

(1993) 09 SC CK 0125

Supreme Court of India

Case No: Civil Appeal No. 2343 Of 1988

Mari Chettiar

APPELLANT

Vs

S.P. Arumuga Naicker

RESPONDENT

Date of Decision: Sept. 22, 1993

Citation: (1995) 1 SCC 152 Supp

Hon'ble Judges: N. P. Singh, J; Kuldip Singh, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. NAICKER, respondent in appeal herein, instituted a suit for declaration and possession in respect of the property in dispute against Mari, the appellant-defendant, before us in this appeal. The suit was dismissed by the trial court. The lower appellate court upheld the Findings of the trial court and dismissed the appeal. The High court, however, in second appeal reversed the findings of the two courts below and decreed the suit.

2. The facts in a nutshell are that Mari agreed to purchase the property in dispute from Kandappa Gounder by way of the agreement dated 17/10/1966. According to Mari he fell short of money and as such approached Naicker and borrowed a sum of Rs. 4,000.00 from him and as a security for the loan he got the sale deed executed in favour of Naicker on 9/04/1967 in respect of the property in dispute. Thereafter, Naicker entered into an agreement dated 9/04/1967 with Mari to sell the same property to him. It is further not disputed that Mari got the property in dispute on lease from Naicker by way of a lease deed dated 12/04/1967. The three last mentioned documents were registered.

3. The case of the respondent-plaintiff was that the sale deed dated 9/04/1967 being registered was valid and genuine and as such he was entitled to have the declaration and possession of the suit property. On the other hand, the

appellant-defendant claimed that all the three transactions were sham, he had borrowed a sum of Rs. 4,000.00 from Naicker and the documents were entered only to secure the payment of the said loan. The trial court, on appreciation of evidence, came to the conclusion that the sale deed was a sham transaction and was only entered into to secure the loan. As mentioned above the lower appellate court upheld the findings of the trial court.

4. WE are of the view that the High court was not justified in reversing the findings of fact concurrently reached by the trial court and the lower appellate court. There was no question of law, whatsoever, before the High court in the second appeal. The High court went into the evidence, reappreciated the same and reversed the findings of the courts below. The High court exceeded the jurisdiction vested in it under Section 100 Civil Procedure Code. We, therefore, allow the appeal, set aside the judgment of the High court and restore that of the trial court and dismiss the suit of the respondent-plaintiff. While allowing the appeal we are of the view that in the facts and circumstances of this case, the interest of justice would be squarely met if the appellant is directed to pay a sum of Rs. 25,000.00 to the respondent by way of compensation. We order accordingly. The appellant shall pay the sum of Rs. 25,000.00 to the respondent within three months from today. Failing to pay the amount within the said period it shall earn interest at the rate of 15% per annum thereafter. The appeal is allowed and disposed of in the above terms. No costs.