

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2010

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.No.330 of 2010

K.S.Mahalingam,  
S/o.Subbu Chettiar

..Appellant/Plaintiff

Vs.

1.N.Subhathirai  
2.N.Ashok Kumar  
3.N.Nithiyanandam  
4.N.Sasimahendran  
5.N.Umathanappan  
6.N.Ambika  
7.N.Venkatesan  
8.N.Devi  
9.N.Sathiyamoorthy  
10.N.Eswari

..Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.01.2008 made in A.S.No.30 of 2005 on the file of the Subordinate Judge, Vellore, confirming the judgment and decree dated 27.12.2004 made in O.S.No.426 of 2004 on the file of the Additional District Munsif Court, Vellore.

For Appellant : Mr. C. Veeraraghavan

J U D G M E N T

The submissions made by Mr.C.Veeraraghavan, learned counsel for the appellant were heard. Grounds of appeal and the documents produced along with the grounds of appeal were perused. After having failed in the trial court and the lower appellate court, the appellant herein/plaintiff has come forward with the second appeal against the concurrent finding of the said courts.

2. The case of the appellant/plaintiff is that while he was heavily indebted to several creditors, in order to screen the properties from such creditors he made a secret arrangement with one C.Narayanaswamy (died), who figured as the first defendant in the suit, as if the suit properties were sold by the appellant/plaintiff and his brother-in-law under two sale deeds dated 27.08.1979, which

were produced and marked on the side of the plaintiff before the trial court as Exs.A1 and A2, with a specific understanding that after the problem with the creditors would be over, the first defendant should re-convey the property in favour of the appellant/plaintiff and that the said understanding has been incorporated in a separate deed of agreement for re-conveyance dated 01.09.1979, a xerox copy of which has been marked as Ex.A3. In the alleged agreement for re-conveyance recitals have been incorporated to the effect that the first defendant shall re-convey the property to the appellant/plaintiff, if the appellant/plaintiff would repay a sum of Rs.60,000/- received as sale consideration under Exs.A1 and A2, within 15 years from the date of Ex.A3.

3. According to the appellant/plaintiff, the suit was filed in the year 1994 seeking the relief of specific performance of the above said agreement for re-conveyance. The suit was instituted after the demand made by the plaintiff under Ex.A6 - Notice was refuted by the first defendant under Ex.A7 - Reply notice.

4. The suit was originally filed against the first defendant alone when he was alive. The first defendant resisted the suit by filing a written statement contending that the sales made in his favour under Exs.A1 and A2 were genuine and were not intended to defraud the creditors of the appellant/plaintiff as claimed by the plaintiff and that the alleged agreement for re-conveyance was nothing but a fabricated and forged one. As the first defendant died during the pendency of the suit, his legal representatives were impleaded as defendants 2 to 11. On their impleadment, they filed an additional written statement containing almost similar allegations found in the written statement of D1.

5. The trial court framed six issues based on which the parties went for trial in which the plaintiff/appellant herein was examined as the sole witness as P.W.1 and twelve documents were marked as Exs.A1 to A15 on the side of the plaintiff and the third defendant/2nd appellant herein was examined as the sole witness (D.W.1) and no document was marked on the side of the defendants.

6. At the conclusion of trial, after hearing the arguments advanced on either side, the trial court considered the pleadings and evidence in the light of the points urged in the arguments advanced on either side and upon such a consideration, came to the conclusion that the agreement for re-conveyance pleaded by the appellant/plaintiff was not a genuine one and thus non-suited the appellant/plaintiff for the relief sought for in the plaint. As against the said judgment and decree of the trial court, the appellant prosecuted an appeal in A.S.No.30/2005 on the file of the learned Subordinate Judge, Vellore. The learned appellate judge also concurred with the finding of the trial court regarding the genuineness of the document based on which the plaintiff has filed

the suit. Based on the finding that the agreement for re-conveyance propounded by the appellant/plaintiff was not a genuine one, the learned appellate judge also concurred with the trial court that the plaintiff was to be non-suited to the relief sought for in the plaint.

7. As against the concurrent findings of fact based on which the decrees were passed by the trial court as well as lower appellate court, the appellant has brought-forth the present second appeal on various grounds set out in the Memorandum of Appeal.

