

Ulaganathan. Vs. Kannaiyan

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Court : Chennai

Decided On : Jun-08-2012

Judge : T.Raja, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Section 100(5), 9; Indian Registration Act - Section 72, 76, 77; [Constitution of India](#) - Articles 226

Appeal No. : Second Appeal No.241 of 2007

Appellant : Ulaganathan

Respondent : Kannaiyan

Advocate for Def. : Mr.S.Sounthar, Adv.

Advocate for Pet/Ap. : Mr.A.Muthukumar, Adv.

Judgement :

Second Appeal filed under Section 100 CPC. as against the judgment and decree, dated 24.02.2006, passed by the Additional Subordinate Court, Mayiladuthurai, in A.S.No.100 of 2005, reversing the judgment and decree, dated 20.12.2004, passed in O.S.No.32 of 2001, by the Additional District Munsif, Mayiladuthurai.

JUDGMENT

1. The present second appeal has been filed by the plaintiffs as against the judgment and decree passed by the Additional Subordinate Judge, Mayiladuthurai, in A.S.No.100 of 2005, dated 24.02.2006, reversing the judgment and decree passed by the Additional District Munsif, Mayiladuthura, in O.S.No.32 of 2001, dated 20.12.2004.

2. Brief facts leading to the filing of the second appeal are given as under:-

The suit property was originally belonged to the deceased-first plaintiff. After the death of the first plaintiff, the plaintiffs 2 and 3/appellants herein are in possession and enjoyment of the suit property. Since both the plaintiffs and the defendant are having adjacent lands, it was stated in the plaint, that the defendant wanted the plaintiffs to sell his property to him. But, the plaintiffs were not willing for the said proposal. However, when the plaintiffs refused to sell their property, the defendant, created a forged sale deed, dated 19.02.1989, to the effect that it was signed by the plaintiffs, and for which, a sum of Rs.6,000/- was received by the plaintiffs and thereafter, the defendant wrongly presented the document for registration before the Sub Registrar, Kuttalam, on 12.06.1989. The Sub-Registrar, Kuttalam, in turn, refused to register the sale deed, dated 19.02.1989. As against the same, when an appeal was preferred before the District Registrar, Mayiladuthurai, in A.P.No.1/89, the said District Registrar, after conducting an enquiry, passed an order, dated 29.02.2000, directing the Sub-Registrar, Kuttalam, to register the sale deed, dated 19.02.1989. In pursuant to the same, the Sub-Registrar, Kuttalam, was taking steps to register the same. Therefore, it was stated in the plaint that the District Registrar is not having competency to decide about the title of the plaintiffs or about the validity of the documents and hence, the order passed by the District Registrar is not valid in law. Therefore, challenging the same, a suit has been filed by the plaintiffs in O.S.No.32 of 2001 seeking to pass a decree declaring that the sale deed, dated 19.02.1989, alleged to have been executed by the plaintiffs in favour of the defendant, is a forged document, with a consequential direction not to cause interference with the plaintiffs' peaceful possession and enjoyment of the suit property.

3. Opposing the said prayer, the defendant has filed a detailed written statement, stating that the plaintiffs have purposely suppressed the facts with a view to defeat the rights of the defendant, inasmuch as when the first plaintiff had received a sum of Rs.6,000/- as a sale consideration on 19.02.1989, for selling the suit property, admittedly, executed the sale deed in favour of the defendant. The said document has been duly attested by witnesses of the native village. As the plaintiffs refused to come forward to execute the sale deed with a view to extract more money, the defendant presented the sale deed for compulsory registration before the Sub-Registrar, Kuttalam and in turn, the Sub-Registrar referred the matter before the District Registrar. Thereafter, the District Registrar, Mayiladuthurai, by holding a proper enquiry, passed the proceedings in appeal No.1/89 and pronounced a judgment on 29.12.2000, by holding that the sale deed, dated 19.02.1989, has to be registered and the alleged forgery of vendors signature stands not proved. Therefore, it was stated in the written statement that, even without challenging the order passed by the District Registrar, the present suit filed by the plaintiffs is not valid in law. Further, it was stated that if really the plaintiffs have got any grievance, they ought to have preferred a revision before the High Court only and not by filing the suit before the Civil Court.

4. Under these circumstance, the learned trial Court framed the following issues;-

"i. Whether the plaintiff is entitled for the relief of declaration and consequential permanent injunction as sought for?

ii. To what relief is the plaintiff entitled to?

iii. Whether the suit is barred by law?"

On the side of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A1 to A24 were marked, and on the side of the defendant, D.Ws.1 to 3 were examined and Exs.B1 to B10 were marked. On perusing the above documents and examination of witnesses, the trial Court has decreed the suit in favour of the plaintiffs. Aggrieved by the same, the defendant filed an appeal before the learned first appellate Court. The learned first appellate Court, after perusing the documents --- Ex.B3-house tax receipt, Exs.B4 to B7-voters list for the years 1970, 1975, 1980 and 1983 ---

has reversed the judgment and decree passed by the learned trial Court, by holding that name of the first plaintiff is Rengaiyan and not Rengasamy. As against the order passed by the learned first appellate Court, the present second appeal has been filed by the plaintiffs/appellants herein.

