

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.01.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.488 of 2013 and M.P.No.1 of 2013

A.Sakthivel

.. Appellant/Plaintiff

-Vs-

1. K.Viswanathan

2. K.Loganathan

.. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the decree and judgment passed in A.S.No.78 of 2010 on the file of the Principal District Judge, Salem dated 22.06.2012 reversing the judgment and decree passed in O.S.No.332 of 2004 on the file of the I Additional Subordinate Judge, Salem dated 16.06.2010 and to set aside the same.

For Appellant : Mr. D. Muthuselvam
For Respondents : ...

J U D G M E N T

The plaintiff in O.S.No.332 of 2004 on the file of the learned I Additional Subordinate Judge, Salem is the appellant herein. The respondents are the defendants. The said suit was filed for specific performance of an agreement of sale allegedly entered into between the defendants and one Kumarasamy on 22.01.1998. The defendants contested the suit. The trial court by decree and judgment dated 16.06.2010 decreed the suit as prayed for. As against the same, the defendants filed A.S.No.78 of 2010 before the Principal District Judge, Salem. By decree and judgment dated 22.06.2012, the lower appellate court allowed the appeal and reversed the decree and judgment of the trial court and dismissed the suit. As against the same, the appellant/plaintiff is before this Court with this Second Appeal.

2. This Second Appeal has come up before me for admission and I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the appellant/plaintiff is as follows:

The suit property was originally owned by the defendants and their father by name Kumarasamy. On 22.01.1998, the defendants and

Mr.Kumarasamy had entered into a sale agreement with the plaintiff thereby agreeing to sell the suit property to the plaintiff for a sale consideration of Rs.2,60,000/-. A sum of Rs.2,50,000/- was paid to them by the plaintiff as advance. The balance of sale consideration was thus Rs.10,000/-. The said sale agreement was duly registered on 22.01.1998 itself. It was agreed upon to complete the sale within a period of two years. But the defendants were not ready to perform their contract on time. The defendants, instead, wanted extension of time. In the meanwhile, Kumarasamy passed away. The defendants, therefore, requested the plaintiff to cancel the sale agreement dated 22.01.1998 and to enter into a fresh sale agreement. It was agreeable to the plaintiff. Accordingly, the earlier sale agreement was cancelled by means of a deed of cancellation on 22.08.2002 and the same was registered. On the same day, a fresh sale agreement was entered into between the defendants and the plaintiff by which the defendants agreed to sell the suit property for a valuable consideration of Rs.3,00,000/-. A sum of Rs.2,50,000/- was received as advance. It was agreed upon that the sale shall be completed within a period of two years. The deed was duly registered. After that, when the plaintiff approached the defendants expressing his willingness to pay the balance of sale consideration of Rs.50,000/- and wanted the defendants to perform their part of contract, they were evasive. They do not come forward to perform their part of contract. There were exchange of legal notices. Finally, the plaintiff was forced to file the present suit for specific performance.

4. In the written statement filed by the 1st respondent, it was contended before the trial court that the alleged sale agreement dated 28.02.2002 was not really intended to be a sale agreement and the defendants never agreed to sell the suit property to the plaintiff. The reasons for execution of the said document has been duly stated in paragraph 3 of the written statement. It is stated that the plaintiff is a moneylender and he was in the practice of demanding a sale agreement as and when he lent money on loan to anybody. It was only as per the said practice, when the defendants borrowed money, the sale agreement was demanded by the plaintiff. Following the said practice, the defendants signed the document and the same was registered. Thus, the deed was never intended to be a sale agreement and it was never the intention of the defendants to sell the suit property to the plaintiff. Thus, according to the defendants, the plaintiff is not entitled for a decree as prayed for.

5. Based on the above pleadings, appropriate issues were framed by the trial court and the parties were called upon to let in both oral and documentary evidence. On the side of the plaintiff, 4 witnesses were examined including the plaintiff and 6 documents were exhibited. On the side of the defendants, the 1st defendant was examined as D.W.1 and as many as 22 documents were exhibited. Having considered the above evidence, the trial court decreed the suit

thereby holding that the sale agreement, namely, Ex.A.3 was intended to be a sale agreement and the defendants genuinely agreed to sell the property to the plaintiff. But the lower appellate court has given a different finding reversing the decree and judgment of the trial court. The lower appellate court has held that Ex.A.3 was never intended to be a sale agreement and therefore, the defendants are not liable to sell the suit property to the plaintiff. That is how, the appellant is before this Court with this Second Appeal.

