

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.144 of 2023
and C.M.P(MD)No.2922 of 2023

Lazar Appellant/Appellant/Defendant

Vs.

T.Karthikeyan ... Respondent/Respondent/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 12.08.2022 passed in A.S.No.22 of 2021 on the file of the Additional Subordinate Judge, Thanjavur, confirming the judgement and decree dated 21.09.2021 passed in O.S.No.491 of 2008 on the file of the Principal District Munsif, Thanjavur.

For Appellant : Mr.R.Rajamohan

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The appellant is the defendant in the suit and the respondent is the plaintiff.

2. The suit in O.S.No.491 of 2008 on the file of the Principal District Munsif, Thanjavur has been filed for recovery of possession. The

respondent claimed ownership of the suit schedule property based on a sale deed dated 03.10.2006 executed in his favour, which has been marked as Ex.A.3 before the trial court. Before the trial court, the respondent/plaintiff has filed 18 documents which were marked as Ex.A.1 to Ex.A.18. Originally the suit schedule property was owned by the appellant/defendant who has executed a power of attorney dated 21.03.2005 in favour of one Ramasubbu which has been marked as Ex.A.2. The said Ramasubbu acting as power agent of the appellant/defendant has executed the sale deed dated 03.10.2006 (Ex.A.3) in favour of the respondent/Plaintiff.

3. Before the trial court, the appellant/defendant has contended that he never agreed to sell the suit schedule property to the respondent/plaintiff but he had only borrowed a sum of Rs.80,000/- as loan from the respondent/plaintiff and only as a security he had executed a power of attorney on 21.03.2005(Ex.A.2) in favour of Ramasubbu and further according to the appellant/defendant, Ramasubbu has misused the power of attorney by executing a sale deed dated 03.10.2006(Ex.A.3) in favour of the respondent/plaintiff. Before the trial court the appellant/defendant had filed 8 documents which were marked as Ex.B.1 to Ex.B.8. Even though the appellant/defendant contended that the subject transaction is a loan

transaction, as seen from the oral and documentary evidence, he has failed to establish that he had availed a loan of Rs.80,000/- from the respondent/plaintiff and only by way of security for the said loan, he had executed a power of attorney on 21.03.2005 (Ex.A.2) in favour of Ramasubbu. He has also not produced any documentary evidence to show that he has repaid the loan to the respondent/plaintiff pursuant to the execution of the power of attorney dated 21.03.2005 (Ex.A.2).

4. Though the appellant/defendant has filed house tax receipts dated 06.04.2004, 15.03.2008, 18.04.2017, 15.06.2019 and electricity charges receipt dated 10.06.2019 all standing in his name, admittedly he has not filed any documentary evidence to prove his case that he had in fact only availed a loan from the respondent/plaintiff and never agreed to sell the suit schedule property to the respondent/plaintiff. On the side of the respondent/plaintiff, 2 witnesses were examined namely, the respondent/ plaintiff as well as Ramasubbu, the power agent of the appellant/defendant as per the power of attorney dated 21.03.2005 (Ex.A.2). As seen from the oral evidence of both witnesses, they have consistently deposed that the respondent/plaintiff purchased the suit schedule property from the appellant/defendant by a valid sale deed dated 03.10.2006 (Ex.A.3) by paying the

entire sale consideration to the appellant/defendant.

5. On the side of the appellant/defendant, the appellant/defendant himself examined as witness (D.W.1) and he has reiterated the contents of the written statement filed by the appellant/defendant in his deposition. The trial court has decreed the suit in favour of the respondent/plaintiff for recovery of possession as the appellant/defendant has failed to prove through oral and documentary evidence that he had only borrowed money from the respondent/plaintiff but never agreed to sell the suit schedule property to the respondent/plaintiff.

6. Admittedly, no documentary evidence has been produced by the appellant/defendant to prove that he had only borrowed money from the respondent/plaintiff but never agreed to sell the suit schedule property to the respondent/plaintiff. Having filed documentary evidence, in the form of power of attorney (Ex.A.2) and sale deed (Ex.A.3) to prove that the respondent/plaintiff had in fact purchased the suit schedule property from the appellant/defendant, the respondent/plaintiff has discharged his burden of proving the suit claim. The onus has been shifted to the appellant/defendant to disprove the contentions of the respondent/plaintiff. As seen

from the oral and documentary evidence produced by the appellant/defendant, he has miserably failed to discharge his burden of disproving the contentions of the respondent/plaintiff. Only based on oral and documentary evidence available on record, the trial court has decreed the suit in favour of the respondent/plaintiff. The lower Appellate court has also rightly confirmed the findings of the trial court by dismissing the appeal filed by the appellant/defendant.

7. There are no substantial questions of law involved in the Second Appeal and all the substantial questions of law raised by the appellant in the grounds of this Second Appeal are all questions of fact which have been rightly considered by the courts below by giving due consideration to the oral and documentary evidence available on record. This Court does not find any merit in the Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2023

Index : Yes/No

Internet: Yes/No

CM

To

1.The Additional Subordinate Judge, Thanjavur,

2.The Principal District Munsif, Thanjavur.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

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ABDUL QUDDHOSE . J.,

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