



S.A.No.728 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.728 of 2010
and M.P.No.1 of 2010

1.Duraisamy

2.Kuppan

3.Arumugam

4.Shanthi

5.Minor Jothi

6.Minor Anitha

The minor appellants 5 and 6 rep. by
their mother and natural guardian

Shanthi, 4th respondent.

...Appellants

Vs.

Malligammal

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the Second Additional Subordinate Judges Court, Villupuram made in A.S.No.44 of 2006 dated 15.02.2007 confirming the judgment and decree of the Principal District Munsif Court, Villupuram made in O.S.No.160 of 2001 dated 17.08.2005.



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For Appellants : Mr. S.Rajendra Kumar

For Respondent : M/s. Vedavalli Kumar

J U D G M E N T

This Second Appeal is arising out of concurrent finding in a suit for specific performance, wherein the Trial Court as well as the First Appellate Court has decreed the suit for specific performance.

2.For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts which give rise to this Second Appeal is that:

3.The plaintiff and the first defendant entered into a Sale Agreement on 29.04.1987. According to the said sale agreement, a sum of Rs.20,000/- have been paid to the first defendant on various occasions and the balance amount of Rs.400/- have to be paid and both the parties have agreed to enter into the Sale Deed after the disposal of O.S.No.822 of 1984 finally. It was further contended that the suit was ultimately



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disposed by way of Second Appeal during 2000. In pursuance thereof, the plaintiff issued a notice during 2001 calling upon the first defendant to execute the Sale Deed.

4.The said suit was resisted by the defendant on the ground that the very sale agreement was not at all executed by him, and the signature found in the said sale agreement is forged one. It was also contended that the plaintiff, being a person wellversed in the Court proceedings, and that there was a transaction between the plaintiff and first defendant with regard to the earlier suit, the plaintiff used to get certain signature in the blank papers and that the plaintiff could have used the signed blank papers. Thus, the sum and substance of the defendant's contention is that the sale agreement is fabricated one.

Evidence, Documents and Finding of the Courts below:

5.Before the Trial Court, the plaintiff's husband was examined as P.W.1 and the attesor of Ex.A9/sale agreement was examined as P.W.2 and 13 documents were marked as Exs.A1 to A13. On behalf of the



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defendants, the first defendant was examined as D.W.1 and no documents were marked.

6.The Trial Court has held that the execution of the sale agreement was proved through examining the attesor and has ultimately decreed the suit. The First Appellate Court has also confirmed the findings recorded by the Trial Court. Aggrieved by the same, the defendants are now before this Court by filing this Second Appeal.

Submissions on either side:

7.The learned counsel appearing for the appellants/defendants would vehemently submit that the first defendant being an illiterate person, and the plaintiff, who is wellversed in the Court proceedings, used to get signature in the blank papers, and by using the same, they have fabricated the sale agreement. It is also the submission of the learned counsel for the appellants/defendants that the signature found in the sale agreement is not that of the signature of the first defendant and it is a forged signature. The learned counsel is also relied upon Section 16



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of the Indian Contract Act, 1872 and would submit that there was undue influence by the plaintiff. It is the further submission of the learned counsel for the appellants that the Trial Court as well as the First Appellate Court has wrongly shifted the burden upon the defendants, when the plaintiff himself failed to prove the case.

8.Per contra, the learned counsel for the respondent/plaintiff would submit that she was under the impression that P.W.2/attestor was no more, and that only upon the summons issued by the defendant, the attestor was examined. During the examination of the attestor, the execution of Ex.A9/sale agreement was proved. The learned counsel would also further contend that even in the year 1989, the plaintiff issued a notice calling upon the defendant to execute the sale deed, whereas the defendant did not reply. Only during 2001, they took defence of fabrication and undue influence and that the defence put forth by the defendant could not be believed.

9.I have given my anxious consideration to the submissions made by both sides.



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Analysis of the submissions of both sides:

10.From the submissions of the either side, now we must see whether the findings recorded by both the Courts below, as well as the execution of the sale agreement, are probable one. Admittedly, the attesor/P.W.2 was not originally examined by the plaintiff, and he (P.W.2) came to the box just after the examination of D.W.1, namely Duraisamy. During the examination of D.W.1 on 27.01.2004, it was informed by the first defendant that P.W.2/Ranganathan was alive.

11.It appears that after the first defendant has issued summons to the attesor of Ex.A9/Sale agreement, the attesor Ranganathan (P.W.2) was examined on 20.07.2005 by the plaintiff. Wherein during cross-examination, he has categorically stated that the defendant has received a sum of Rs.20,000/- at four different occasions and he has also spoken about the execution of the sale agreement. However, the learned counsel for the appellants would submit that before the attesor/P.W.2 came to the Court, the plaintiff had met P.W.2. Therefore, there could have been some sort of arrangements and tutoring between P.W.2 and the plaintiff and



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hence, the evidence of P.W.2 should not be believed.

12.However, this Court is not in a position to agree with the submission made by the learned counsel for the appellants on the simple ground that P.W.2 came to the Court only on the summons issued by the defendant. Therefore, the mere admissions made by the attesor/P.W.2 to the effect that he met the plaintiff before he came to the Court will in noway disprove the case of the plaintiff. Whenever a party comes with the pleadings about undue influence, there should be a specific pleading in that regard. While looking at the pleadings of the defendant, there is no categorical pleading in respect of the undue influence and it was only said that the sale agreement was forged. Therefore, this Court is of the view that from the submissions made by the learned counsel for the appellants, this Court could not find any ground to deviate from the findings recorded by both the Courts below. Hence, this Court could not find any substantial questions of law.



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13.Hence, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes/No

Index: Yes/No

apd

To

- 1.The II Additional Subordinate Judge, Vilupuram,
- 2.The Principal District Munsif, Vilupuram,
- 3.The Section Officer, V.R.Section, High Court, Madras.



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C.KUMARAPPAN,J.

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