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S.A.No.852 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2024

PRONOUNCED ON : 11.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.852 of 2009

A.Ranganathan

...

Appellant

Vs.

1.M.L.Ponnusamy (Died)

2.Yasodha

3.Panneerselvam

...

Respondents

[R2 and R3 were set ex-parte vide
order dated 02.07.2024]

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.11.2007 in A.S.No.31 of 2005 on the file of the Sub Ordinate Court, Dharmapuri reversing the judgment and decree dated 24.03.2004 made in O.S.No.226 of 1999 on the file of District Munsif Court, Palacode.

For Appellant

: Mr.T.Karunakaran



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JUDGMENT

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Challenge in this second appeal is made to the Judgement and Decree dated 30.11.2007 in A.S.No.31 of 2005 on the file of the Sub Ordinate Court, Dharmapuri reversing the judgment and decree dated 24.03.2004 made in O.S.No.226 of 1999 on the file of District Munsif Court, Palacode.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The case of the plaintiff, in brief, is that the plaintiff filed the suit for specific performance of the Sale Agreement dated 14.06.1965 executed by M.L.Ponnusamy and for possession of the suit property. Plaintiff suit property was owned by the said M.L.Ponnusamy through partition. The defendants 2 and 3 are his wife and son. Since the said M.L.Ponnusamy died, the suit is filed against the wife and his son. M.L.Ponnusamy had agreed to sell the suit property for a sale consideration of Rs.20,000/- and received a sum of Rs.10,000/- as advance on the same day. Three years time was fixed to complete the sale transaction. Since he denied to execute the sale deed, the plaintiff filed a suit against him.



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4.The defendants contested the suit, denied the allegations in the plaint and filed a written statement contending that 1st defendant had no intention to sell the plaint schedule property to the plaintiff. He borrowed a sum of Rs.50,000/- from the plaintiff as a debt. For the same, he executed a promissory note for Rs.40,000/- and executed a Sale Agreement Ex.A.1 for Rs.10,000/-. At the same time, he also executed two general agreements on the same date, mentioning about the loan transaction. Thus, pleaded to dismiss the suit.

5.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

- “1.வாதிக்கு தாவா சொத்தை ரூ.20,000/- விற்பதாக பிரதிவாதி கிரய ஒப்பந்தம் செய்துள்ளார் என்பது சரியா?
2. கிரய ஒப்பந்தம் பிரதிவாதிபெற்ற கடனிற்கு ஆதாரமாக எழுதிக் கொடுக்கப்பட்டது என்பது சரியா?
3. கிரய ஒப்பந்தம் செல்லத்தக்கதா?
4. வாதி கோரியுள்ள பரிகாரங்கள் பெறத்தக்கவரா?
- 5.இதர பரிகாரங்கள் என்ன?

6. Before the Trial Court, in support of the plaintiff's case, PW 1 and PW2 were examined and 8 documents were marked as Ex.A.1 to Ex.A.8. On the side of the defendants, 1st defendant himself examined as DW1 and 2



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documents were marked as Ex.B.1 and Ex.B-2.

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7. Upon considering the evidence and documents, the trial Court allowed the suit and granted the prayer for specific performance of sale agreement and possession as claimed by the plaintiff.

8. Aggrieved over the same, the defendant had filed A.S.No.31 of 2005, before the Sub Ordinate Court, Dharmapuri. The First Appellate Court, after considering the entire materials and evidence on record reversed the Judgment and Decree of the trial Court and allowed the appeal. Aggrieved by the same, the plaintiff has filed the present second appeal.

9. The second appeal has been admitted on the following substantial questions of law:

“a) Whether the appellant court can decide the case on the basis of unregistered document i.e., Ex.B2, while the suit filed on the basis of registered sale agreement i.e., Ex.A1.

b) Whether the appellate Court is correct in coming to a conclusion that the Ex.A1/B1 is not



made with intention to sell the property, even though the Ex.B2 reflects why Ex.A1 has been made and when Ex.A1 can be used by the appellant through Court.”

