



A.S.No.21 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :09.06.2025

Pronounced on: 17.06.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.21 of 2022

D.Anandhan, aged about 63 years
Son of Deivanayagam,
Residing at No.531, Bharathi Street,
Puducherry 605 001.

... Appellant/Plaintiff

/versus/

1.R.Kalavathi, aged about 52 years,
Wife of Rajendran

2.P.Rajendran, aged about 58 years,
Son of Pushpanathan

Both residing at No.5, Mariamman Koil Street,
Ariyankuppam, Puducherry 605 007.

... Respondents/Defendants

Appeal Suit has been filed under Section 96 r/w Order XLI, Rule 1 of the Civil Procedure Code, to set aside the impugned judgment and decree dated 28.02.2018 in O.S.No.36 of 2008 on the file of Hon'ble Second Additional District Judge, Puducherry and allow the First Appeal with cost by decreeing O.S.No.36 of 2008 as prayed for.

For Appellant :Mr.M.Devaraj



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For Respondents : Mr.S.Subramanian

J U D G M E N T

This Appeal Suit is filed against the dismissal of the suit in O.S.No.36 of 2008 on the file of II Additional District Judge, Puducherry, *vide* judgment and decree dated 28.02.2018.

2. For the sake of convenience, the parties are described as per their rank and status in the suit.

3. The aggrieved plaintiff is the appellant:-

The plaintiff, claiming himself as the owner of the suit schedule property purchased in the year 1987 under two sale deeds dated 14.09.1987 and 30.12.1987 (Ex.A-1 and Ex.A-2) had laid the suit against the defendants 1 and 2, who are husband and wife to declare the registered sale executed by him in favour of the defendants on 07.12.2005 as null and void.

4. According to the plaintiff, after purchase of the suit property as vacant land under the sale deeds Ex.A-1 and Ex.A-2, he got plan approval (Ex.A-



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3) for constructing a house on 28.08.1996. He and his wife availed Loan from LIC

Housing Finance Limited to a tune of Rs.2,50,000/- and put up construction. The title deed was deposited with LIC creating mortgage. While so, his wife, who was a subscriber to the unauthorised chit conducted by the second defendant, was successful bidder in the chit and as security for the bid amount, the suit property was offered as security and Ex.A-4, a sale agreement dated 11.12.2002 showing advance of Rs.2,00,000/- as against the total sale consideration of Rs.6,00,000/- was executed and registered. The agreement was executed with specific promise that it is taken only as security and on payment of chit dues, same will be cancelled. On 14.07.2004, the plaintiff created a usufructuary mortgage (Ex.A-5) with one Prabavathi and availed loan to clear the LIC Housing Loan. The said Prabavathy was put in enjoyment of the property till her mortgage loan is cleared. After redeeming the property from LIC (Ex.A-7), the plaintiff approached the second defendant to receive the debt amount due to her and cancel the sale agreement. The defendants refused to cancel the sale agreement but, insisted to execute the sale deed as he is ready to pay the market value. Accordingly, valuation report (Ex.A-17) was obtained from a qualified Chartered Engineer. The property was valued at Rs.11,00,000/-. The defendants agreed to pay Rs.11 lakhs



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but insisted to execute sale deed in favour of the first defendant. She paid Rs.3,00,000/- to Prabavathy the occupant of the premises based on the usufructuary mortgage and partially, cleared the debt of the plaintiff, leaving a balance of Rs.1,00,000/-. Believing the sweet coated words, without receiving the full consideration, the sale deed dated 11.12.2002 was executed. Meanwhile, the plaintiff cleared the due with Prabavathy and took back possession of the property from her. Hence, after causing notice Ex.A-11 on 16.02.2006, the suit is laid to declare the sale deed dated 01.12.2002 as null and void. The plaintiff in support of his case, marked 19 documents besides oral evidence.

