

(2011) 08 MAD CK 0153

Madras High Court (Madurai Bench)

Case No: S.A. No. 957 of 1994

P. Raju

APPELLANT

Vs

Periaswamy

RESPONDENT

Date of Decision: Aug. 22, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Evidence Act, 1872 - Section 92

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: K. Govindarajan for Sarvabhauman Associates, for the Appellant; M.V. Venkataseshan, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Sundresh, J.

The unsuccessful Plaintiff is the Appellant. The Appellant filed a suit for declaration and permanent injunction in O.S.

No. 688 of 1980 on the file of the II Additional District Munsif, Trichy. The trial Court decreed the suit, which has been reversed by the lower

appellate Court. Formulating the following questions of law, the Appellant has preferred this Second Appeal:

(i) Whether the judgment of the lower appellate Court reversing the judgment of the trial Court without considering material issues including the validity of the sale deed dated 23.04.1980 on which reliance has been placed by the Respondent, is sustainable in law?

(ii) In the light of the findings rendered by the trial Court, whether the judgment of the trial Court which seeks to proceed to decide the case

ignoring the issue relating to the validity of the sale deed dated 23.04.1980, is sustainable in law?

2. Admittedly, the suit property originally belonged to one Appakkannu, who had 3 sons, namely Dayanaselvam, Manickam and Kutti, of which

one of the sons, namely Kutti died intestate. Pitchaikkannu is the son of Dayanaselvam and Baby Ammal is the wife of Pitchaikkannu. Manickam,

the other son of Appakkannu had two sons, by name Mani and Jayaraj. The suit property was mortgaged in favour of one Palaniammal, who in

turn made it over to her husband Mookan. Manickam and his two sons executed a sale deed dated 17.07.1975, for the entire property. Even

though the name of Baby Ammal has been shown in the sale deed, admittedly she has not signed any document. Thereafter, she executed an

agreement -Ex.A.2 in favour of the purchasers under Ex.A.1, namely Rajagopal Pillai and Baby Ammal. The Plaintiff purchased the suit property

from the said Rajagopal Pillai and Baby Ammal. It is the case of the Plaintiff that the mortgage has been redeemed by his vendors. Therefore,

seeking title based upon Exs.A.1 and A.2, Plaintiff has filed the suit.

3. The Defendant purchased the suit property, which is half share of the property originally belonged to Appakkannu from Baby Ammal, who had

executed a registered sale deed under Ex.B.1 dated 23.04.1980, for herself and on behalf of her minor children. Thereafter, under Ex.A.5 dated

21.05.1980, the sale deed executed in favour of the Defendant was cancelled. Since cancellation was unilateral, the Defendant contended that the

suit property only belonged to him.

4. The lower appellate Court was pleased to reverse the judgment and decree of the trial Court by holding that in as much as Ex.B.1 being the

registered document and the vendor of the Defendant Baby Ammal having signed the said document, the suit filed by the Plaintiff placing reliance

upon Ex.A.2 -unregistered agreement deed cannot be decreed.

5. Mr. K. Govindarajan, Learned Counsel for the Appellant submitted that the Plaintiff is in possession and enjoyment of the suit property. Merely

because there is a registered sale deed in favour of the Defendant, it does not mean that the title has been passed. Ex.A.2 was much earlier in time

and Baby Ammal herself has deposed that she did not know the contents of Ex.B.1. The mortgage amount has been discharged by the vendors of the Plaintiff. Therefore, the Learned Counsel submitted that Second Appeal will have to be allowed. The Learned Counsel relied on the judgment of the Hon"ble Apex Court in Kaliaperumal Vs. Rajagopal and Another, and contended that merely because there is registration of the deed, it does not amount to consideration having been passed and therefore, the judgment of the lower appellate Court will have to be reversed.

6. As rightly submitted by the Learned Counsel for the Respondent, Ex.B.1 is a registered sale deed executed by Baby Ammal. The said Baby Ammal has not taken steps to set aside Ex.B.1 by appropriate proceedings. u/s 92 of the Indian Evidence Act, a party to the registered document

cannot be allowed to depose against its contends. The evidence of Baby Ammal is also to the effect that she did not know the contents of Ex.B.1.

Being the Plaintiff, the Appellant has to show the title based upon which the suit has been filed. Admittedly, there is no other document except

Ex.A.2, which is a unregistered agreement. Placing reliance upon the said document, the suit for declaration cannot be filed. In so far as Ex.A.1 is concerned, it is a sale deed executed by Manickam and his two sons covering the entire property, of which half share belonged to Baby Ammal.

The lower appellate Court has rightly found that the said Baby Ammal was not a party to Ex.A.1 and therefore, the share of the property owned

by her did not pass on to the vendors of the Plaintiff. Merely because she executed an agreement, thereafter, neither the vendor of the Appellant

nor the Appellant has no title over the suit property. It is further seen Ex.A.5 is a cancellation deed executed by Baby Ammal, which is unilateral.

Admittedly, the Defendant was not a party to the said deed and by which an attempt has been made to acquire title to the suit property. Moreover,

Ex.B.1 has been attested by the father of vendor of the Defendant.

7. Insofar as the judgment relied on by the Appellant is concerned, the said judgment does not help the case in any way. It is no doubt true that a sale would not amount to transfer of title, when the recitals in the document clearly indicate so. There is no need to take Ex.A.1 as a conditional

sale. Moreover as rightly held by the Hon'ble Apex Court, even in a case if an amount is due after the title is passed and the sale is effected, the only way open to the seller is to recover the money in the manner known to law. In the present case on hand, admittedly, even the Plaintiff has not come to challenge the sale deed executed under Ex.B.1. Hence, for the reasons stated above, this Court does not find any question of law warranting interference by this Court u/s 100 of the Code of Civil Procedure.

8. Accordingly, the Second Appeal is dismissed. In the circumstances of the case, there is no order as to the costs.