Prince vs S.Logendran

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SooperKanoon Citation : sooperkanoon.com/1291856

Court : Kerala

Decided On : Feb-23-2024

Judge : Honourable Mrs. Justice C.S. Sudha

Appeal No. : RFA/185/2004

Appellant : Prince

Respondent : S.Logendran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE C.S. SUDHA FRIDAY, THE 23RD DAY OF FEBRUARY 2024 / 4TH PHALGUNA, 1945 RFA NO. 185 OF 2004 AGAINST THE JUDGMENT AND DECREE DATED 26.3.2003 IN OS 123/2001 ON THE FILE OF SUB COURT COURT,KATTAPPANA APPELLANTS/PLAINTIFFS: 1 PRINCE, S/O.JOSEPH, VEEHOOR HOUSE, ANAVILASAM KARA, ANAVILASAM VILLAGE. 2 FELIX MANNEL JOSE, S/O. JOSEPH VEEHOOR HOUSE, ANAVILASAM KARA, ANAVILASAM VILLAGE 3 HILARI JOSE SEBASTIAN, S/O. JOSEPH VEEHOOR HOUSE,ANAVILASAM KARA, ANAVILASAM VILLAGE 4 JOSE F.THOMAS, S/O.JOSEPH VEEHOOR HOUSE, ANAVILASAM KARA, ANAVILASAM VILLAGE BY ADV

SRI.G.S.REGHUNATH RESPONDENTS/DEFENDANTS:

1 S.LOGENDRAN S/O.P.SIKKAYA GOWDER, 22-C, KRISHNAPURAM STREET, CUMBUM. 2 L.YOGANATH, S/O. S.LOGENDRAN, 22-C KRISHNAPURAM STREET, CUMBUM. 3 K.S.GOPAL SO. K.SANNASI GOWDER 22-C KRISHNAPURAM STREET, CUMBUM. 4 S.SEKHAR, S/O. T.S.K.SREENIVASAKAR NO.136, ODAKKARA STREET, CUMBUM, UTHAMAPALAYAM TALUK 5 S.THANKARAJ *[DIED] S/O. N.SANTHANAPILLA, NO.8,KILAITHAIPILLA-STREET, CUMBUM, UTHAMAPALAYAM TALUK. *ADDL.6 T.KRISHNAVENI , AGED 66 YEARS, W/O.LATE THANGARAJ, RESIDING AT 5/21 KILAI THANGI PILLAI STREET, CUMBUM, THENI DISTRICT, TAMILNADU -625516. *(THE LEGAL REPRESENTATIVE OF DECEASED 5TH RESPONDENT IS IMPLEADED AS ADDITIONAL RESPONDENT NO.6 IN I.A.NO.1/2023 VIDE ORDER DATED 30/01/2024) BY ADVS.A.K.PREETHA SRI.P.ANIYAN SRI.M.R.RAJESH SMT.RAGAM.K.P. SMT.REEJA HARI SMT.REENA.C.STEPHENSON SRI.VAKKOM N.VIJAYAN SMT.VINITHA PRASANNAN

THIS REGULAR FIRST APPEAL HAVING COME UP FOR FINAL HEARING ON 16.2.2024, THE COURT ON 23.02.2024 DELIVERED THE FOLLOWING:

C.S.SUDHA, J.

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Dated this the 23rd day of February, 2024

JUDGMENT

This appeal has been filed by the plaintiffs against the judgment

and decree dated 26/03/2003 in O.S.No.123/2001 on the file of the Subordinate Judge's Court, Kattappana. The respondents herein are the defendants in the suit. The parties and the documents will be referred to as described in the suit.

2. The suit was one for cancellation of Exts.A1 to A3 agreements

executed by the plaintiffs in favour of defendants 1 to 3. According to the plaintiffs, who are siblings, the agreements were executed on 23/08/1999 when an amount of 2,30,000/- was borrowed from the first defendant. The documents though styled as 'agreements for sale' were meant to be only as a security for the money transaction between the parties. It was agreed that when the amount was repaid with interest, the first defendant would execute and register three release deeds in favour of the plaintiffs. While so in June 2000, the first plaintiff was informed by the first defendant that the money he had lend to the former had been taken from defendants 4 and 5 and that the money is being demanded back and therefore wanted the plaintiffs to return

the amount immediately. The first plaintiff was not in possession of necessary funds to repay the debt. Hence he informed the first defendant that he was prepared to pay the money to defendants 4 and 5 and also to execute necessary documents in their favour. Accordingly, on 18/06/2000 defendants 1 and 2 executed Ext.A4 agreement in favour of the fourth defendant whereby they agreed to relinquish all their rights under Exts.A1 to A3 in favour of defendants 4 and 5. The third defendant was not in station and hence he is not a signatory to Ext.A4 agreement. In the light of Ext.A4 dated

the plaintiffs would execute agreements for sale of the plaint schedule properties in favour of defendants 4 and 5 and that defendants 1 to 3 would execute release deeds relinquishing their rights under Exts.A1 to A3.

release deeds. The plaintiffs thus executed three registered agreements, that is Exts.B1 to B3, agreeing to sell the schedule property to the fourth defendant and the B schedule to the fifth defendant. However, defendants 1 to 3 never turned up to execute the release deeds. Though the first plaintiff contacted the first defendant and demanded execution of the release deeds, he never acceded to the request made. The liability of the plaintiffs towards defendants 1 to 3 have been completely discharged. Defendants 1 to 3 have no rights left under Exts.A1 to A3 and so the plaintiffs are entitled to get the said agreements cancelled. Hence the suit praying for a decree for cancellation of Exts.A1 to A3 executed by the plaintiffs in favour of defendants 1 to 3.