5. The defendants admitting the fact that the plaintiff title under Ex.A-1 and Ex.A-2, had claimed that the plaintiff to clear his LIC Housing Loan agreed to sell the property and entered into the sale agreement on 11.12.2002 for consideration of Rs.6,00,000/-. He received Rs.2,00,000/- as advance and promised to clear the LIC Loan, get back the title document and execute the sale deed. The sale agreement was duly registered. The plaintiff failed to clear the LIC loan and complete the sale. The second defendant issued notice Ex.B-1 on 25.11.2005 expressing her ready and willingness to complete the contract. Then,



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the plaintiff disclosed about the usufructuary mortgage of the property with Prabavathy and his need for more money to redeem the mortgage and get possession from Prabavathy. Hence, the defendants were forced to re-negotiate and agreed to pay Rs.40,000/- more and paid Rs.3,00,000/- as part sale consideration to enable the plaintiff to clear the usufructuary mortgage. Thereafter, the sale deed was executed by the plaintiff in favour of the first defendant, with promise to hand over the vacant possession in due course. The defendants had strongly denied the averment that the sale deed was obtained by fraud, misrepresentation and not supported with adequate consideration.

6. To support their version of the case, two documents (Ex.B.1 & Ex.B.2) and two witnesses viz., the first defendant (D.W-1) and one Jayaraman (D.W-2) were examined.

7. The issues as recasted by the Trial Court are:-

- (1) Whether the suit is maintainable?
- (2) Whether the suit is under valued for the purpose of court fees?
- (3) Whether the suit is barred by limitation?



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WEB COPY 30.12.1987 is valid under law?

- (4) Whether the two registered sale deed dated 14.09.1987 and
- (5) Whether the plaintiff is entitled for injunction against the defendants 1 and 2?
- (6) Whether the plaintiff is entitled for judgment and decree?
- (7) To what other reliefs the parties are entitled?

8. The plaintiff has deposed before the trial Court and marked 19 Exhibits (Ex.A.1 to Ex.A.19). The 2nd defendant/Rajendiran and V.Jayaraman, who is a signatory to the sale deed (Ex.A.9) were examined as D.W.1 and D.W.2.

9. The trial Court held that the passing of consideration for the sale deed Ex.A.9 is proved. Contrarily, the plaintiff has failed to establish unregistered usufructuary mortgage (Ex.A.5) and could not prove, it was obtained by fraud. As a consequence, the suit was dismissed and the relief of consequential injunction was declined.

10. In this appeal, the unsuccessful plaintiff has contended that the trial Court failed to consider the receipts marked as Ex.A.14, Ex.A.15 and Ex.A.16 which would show that even after the Ex.A.9, the plaintiff was in possession of the



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property, enjoying the property and paying necessary charges to the local body towards development charges, water connection and paying tax for the property.

The defendant failed to respond the Lawyer notice (Ex.P.11), dated 16.02.2006 issued by the plaintiff, which leads to a presumption that the defendants have admitted the contents of the notice. The stamp papers for the sale deed (Ex.A.9) was purchased on different dates and in different names is sufficient to prove that it was not a genuine document. Furthermore, the trial Court had heavily rely upon the evidence of D.W.2 to uphold the genuineness of Ex.A.9, is ignorance about the details of the sale transaction admitted in the cross examination not been taken note by the trial Court. Had the trial Court properly appreciated the evidence of D.W.2, it ought not to have dismissed the suit.

11. The Learned Counsel appearing for the respondents submitted that the sale deed Ex.P.9, dated 07.12.2005, was challenged by the plaintiff/appellant in the year 2008, after receiving the full sale consideration. The sequence of events, from the documents exhibited would clearly establish that the plaintiff, after receiving part consideration, executed the sale agreement Ex.P.4 on 11.12.2002 to clear the mortgage debt with L.I.C and other debts owned to Prabavathy from the



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money advanced by the defendants. After issuance of notice Ex.B.1, dated

25.11.2005, the plaintiff came forward to execute the sale deed after receiving an additional consideration of Rs.40,000/- over and above the agreed sale consideration of Rs.66 lakhs. Accordingly, on payment of the entire sale consideration, the sale deed was executed by the plaintiff in favour of the defendants. With the false contention that there was earlier chit transaction and that money was due and payable to the 1st defendant. For the said purpose, the sale agreement Ex.A.4 was executed are all concocted averments which the plaintiff failed to substantiate in the manner known to law. The alleged usufructuary mortgage with Prabavathy is also an invented contention to abstract the possession. The very conduct of the plaintiff in challenging the sale deed after nearly three years, when the defendants want to take possession from the occupant of the premises would clearly show that the suit is an attempt to extract money by exerting pressure on the defendants. Ex.A.9 being a duly registered sale deed, the name of the purchasers of the stamp though not mentioned in the stamp paper, it does not mean that the document is invalid.

