

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

S.A.No.1314 OF 2008

Subramaniam

... Appellant(Plaintiff)

Vs.

Mohana

... Respondent(Defendant)

PRAYER : This second appeal filed under Section 100 C.P.C. against the judgment and decree dated 21.01.2008 passed in A.S.No.52 of 2007 on the file of the Principal Subordinate Judge, Gobichettipalayam, Erode District, confirming the judgment and decree dated 29.10.2004 passed in O.S.No.74 of 2004 on the file of the District Munsif Court, Sathynamangalam, Erode District.

For Appellant : Mr.I.C.Vasudevan
For Respondent : M/s.P.R.Balasubramanian

J U D G M E N T

The unsuccessful plaintiff is the appellant herein. The second appeal is arising out of the judgment and decree made in the suit for specific performance of the sale agreement dated 20.08.1996, in respect of the undivided 1/10th share of the defendant, who is the sister of the plaintiff. The case of the plaintiff is that Ex.A1-suit agreement was executed on 20.08.1996 for a sale consideration of Rs.50,000/- and Rs.45,000/- was paid as advance and the balance of Rs.5,000/- was agreed to be paid within 30 months and the plaintiff is in possession and enjoyment of the property much before the sale agreement. The plaintiff has been ready and willing to pay the balance sale consideration of Rs.5000/- and the defendant has been postponing the same and the defendant has also filed the suit in O.S.No.186 of 1997 for partition including the suit property.

2. The suit was seriously resisted by the defendant-sister mainly by denying the genuineness of Ex.A1 Agreement. According to her, the document is forgedly created to file the present suit as counter blast to the suit for partition filed by the defendant in respect of the family property.

3. The brother and the sister in support of their respective contention adduced oral and documentary evidence before the trial Court. The trial Court on the basis of the oral evidence adduced on both sides found the terms and conditions subject to which Ex.A1-sale agreement came to be executed were unnatural and Ex.A1 agreement was not true and genuine and was forgedly created by using thumb impression of the defendant for grabbing the property belonging to the defendant for lesser price. The plaintiff is hence held disentitled to claim any right in the suit property. Aggrieved against the same, the plaintiff preferred the appeal in A.S.No.52 of 2007. The first Appellate Court also after detailed discussion, agreed with the findings of the trial Court and dismissed the appeal. Hence, this Second Appeal before this Court.

4.The second Appeal is admitted on the following Substantial Questions of Law:

1. Whether the Court below was correct in dismissing the appeal without following the mandatory provisions of Order 41 Rule 31 of the Code of Civil Procedure.
2. Whether the sale agreement (Ex.A1) should contain the signature of the purchaser compulsorily especially when the vendor alone executed the sale agreement in favour of the vendee.
3. Whether the burden of proving the sale agreement was on the plaintiff especially when the defendant admitted the signature in the agreement and pleaded coercion.

5. Regarding the Second Question of Law raised herein, the same is answered on the basis of the judgment of the Hon'ble Supreme Court in the case of ALKA BOSE V. Parmatma Devi and Others reported in 2008 (6) CTC 509 wherein, the Hon'ble Apex Court has categorically held that an agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral or it can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy, as a consequence of which the purchaser has the copy signed by the vendor and the vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it.

6.The relevant provision of law under Section 10 of the Contract Act also provides that all agreements are contracts if they are made the by free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. As such, by applying the observation of the Hon'ble Apex Court and by virtue of Section 10 of the Contract Act, even an oral agreement to sell is a valid one. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. As such, the finding rendered by the Courts below

holding the document to be invalid for want of signature by one of the parties, is legally unsustainable.

7.Regarding the first substantial question of law, the trial Court has framed the issues for consideration and the lower appellate Court also framed points for consideration and thereafter dismissed the issues and the points, on the basis of the evidence available before the same and rendered the findings and based on such findings, determined the rights of the parties and accordingly decided the issues in accordance with the procedure laid down under the law and the first Substantial Question of Law is accordingly answered.

8.On facts, the suit property belong to both the plaintiff and the defendant and the suit agreement is only in respect of the defendant's share in the suit property. The defendant though admitted her signature in the document, denied the execution of the same. It is her definite case that the document was created by using her signature obtained in the blank papers. That being so, the Court below rightly cast burden on the plaintiff to prove the valid execution of the same by the defendant. Though the plaintiff examined himself and the scribe of the document as PW1 to PW3, both the Courts below were for well considered reasons, not inclined to accept the same. Both the courts below having regard to the conduct of the parties, disbelieved the plaintiff's case, regarding the execution of the document.

9. Further, there is no explanation on the part of the plaintiff for fixing 30 months long duration for payment of balance ale consideration of Rs.5,000/- when major part of it is stated to be paid. It is relevant to point out at this juncture that the defendant already filed a suit in O.S.No.186 of 1997 seeking partition of the suit property and the same was decreed exparte on 13.03.2000 and the plaintiff as the defendant therein took steps to set aside the same and the present suit came to be filed during 1999, during the pendency of the partition suit. Had it been true that the plaintiff had always been ready and willing to pay the balance sale consideration of Rs.5,000/- and to have the execution and registration of the sale deed, he would have filed the present suit immediately after the institution of the partition suit. There is absolutely no reason for him to wait till 1999 to issue the legal notice. Had the arrangement as pleaded in this case been true, the plaintiff would have defended so in that partition suit and duly contested the same and would not have allowed the suit to be decreed ex parte. The trial Court, considering the material aspects as discussed above which raised serious doubt regarding the genuineness of Ex.A1, has rightly held the plaintiff to be disentitled to have the discretionary relief of specific performance and the same was also rightly confirmed by the lower appellate Court. The appellant is unable to make out any valid ground for interfering with such well considered judgments of the Courts below and the substantial questions of law are accordingly decided against the appellant.

10.In the result, the second appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

kal
To

- 1.The Principal Subordinate Judge,
Gobichettipalayam,
Erode District,
- 2.The District Munsif Court,
Sathynamangalam,
Erode District.

3.The Section Officer,
V.R.Section, High Court, Madras

+1 cc to Mr.I.C.Vasudevan, Advocate sr.3852

+1 cc to Mr.P.R.Balasubramaniam, Advocate sr.3339

S.A.No.1314 OF 2008

ts(co)
aa24/08/2015

सत्यमेव जयते

WEB COPY