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AS.No.402 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2025

CORAM:

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

A.S.No.402 of 2018

K.Arunachalam

... Appellant/defendant

-Vs-

Pushpa

... Respondent/plaintiff

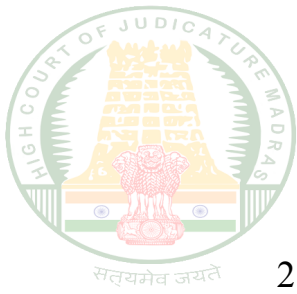
PRAYER: First Appeals filed under Section 96 of the Code of Civil Procedure praying to set aside the Judgment and decree passed in O.S.No.10 of 2014 dated 23.01.2018 by the Hon'ble II Additional District Judge, Ranipet, Vellore.

For Appellants : Mr.R.Narendran

For Respondent : Mr.G.Rajan

J U D G M E N T

The defendant and the plaintiff before the Trial Court are the appellant and the respondent respectively herein.



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2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts which give rise to the instant First Appeal is that the plaintiff is the absolute owner of the suit property by virtue of a Sale Deed dated 25.01.2012. While the plaintiff's husband Subramani Achari was alive, he purchased a property at Madras under the registered Sale deed dated 14.06.1965, and that after his demise, the plaintiff entered into a Sale Agreement dated 19.03.2012 with one M.Pannalal Bafna and others. In the said document, the defendant is an attesor. Since the defendant is sister's son of the plaintiff, he was staying along with her. While so, the defendant, under the guise of transferring the property to the plaintiff's daughter, with undue influence and misrepresentation, obtained a sale deed of the suit property from the plaintiff, without paying any consideration. It is the further submission of the plaintiff that there was no occasion for her to sell the property. She further pleaded that the defendant has no capacity to purchase the property.

4. Disputing the above contention, the defendant contended that the plaintiff has not submitted any scrap of papers to substantiate her contention,



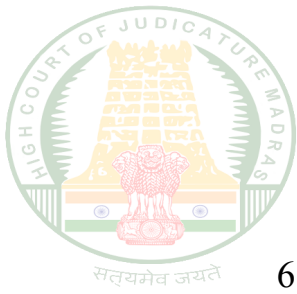
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and that he never played fraud upon the plaintiff. It was the plaintiff, who came forward to sell the suit property with him, and that he had paid the valid sale consideration and obtained the Sale Deed dated 13.03.2013. He would further state that the recital in the Sale Deed would demonstrate the passing off consideration. He would further submit that there was no undue influence or he never induced the plaintiff to execute the Sale Deed under false pretext. Hence, he prayed to dismiss the suit.

5. The Trial Court, after having considered the pleadings of either side, has framed the following issues:-

1. *Whether the plaintiff is entitled for setting aside sale deed dated 13.03.2013?*
2. *Whether the sale deed dated 13.3.2013 was fraudulently obtained by defendant?*
3. *Whether the Plaintiff is entitled for Declaration?*
4. *Whether the Plaintiff is entitled the Permanent injunction not to interfere?*
5. *Whether the Plaintiff is entitled for permanent injunction not to alienate?*
6. *To what other relief?*



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6. While considering the issue nos.1 to 3, the Trial Court by referring the evidence of the defendant, found the falsity of the defendant's case. The Trial Court took cognizance of the fact of the possession of original Sale Deed with the plaintiff even after the alleged sale deed, considered in favour of the plaintiff and ultimately decreed the suit by declaring the Sale Deed dated 13.03.2013 as null and void. However, in view of the interim nature of injunction relief, the same was not granted. Aggrieved with the same, the defendant filed the instant appeal.

7. Heard Mr.R.Narendran, learned counsel appearing for the appellant/defendant and Mr.G.Rajan, learned counsel appearing for the respondent/plaintiff.

8. The learned counsel for the appellant/defendant would vehemently contend that the Electricity receipts were all paid at Madras, and that though certain documents have been filed to prove the purchase of the building materials, the plaintiff did not examine those contractors and even the account books submitted by the plaintiff cannot be believed, as the person, those who dealt the accounts have not been examined. Apart from that, the learned

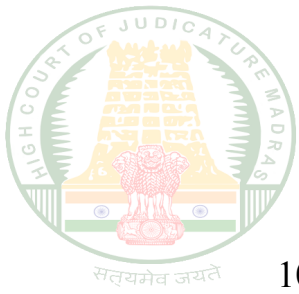


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counsel would also contend that the passing off consideration has been established through DW2 and DW3, but the Trial Court did not refer about their evidence. It is the further contention of the learned counsel for the appellant that except the plaintiff, no one was examined to substantiate their case. Hence, prayed to allow the appeal.

9. Per contra, the learned counsel for the respondent/plaintiff would contend that taking advantage of his position, qua nephew of the plaintiff, the defendant had fraudulently misrepresented the plaintiff on the pretext to avoid the income tax, obtained sale deed of the suit property in his name, and that the plaintiff being an ignorant woman, had budged his request. It is the submission of the learned counsel for the plaintiff that the defendant has no source to pay the sale consideration and even the original title deed of the suit property is with the defendant. Therefore, contended that all these circumstances would cumulatively establish the plaintiff's claim that DW2 and DW3 are self serving witnesses. Hence, would submit that there are no grounds to interfere with the order of the Trial Court.