8. Under Section 100 of CPC, an appeal from the decree of the appellate court shall lie to the High Court only on a substantial question of law. Unless the appealing party satisfies the court that the appeal involves a substantial question of law, the appeal cannot be entertained for being heard on merit. In this case, excepting the contention that the courts below gave an erroneous finding on a question of fact, to say the question regarding the genuineness of the agreement for re-conveyance, no other question of law, much less, substantial question of law, has been proved to have involved in this second appeal. It is true that though a finding may be a finding of fact, it will get escalated to the position of a question of law, if the finding is perverse. In this case, there is no prima-facie material to show that the finding of fact regarding the genuineness of suit agreement for re-conveyance is based on no evidence or based on evidence on which no reasonable person would have arrived at such a conclusion or based on inadmissible evidence or based on improper rejection of admissible evidence.

9. It is pertinent to note that the appellant/plaintiff has failed to produce the original agreement itself and on the other hand, has produced only a xerox copy. The reason assigned for non-production of the original agreement is that the same was handed over to the first defendant for defending a criminal prosecution launched against the first defendant and the appellant/plaintiff. As the appellant/plaintiff was a co-accused, there could have been no necessity on his part to hand over the document to the first defendant for defending the criminal case. As a co-accused, he himself could have utilised it, if at all that document was of any help in the defence made in the criminal prosecution. Though the appellant/plaintiff has chosen to produce a certified copy of the judgment of the said criminal case and marked it as Ex.A5, no reference has been made in the said judgment to the suit agreement for re-conveyance.

10. Under such circumstances, this court is not in a position to come to a conclusion that the finding of the courts below regarding the genuineness of the suit agreement for re-conveyance is perverse. Therefore, this court is of the considered view that the second appeal deserves to be dismissed in limini since no substantial

question of law has arisen. Accordingly, the second appeal is dismissed. No cost.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

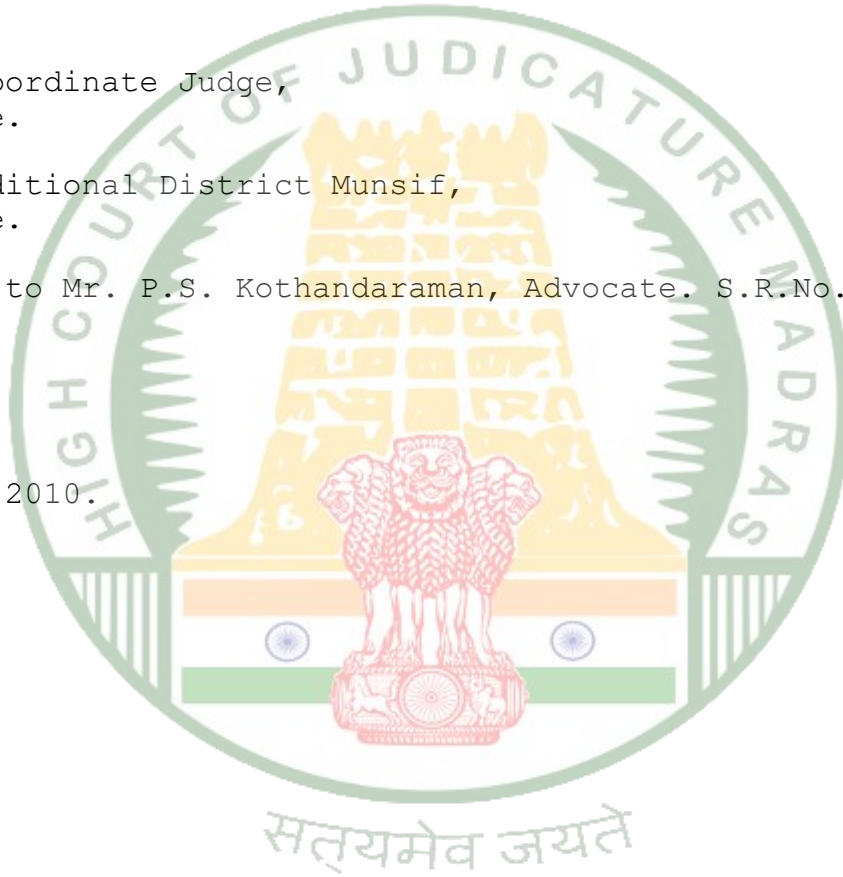
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To

1. The Subordinate Judge,  
Vellore.
2. The Additional District Munsif,  
Vellore.
- + 1 c.c. to Mr. P.S. Kothandaraman, Advocate. S.R.No.21997.

S.A.No.330/2010

KSK (CO)  
GSK 27.04.2010.



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