of the plaint schedule property. After taking possession, the Plaintiffs have incurred huge expenses for levelling the land and divided the lands into plots. According to the Plaintiffs, one such plot was sold by them jointly with the Defendants for Rs.2,50,000/- to one Ramayee, however, the Defendants have taken the entire sum of Rs.2,50,000/- without paying any

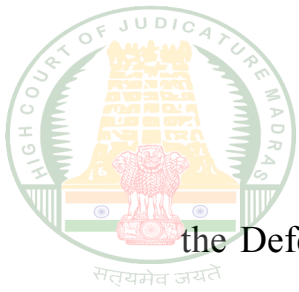


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amount to the Plaintiffs. While so, one Sangeetha, relative of the Defendants raised a rival claim in the plaint schedule property. Asserting a right over the plaint schedule property, the said Sangeetha had executed an agreement of sale dated 04.09.2006 in favour of one Muthusamy for sale of 77 cents of land. On coming to know about the agreement of sale executed by the said Sangeetha, Plaintiffs called upon the Defendants to clear the encumbrance in the property and to execute a sale deed in their favour. In this context, a panchayat was convened on 29.03.2012 in which the Defendants agreed to pay Rs.4,20,000/- with interest at the rate of Rs.2/- per Rs.100/- from 14.05.2007 onwards. Similarly, Jagathambal and Selvam have separately executed a consent deed agreeing to pay the sum of Rs.2,90,000/- plus Rs.37,500/- for the expenses incurred to level the land, to the Plaintiffs. Accordingly, on 08.10.2022, the above said Jagathambal and Selvam have paid the plaintiff a sum of Rs.6,98,700/- towards principal and interest and on such payment, the Plaintiffs also returned the consent deed executed by them.

4. According to the Defendants, having executed the consent deed voluntarily on 29.03.2012, on 01.08.2012, they sent a legal notice to the Plaintiffs stating that the consent deed dated 29.03.2012 was obtained by inducement, fraud and coercion. For the legal notice dated 01.08.2012 sent by

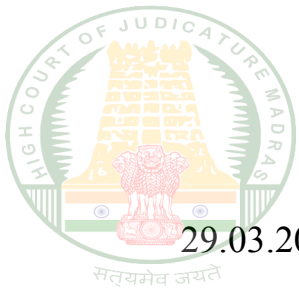


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the Defendants, a reply notice was also sent by the Plaintiffs on 11.08.2012.

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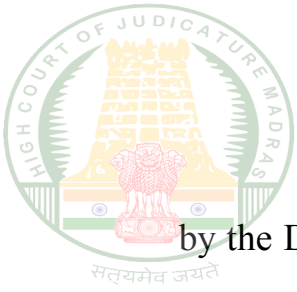
5. On notice, the first Defendant filed a written statement denying the plaint averments. It was stated that the sale agreement dated 14.06.2006 is a fraudulent document and it was not executed by the Defendants. The sale agreement dated 14.06.2006 is a fraudulent document will be clear from the fact that in the said sale agreement dated 14.06.2006, it was made as if one Samiyannan signed. However, the said Samiyannan died even in the year 2001. Further, the ancestral properties of Selvam and Jagathambal are shown as ancestral properties, but the legal heirs of Selvam and Jagathambal have not been added as parties to the agreement of sale. Further, the second Defendant was not a party to the sale agreement, but the sale agreement contains the signature of the second Defendant as well. Thus, the Plaintiffs themselves executed a void agreement of sale. According to the first Defendant, on 14.06.2006 an agreement of sale was executed, but the Plaintiffs did not pay Rs.5 lakhs as alleged. It was further stated that the Plaintiffs were not ready and willing to pay the balance amount and to get the sale deed executed in their favour. The legal notice dated 01.08.2012 was sent beyond the period of 11 months mentioned in the agreement of sale. The consent deed dated



29.03.2012 was not executed voluntarily and therefore, it will not bind the Defendants. Accordingly, the Defendants prayed for dismissal of the suit with costs.

