

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1108 of 2015 and M.P.No.1 of 2015

Saranya

.. Appellant/ 2nd Defendant

-Vs-

1. Nallasivam
2. R.Shanmugam

3. The District Collector,
Erode District,
Erode-11. .. Respondents/ Plaintiff/ 1st Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.121 of 2012 dated 01.03.2013 on the file of the Principal District Judge, Erode, in confirming the judgment and decree passed in O.S.No.99 of 2009 dated 01.04.2011 on the file of the II Additional Subordinate Judge, Erode.

For Appellant : Mr.M.Guruprasad

For Respondents : ...

J U D G M E N T

The 2nd defendant in O.S.No.99 of 2009 on the file of the learned II Additional Subordinate Judge, Erode is the appellant and the 1st respondent is the plaintiff and the 2nd respondent is the 1st defendant in the suit. The said suit was filed for specific performance of contract of sale dated 06.10.2008. The trial court decreed the suit by decree and judgment dated 01.04.2011. As against the same, the appellant herein filed an appeal in A.S.No.121 of 2012 on the file of the learned Principal District Judge, Erode. By decree and judgment dated 01.03.2013, 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. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

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

The suit property was jointly owned by the appellant and the 2nd respondent herein. They agreed to sell the suit property to the 1st respondent/plaintiff for a valuable consideration of Rs.2,80,000/-. A sum of Rs.2,50,000/- was paid on the date of agreement itself. Incorporating these terms and conditions, forthwith, a sale agreement was executed on 06.10.2008 by the appellant and the 2nd respondent in favour of the 1st respondent. From the date of the sale agreement, the 1st respondent was all along ready and willing to perform his part of contract. But the defendants were evasive. Therefore, the plaintiff issued a legal notice dated 30.01.2009 to both the defendants calling upon them to perform their part of contract. The 1st defendant, having received the said notice, did not send any reply. The 2nd defendant sent a reply disputing the claim of the plaintiff for specific performance. Thereafter, the plaintiff filed the present suit for specific performance.

4. Before the trial court, the 1st defendant remained ex-parte. The 2nd defendant/appellant herein alone filed a Written Statement in which she denied the execution of the sale agreement and also she denied her liability to execute a sale deed in favour of the plaintiff. According to her, there was a matrimonial dispute between her and the 1st defendant and in order to wreck vengeance and in order to deprive the appellant from owning the suit property, the 1st defendant had colluded with the plaintiff and he has created such a document.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and one of the attestors of the document was examined as P.W.2. As many as 5 documents have been exhibited on the side of the plaintiff. Ex.A.1 is the sale agreement dated 06.01.2008. Ex.A.2 is the copy of the legal notice dated 30.01.2009. Ex.A.3 and Ex.A.4 are the postal acknowledgments. Ex.A.5 is the Reply Notice of the appellant dated 18.12.2009. On the side of the defendants, he was examined as D.W.1 and her father one Mr.Palaniappan, who is stated to be one of the attestors to the sale agreement was examined as D.W.2. D.W.1 has denied her signature found in the sale agreement. D.W.2 Palaniappan has denied the signature found in the sale agreement which is alleged to have been made by him. On the side of the defendants, the original sale deed dated 24.11.2004 standing in the name of the defendants 1 and 2 has been marked as Ex.B.1. Having considered all the above, the trial court decreed the suit.

6. Before the lower appellate court, the appellant filed a Miscellaneous Petition requesting the court to receive additional documents. The lower appellate court heard the said Miscellaneous Petition along with the appeal. Finally, by decree and judgment dated 01.03.2013, the lower appellate court dismissed the appeal.

and also the lower appellate court declined to receive the documents as additional evidence and also dismissed the Miscellaneous Petition. 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 not right in comparing the disputed signature of the appellant with her admitted signature found in the postal acknowledgment and in the vakalath and to come to the conclusion that the said signature found in the sale agreement is that of the appellant. The learned Counsel would further submit that the legal burden is only upon the plaintiff to prove the execution of the document and according to her, the courts below have cast the said burden on the defendants. The learned Counsel for the appellant would also submit that the lower appellate court has erred in not receiving the documents which have sought to be filed at the time of the First Appeal, namely, the order passed by a learned Judicial Magistrate under Section 125 of Cr.P.C. against the 1st defendant and in favour of the appellant and the matrimonial dispute pending before the civil court wherein the 1st defendant had sought for divorce against the appellant herein. The learned Counsel for the appellant would further submit that the very fact that the original sale deed Ex.B.1 was in the possession of this appellant would go to show that the sale agreement would not have been true.

8. I have considered the above submissions.

9. At the outset, I should say that there is no question of law much less a substantial question of law involved warranting admission of the Second Appeal. On facts also, I do not find any perversity in the findings of the courts below. The lower appellate court has meticulously examined the written statement of the 2nd defendant and the evidence of D.W.1, wherein according to the lower appellate court, there is no specific denial of the execution of the sale agreement. The signature found in the sale agreement has been compared by the courts below with the admitted signature of the appellant found in the postal acknowledgment and also in the vakalath. According to the courts below, the disputed signature tallies with the admitted signature of the appellant. Though it is true that the courts below are not experts in the science of handwriting, on that score, the power of the court under Section 73 of the Indian Evidence Act cannot be questioned.

10. Here in this case, initially the burden to prove the execution of the document is on the plaintiff. That burden has been duly discharged by the plaintiff by examining P.W.1 as well as P.W.2, the attestors to the sale agreement who have categorically stated about the execution of the document. From these evidences, the plaintiff has discharged his legal burden to prove the execution and thereafter, the onus shifts on the appellant herein

to disprove the same. But unfortunately, the appellant has failed to discharge her onus. The courts below have given cogent reasons to hold that the execution of the disputed sale agreement has been proved. The said agreement contains the signature of Palaniappan, the father of the appellant as attestor. Palaniappan, the father of the appellant has been examined as D.W.2. He has denied the signature in the document. But such a plea was not taken anywhere either in the reply notice or in the written statement of this appellant. The 1st defendant remained ex-parte and he has not disputed the sale agreement. The divorce proceedings and the maintenance proceedings were subsequent to the execution of the sale agreement.

11. Considering all the above, the courts below on facts have come to the conclusion that the sale agreement is true and also the fact that the plaintiff was all along ready and willing to perform his part of contract. Based on these factual findings, the lower appellate court as well as the trial court have held that the plaintiff is entitled for a decree for specific performance. In this finding, I do not find any perversity at all. As I have already pointed out, there is no substantial question of law also involved in this Second Appeal. In view of the same, I do not find any merit at all in the Second Appeal.

12. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

- 1.The II Additional Subordinate Judge, Erode.
- 2.The Principal District Judge, Erode.

1 cc to Mr.M. Guruprasad, Advocate, Sr. 2058

S.A.No.1108 OF 2015

TEJ (CO)
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