Point for consideration:-



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Whether the plaintiff had proved that no consideration passed for the sale of the suit property under document Ex.A.9?

12. Perusal of Ex.A.9 reveals that the property was sold to R.Kalavathi (1st respondent/1st defendant) by D.Anandhan (plaintiff/appellant). The document is engrossed in the stamp paper purchased by R.Kalavathi and there is a certificate to that effect by the Sub-Registrar which is found on the first page of the document. The sale consideration is mentioned as Rs.6,40,000/- and the receipt of the sale consideration is duly acknowledged in the document itself. Further, Ex.A.10 which is the certified copy of the cancellation of sale agreement dated 06.12.2005, shows that the plaintiff is the vendor and 2nd defendant is the purchaser. The vendor has agreed to cancel his earlier sale agreement dated 11.12.2002. In this deed, the plaintiff has acknowledged the return of the advance money to the 2nd defendant/Rajendiran. On the very next date after the cancellation of sale agreement, the plaintiff has executed the sale deed in favour of the 1st defendant, who is none other than the wife of the 2nd defendant. The sequence of events reflected in the registered documents namely, cancellation of sale agreement and the sale deed executed by the plaintiff on 06.12.2005 and 07.12.2005

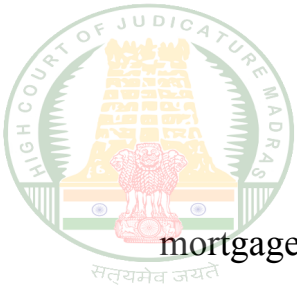


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respectively. The execution of two documents back to back would clearly show that it was a conscious sale on receipt of full sale consideration.

13. It is admitted by the plaintiff that, he owes money to the defendants. He also admits that he initially executed the sale agreement only as security and after entering into the sale agreement, he further borrowed money from the defendant to clear the debts of Prabavathy. His only defence is that the defendants failed to clear the entire debts. He owes to Prabavathy and there was still a lack of rupees due. Prabavathy, who was holding the property under the usufructuary mortgage is an undischarged mortgagor, enjoying the property.

14. In support of his claim, the plaintiff relies on Ex.A.5, an unregistered usufructuary mortgage deed. Ex.A.5 is a self-serving unregistered document without any corroboration. The said Prabavathy not examined. The alleged creation of usufructuary mortgage when the sale agreement in force creates more doubt about the genuineness. In any event, the plaintiff having admitted that the defendants paid Rs.3 lakhs to clear the usufructuary mortgage with Prabavathy and that money advanced by the defendants was used to clear the part of the



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mortgage loan with L.I.C, his plea that the sale deed not supported with consideration is baseless.

15. Under these circumstances, the trial Court, after due consideration of the evidence, had dismissed the suit as devoid of merits.

16. In view of this Court, in the absence of evidence to prove the contrary to the content of registered document, mere receipts issued by the local body will not confer any right to the appellant/the erstwhile owner. The valuation report marked as Ex.A.17 is relied by the appellant to show that the defendants had promised to pay an extra money over and above the sale consideration, based on the valuation certificate. However, this contention is shoutly denied by the defendants.

17. The plaintiff ought to have adduced evidence about the supplementary oral agreement between the parties. Having failed to adduce any such supplementary evidence, the plaintiff's claim cannot succeed.



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18. In light of the above discussion, the Appeal Suit stands dismissed.

There shall be no order as to costs.

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Index :Yes/no.

Speaking order/non speaking order

Neutral citation :Yes/no.

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To,

1.The II Additional District Judge, Puducherry.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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