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10. From the submissions made by either side, the points arise for determination is as follows:-

1. Whether a fraud was played by the defendant while getting the Sale deed dated 13.03.2013 in his favour?
2. Whether the plaintiff is entitled for a declaration?
3. Whether the plaintiff is entitled for a permanent injunction restraining the defendant from interfering in his possession?
and
4. To what other reliefs?

Point Nos.1 to 4:-

11. According to the plaintiff, she purchased the suit property as a vacant site and had put up construction thereon by utilizing a sale proceeds received in pursuance of the Sale Agreement dated 19.03.2012. As such, to prove the wherewithal of the plaintiff to purchase the vacant site as well as cost of construction, the Sale Agreement [Ex.A3] was submitted and in which this defendant is one of the attestor. Further, there is no serious dispute about the existence of Ex.A3. At this juncture, it is relevant to refer Order 6 Rule 10



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of CPC, where a party to the proceedings pleads fraud malice, then they have to specifically plead as to the nature of fraud. In this case, the plaintiff had pleaded that, taking advantage of her ignorance and on the basis of close relationship of the defendant, the defendant had misrepresented the plaintiff, to execute the sale deed in her daughter's favour to avoid levy of the income tax. In order to substantiate the said factum, the plaintiff had elaborately cross examined DW1.

12. It is the specific contention of the learned counsel for the plaintiff that the defendant did not establish his capacity to pay the sale consideration and that the very possession of the parental deed and the original sale deed of the defendant with the plaintiff, would demonstrate the fallacy over the defence set up by the defendant. It is pertinent to refer that, whenever a person getting a Sale Deed in respect of any property, it is expected to get the parent deed along with the sale deed. Therefore, as rightly observed by the Trial Court, had there been a real sale in favour of the defendant, he would have possessed the parent deed viz., Ex.A1 and the Sale Deed [Ex.A2].

13. However, the learned counsel for the defendant would vehemently



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contend that, being the owner of the suit property, he has obtained the house site plan as well as paid property tax. However, it was established before this Court that the above documents were obtained after the filing of suit. Accordingly, those documents will in no way be helpful to support the defendant's case. It is the specific case of the plaintiff that she had put up construction in the suit property, which factum was disputed by the defendant. He would state that it was he, who spent for construction. But, to substantiate the construction, he did not file any documents. On the other hand, the plaintiff has produced several documents viz., Exs.A11 to A17 to prove expenditure for the construction.

14. At this juncture, it is relevant to refer the admissions made by the defendant. When a specific question was put against the defendant, as to the cost of construction, he has deposed that he spent Rs.18,000/- per sq.ft. The very admission made by the defendant of spending Rs.18,000/- per sq.ft for construction would demonstrate the falsity over the defendant's case. Even in a city like Chennai, for luxurious Villa including the plot, a reputed builder is charging far below than what was allegedly spent by the defendant in a remote area for mere construction of building. The false claim of spending of Rs.18,000/- per sq.ft has been further vindicated through the factum of



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existence of electricity service connection in the name of the plaintiff.

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15. In the case in hand, the plaintiff has established her case of purchasing the property through Ex.A1 by spending the amount received from the Sale Agreement-Ex.A3, which factum was not seriously disputed by the defendant. From the evidence adduced by the plaintiff, we could able to see that she has substantiated her case cogently through oral and documentary evidence.

16. The learned counsel for the defendant would draw the attention of this Court that the Electricity receipt have been issued at Chennai. But, no such defence was raised before the Trial Court as to the veracity of the Electricity receipts. It was also contended by the learned counsel for the defendant that the persons, those who gave the receipts for construction were not examined before the Trial Court. But, when those receipts were not seriously disputed by the defendant, question of examining the witnesses does not arise. The learned counsel for the defendant would heavily rely upon the evidence of DW2 and would submit that he had spoken about the passing off consideration. Whereas, DW2, who was the attestor to the Sale Deed had spoken about the passing off consideration. But, his evidence was falsified



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through the evidence of DW1. When DW1 was not in a position to produce the original sale deed and parent deed of the suit property and when the electricity connection obtained in the name of the plaintiff to the property allegedly owned by the defendant, and the false claim of paying Rs.18,000/- per sq.ft for construction, would cumulatively make the DW2's evidence become unreliable and self-serving.

17. In view of the above detailed discussions, this Court does not find any infirmity in the order of the Trial Court.

18. In the result, this Appeal Suit stands dismissed by confirming the order of the Trial Court. There shall be no order as to costs.

26.02.2025

kmi

Index : Yes/No

Speaking Order/Non Speaking order

NCC: Yes/No

To
The II Additional District Judge,
Ranipet,



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C.KUMARAPPAN, J

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