6. The learned Counsel for the appellant would submit that it is of course true that it has been established that the plaintiff is a moneylender. But on that score, it cannot be held that Ex.A.3 was not a genuine sale agreement entered into between the plaintiff and the defendants. According to him, the attestors of the document have been examined on the side of the plaintiff who have very categorically stated about the execution of this document. Apart from that, it is a registered document. The trial court had appreciated the evidence properly, but the lower appellate court has given certain reasons which are not at all sound to hold that the sale agreement, namely, Ex.A.3 was never intended to be the sale agreement. The learned Counsel for the appellant would also submit that the lower appellate court has also given a finding that the appellant was not ready and willing to perform his part of contract which is contrary to earlier findings. Thus, according to the learned Counsel for the appellant, the decree and the judgment of the lower appellate court deserves to be set aside.

7. I have considered the above submissions.

8. At the outset, I would like to state that there is no substantial question of law involved warranting admission of the Second Appeal. The lower appellate court has appreciated the evidence and has given only a factual finding which does not make out any substantial question of law at all. A perusal of the judgment of the lower appellate court would go to show that it has given a specific finding that the appellant/plaintiff is a moneylender. The contention of the learned Counsel for the appellant is that simply because, the plaintiff happens to be a moneylender, on that score, the lower appellate court ought not to have held that Ex.A.3 was never intended to be a sale agreement. But I find it very difficult to persuade myself to agree with the said submission of the learned Counsel for the appellant. It is not only on the ground that the appellant happens to be a moneylender that the lower appellate court has reversed the decree and judgment of the trial court, but for other reasons also.

9. The foremost reason is that Ex.B.1 to Ex.B.22 are all cancellation deeds cancelling the agreements for sale executed by various persons. All these documents are of the years 2002 to 2008. These documents would go to show that the appellant had lent money to various persons and as a security, he had obtained sale agreements

from them in respect of their property and after repayment of the loan, he had cancelled all these 22 agreements. The lower appellate court has rightly held that in all those 22 documents, it was never intended to use them as sale agreements. Thus, it has been clearly established that the appellant was in the practice of demanding for execution of sale agreement as and when he lent money to various parties.

10. In the light of the above findings, if we look into Ex.A.1 and Ex.A.3 there can be no difficulty in coming to the conclusion that here also, going by usual practice for the money lent, the appellant has obtained the sale agreements. Ex.A.1 was executed by the defendants and his father on 22.01.1998. In that document, it is stated that the sale consideration was fixed at Rs.3,00,000/-. It is stated in the document that a sum of Rs.2,50,000/- was paid as advance. But, in the plaint in para 2, it has been stated that a sum of Rs.2,60,000/- was fixed as sale consideration. This contradiction has been given weightage of by the lower appellate court to come to the conclusion that Ex.A.1 itself would not have been executed genuinely with an intention to sell the suit property, but instead, it is a document executed as a security. Then comes to Ex.A.3.

11. Had it been true that the intention of the parties to treat Ex.A.1 as a sale agreement, there would have been no occasion or necessity to cancel the said document on 28.02.2002 and to execute another sale agreement on the same day itself. P.W1 during his examination has clearly stated that no amount was paid towards sale consideration on 22.01.1998. But the document shows that a sum of Rs.2,50,000/- was paid under this document. There is no mention about the cancellation of the earlier sale agreement and the money paid under Ex.A.1. All these facts have been appreciated by the lower appellate court to come to a definite conclusion that Ex.A.3 would not have been intended to be a sale agreement. This finding of the lower appellate court cannot be stated to be in any manner imperfect. The lower appellate court has given cogent reasons for coming to this conclusion. As I have already narrated, it is essentially a question of fact which has been resolved by the lower appellate court and there is no substantial question of law in respect of the same.

12. The learned Counsel for the appellant would nextly contend that the lower appellate court has given a finding that the plaintiff was not ready and willing to perform his part of the contract. This finding given by the lower appellate court is only to substantiate the earlier conclusion arrived at by him that the sale agreement is not true. The finding of the lower appellate court is that had it been true that Ex.A.3 was intended to be used as a sale agreement, certainly, the plaintiff would have expressed his willingness to perform his part of contract within the time stipulated in the

document itself. Therefore, it cannot be said that the lower appellate court has taken a contra finding. This conclusion has been arrived at only to substantiate or support the earlier conclusion arrived at by the lower appellate court to hold that the sale agreement was never intended to be acted upon. From the detailed discussion made by the lower appellate court, it is crystal clear that the lower appellate court has appreciated all the documentary and oral evidence, let in by both parties including the attestors. The attestors have not stated that they saw the defendants signing the documents. But it was no consequence because the defendants have not denied the execution and the registration of the same. But the question is what was the animus of the parties, when the document was executed. It has been clearly held by the lower appellate court that it was never the animus of the parties to complete the sale in which I do not find any reason to interfere. To repeat, I have to hold that absolutely there is no substantial question of law involved warranting admission of this Second Appeal.

13 . In view of all the above, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi

To

- 1.The Principal District Judge, Salem.
- 2.The I Additional Subordinate Judge, Salem.

+ 1 cc to Mr.Muthuselvam, Advocate Sr.4966

S.A.No.488 OF 2013

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