



S.A.No.15 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.15 of 2010

1.Venkittammal (Deceased)
2.T.Palanichamy
3.T.Sarojini

..Appellants

vs.

1.N.Krishnasamy Naidu (Deceased)
2.K.Renganayaki
3.T.Viswanathan

..Respondents

(Appellants 2 & 3 brought on record as LR's of the deceased sole appellant vide order of Court dated 04.07.2017 made in C.M.P.No.1/2013 in S.A.No.15/2010)

(RR2 & 3 brought on record as LR's of the deceased sole respondent vide order of Court dated 04.07.2017 made in C.M.P.No.2201/2017 in S.A.No.15/2010)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the decree and judgment dated 08.09.2009 in A.S.No.24 of 2009 on the file of the I Additional District Court, Coimbatore, upholding the decree and judgment dated 22.09.2008 in O.S.No.167 of 2002 on the file of the Sub Court, Udumalpet.



WEB COPY



S.A.No.15 of 2010

For Appellants : Ms.Elizabeth Ravi for
Mr.P.Raja

For R2 : Ms.M.V.Kalaichitram

For R3 : No appearance

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal. The appellant/plaintiff filed the suit in O.S.No.167 of 2002 on the file of the Sub Court, Udumalpet, seeking for specific performance of contract dated 31.12.1999 (Ex.A1) executed between him and the defendant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:

The suit property originally belonged to the defendant. The plaintiff and the defendant entered into an oral agreement of lease and the



S.A.No.15 of 2010

WEB COPY

plaintiff was put in possession during the year 1992 and thereafter, an agreement of sale dated 31.12.1999 (Ex.A1) was executed fixing the consideration at Rs.1,50,000/- out of which the plaintiff paid a sum of Rs.1,20,000/- towards advance. The plaintiff was ready to pay the balance amount of Rs.30,000/- to the defendant to get the sale deed executed in his favour. Though the plaintiff approached the defendant to execute the sale deed, he evaded the same and also filed a suit in O.S.No.347/2000 before the District Munsif, Udumalpet. The plaintiff thereafter, issued a legal notice to the defendant dated 18.12.2000 (Ex.A2) calling upon the defendant to execute the sale deed in pursuance of the sale agreement (Ex.A1). The defendant issued a reply notice (Ex.A3) which according to the plaintiff contained false allegations. Hence, the suit.

4. The suit was resisted by the defendant on the following grounds:

- i. The plaintiff was never put in possession of the suit property as a lessee.
- ii. The plaintiff was only a permissive occupier of the suit property.
- iii. There was no agreement of sale between the plaintiff and the



S.A.No.15 of 2010

defendant and the sale agreement is a forged document. The plaintiff has not also filed the suit within a reasonable period and therefore, his suit is liable to be dismissed.

5. On the basis of the above pleadings, the trial Court Judge framed the following issues :

- i. "Whether the sale agreement is true and valid?
- ii. Whether the plaintiff is entitled for specific performance?
- iii. To what relief, the plaintiff is entitled?"

6. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A12. The defendant examined himself and one another witness and marked Ex.B1 & Ex.B2. The handwriting expert's opinion was marked as Ex.X1.

7. After full contest, the learned Subordinate Judge, Udumalpet, dismissed the suit filed by the plaintiff vide his decree and judgment dated 22.09.2008 on the following grounds :



S.A.No.15 of 2010

WEB COPY

- i. The plaintiff did not examine any of the attesting witnesses to the sale agreement (Ex.A1).
- ii. The plaintiff also admitted that there was a strained relationship between him and the defendant for the past 10 years. Hence, it is difficult to accept that the defendant executed the sale agreement (Ex.A1).
- iii. There are different versions with regard to the place of signing of the sale agreement by the defendant.
- iv. The plaintiff has not proved the execution of the sale agreement by adducing acceptable evidence.
- v. The expert who compared the signature of the defendant on the sale agreement had clearly stated that the sale agreement is a rank forgery.
- vi. A careful comparison of the signature of the defendant on the sale agreement with that of his admitted signatures would clearly go to show that the suit sale agreement is a forged document.
- vii. The plaintiff has not pleaded his readiness and willingness for performing his part of the contract.
- viii. The plaintiff has not also approached the Court within a reasonable



S.A.No.15 of 2010

WEB COPY

period from the date of the alleged execution of Ex.A1.

8. Aggrieved over the same, the plaintiff filed an appeal in A.S.No.24 of 2009 before the I Additional District Court, Coimbatore. The learned I Additional District Judge, Coimbatore, after analysing the oral and documentary evidence adduced on both sides upheld the findings recorded by the trial Court and dismissed the appeal vide his decree and judgement dated 08.09.2009.