6. During trial, the second Plaintiff examined himself as P.W-1 along with two other witnesses as P.W-2 and P.W-3 and marked Ex.A-1 to Ex.A-15 on their side. On behalf of the Defendants, the second Defendant examined himself as D.W-1 and one Vijayakumar was examined as D.W-2 and Ex. B-1 to B-13 were also marked. That apart, the consent deed dated 29.03.2012 and registration of certificate received from the Registration Department have been marked as Ex.X1 and Ex.X2 respectively.

7. The trial Court dismissed the suit with costs by observing that the Defendants have clearly established that the consent deed under Ex.A-8 was not executed by them voluntarily but it was made to be executed by force. Further, the Defendants have issued a notice under Ex.A-9 informing that the Plaintiffs have threatened the Defendants and others to execute the consent deed under Ex.A-8. When it was the case of the Defendants that they were made to execute the consent deed by force, the burden is on the Plaintiffs to disprove the same. But the Plaintiffs did not disprove such an averment made



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by the Defendants. The trial Court also observed that the Plaintiffs also failed to prove that they have paid Rs.4,20,000/- to the Defendants from 14.05.2007 to 29.09.2012 by producing documentary evidence or examined any witness to prove the alleged expenses incurred by them for levelling the land.

8. Assailing the aforesaid Judgment dated 24.08.2015 dismissing the suit in O.S. No. 199 of 2012, the present Appeal Suit is preferred by the Plaintiffs.

9. The learned Counsel for the Appellants submitted that the suit was filed for recovery of Rs.10,28,500/- based on the consent deed dated 29.03.2012 and subsequent interest at the rate of Rs.2/- per Rs.100/- on Rs.4,20,000/- from the date of the plaint. According to the learned Counsel, on 14.06.2006, the Defendants and their relatives Selvam, Jagathambal, R. Kumar, R. Mohan, Ashok Kumar and Sumathi have entered into an agreement of sale for sale of the property and received a sum of Rs.5,00,000/- as advance. Subsequently, Plaintiffs and Defendants have jointly executed an agreement of sale in favour of one Ramayee Ravi and received Rs.2,50,000/-. Similarly, an agreement of sale dated 22.03.2007 was entered into with one Murugesan and Madhesh. However, one of the relatives of the Defendants by name Sangeetha



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raised a rival claim and consequently, Murugesan and Madhesh have cancelled the agreement of sale entered into with the Plaintiffs and received the advance amount paid to the Plaintiffs. Since a dispute has arisen with the Defendants for repayment of the advance amount, a panchayat was convened in which the Defendants agreed to return their share of the amount of Rs.4,20,000/- with interest at the rate of Rs.2/- per Rs.100/- and also entered into a Consent Deed on 29.03.2012. The Defendants also agreed to repay Rs.37,500/- incurred by the Plaintiffs for levelling the land. However, the Defendants disputed the consent deed executed by them. In fact, Selvam and Jagathambal, relatives of the Defendants paid Rs.6,98,700/- to the Plaintiffs on 08.10.2012 and upon such payment, the consent deed executed by them was returned by the Plaintiffs. However, the Defendants have issued the legal notice on 01.08.2012, after five months of executing the consent deed, falsely stating that the consent deed was obtained by threat and coercion. A reply was issued by the Plaintiffs repudiating the averments in the notice dated 01.08.2012, however, the Defendants have not issued any rejoinder.

10. The learned Counsel for the Plaintiffs/Appellants submitted that the trial Court concluded that under Ex.A-1 there are interpolations and it cannot be relied on. On the other hand, Ex.A-1 is a document neatly typed and

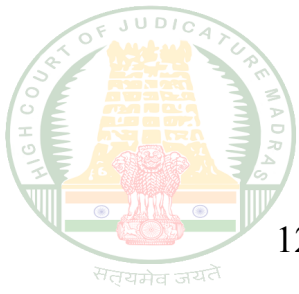


signed by the parties and there is no interpolation or interlineation in Ex.A-1.

