

Rajeswari Vs. Selvaraj

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Court : Chennai

Decided On : Jul-25-2013

Judge : S.Palanivelu

Appellant : Rajeswari

Respondent : Selvaraj

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

25. 07.2013 CORAM THE HONOURABLE MR.JUSTICE S.PALANIVELU
S.A.No.895 of 2005 Rajeswari ... Plaintiff / Appellant vs. 1.Selvaraj (Died) 2The District Registrar, Mayiladuthurai, Nagapattinam Dt. ... 2nd Defendant / 2nd Respondent 3.Selvi 4.Devendran 5.Devi 6.Madhavi ... Defendants / Respondents
Second Appeal filed under Section 100 C.P.C. against the judgment and decree of Additional Sub Court, Mayiladuthurai dated 19.01.2005 made in AS No.150/2003 reversing the judgment and decree of District Munsif Court, Sirkali dated 22.08.2003 made in OS No.214/2000. For Appellant : Mr.S.Sounthar For Respondent : Mr.A.Muthukumar for R1 No appearance for R2

JUDGMENT

The plaintiff is the appellant. The plaintiff/1st respondent filed O.S.No.214 of 2000 on the file of the learned District Munsif, Sirkali for permanent injunction. The trial Court decreed the suit by judgment dated 22.08.2003. Challenging the same, the

1st defendant/appellant filed A.S.No.150 of 2003 before the learned Additional Subordinate Judge, Mayiladuthurai. The First Appellate Court allowed the appeal by setting aside the judgment and decree of the trial Court dated 22.08.2003. Challenging the same, the unsuccessful appellant has come forward with this second appeal. 2.The case of the appellant/plaintiff is as follows:- The plaintiff is the owner of the suit property. The plaintiff has purchased the suit property under a sale deed dated 24.01.1992. The plaintiff has been in possession of the suit property as absolute owner. The defendant is the brother of the plaintiffs husband. The plaintiff and her husband borrowed a sum of Rs.10,000/- from the defendant in March 1997. The defendant obtained signatures from the plaintiff and her husband in white blank papers and on blank papers affixed with revenue stamps assuring that he would keep the signed blank papers as security and would return same after discharging the debts. But the defendant presented a document styled as sale deed dated 20.01.98 alleged to have executed by the plaintiff and hence the plaintiff has filed this suit for permanent injunction.

3. In the written statement, the 1std defendant / 1st Respondent has pleaded as follows:- The suit is not sustainable in law, that the plaintiff has no title or right over the suit property, that the plaintiff had signed the sale deed dated 21.01.1998 in favour of the 1st defendant after receiving the entire sale consideration, that during registration of the said sale deed, this false suit has been filed to drag on the proceedings and hence the suit is liable to be dismissed.

4. In the written statement, the 2nd defendant / 2nd Respondent has pleaded as follows - The allegations made in the plaint are denied. This defendant is not connected with the dispute between the 1st defendant and the plaintiff, that this defendant is an unnecessary party to the suit and that this defendant had issued notice to the plaintiff in the regular course of his official function and discharged his duty, that this defendant could not decide the question of forgery in appeal under Section 73 of Indian Registration Act and that the suit is liable to be dismissed for mis-joinder of unnecessary party.

5. Based on the above pleadings, the trial Court framed relevant issues. During the trial of the case, plaintiff examined two witnesses, PW1 & PW2 and as many

