

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram:

The Honourable Mr.Justice M.M.SUNDRESH

S.A.No.579 of 2015
and M.P.No.1 of 2015

M.Easwaran

... Appellant/Plaintiff

Vs.

K.V.Ponnusamy

... Respondent/Defendant

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 17.03.2015 made in A.S.No.21 of 2010 on the file of third Additional Subordinate Judge, Coimbatore, confirming the judgment and decree dated 07.12.2009 as against O.S.No.4418 of 2004 on the file of I Additional District Munsif, Coimbatore.

For Appellant : Mr.S.Subbiah
For Respondents : Mr.M.C.Swamy for
M/s Senthil Swamy Associates

JUDGMENT

The unsuccessful plaintiff in the suit for specific performance has come forward with this appeal.

2. This Court, while admitting the second appeal on 08.07.2015 framed the following substantial questions of law.

1. When the defendant admitted his signature in an agreement of sale, but setting up his defence as if he signed in the blank papers, as part of a loan transaction, to whom the onus of proof lies, whether upon the plaintiff or the defendant?

2. When the agreement of sale was disputed by the vendor, on the ground that the papers were filled up after getting signatures in blank sheets, without determined as to whether the defence put forth by the vendor is correct or not is not the judgment of the lower appellate Court, dismissing

the appeal on other grounds without rendering any specific finding on the question of execution of the agreement of sale is true or not?

3. Without rendering any finding relating to the true and genuineness of the agreement of sale, whether, in a suit for specific performance, the Court can dismiss the suit, on the contents of the agreement, on the ground of vagueness?

3. An agreement of sale was entered into between the appellant and the respondent on 27.09.1995. This agreement is with respect to 30 cents of the suit schedule property out of an extent of 1 acre, which was supposed to be allotted to the respondent. The time mentioned in the said agreement was four months. As the respondent was not willing, a notice was issued by the appellant on 05.02.1996 and the same was returned as "refused". Thereafter, with the averment that he has been ready and willing to pay the remaining amount in pursuant to the amount of Rs.10,000/-already paid, the respondent took up the plea that the document dated 27.09.1995 has been concocted and created for the purpose of filing the suit. The Appellant has examined the attester and the scribe as P.Ws.2 and 3 respectively, apart from examining himself as P.W.1.

4. The trial Court dismissed the suit on the premise that Ex.A1 does not mention any boundaries and therefore, it is vague. There are certain overwriting and corrections in Ex.A1. Thus, it creates serious doubts. The suit property has been handed over even much prior to the execution in favour of the local body for the purpose of laying road as seen from Ex.B1.

5. Before the lower appellate Court, the appellant filed a document additionally to buttress his submission that on a similar case involving the sister of the respondent, a suit filed for specific performance was decreed. However, the said application was dismissed as irrelevant for deciding the present suit. The lower appellate Court concurred with the findings rendered by the trial Court apart from holding that there are certain discrepancies in the evidence of P.Ws.1 and 2. Challenging the said concurrent finding rendered by the Courts below, the present second appeal is filed.

6. The learned counsel for the appellant submits that the respondent has not come with the clean hands. P.Ws.2 and 3 spoken in tune with the case of the P.W.1. The additional document filed under Order XLI Rule 27 of the Code of Civil Procedure was rejected wrongly by the lower appellate Court. Notice was issued under Ex.A2 within time. Even with respect to the payment of Rs.10,000/-, the respondent has deposed that he had discharged the said loan without any proof. Hence, the

appeal has to be allowed.

7. The learned counsel for the respondent/defendant submits that as both the Courts have given factual findings concurrently, no interference is required. The discretion is rightly exercised in favour of the respondent. Admittedly, there is an element of vagueness and doubt created over Ex.A1.

8. Ex.A1 has been allegedly executed as early as 27.09.1995. Now more than two decades have elapsed. Only a sum of Rs.10,000/- has been paid. A factual finding has been rendered on the vagueness of Ex.A1 especially, with reference to the boundaries. The suit property is only an extent of 30 cents out of 1 acre. It was supposed to be allotted in favour of the respondent after partition with his brother. The additional document sought to be marked is with respect to the separate property, which is owned by the sister of the respondent. A suit for specific performance is based upon discretion to be exercised by the Court, which is judicial in nature. In the case on hand, both the Courts have concurrently found that such a discretion has been exercised in the teeth of vagueness under Ex.A1, corrections made therein apart from discrepancies in the evidence of the plaintiff. Therefore, in exercise of the power under Section 100 of the Civil Procedure Code does not find any ground to interfere with the concurrent findings rendered by the Courts below on appreciation of evidence. In such view of the matter, this Court does not find any question of law warranting interference.

9. The additional document sought to be marked also does not improve the case of the appellant. The finding of the trial Court placing reliance upon Ex.B1 that the suit property has already been handed over to the local body for the purpose of construction of the road is also not assailed. At this juncture, taking into consideration the fact that the trial Court itself has given a finding that there is no evidence for repayment of a sum of Rs.10,000/- as mentioned in Ex.A1 coupled with the fact that the respondent was also responsible for dragging the matter over the years, including warranting an ex-parte decree on few occasions, this Court is of the view that interest of justice would be met if the respondent is directed to pay a sum of Rs.60,000/- (Rupees sixty thousand only) to the appellant. This course is also acceptable to the counsel for the respondent. Accordingly, the respondent/ defendant is directed to pay a sum of Rs.60,000/- within a period of eight weeks from the date of receipt of a copy of this judgment. The judgment and decree rendered by the Courts below are hereby confirmed insofar as the claim for specific performance is concerned.

10. The second appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

raa

To

1.The III Additional Subordinate Judge,
Coimbatore.

2.The I Additional District Munsif,
Coimbatore.

+1 cc to M/s.S.Subbiah Advocate sr 74142

S.A.No.579 of 2015

mp(co)
aa23/02/2017



WEB COPY