

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2016

Pronounced on : 23.12.2016

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A. No.252 of 2008

and

M.P.No.1 of 2008

Navaneethakrishnan ... Appellant/Appellant/Plaintiff

Vs.

Indirakumar ... Respondent/Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 31.07.2007, made in AS No.65 of 2006, on the file of the Subordinate Court at Chidambaram, confirming the Judgment and Decree dated 28.02.2006, made in O.S.No.301 of 2004 on the file of the Principal District Munsif Court at Chidambaram.

For Appellant : Mr. Shloka Narayanan
for
M/s.Srinath Sridevan

For Respondent : Mr.A.Muthukumar

J U D G M E N T

The suit was filed for specific performance by the plaintiff. The suit was dismissed and the appeal was also dismissed by the first appellate Court. Aggrieved by the concurrent judgment of the courts below, the plaintiff has preferred this Second Appeal.

2. When the matter came for admission, this Court thought fit to put the respondent to notice to consider, whether any substantial question of law arises for consideration of this Court. Accordingly, the respondent appeared through his counsel and submitted that there is no perversity in the findings of the Courts below, hence, the Second Appeal has to be dismissed.

3. The short point involved in this Second Appeal is as under :-

The defendant executed a sale agreement, Ex.A1, on 13.04.1994 in respect of the suit schedule property for a sale consideration of Rs.50,000/- and received an advance of Rs.10,000/- on the same day. Later, he received Rs.35,000/- on 26.08.1994 towards part sale consideration and executed Ex.A2. As per the terms of the sale agreement as found in Ex.A1 the time for completion of contract was fixed as one year. The case of the plaintiff is that though the plaintiff was ready and willing to perform his part of the contract and to pay the balance sale consideration of Rs.5,000/- to get the sale deed registered, the defendant evaded to perform his part of contract and therefore, the plaintiff gave a telegram on 07.04.1997 and presented the suit on 11.04.1997.

4. The suit was successfully contested by the defendant alleging that there was no intention to sell his property. The agreement Ex.A1 was executed as a security for the loan received from the plaintiff. The alleged payment of Rs.35,000/- on 26.08.1994 and execution of Ex.A2 totally denied. The plaintiff, by creating false document has approached the Court with unclean hands and had sought for an equitable relief of specific performance based on a document which was not intended for alienation of the property and hence, the suit has to be dismissed.

5. Based on the pleadings, the trial court has framed three issues. On behalf of the plaintiff, three witnesses namely P1 to P3 were examined and Exhibits P1 to P3 were marked. On behalf of the defendant, the defendant examined himself as DW1 and 3 exhibits were marked on his side namely Exs. D1 to D3.

6. On appreciation of the facts, the trial Court held that Ex.A2 was a fraudulent document and part sale consideration of Rs.35,000/- was not passed on to the defendant on that date. In so far as Ex.A1 sale agreement is concerned, the attesting witnesses were not examined and the document was not proved in the manner known to law. For the said reason, the trial Court dismissed the suit. On appeal, after reappreciating the evidence, the first appellate court confirmed the judgment and decree of the trial court.

7. The learned counsel appearing for the appellant contended that the courts below have failed to consider the oral evidence and arrived at a conclusion which is contrary to the documentary evidence namely Exs.A1 and A2. Thus, the decree and judgment passed by the courts below is in violation of Section 91 and 92 of Indian Evidence Act. Further, it was contended by the

learned counsel for the appellant that the courts below ought not to have rejected Ex.A2 by comparing the admitted and disputed signatures through the naked eyes. It was also contended by the learned counsel for the appellant that in a suit for specific performance, the court ought not to have refused the equitable relief.

8. The learned counsel for the appellant submitted the following questions of law have to be taken for consideration :

a) Whether a defendant is barred under Section 91, 92 Evidence Act from taking the defence that he executed an agreement to sale as security for loan transaction.

b) Whether in order to prove the signature in a document, handwriting expert evidence is mandatory and conclusive.

c) Whether the Court is justified in observing that disputed signature and admitted the signature differ without giving any details or reasons of comparison.

d) Whether in a suit for specific performance the Court ought to have directed the defendant to refund advance by way of equity even if no decree of specific performance can be granted.

9. Per contra the learned counsel for the respondent submitted that the relief of specific performance is an equitable relief. The person who seeks such relief should come with clean hands. In this case, both the courts have concurrently stated that Ex.A2 is a forged document and there was no payment made by the plaintiff under the said exhibit. In the suit no where the plaintiff has pleaded his readiness and willingness to perform his part of the contract, which is a prime requisite for seeking the relief of specific performance. The plaintiff, having failed to prove his ready and willingness, the courts below have rightly held that the plaintiff is not entitled for the equitable relief. Since, the plaintiff has not prayed for alternate relief of repayment of money advanced and having found that Ex.A2 payment of part of consideration of Rs.35,000/- is a forged document, the courts below held that there is no necessity to order repayment of money advanced as an alternate relief.