10.The learned counsel appearing for the appellant contended that the First Appellate Court failed to consider the documents Ex.B.1 and B.2 properly. Ex.B.2 is an operative document of Ex.A.1. It is not a registered document. Ex.A.1 Sale Agreement is a registered document. There should be another registered document, for varying the contents of the registered document. The First Appellate Court failed to appreciate this fact and erroneously relied on Ex.B.1 and B.2 and found that the Sale Agreement Ex.A.1 was executed for a loan transaction and dismissed the suit filed by the plaintiff. It is erroneous and irrelevant consideration of material on the record. Without considering the evidence on record and reiterated the other grounds raised in the grounds of appeal and thus pleaded to allow the second appeal.

11.The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and contended that the Ex.A.1 Sale Agreement is not valid. To show the loan transaction between the plaintiff and the defendants and for the purpose of exposing the fact that Ex.A.1 was



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executed only for the purpose of loan transaction and that there was no intention for the 1st defendant to sell his property to the plaintiff. Exs.B.1 and B.2 was written and signed by the plaintiff, which is admitted by the plaintiff during his cross examination. Under these circumstances, there is no reason to reject Exs.B.1 and B.2. The First Appellate Court had rightly relied upon Exs.B.1 and B.2 and found that the Ex.A.1 Sale Agreement is not entered with an intention to sell the property. It has been entered only as a security to the loan transaction. There is no ground to interfere with the findings of the First Appellate Court. There is no irregularity and no substantial question of law is involved in this case and thus, pleaded to dismiss the Appeal.

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.The suit property is owned by the defendants. It is not in dispute. The averment in the plaint is that the defendant agreed to sell the plaint schedule property for a sale consideration of Rs.20,000/- and received an advance of Rs.10,000/-. He executed a Sale Agreement on 14.06.1995 and fixed three years time for completing the sale transaction. Since 1st defendant failed to

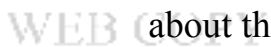


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come forward to complete the sale transaction, plaintiff filed the suit. The defendant filed written statement and contested that he had no intention to sell the plaint schedule property. He borrowed a sum of Rs.50,000/- from the plaintiff as a debt, for which, he executed a promissory note for Rs.40,000/- and executed a Sale Agreement (Ex.A.1) for Rs.10,000/-. At the same time, they also executed two general agreements on the same date, mentioning about the loan transaction. Therefore, pleaded that the suit is liable to be dismissed

14.Now, I have to consider, whether the defendant executed the Ex.A.1, Sale Agreement with an intention to sell the suit property for a sum of Rs.20,000/-. In this regard, I have gone through the evidence adduced by the parties. Ex.A.1 Sale Agreement is admitted by the defendant. Their only contention is that, it is executed to acknowledge the loan transaction. To support his contention, defendant filed Exs.B.1 and B.2, General Agreements signed by both the parties.

15.On perusal of Ex.A.1, it is noticed that the Sale Agreement is executed on 14.06.1995. Sale consideration is fixed as Rs.20,000/- and an advance of Rs.10,000/- was paid. For completing the sale transaction, three years time was fixed for paying the balance Rs.10,000/-. Three years time

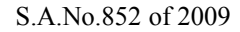


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period for completing sale transaction is abnormal in this case. It raises a doubt about the intention of the parties who sell or purchase the property.

16.It is to be noted that on the same date of Sale Agreement i.e., 14.06.1995, the parties executed two General Agreement dated 14.06.1995. It is evidenced as Ex.B.1 and B.2. For better appreciation, Ex.B.1 reproduced herein under,

[illegible]



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principles of law governing the same, had rightly allowed the appeal. There is no misappreciation of evidence, irrelevant consideration and no ground to hold that the findings are perverse. There are no merits in the appeal. The substantial questions of law formulated in the second appeal are accordingly answered.

21. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. However, liberty is granted to the appellant to take proper legal action with regard to loan transaction within the limitation period from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition, if any, is closed.

.07.2024

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1. The Sub Ordinate Court, Dharmapuri

2. The District Munsif Court, Palacode.



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.852 of 2009