as seven documents were exhibited as Exs.A.1 to A.7. On the side of the defendant, DWS1 to DW5 were examined and Ex.B1 was marked. Having considered the oral and documentary evidence adduced, the trial Court decreed the suit by judgment and decree dated 22.08.2003. Aggrieved by the same, the unsuccessful defendant has preferred an appeal in A.S.No.150 of 2003 on the file of the learned Additional Sub Court, Mayiladuthurai. 6.The First Appellate Court, on considering the materials on record, allowed the appeal setting aside the judgment and decree of the trial court in O.S.No.214/2000 dated 22.08.2003. Challenging the same, the plaintiff/ appellant has come forward with the present Second Appeal. 7.While admitting the Second Appeal, this Court has framed the following substantial questions of law:- 1.Whether the Civil Courts are not entitled to give a finding as to the genuineness of a signature found in a document after considering the depositions of attestors, scribe and other witnesses produced by a party relying on such document?. Whether seeking opinion from handwriting expert is compulsory or condition precedent for civil court to give a finding as to genuineness of a disputed signature ?. 2.When a signature in a document is disputed by executor of document, whether it is not the duty of person relying on a document to seek for opinion of handwriting expert in order to prove the genuineness of disputed signature and discharge the burden of proof on him ?.

8. The suit property was purchased by the plaintiff on 24.01.2002 and since then, the plaintiff has been in possession of the suit property as absolute owner. The 1st defendant is the brother of the plaintiffs husband. The plaintiff and her husband borrowed a sum of Rs.10,000/- from the defendant in March 1997. The 1st defendant obtained signatures from the plaintiff and her husband in white blank papers and on blank papers affixed with revenue stamps. The 1st defendant had assured that the signatures obtained in blank papers would be kept safe and were obtained only as security and he would return the signed blank papers as soon as the debt is discharged.

9. The 1st defendants contention goes to the effect that only to harass this defendant, the plaintiff has filed the suit and that after signing the sale deed, the plaintiff should not have come to the court.

10. In order to find out the scheme of Registration Act 1908 in the matter of registration of documents, procedures to be observed by the authorities are incorporated by (1) and (2) of Section 77 of the Registration Act. Section 71 contemplates that Sub Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2 and endorse the words registration refused on the document and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reason so recorded.

11. Section 75 empowers the registrar to hold an enquiry to find out whether the document was executed and that the said requirements have been complied with and shall then order the document to be registered. Section 76 empowers the registrar to refuse to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar or to direct the registration of a document under Section 72 or Section 75 shall make an order of refusal and record the reasons for such order in his Book No.2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded. No appeal lies from any order by a Registrar under this Section or Section 72.

12. Following is the extraction of Section 71 to 76 of The Registration Act, 1908 for better appreciation of the case and find out the powers of the Registrar of refusal to register.

71. Reasons for refusal to register to be recorded - (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2 and endorse the words registration refused on the document and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded. (2) No

registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Appeal to Register from orders of Sub-Registrar refusing registration on ground other than denial of execution (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub - Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order, and the Registrar may reverse or alter such order. (2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 5 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. Application to register where Sub-Registrar refuses to register on ground of denial of execution (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered. (2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under Section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. Procedure of Registrar on such application In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire - (a) whether the document has been executed; (b) whether the

requirements of the law for the tie being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. Order by Registrar to register and procedure thereon (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered. (2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60. (3) such registration shall take effect as if the document had been registered when it was first duly presented for registration. (4) The Registrar may, for the purpose of any enquiry under Section 74, summon and enforce the attendance of witnesses and compel them to give evidence as if he were a civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

76. Order of refusal by Registrar (1) Every Registrar refusing - (a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or (b) to direct the registration of a document under Section 72 or Section 75, shall make an order of refusal and record the reasons for such order in his Book No.2, and, on application, made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded. (2) No appeal lies from any order by a Registrar under this section or section 72.

13. The first defendant presented the sale deed before the Sub Registrar who sent a notice to the plaintiff as there was legal objection on the part of the plaintiff to abide by the direction contained in the notice issued by the Registrar. But, without moving before the Sub-Registrar, she immediately rushed to the court impleading the defendants for the purpose of getting permanent injunction against the first defendant who took steps for registration of the sale deed.