10. In this context, the learned counsel for the respondent relied on the following portion of the judgment rendered in the case of (Kamireddi Sattiaraju & another V.Kandamuri Boolaeswari) reported in 2007 - 1 - L.W. 309:

17. From the above ratio laid down by the Supreme Court, when we analyse the stand of the parties, according to the appellants, irrespective of the fact that Ex.A-1 came into being, it was contended that the deed was never intended to be acted upon and that it

was a sham document. When the said stand is probed into further, as held by the Supreme Court, the bar under Section 92 of the Indian Evidence Act vis-a-vis Ex.A-1 would operate if only the appellants attempt to rely upon Ex.A-1 agreement and simultaneously sought to vary and contradict its terms. Such is not the case of the appellants. The appellants are not attempting to contend that the terms contained therein are to be varied or that the evident let in on their side was to contradict the terms contained therein. According to the appellants, the entire evidence let in both oral and documentary, was only to demonstrate that inspite of existence of Ex.A-1, it will have to be held that the parties had a different contract altogether and Ex.A-1 was never intended to be acted upon. At the risk of repetition, we state that applying the ratio laid down by the Supreme Court, such a stand of the appellants was certainly not prohibited under Section 92 of the Indian Evidence Act.

11. In this case also the oral evidence adduced by the defendant to establish that the agreement was not intended to sell the property but executed as a collateral security for the loan availed by him is permissible under Section 91 and 92 of Indian Evidence Act as observed by the Hon'ble Bench of this Court in the judgment cited supra. In addition to that it is held by the Courts below that Ex.A2 which was relied by the plaintiff to show that Ex.A1 was acted upon and the defendant has received a substantial sum of rupees towards sale consideration has been proved to be a false claim. There is no bar under law for the presiding officer to compare the signatures with the naked eye. In fact the law permits to do so, if necessary. In this case, the date of the stamp paper, place at which it was purchased and the evidence of attesting witness put together, has led to the conclusion that Ex.A2 is not a genuine document.

12. As pointed out by the learned counsel for the respondent that relief of specific performance being an equitable relief, it cannot be granted for mere asking of such relief. That too, in favour of the plaintiff, who has submitted forged document regarding the payment of part consideration. In such circumstances, the Plaintiff does not deserve any relief. Since, the plaintiff has not sought for an alternate relief of repayment of money advanced and when there is a dispute about the exact money advanced by him, the alternate relief cannot be granted. Therefore, this Court, does not find any arbitrariness, illegality or irregularity in the judgment and decree passed by the courts below. Accordingly, the substantial

question of law raised in this appeal are answered against the appellant and the second appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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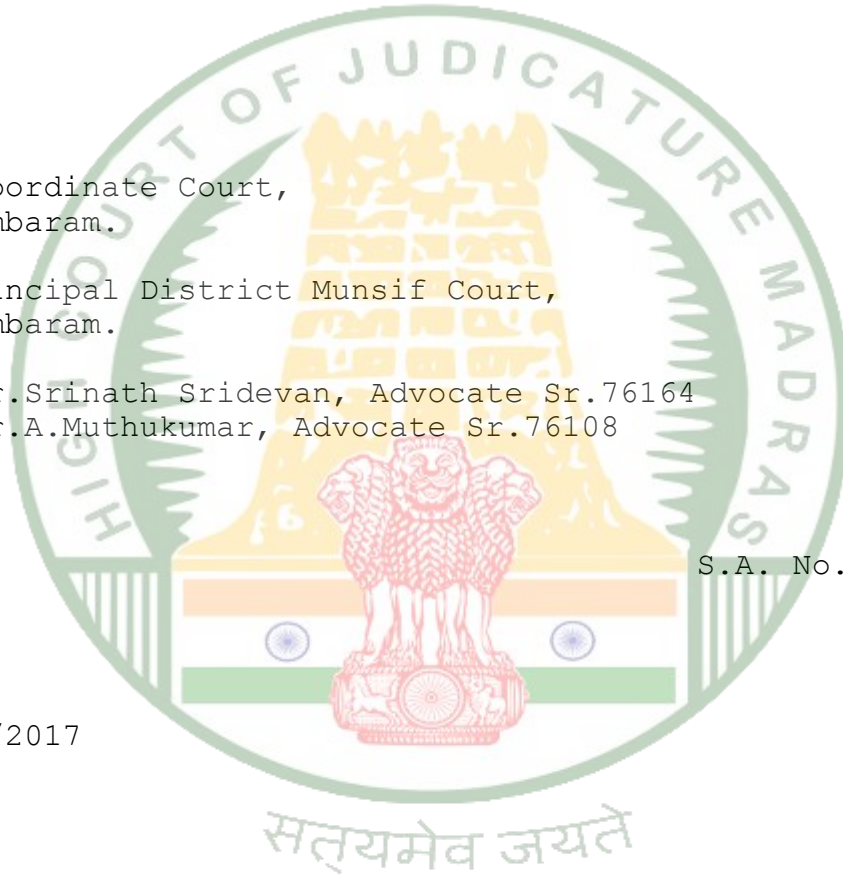
To

1. The Subordinate Court,
Chidambaram.
2. The Principal District Munsif Court,
Chidambaram.

+1cc to Mr.Srinath Sridevan, Advocate Sr.76164
+1cc to Mr.A.Muthukumar, Advocate Sr.76108

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