

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.252 of 2009 & M.P.No. 1 of 2009

Jayalakshmi

.. Appellant/Appellant/Plaintiffs

vs.

Venkatesan

.. Respondent/Respondent/Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree in A.S.No.22 of 2007 on the file of the Principal Subordinate Judge, Krishnagiri dated 17.11.2008 in confirming the judgment and decree in O.S.No.405 of 2005 on the file of the District Munsif, Krishnagiri dated 23.08.2006.

For Appellant : Mr.V.Ragavachari

For Respondent : Mr.J.Hariharan
for M/s.V.Nicholas

J U D G M E N T

The appellant herein is the plaintiff in O.S.No.405 of 2005 on the file of the learned District Munsif, Krishnagiri. The said suit was originally filed before the learned Subordinate Judge, Krishnagiri and numbered as O.S.No.41 of 2003. On the modification of the jurisdiction, the suit was transferred to the District Munsif, Krishnagiri and renumbered as O.S.No.405 of 2005. The respondent herein is the sole defendant in the said suit. It was a suit filed for specific performance of contract of sale. The trial court by decree and judgment dated 23.08.2006 dismissed the suit. As against the same, the appellant herein filed an appeal in A.S.No.22 of 2007 before the learned Principal Subordinate Judge, Krishnagiri. By decree and judgment dated 17.11.2008, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same, the appellant is before this Court with this Second Appeal.

2. When this Second Appeal came up for admission on 17.04.2009, this Court ordered notice regarding admission. On service of notice, the respondent has made appearance. Thus, the Second Appeal is before me today for admission.

3. I have heard the learned Counsel for the appellant and the learned Counsel for the respondent. I have also perused the records carefully.

4. The case of the plaintiff in brief is as follows:

Admittedly, the suit property belongs to the defendant. The plaintiff and the defendant entered into a sale agreement on 06.12.1996 whereby the defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.55,000/-. A sum of Rs.50,000/- was paid at the time of agreement itself and the balance of sale consideration to be paid by the plaintiff was only Rs.5,000/-. It was also agreed upon that the balance of sale consideration should be paid by the plaintiff within 1½ years from the date of the sale agreement and the defendant, in turn, should execute the sale deed in favour of the plaintiff. It is the further case of the plaintiff that though the plaintiff was ready and willing to perform his part of contract, the defendant was evasive. Subsequently, on 10.04.1998, the defendant received yet another sum of Rs.1,000/- from the plaintiff towards part of the sale consideration and made an endorsement on the sale agreement itself vide Ex.A.4. Again on 09.02.2001, the defendant received yet another sum of Rs.1,500/- towards part of the sale consideration and made an endorsement on the sale agreement itself vide Ex.A.5. The sale agreement is Ex.A.1. Even after 09.02.2001, though the plaintiff was ready and willing to pay the balance of sale consideration, the defendant was not ready and willing to perform his part of contract. Therefore, he issued a legal notice and then filed the present suit on 31.01.2003 for specific performance.

5. The suit was resisted by the defendant. According to the defendant, there was no such sale agreement at all entered into between the parties on 06.12.1996 as it is projected by the plaintiff. According to the specific case of the defendant, the defendant borrowed a sum of Rs.45,000/- from the plaintiff and as per the practice adopted by the plaintiff, the suit sale agreement was executed by the defendant in favour of the plaintiff only as a security for the above said loan amount. It is further contended that the defendant never agreed to sell the suit property at all to the plaintiff. Therefore, according to the plaintiff, the Ex.A1 cannot be treated as a sale agreement and the same cannot be enforceable at all. It is further contended that Ex.A.4 and Ex.A.5 endorsements were not at all made by the defendant and he did not receive any amount at all on 10.04.1998 and 09.02.2001 respectively. According to him, the endorsements are all forgery. It is further contended that at any rate, the suit is barred by limitation.

6. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiff, four witnesses were examined including the plaintiff and as many as 8 documents have been marked. On the side of the defendant, two witnesses have been examined and as many as two documents have been marked. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

7. In this Second Appeal, the learned Counsel for the appellant would submit that the courts below were in error in comparing the signatures found in Ex.A.4 and Ex.A.5 with the vakalath and the other admitted signatures of the defendant to come to the conclusion that Ex.A.4 and Ex.A.5 would not have been made by the defendant at all. He would further submit that from the oral and documentary evidence, it has been clearly established that the sale deed is true and genuine and the same was entered into between the plaintiff and the defendant. The learned Counsel for the appellant would also submit that the endorsements Ex.A.4 and Ex.A.5 are true and thus, the suit is not barred by limitation. The learned Counsel would further submit that the courts below have not appreciated these facts properly.