9. Now the present second appeal is filed. My learned predecessor, vide his orders dated 11.01.2010, had admitted the appeal by observing thus :

"Heard the learned counsel appearing for the petitioner.

2. Notice to the respondent returnable by 11.02.2010.

3. The suit was filed by the petitioner/appellant seeking specific performance of contract based on the alleged agreement dated 31.12.1999. Based on the substantial question of law raised by the appellant, the second appeal has been admitted"



S.A.No.15 of 2010

WEB COPY

The substantial question of law mentioned in the second appeal are extracted hereunder :

- i. "When an agreement of sale is not a document that requires compulsory attestation under Section 68 of the Evidence act, when the signature in the agreement of sale is denied, whether the proof of such document requires such strict proof in the manner as said under Section 68 of the Evidence Act.
- ii. When the agreement of sale was proved by the scribe along with the statement of a deceased witness, whether such proof satisfies the requirement of the proof of document which is not otherwise requiring compulsory attestation under Section 68 of the Evidence Act.
- iii. Whether the comparison of the signature by the hand writing expert of the disputed signature along with the signature taken subsequent to the suit and during the course of the proceedings is lawful and such investigation found out of such comparison has any legal sanction and approval.
- iv. Whether the finding of the Court that signatures found in a disputed document simply because they were of different inks, whether such



S.A.No.15 of 2010

WEB COPY

basis to form the above opinion is legal.

10. Heard, Ms.Elizabeth Ravi, learned counsel for the appellants and Ms.M.V.Kalaichitram, learned counsel for the second respondent.

11. Ms.Elizabeth Ravi, learned counsel for the appellants contended that both the Courts below had committed an error by relying on the expert's evidence especially when handwriting expert did not compare signatures of the defendant with the contemporary documents. It is also her contention that though she adduced several documents to show her possession over the suit property apart from filing the judgment passed in O.S.No.347/2000, both the Courts below did not appreciate these evidence properly. It is further contended that both the Courts below did not compare the signature of the defendant with the contemporary documents and on the other hand the defendant was made to sign in open Court during the year 2008 and the same was compared with the sale agreement dated 31.12.1999. She had prayed for allowing the present second appeal.



S.A.No.15 of 2010

WEB COPY

12. Per contra, Ms.M.V.Kalaichitram, learned counsel for the second respondent contended that both the Courts below after analysing the oral and documentary evidence adduced on both sides had concurrently held that the suit sale agreement is a forged document and that no interference by this Court is warranted as there is no substantial question of law involved in the present second appeal. It is also her contention that the plaintiff had failed to examine the attesting witness to prove the execution of the sale agreement and that the observation of both the Courts below that the plaintiff had not established the genuineness of Ex.A1 is perfectly in order.

13. The specific contention of the plaintiff is that she has been in possession and enjoyment of the suit property as a lessee since the year 1992. According to her, she entered into a sale agreement dated 31.12.1999 (Ex.A1) in respect of the suit property with the defendant and also paid a sum of Rs.1,20,000/- towards advance. According to her, though she was ready to perform her part of the contract, the defendant did not come forward to execute the sale deed in her favour. In order to prove the execution of the sale agreement, the plaintiff mainly relied on



S.A.No.15 of 2010

her evidence as PW1 and also the evidence of the scribe (PW2). On the other hand, the contention of the defendant is that the sale agreement is a rank forgery and that the plaintiff was never in possession of the suit property. According to her, the plaintiff was only a permissive occupier of the suit property and therefore, the suit filed by the plaintiff is liable to be dismissed.

14. According to the plaintiff, she continued to be in possession of the suit property pursuant to the sale agreement (Ex.A1). However, there is no pleading in this regard in the plaint. The contention of the learned counsel for the appellant is that she has filed numerous documents in O.S.No.347/2000 before the District Munsif, Udumulpet and in the judgment passed in O.S.No.347/2000 (Ex.A7), it is held that the plaintiff is in possession of the suit property. It is not known as to why the plaintiff has not filed those documents in the present suit. The suit in O.S.No.347/2000 was filed for bare injunction based on possession, the suit was decreed. The contentions of the defendant is that the plaintiff is only a permissive occupier. The present suit is filed for specific performance of contract. The plaintiff's contention is that in pursuance of



S.A.No.15 of 2010

WEB COPY

the sale agreement dated 31.12.1999 she has been in possession of the suit property. As already observed, there is no specific pleading in this regard in the plaint.