14. In this context, it is argued by Mr.A.Muthukumar, learned counsel appearing for the first defendant that since the suit is not expected to be filed by the aggrieved party, in violation of the above said principles of the Registration Act, the suit is not maintainable. The District Registrar is empowered under Sections 74 to 76 of the Act to determine whether the said document was executed and whether it satisfies the other requirements of law. If the registration was refused by the Sub-Registrar on the ground of denial of execution, the aggrieved party can invoke Section 73 of the Indian Registration Act.

15. The statutory duty cast upon the plaintiff to approach the Sub-Registrar's office and as per his orders, if there is violation of principles and if remedy is not available to her, she has to approach the higher authority, as prescribed in the Registration Act.

16. Mr.S.Sounthar, learned counsel appearing for the plaintiff would submit that whatever may be the contention as to maintainability of the suit, it should have been agitated before the trial court and taking plea of maintainability should not be before the High Court and the same is not sustainable.

17. The learned counsel for the defendants 3 to 6 would garner support from a decision of this Court reported in AIR 1978 MADRAS192[V.Bapu Kalingarayar v. Rajam and anr.]. wherein this Court has observed as follows - The point that the suit on the pronote was not maintainable could be raised first time in second appeal as a mere perusal of the promissory note and the plaint would show that the plaintiffs were not payees or endorsees, and it was only necessary for the defendant-appellant to bring this fact to the notice of the Court in connection with the legal submission that the suit by the plaintiffs who were not either the payees or endorsees of the promissory note was not maintainable.

18. Even though it is not pleaded in the written statement the application as to maintainability is a pure question of law which does not require any evidence that shall be agitated before this court even in the second appeal. The opinion recorded by a Division Bench of this court reported in 2003 (1) L.W. 386 [Sri Arthanareeswarar of Tiruchengode by its present Executive Officer Sri Sabapathy v. T.M.Muthuswamy Padayachi, etc. & others]. as to the above preposition is as

follows - The Supreme Court, in State of Rajasthan vs. Rao Raja Kalyan Singh (AIR 1971 SC2018 has held that the plea of maintainability of a suit is essentially a legal plea. If the suit, on the face of it, is not maintainable, the fact that no specific plea was taken or no precise issues were framed is of little consequence. Therefore, it is open to the parties to raise the plea of maintainability of the suit as a legal plea without there being a specific plea in the written statement or the issues.

19. In view of the legal preposition laid down by this court, it is clarified that when the objection as to maintainability is a pure question of law which could be agitated even in the Second Appeal. The trial court has taken much efforts in examining the witnesses, in other words, as to whether the sale deed and signatures are genuine. The plaintiff should have applied before the same Judge before putting her contentions. She has to prove before the trial court whether her signatures have been forged. The provisions of the Act, specifically on the categorical, empowers the authorities prescribed in the Act, to do certain obligations statutorily. In this stage, as per the provision of legal provision, this court has no jurisdiction to entertain the suit to find out whether deciding the signatures found in the disputed documents are genuine or not.

20. In view of the observations recorded as above, this court is of the firm opinion that the suit is premature and not maintainable. The Civil Court should not usurp the powers of authorities of the Registration Act before the statutory obligations were complied as contained in Section 71 to 77 of the Act. The observations and findings rendered by the First Appellate Court need not be disturbed. The judgment and decree of the First Appellate Court deserves to be confirmed and they are accordingly confirmed. The substantial questions of law are answered as above.

21. In fine, the Second Appeal is dismissed. No costs. Consequently, CMP No.1091 of 2008 is allowed. The second defendant is directed to observe the procedures contained in Section 73 & 74 of the Registration Act. The parties are at liberty to put forth their respective contentions before the Registrar subject to the mandates contained in the relevant provisions. The second defendant shall

dispose of the suit within a period of three months (3) from the date of receipt of case records from this Court. 25.07.2013 Internet : Yes Index : Yes rgr Note : Issue order copy by 13.12.2013 To 1. The Additional Sub Judge, Mayiladuthurai 2.The District Munsif, Sirkali S.PALANIVELU, J.

rgr S.A.No.895 of 2005 25.07.2013

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