

Arumugha Chettiar

Vs

Rahmanbee and others

Civil Appeal No. 1948 of 1980

(J. S. Verma, K. Jayachandra Reddy JJ)

07.01.1992

JUDGMENT :-

1. This appeal is by the plaintiff whose suit was decreed by the Trial Court but on an appeal by the defendant was dismissed by the First Appellate Court and the second appeal has failed.
2. The plaintiff claiming to be the purchaser of 2/3rd share in the suit property by sale-deed Exhibit A-I dated 14-6-1962 brought the suit for partition and separate possession of his 2/3rd share. The suit property originally belonged jointly to Palani Chettiar and his uncles Murugess Chettiar and Govindasami Chettiar, each having 1/3rd share. By an unregistered agreement dated 17-5-1959, Exhibit B-3, Murugesha Chettiar and Govindasami Chettiar agreed to convey the property to the defendant within the stipulated period of one year and a sum of Rs. 1,000/- was paid by way of advance. Subsequently, a registered sale-deed, Exhibit B-I was executed by Palani Chettiar on 6-6-1959 for a sum of Rs. 4,500.- in favour of the defendant who was also put in possession of the entire property. It may be mentioned that the suit properties were earlier mortgaged by the joint owners and that mortgage was redeemed out of a part of the sale consideration so received. There were some other dues also against the suit properties which were discharged out of the sale consideration. All the dues are mentioned in the sale-deed. It is obvious that the benefit of the entire sale transaction evidenced by the sale-deed, Exhibit B-1 and the sale consideration of Rs. 4,500/- received thereunder, was taken not only by Palani Chettiar, but also his uncles Murugesha Chettiar and Govindasami Chettiar, the alleged vendors of the plaintiff. The plaintiff claims that thereafter by a sale-deed, Exhibit A-1 dated 14-6-1962 Mirages Chettiar and Govindasami Chettiar sold their 2/3rd share of the said property to him. Notwithstanding the execution of the sale deed on which the plaintiff relied on 14-6-1962 and the fact that the defendant was in possession of the suit properties under the sale-deed Exhibit B-i dated 6-6-59 executed by Palani Chettiar, the plaintiff waited till 1971 to file the suit.
3. The Trial Court accepted the plaintiff's claim and passed a decree in his favour but directed that the plaintiff should contribute his vendor's share of the liability to free the suit properties from the encumbrances on the date of sale by Palani Chettiar to the defendant. The First Appellate Court, however, reversed that decree. It held that in the facts and circumstances of the case the sale-deed Exhibit A-1 under which the plaintiff claims is purely sham and nominal and not supported by consideration and does not convey any title to the plaintiff. It was, therefore, held by the First Appellate Court that the plaintiff could not make out a preferential claim in the said property against the defendant who was in possession thereof ever since execution of the sale-deed in his favour by Palani Chettiar on 6-6-1959. The High Court has dismissed the second appeal.
4. In our opinion the view taken by the First Appellate Court for non suing the plaintiff cannot be

faulted. The facts and circumstances which are either admitted or beyond controversy at this stage fully support that conclusion. On that conclusion alone the plaintiff's suit had to fail. Accordingly, there is no error committed by the High Court in not interfering with the decision of the First Appellate Court in second appeal.

5. Accordingly, the appeal is dismissed. No costs. Appeal dismissed.

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