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Further, the trial Court wrongly held that Kumar and others have signed as “B” parties in Ex.A-1, but they were only signed as 'A' parties. The Trial Court, without proper assessment of Ex.A-1 erred in rendering a factual finding with respect to Ex.A-1. With respect to the receipt of Rs.6,98,700 from Jagathambal and Selvam, under Ex.A-7, the trial Court wrongly held that when the total advance amount received by the Defendants along with Jagathambal and others itself is Rs.5,00,000/- there is no necessity for Jagathambal and Selvam to pay Rs.6,98,700/-. The fact remains that the Plaintiffs received Rs.2,90,000/- towards part of advance amount, interest of Rs.3,71,200/- together with the expenses of Rs.37,500/- incurred by the Plaintiffs totalling Rs.6,98,700/-. This was not properly considered by the trial Court.

11. The learned Counsel for the Appellants/Plaintiffs also submitted that P.W-2, who is also related to the Defendants, has clearly stated that Ex.A-1 has been prepared and signed by the parties. It was further stated that some of the names have been omitted and it was hand written in Ex.A-1. Therefore, there is no reason to disbelieve Ex.A-1 by the trial Court. Further, the Defendants have admitted having received Rs.1,75,000/- under Ex.B-8 and it was totally ignored by the trial Court.



12. The learned Counsel for the Appellants further stated that after the execution of the agreement for sale dated 14.06.2006, the Defendants 1 & 2, who were also parties to the sale agreement, opposed the sale agreement stating that it is the joint family properties or undivided properties and it cannot be conveyed to the Plaintiffs. Therefore, the Plaintiffs had obtained the consent deed dated 29.03.2012 from the other relatives who have protested against the Defendants 1& 2. In the Consent Deed, the relatives of Defendants 1 & 2 have repaid advance amount. Even after obtaining the Consent Deed the Plaintiffs levelled the land measuring 1 Acre 67 Cents and incurred expenses of their own. The other parties have laid out the land as house sites. Subsequently, the very same party did not come forward to execute the sale deed. Therefore, the Plaintiffs caused legal notice on the Defendants 1 & 2 and other relatives. The other relatives were parties to the consent deed returned the amount that was received by them. However, the Defendants 1 & 2 did not return the amount. While so, the Defendants are estopped from refusing to repay the amount received from the Plaintiffs. Further, the evidence of P.W-1 and the Stamp Vendor P.W-2, examined before the trial Court substantiate the due execution of agreement between the parties. In spite of such evidence made available before the trial Court, the Trial Court erroneously dismissed the suit. It is the specific contention of the learned



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Counsel for the Appellants that the suit claim was not based on the sale agreement dated 14.06.2006, but based on the consent deed obtained from the Defendants and their relatives. Therefore, the learned Counsel for the Appellants seeks to set aside the Judgment of dismissal dated 24.08.2015 passed in O.S. No. 199/2012 on the file of the learned II Additional District Judge, Salem and to decree the Suit.

13. Even though the name of the Respondents were printed in the cause list, they did not engage a Counsel to defend this appeal. Therefore, on the basis of the submissions of the learned Counsel for the Appellants and upon considering the oral and documentary evidence let in before the trial Court, this appeal is being disposed of.

Points for determination:

1. Whether the Plaintiffs/Appellants are entitled to recover the money based on the alleged consent deed?

2. Whether the trial Court failed to consider Ex.A-8 and dismissed the suit on the ground of Limitation based on the Sale agreement under Ex.A-1?

14. Heard the learned Counsel for the Appellants/Plaintiffs. Perused



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the records in O.S.No.199 of 2012 and the judgment dated 24.08.2015 of the learned II Additional District Judge, Salem in O.S. No. 199 of 2012.