3. Defendants 1 to 3 filed a joint written statement denying the

allegation of the plaintiff that Exts.A1 to A3 had been executed as security when money was borrowed from the defendants. Exts.A1 to A3 are not agreements executed as security for the money transaction, on the other hand they are documents executed by the plaintiffs agreeing to sell the plaint schedule properties to the defendants for valuable consideration stated therein. Advance sale consideration as stated in the agreements had also been paid to the plaintiffs. Defendants 4 and 5 are money lenders. There were disputes relating to money borrowed by the first defendant from them. Defendants 4 and 5 refused to acknowledge certain payments made by the first defendant and they demanded huge amounts from the first defendant, which he refused to give. On 18/06/2000 at about 09:30 p.m., defendants 4 and 5 trespassed into the house of the first defendant and forcibly took away valuables and documents including Exts.A1 to A3. Ext.A4 document relied on by the plaintiffs alleging it to have been executed by the first defendant in favour of defendants 4 and 5 is a forged document. The first defendant had

never signed in the said document. The first defendant had lodged a complaint against the criminal trespass and acts of dacoity committed by defendants 4 and 5 before the police and a criminal case is pending before the Judicial First Class Magistrate Court, Udampalaya. With the documents taken away from the house of the first defendant, defendants 4 and 5 approached the plaintiffs. As the cardamom price had shot up, the plaintiffs were trying to find ways and means to somehow avoid execution of Exts.A1 to A3 agreement for sale of the plaint schedule property in favour of defendants 1 to 3. It is at that time defendants 4 and 5 intervened and offered to handover Exts.A1 to A3 and also execute release deeds if the plaintiffs returned the advance money received from defendants 1 to 3 to defendants 4 and 5. Accordingly, the money received on the basis of Exts.A1 to A3 by the plaintiffs from defendants 1 to 3 were returned to defendants 4 and 5 and fresh agreements were entered into between them. Defendants 1 to 3 are not parties in the transaction between the plaintiffs and defendants 4 and 5. It is actually defendants 4 and 5 who had instituted the suit in the name of the plaintiffs. The agreements alleged to have been executed by the plaintiffs in favour of defendants 4 and 5 were never intended to be acted upon. The same were executed only to defeat the claims of defendants 1 to 3. The plaintiffs are not entitled to demand any release deeds from defendants 1 to 3. They are bound to perform their part of the agreement as agreed to in Exts.A1 to A3. On 31/12/2000, the date fixed for execution of the sale deed, the defendants caused to issue a registered notice to the plaintiff requesting execution of sale deed in their favour. All the plaintiffs refused to accept the registered notice sent to them. The plaintiffs are bound by the stipulations contained in Exts.A1 to A3 and therefore they are not entitled to the reliefs prayed for.

4. Defendants 4 and 5 filed separate written statements admitting the plaint claim. According to them, pursuant to an understanding reached on schedule properties in favour of defendants 4 and 5. Defendants 1 to 3 for reasons best known to them, failed to turn up to execute deeds releasing their

rights under Exts.A1 to A3. The entire liability of the plaintiffs to defendants 1 to 3 have been taken over by defendants 4 and 5 and the plaintiffs were discharged of the liability to defendants 1 to 3. The attempt of the first defendant is to extract more money from the plaintiffs and the defendants and hence the reason why they are refusing to execute the release deeds as promised by them. Almost six months after the execution of Ext.A4 agreement by defendants 1 to 3 in favour of defendants 4 and 5, on

that the document had been executed under duress. Investigation by the police revealed that there was no bona fides or truth in the complaint and that the complaint was only an attempt to extract more money from defendants 4 and 5. Defendants 4 and 5 have no objection in decreeing the suit.

5. On completion of pleadings, the parties went to trial. PW1 was examined and Exts.A1 to A4 were marked on the side of the plaintiffs. DW1 to DW3 were examined and Exts.B1 to B12(a) were marked on the side of the defendants. The trial court on an appreciation of the oral and documentary evidence and after

hearing both sides, by the impugned

judgment dismissed the suit. Aggrieved, the plaintiffs have come up in

appeal.

6. The only point that arises for consideration in this appeal is whether there is any infirmity in the findings of the trial court calling for an interference by this Court.