15. In the plaint, the plaintiff had contended that she developed the suit property by incurring an expenditure of Rs.1,00,000/- but she has not adduced any documentary evidence to substantiate her contention in this regard. A perusal of Ex.A4 and Ex.A5 which are the lawyer's notice issued by the plaintiff to the defendant and a letter sent by the Electricity Board to the plaintiff's counsel respectively would go to show that the Service Connection No.353 was disconnected and the plaintiff in her plaint had admitted that the service connection belongs to the defendant. Except examining the scribe of the sale agreement the plaintiff did not examine any of the attesting witness. In fact the plaintiff during the course of cross examination had contended that one of the attesting witnesses Subburayalu, who is her brother is dead and that she does not know who is the other attesting witness. She also admitted that she did not witness the attestors signing the document in her presence. No doubt it is true that the sale agreement is not a document which requires to be compulsorily



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attested. The plaintiff who filed the suit for specific performance of contract has to prove the execution of the sale agreement especially when the defendant had denied the execution itself.

16. A handwriting expert compared the signature of the defendant in the sale agreement with his admitted signatures and had opined that the sale agreement is a forged document. The hand writing expert was examined as DW2 and he had deposed that there will not be much changes in the handwriting of a person within a short period. However, both the Courts below did not dismiss the suit mainly based on the expert's opinion. The other circumstances including the evidence adduced on both sides were taken into account by both the Courts below. In fact the First Appellate Court in Para 12 of his judgment had observed thus :

"12. As already discussed one Mani was also cited as attesting witnesses. In the cross-examination of PW1, she has deposed as if she alone paid the advance amount, subsequently she immediately changed her version and deposed that at the time of paying the advance amount, subsequently she immediately changed her version and



S.A.No.15 of 2010

WEB COPY

deposed that at the time of paying the advance sale consideration. witness Subbarayalu, Krishnasamy and scribe and Mani were present. Her evidence is as follows:-

"பணம் கொடுத்தபோது நான் மட்டும் இருந்தேன். சாட்சி உடனே சுப்பராயலு : கிருஷ்ணசாமி, எழுத்தாளர் மணி ஆகியோர் இருந்ததாகக் கூறுகிறார்."

If this admission of PW1 considered along with her specific admission in the re-examination and cross-examination in page No.3. She has categorically stated that she did not know who is another witness her evidence is as follows :-

"இந்தக் கிரைய ஒப்பந்தத்தில் சாட்சிக் கையெழுத்து செய்த சுப்பராயலு இறந்துவிட்டார். மற்றொரு சாட்சி யார் என்று எனக்குத் தெரியாது"

Further, in the cross examination she is admitted that

"மணி என்பவர் கையெழுத்து போட்டதை நான் பார்க்கவில்லை. அதேபோல் நான் கையெழுத்து போட்டதையும் மணி பார்க்கவில்லை".

Therefore, the evidence of PW1 herself clearly show some doubt in Ex.A1 agreement. If her evidence as to payment of consideration in the presence of Mani and Subbarayalu is (end of the 8th page in the original) believed as a true version then her cross-examination clearly militate against her own admission. She claimed that she does not know who is another witness, and further, she has also asserted that



S.A.No.15 of 2010

WEB COPY

the witness Mani did not witness her affixing her thumb impression in the Ex.A1 document. Therefore, the evidence of the PW1 and PW2 with regard to the signing of the document by witnesses also create serious doubt about the genuineness of the Ex.A1 agreement. Though it is a repetition as already held, PW2 has deposed that all the witnesses have signed in his office. Thereafter, PW1 put her thumb impression in her land, this evidence of PW2 is considered along with Ex.A12, the evidence of the one of the attesting witnesses Subbarayalu who was examined in O.S.347/2000 in between the same parties and also in connection with the same agreement. The entire genuineness of the agreement itself could be suspected very well. The cross-examination of the witnesses Subbarayalu before the District Munsif's Court in O.S.347/2000 clearly create cloud and suspicion about the existence of Ex.A1. He has admitted as follows :

"குத்தகை விவரம் எனக்கு நேரில் தெரியாது. நான் சாட்சிக் கையெழுத்து போட்டுள்ள தாவா ஒப்பந்தம் எந்தத்தேதியில் எந்த வாரம் எந்த தேதியில் எழுதப்பட்டது என்பது எனக்கு ஞாபகம் இல்லை. தாவா பூமி சம்பந்தமாக நான் கூட இருந்து கிரையம் பேசவில்லை. தாவா ஒப்பந்தத்தில் என்னுடன் கையெழுத்துப்போட்ட மற்றொரு சாட்சி யார் என்று எனக்குத் தெரியாது. தோட்டத்துச் சாலையில் வைத்து கையெழுத்துப்போட்டேன். சாட்சிக் கையெழுத்துப் போடும்போது வெங்கிட்டம்மாள் மற்றும் அவர் கணவர் மற்றும்



S.A.No.15 of 2010

WEB COPY

வெளியூர்காரர்களும் இருந்தார்கள். அந்த வெளியூர்காரர்கள் யார் என்றே எனக்குத் தெரியாது. கிருஷ்ணசாமி ஒப்பந்தத்தினை எழுதிக்கொண்டு வந்தார். அதனை யார் எழுதினார்கள் என்று எனக்குத் தெரியாது”.