5. This Court, at the time of entertaining the second appeal, framed the following substantial questions of law;-

i. When the D.W.3, the attestor of Ex.B1 has categorically stated in his evidence that he had neither seen the execution of Ex.B1 by the deceased first plaintiff nor passing of sale consideration, whether the learned Subordinate Judge erred in law in holding that the deceased first plaintiff had executed the sale deed, Ex.B1?

ii. Whether the lower appellate Court erred in law in holding that the plaintiffs are not entitled to the relief of injunction though the defendant has not disputed the plaintiffs' possession?

iii. Whether the lower appellate Court erred in law in dismissing the suit when the authorities have not considered the case of the plaintiffs in proper perspective?

6. In view of the above mentioned substantial questions of law framed by this Court, learned counsel appearing for the appellant requested this Court to frame one more substantial question of law on the question of jurisdiction of the Civil Court to entertain the suit, to which learned counsel for the respondent also has no objection for framing one more substantial question of law. Therefore, in view of Section 100(5) of CPC, which says that the appeal shall be heard on the question so formulated and the respondent shall, at the hearing of appeal, be allowed to argue that the case does not involve such question, this Court, by framing one another substantial question of law, viz., whether the suit is barred by Section 9 of CPC, in view of Section 77 of the Registration Act, which explicitly bars any civil suit, seeking for declaration and consequential injunction, allowed both counsel to argue the matter extensively.

7. Learned counsel appearing for the appellants submitted that the findings given by the District Registrar, Mayiladuthurai, in his order, dated 29.12.2000, cannot

form res judicata, nor considered as a bar for the plaintiffs to file a suit for declaration of sale deed, dated 19.02.1989, alleged to have been executed by the plaintiffs in favour of the defendant, as a forged document, for the reason that a special statutory remedy cannot ordinarily exclude, by implication, the general right of suit under Section 9, C.P.C., nor are there in part 12 of the Indian Registration Act clear and unmistakable indications of such exclusion of the Civil Court's jurisdiction by necessary and inevitable implication; and the language of Section 77 is optional, but not obligatory, and this aspect has not been properly considered by the first appellate Court.

8. In support of his submission, he has also relied upon a judgment of this Court in V.K.Thanikachalam v. Parameswari Ammal (1997 (II) CTC 746), wherein it has been held that a special statutory remedy cannot ordinarily exclude, by implication, the general right of suit under Section 9 of C.P.C., therefore, according to him, the suit filed by the plaintiffs is legally well maintainable, however, ignoring this legal aspect, the learned first appellate Court has committed error, hence, the same is liable to be set aside.

9. Learned counsel appearing for the respondent submitted that under the provision of Registration Act, a party in whose favour a sale deed is executed by a vendor after receiving the sale consideration in the presence of sufficient attesting witnesses and, on subsequent refusal by the vendor to come forward to execute the sale deed, the Registrars, in their wisdom, has thought fit to give a remedy to such person for compulsory registration before the District Registrar, under Sections 72 or 76 of the Registration Act. Even if the Registrar refuses to order the document to be registered under Section 72 or Section 76, Section 77 of the Indian Registration Act gives further remedy to institute a civil suit before the Civil Courts within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree. Once the Civil Court on instituting a civil suit, finds the order of refusal by the Registrar is unsustainable, on proper enquiry, the Civil Court can pass a decree for compulsory registration and thereafter, there is no further provision contemplating in the Indian Registration Act in favour of a

person against whom an order of compulsory registration was passed by the District Registrar to file a suit like one contemplated under Section 77 of the Registration Act. Therefore, he contended that, apart from Section 77 of the Registration Act, as there is no provision, the plaintiffs should have resorted to extraordinary remedy provided under Article 226 of the [Constitution of India](#) in challenging the order passed by the District Registrar for compulsorily registering the sale deed. Since in the present case, the plaintiffs failed to challenge the order passed by the District Registrar directing for compulsory registration, there is no remedy available to the plaintiffs to file a suit, therefore, he argued that the impugned judgment is well merited in holding that the suit is impliedly barred by Section 9 of CPC.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. Admittedly, the suit property was originally belonged to the deceased-first plaintiff. After his demise, the plaintiffs 2 and 3/appellants herein, who are the heirs of the first plaintiff, are in possession and enjoyment of the suit property. Towards sale consideration, the first plaintiff had received a sum of Rs.6,000/- in the presence of the attesting witnesses. However, when the plaintiffs refused to come forward for registration, the defendant presented the sale deed for compulsory registration before the Sub-Registrar, Kuttalam. But, the Sub-Registrar referred the matter before the District Registrar. Thereafter, when an appeal was preferred in Appeal No.1/89, before the District Registrar, the District Registrar also by conducting an enquiry, passed an order, dated 29.02.2000, directing the Sub-Registrar, Kuttalam, to register the sale deed. Subsequently, the Sub-Registrar also registered the same. Thereafter, the plaintiffs, who suffered an order of compulsory registration, filed a suit with a prayer as mentioned above, however, the order passed by the District Registrar became final as the same was not challenged.