15. On perusal of the Complaint averments, averments in the written statement filed by the Defendants, evidence of the Plaintiffs' witnesses viz., P.W-1 to P.W-3, evidence of the Defendants' witnesses viz., D.W-1 and D.W-2 and the contention of the learned Counsel for the Appellants/Plaintiffs, it is evident that that the cause of action for the Suit is based on the Consent Deed alleged to have been executed by the Defendants. Earlier a sale agreement came to be entered into between the Plaintiffs and the Defendants herein and their relatives. However, the agreement of sale could not be implemented due to dispute raised by the relatives of the Defendants. Therefore, the Plaintiffs demanded the amount from the Defendants as well as their relatives. The relatives of the Defendants have repaid the amount to the Plaintiffs with interest. Therefore, the Plaintiffs had not sought for any relief against them and had filed the Suit only against the Defendants 1 and 2 herein. Thus, on the basis of the Consent Deeds executed by the Defendants 1 and 2, the instant suit was filed.

16. It is seen that the agreement under Ex.A-1 was dated 14.06.2006



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and it was entered into between Defendants 1 and 2 and others. Similarly,

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is not maintainable. Therefore, this Court does not accept the submission of the learned Counsel for the Appellants/Plaintiffs.

17. Perused the deposition of P.W-1 Kulla Padayachi, P.W-2 Selvam, P.W-3 Matheshwaran and the documents marked on the side of the Plaintiffs under Ex.A-1 to Ex.A-15. Perused the deposition of witnesses, D.W-1 Rama Chandran, D.W-2 Vijayakumar and the document marked on the side of the Defendants under Ex.B-1 to Ex.B-13 and the Court documents under Ex.X-1 and Ex.X-2. On perusal of the judgment of the learned II Additional District Judge, Salem in O.S.No.199 of 2020 dated 24.08.2015, it is found that the learned Judge had not dismissed the suit based on limitation. The argument of the learned Counsel for the Plaintiffs before the learned II Additional District Judge, Salem is that, the suit is based on Consent deed, executed by the Defendants 1 and 2. In the written statement, Defendants 1 and 2 have disputed the Consent deed by stating that the Consent deed was obtained by the Plaintiffs under duress and coercion in the Office of the Deputy Superintendent of Police with whom the Plaintiffs have influence. Therefore, it was contended by the Defendants that the Consent Deed is not binding on the Defendants. The trial Court framed issues regarding Consent deed as to whether the Consent deed dated 29.03.2012 executed by the Defendants is true



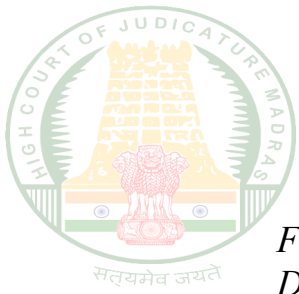
and valid. While answering the issue, the learned II Additional District Judge,

had in her judgment observed as follows:-

“46. This Court has carefully perused the records of the case and a careful perusal of Ex.A8 clearly shows that the Defendants have entered into a deed of consent with the Plaintiffs agreeing to pay a sum of Rs.4,20,000/- with interest at the rate of Rs.2/- per Rs.100/- 14.05.2007 till date and they have also agreed to pay a sum of Rs.62,500/- towards the levelling of the land. In the consent deed Ex.A-8 one Madheswaran and Ashok Kumar have signed as witnesses and one Paulraj is the document writer. Though P.W.3 was examined by the Plaintiffs to prove the execution of Ex.A-8, he has admitted in cross that the consent deed was obtained by coercion. But there is no proof whether the alleged amount of Rs.4,20,000/- have been received by the Defendants.