From the above admission of the one of the attesting (end of the 9th page in the original) witnesses Subbarayalu who is none other than the brother of the plaintiff under Ex.A12 clearly create doubt about the PW2's evidence. Whereas PW2 has deposed of the witnesses including the Subbarayalu signed the document in his office. Whereas Subbarayalu has deposed before the lower court that he has signed only in the land. Therefore, the PW2's evidence coupled with the admission of the one of the attesting witnesses Subbarayalu under Ex.A12 and also the evidence of PW1 create serious doubt about the very existence of the agreement, as already pointed out the signature of witnesses found in different ink. It is the specific defence of the defendant that he never executed agreement. signature found in the agreement is not that of his signature."

The plaintiff had filed the deposition of one of the attesting witness Subbarayalu as Ex.A12. A perusal of Ex.A12 shows that Subbarayalu had deposed thus :

"குத்தகை விவரம் எனக்கு நேரில் தெரியாது. நான் சாட்சிக் கையெழுத்து



S.A.No.15 of 2010

போட்டுள்ள தாவா ஒப்பந்தம் எந்தத்தேதியில் எந்த வாரம் எந்த தேதியில் எழுதப்பட்டது என்பது எனக்கு ஞாபகம் இல்லை. தாவா பூமி சம்பந்தமாக நான் கூட இருந்து கிரையம் பேசவில்லை. தாவா ஒப்பந்தத்தில் என்னுடன் கையெழுத்துப்போட்ட மற்றொரு சாட்சி யார் என்று எனக்குத் தெரியாது. தோட்டத்துச் சாலையில் வைத்து கையெழுத்துப்போட்டேன். சாட்சிக் கையெழுத்துப் போடும்போது வெங்கிட்டம்மாள் மற்றும் அவர் கணவர் மற்றும் வெளியூர்காரர்களும் இருந்தார்கள். அந்த வெளியூர்காரர்கள் யார் என்றே எனக்குத் தெரியாது. கிருஷ்ணசாமி ஒப்பந்தத்தினை எழுதிக்கொண்டு வந்தார். அதனை யார் எழுதினார்கள் என்று எனக்குத் தெரியாது”.

Thus the evidence of attesting witness Subbarayalu does not fit in with the evidence of PW2 since PW2 had deposed that Subbarayalu signed the document in his office. Thus the evidence of PW1, PW2 & Ex.A12 creates doubt with regard to the execution of Ex.A1 sale agreement. All these aspects are gone into extenso by both the Courts below. They had concurrently held that the sale agreement is a forged document. The conclusion arrived at by both the Courts below are based on facts of the case and I do not see any reason to interfere with their findings. The contention of the counsel for the appellant is that the Courts below as well as the handwriting expert had compared the signatures of the defendant



S.A.No.15 of 2010

WEB COPY

on Ex.A1 and the signatures made by him in open court and therefore, the same cannot be accepted. It is true that both the Court below did not compare the signature of the defendant with contemporary documents. It is also pertinent to point out as to why the plaintiff did not call for the contemporary documents and accepted for getting the signature of the defendant in open court. He did not file any revision against the same. However, as already observed, both the Courts below had taken into account the other circumstances, evidence adduced on the side of the plaintiff. The opinion by the expert and the courts are only one of the grounds. Even if we leave that aspect in entirety, the fact remains that the plaintiff did not prove the execution of Ex.A1. The evidence of PW1, PW2 and one of the attester (Ex.A12) did not corroborate with each other. These are findings based on facts by both the Courts below. In fact there is no substantial question of law involved in the present second appeal.

17. It is also pertinent to mention that this a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law. A full Bench of the Supreme Court in *Bholaram Vs. Ameerchand* reported in *AIR*



S.A.No.15 of 2010

WEB COPY

1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of courts below in a second appeal. In fine, the second appeal fails and is dismissed. Thus, the substantial questions of law raised in the grounds of appeal are answered against the appellant.

18. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 08.09.2009 in A.S.No.24 of 2009 on the file of the I Additional District Court, Coimbatore and the decree and judgment dated 22.09.2008 in O.S.No.167 of 2002 on the file of the Sub Court, Udumalpet, are upheld.

07.06.2023

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Index : Yes/No

Speaking / Non-speaking order



WEB COPY



S.A.No.15 of 2010

R.HEMALATHA, J.

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To

1. The I Additional District Court, Coimbatore.
2. The Sub Court, Udumalpet.
3. The Section Officer, VR Section, High Court, Madras.

S.A.No.15 of 2010

07.06.2023