12. In this context, it is useful to refer a judgment of this Court in V.K.Thanikachalam's case (cited supra), wherein this Court on considering the same issue, has held that the findings rendered by the registering authorities

cannot form *res judicata*, which means that the plaintiffs can file a suit for declaration that the sale deed, dated 19.02.1989 executed in favour of the defendant, is a forged one. Secondly, the same judgment also goes to show that the Registration Act is designed to settle questions of genuineness of deeds and eliminate such disputes regarding title as are traceable to the execution of documents, by providing a special and speedy remedy. Therefore, it is only a facility. If he seeks only one remedy for compulsory registration, he can file a statutory suit under Section 77 of the Indian Registration Act. Equally, the vendee is also entitled to bring a suit for specific performance of that agreement implied in the contract of sale. Therefore, it is not necessary that the vendee, who is aggrieved by the refusal from the vendor, to come forward for registration of sale deed, but can also approach the Civil Court for filing a statutory suit under Section 77 of the Indian Registration Act and that apart, he has also got general right of filing a suit under Section 9 CPC, since a special statutory remedy cannot ordinarily exclude, by implication, the general right of suit under Section 9 CPC. Therefore, as argued by the learned counsel for the appellants, this Court holds that the Civil Court's jurisdiction for filing the present suit is not excluded by implication. Hence, the findings rendered by the learned first appellate Court holding that the plaintiffs cannot maintain a suit is liable to be set aside. Accordingly, the same is set aside. However, the other conclusions reached by the learned first appellate Court are to be upheld, for the reason that admittedly, the plaintiffs agreed to sell the suit property in favour of the defendant and for which, a sum of Rs.6,000/- was received towards sale consideration. This was also seen by DW1, who deposed in the witness box that, in his presence, an agreement was entered and as per the agreement, both parties agreed to execute the sale deed within three months from the date of the sale agreement. But, unfortunately, the plaintiffs refuted his signature in the sale deed, by stating that his name is Rengasamy and not Rengaiyan, and further it was contended that he has not executed any sale deed, since the value of the property was more than the amount mentioned in the document. As a result of the refusal by the plaintiffs, the defendant presented the document before the Sub-Registrar, who, in turn, referred the matter before the District Registrar, and thereafter, the District Registrar, on proper enquiry, directed the Sub-Registrar to register the document and the said

document became final. Till date, that order has not been challenged by the plaintiffs. Whiles, keeping quiet for almost one year, without even questioning the correctness of the order passed by the District Registrar, the plaintiffs filed the present suit for declaration. Though the learned trial Court decreed the suit disbelieving the case of the defendant on the ground that the first plaintiff's name is only Rengasamy and not Rengaiyan, as alleged by the defendant, the learned first appellate Court has rightly set aside the conclusions reached by the trial Court on the basis of Ex.B3-house tax receipt, Exs.B4 to B7-voters list for the years 1970, 1975, 1980 and 1983, since all of them show the name of the first plaintiff as Rengaiyan and not Rengasamy. Further, considering the evidence of the scribe P.Mathi son of Pitchaimuth, who deposed that the plaintiff is called as Rengaiyan and not Rengasamy and also noting the evidence of DW2-Ulaganathan, who admitted the signature of the plaintiff as Rengaiyan before the trial Court and again further relying upon the evidence of plaintiff's son, who also admitted that his father is also known as Rengaiyan @ Rengasamy, ultimately concluded that the first plaintiff has signed the sale agreement in favour of the defendant as Rengaiyan, and on that basis, learned first appellate Court further held that the plaintiffs are not entitled to any declaration that the sale deed, dated 19.02.1989, executed in favour of the defendant is a forged document. Therefore, as held by the first appellate Court, when all these documents show that the name of the first plaintiff's as Rengaiyan and not Rengasamy, this Court fails to understand any good reason in the judgment of the trial Court. For these reasons, this Court does not wish to interfere with such findings of fact reached by the learned first appellate Court.

13. Accordingly, this Court, by setting aside one portion of the findings given by the learned first appellate Court that the Civil Court has no jurisdiction to try the suit, upholds the rest of the findings reached by the learned first appellate Court. Accordingly, the substantial questions of law are answered. In result, the second appeal is partly allowed. No Costs. Consequently, M.P.No.1 of 2007 is closed.

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