47. “Further when the Defendants denied that Ex.A8 was obtained at Tholasampatty Police Station under fraud and coercion, it is the burden on the part of the Plaintiffs to prove the same but the Plaintiffs have not discharged their burden. The Plaintiffs have not come before this Court with clean hands. Further the arguments advanced by the learned Counsel for the Defendants that the Plaintiffs have alleged in the plaint that they have given Rs.5 lakhs to the party persons. But the Plaintiffs have not stated how much amount they have given to the Defendants. P.W-1 has admitted during cross that as per Ex.A-4 the said Rs.2.50 lakhs was not received by the Defendants is correct and the Plaintiffs have not issued any legal notice showing their readiness and willingness and they have not issued any legal notice showing their readiness and willingness and not filed any suit for performance of the sale agreement needs to be accepted by this Court.

48. Further when the Defendants denied that Ex.A-8 was obtained at Tholasaampatty Police Station under fraud and coercion. It is the burden on the part of the Plaintiffs to prove the same but the Plaintiffs have not discharged their burden. The Plaintiffs have not come not come before this Court with clean.



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Further the arguments advanced by the learned Counsel for the Defendants that the Plaintiffs have alleged in the plaint that they have given Rs.5 lakhs to the party persons. But the Plaintiffs have not stated how much amount they have given to the Defendants. P.W-1 has admitted during cross that as per Ex.A-4 the said Rs.2.50 lakhs was not received by the Defendants is correct and the Plaintiffs have not issued any legal notice showing their readiness and willingness and they have not issued any legal notice showing performance of the sale agreement needs to be accepted by this Court.”

18. The evidence of the Scribe, who was examined as P.W-3 by the Plaintiffs to prove the Consent deed under Ex.A-8 was rejected by the learned II Additional District Judge by stating that his evidence cannot be relied upon and on that basis on proper appreciation of evidence, the learned II Additional District Judge, Salem had arrived at a conclusion that the Consent Deed had not been proved through acceptable evidence. Therefore, the claim of the Plaintiffs based on Consent deed under Ex.A-8 does not hold good and had rejected the claim of the Plaintiff.

19. In the cross examination, the Plaintiffs accepted that Ex.A-8 Consent deed was obtained before the Police Station. Under those circumstances, it shall be presumed that the Consent Deed was not executed by the Defendants voluntarily. It can be presumed that the period stipulated in the agreement of sale under Ex.A-1 could not be enforced due to limitation and



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therefore, the Plaintiffs obtained a consent deed from the Defendants to save the lost period of limitation. Therefore, this Court is of the view that the execution of the Consent Deed was by adopting force and coercion. The Consent Deed was not executed voluntarily. It is based on the Consent Deed, the suit was filed in the year 2012, however, in the cause of action, it was stated that the suit is being filed on the basis of the agreement dated 14.06.2006. The period stipulated in the agreement dated 14.06.2006 lapsed and the Plaintiffs were precluded from approaching the court for enforcement of Ex.A-1. It is in those circumstances, the Plaintiffs have engineered a novel idea to get a Consent Deed from the Defendants to enforce their lost right. When it is shown that the consent deed was obtained by force, such document cannot be relied on. On appreciation of the entire evidence, the learned II Additional District Judge rejected the claim of the Plaintiffs. When the Plaintiffs fail to prove the consent deed under Ex.A-8, naturally the suit has to be dismissed. Therefore, on re-appraisal of the same evidence, this Court arrives at the same conclusion that the Plaintiffs have not proved the case through acceptable evidence.

20. In the light of the above discussion, the points for determination are answered against the Plaintiffs and in favour of the Defendants. The



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Judgment and Decree dated 24.08.2015 passed in O.S. No. 199 of 2012 by the learned II Additional District Judge, Salem, is found proper and the same is to be confirmed.

In the result, **this Appeal Suit is dismissed.** The Judgment and Decree dated 24.08.2015 passed in O.S. No. 199 of 2012 by the learned II Additional District Judge, Salem is confirmed. No costs.

02.06.2025

dh/shl

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The learned II Additional District Judge,
Salem.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh/shl

Judgment in
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