7. Heard the plaintiffs/appellants and the fourth and the additional sixth respondents.

8. It was submitted by the learned counsel for the

plaintiffs/appellants, which submissions are endorsed by the respondents also that the trial court had grossly erred in dismissing the suit after having found Exts.A1 to A3 to be documents executed as security for the money transaction between plaintiffs and defendants 1 to 3. The reasons given for declining to rely on Ext.A4 document executed by defendants 1 and 2 in favour of defendants 4 and 5 are erroneous. It was also pointed out that Exts.A1 to A3 are of the year 1999, that is, 23/08/1999. Till date, defendants 1 to 3 have not moved for specific performance which also would probabilise

the case of the plaintiffs. Hence the impugned judgment needs to be interfered with, goes the argument.

9. Service is complete on defendants 1 to 3/respondents 1 to 3. But none has appeared on their behalf.

10. Though defendants 1 to 3 refute the case of the plaintiffs that

Exts.A1 to A3 had been executed only as a security when money was borrowed by the latter, the evidence on record shows otherwise. The first defendant when examined as DW1, denied the allegation of the plaintiffs that Exts.A1 to A3 had been executed as security for the money transaction between the parties. However, he admitted that when the money was lent to the plaintiffs he had obtained four promissory notes, a blank cheque and an agreement on the understanding that those would be returned to the plaintiffs

when the sale deed for the plaint schedule properties is executed. This according to the trial court is not an ordinary-normal conduct of a person who proposes to purchase land after paying advance money. The conduct of defendants 1 to 3 indicated that Exts.A1 to A3 had been executed as security for the money transaction between the parties. DW1 was also not able to give any plausible explanation for the reason as to why the additional documents referred to by him were taken from the plaintiffs if Exts.A1 to A3 were actually agreements for sale. Therefore, the trial court was right in holding that Exts.A1 to A3 were intended only as security for the money borrowed by the plaintiffs from defendants 1 to 3.

11. Further, the case of the plaintiffs that defendants 4 and 5 had

taken over the liability owed by plaintiffs to defendants 1 to 3 has been admitted in the written statement. The pleadings contained in paragraph 4 of the written statement of defendants 1 to 3 regarding this reads - .... Since the cardamom price had shooted up, the plaintiffs were thinking of avoiding the contract someway or other. Defendants 4 and 5 offered to hand over the original agreements and also release deeds, if the plaintiffs return the advance received from defendants 1 to 3 to defendants 4 and 5. Accordingly the money received on the basis of agreements were returned to

defendants 4 and 5 and fresh agreements were entered into. .... It is true that the plaintiffs did not take steps to call for the original of Ext.A4. But it is not disputed that the said document had been seized by the police in a criminal case involving the parties in this case. Even in the absence of Ext.A4, in the light of the aforesaid admission made by defendants 1 to 3 in the written statement, the plaintiffs' case appears more probable.

12. The defendants have offered an explanation for the plaintiffs to

be in possession of Exts.A1 to A3. According to them, defendants 4 and 5 had criminally trespassed into their house and stolen valuables and documents including Exts.A1 to A3, against which a criminal case is pending. Ext.B12 dated 08/11/2002 is a copy of the judgment dismissing the complaint given by defendants 1 to 3 under Section 203 Cr.P.C. alleging commission of offences punishable under Sections 342, 323, 451, 452, 386, 365, Part II of 506, 395 read with Section 120-B IPC. Though defendants 1 to 3 claimed before the trial court that appeal was pending against Ext.B12, no evidence whatsoever had been let in to substantiate the same. Therefore, the plaintiffs' possession of Exts.A1 to A3 ; the admissions by defendants 1 to 3 in their written statement coupled with the fact that till date, no steps have been initiated by defendants 1 to 3 to get the sale of the plaint schedule property in their favour all the more probabilises the case of the plaintiffs.

13. The period referred to in Exts.A1 to A3 within which period the

plaintiffs were supposed to execute sale deed in favour of the plaint schedule property and the time limit to file suit in the event of the plaintiffs committing default or breach of the terms of the agreement, has long expired. Therefore in effect, Exts.A1 to A3 styled as 'agreements for sale' of the plaint schedule properties by plaintiffs to defendants 1 to 3 have no legal effect. However, the learned counsel for the plaintiffs submitted that Exts.A1 to A3 are registered documents and hence it would be creating a cloud on the plaintiffs' title and possession of the properties and so it is necessary to get the documents cancelled. Agreements of sale do not create any title over the property. But since Exts.A1 to A3 are registered documents, they may have ramifications in so far as the right of the plaintiffs in the property is concerned. In the light of the pleadings and evidence on record, I find that the plaintiffs are entitled to the reliefs prayed for. Hence the findings of the trial court needs to be interfered with and hence I do so.

In the result, the appeal is allowed. The impugned judgment and decree are set aside and Exts.A1 to A3 agreements shall stand cancelled. Interlocutory applications, if any pending, shall stand closed. Sd/- C.S.SUDHA JUDGE ami/