8. The learned Counsel for the respondent would stoutly oppose this Second Appeal. According to him, there is no question of law at all involved in this Second Appeal. He would further submit that the findings of the courts below that Ex.A.4 and Ex.A.5 would not have been made by the defendant at all is a factual finding in which there is no question of law at all involved. He would also submit that in so far as the sale agreement is concerned, on appreciating both the oral and documentary evidence, two courts below have held that the sale agreement is not true and genuine. The learned Counsel would further submit that if once the factual finding that Ex.A4 and Ex.A5 were not made by the defendant could not be interfered with, then it goes without saying that the suit is barred by limitation. Thus, according to the learned Counsel for the respondent, the Second Appeal deserves only to be dismissed.

9. I have considered the above submissions.

10. At the outset, I should say that there is no question of law involved even to admit this Second Appeal. The reasons are many. Though Ex.A.1 reads as though it is a sale agreement, the courts below have appreciated the same along with the oral and documentary evidence let in by both the parties to come to the factual conclusion that there was no such sale agreement entered into between the parties by which the defendant agreed to sell the suit property to the plaintiff at all. Thus, in my

considered view, it is only a factual finding in which this Court cannot interfere with unless it is shown to this Court that the said finding is perverse. But the learned Counsel for the appellant is not able to make out any such case for showing even remotely that this finding is perverse.

11. Now turning to Ex.A.4 and Ex.A.5, these are all endorsements said to have been made by the defendant in the sale agreement on 10.04.1998 and 09.02.2001 respectively. The courts below have compared the disputed signatures in Ex.A.4 and Ex.A.5 with the admitted signatures of the defendant. Though it is contended by the learned Counsel for the appellant that the courts below ought not to have undertaken the said exercise, in my considered view, there is nothing wrong in the same. Under Section 73 of the Indian Evidence Act, the Court is fully empowered to compare the disputed signature with the admitted signature and to give a verdict on the same. It is only in a case where the court is not in a position to take a definite decision as to whether the disputed signature was really made by the party concerned or not, the court may call for opinion from a Handwriting Expert under Section 45 of the Indian Evidence Act. Thus, the opinion of an expert under Section 45 of the Indian Evidence Act is only to assist the court to arrive at a just and definite conclusion. But the Judge cannot give up his jurisdiction and leave it open to the expert to decide as to whether the disputed signature was originally made by the party concerned or not. Whether the opinion of the expert is available or not, ultimately, it is for the court to adjudicate upon the issue as to whether the disputed signature was made by the party concerned or not.

12. In the instant case where even for the naked eyes since it is clear that the disputed signatures would not have been made by the party concerned, there is no need for any expert's opinion. The courts below have rightly compared the disputed signatures with that of the admitted signatures of the defendant and have come to the correct conclusion that Ex.A.4 and Ex.A.5 would not have been made at all by the defendant.

13. The above conclusion is fortified by the evidence of the P.W.3. P.W.3 has admitted that when Ex.A.5 endorsement was made, he was not present. He has further stated that he was not aware as to whether any money was actually paid by the plaintiff on the said date or not. This evidence has also been properly appreciated by the courts below. Thus, the evidence of P.W.3 also clearly goes to prove that Ex.A.5 would not have been made by the defendant at all. At any rate, in my considered view since the finding that Ex.A.4 and Ex.A.5 would not have been made by the defendant is a simple finding on facts and since there is no question of law involved, I cannot interfere with the same. Further, there is no perversity in the said findings.

If once it is held that Ex.A.4 and Ex.A.5 are not true, then, it goes without saying that the suit is barred by limitation which was filed on 31.03.2003. Thus, in none of the findings of the courts below, I find any error. As I have already narrated, there is no substantial question of law warranting even admission of the Second Appeal.

14. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Krishnagiri.

2. The District Munsif, Krishnagiri.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.65757

+1cc to Mr.V. Nicholas, Advocate, S.R.No.65732

VGI (CO)
EU(01/02/2016)

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