

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.03.2016

CORAM

THE HONOURABLE MR. JUSTICE T.MATHIVANAN

Second Appeal No.865 of 2013

K.Natarajan

..Appellant/Appellant/
Plaintiff

/vs/

1.N.M.Sivan
2.P.Parvathi

..Respondents/Respondents/
Defendants

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.02.2013 made in A.S.No.52 of 2011 on the file of the Subordinate Court, Namakkal confirming the judgment and decree dated 16.08.2011 made in O.S.No.573 of 2004 on the file of the Principal District Munsif Court, Namakkal.

For Appellant :Mr.T.Dhanyakumar
For Respondents:Mr.C.Prakasam for R1
No appearance for R2

JUDGMENT

Having lost the case before the Courts below, the plaintiff stands before this Court with this Second Appeal.

2.This Second Appeal has been directed against the judgment and decree dated 28.02.2013 and made in the appeal in A.S.No.52 of 2011 on the file of the learned Subordinate Judge, Namakkal, confirming the judgment and decree dated 16.08.2011 and made in the suit in O.S.No.573 of 2004 on the file of the learned Principal District Munsif, Namakkal.

3.Heard Mr.T.Dhanyakumar, learned counsel appearing for the appellant and Mr.C.Prakasam, learned counsel appearing for the first respondent. Despite substituted service through paper publication is effected, the second respondent has not chosen to appear before this Court and hence, called absent.

4.The appellant had filed a suit in O.S.No.573 of 2004 as against the respondents, seeking the relief of specific

performance of contract of sale, in respect of the suit property and thereby, according to the appellant, the respondents being the husband and wife had agreed to sell the suit property for a sale consideration of Rs.45,800/-. The case of the appellant is that on the date of agreement of sale, he had paid a sum of Rs.35,000/- to the respondents. Since the respondents had mortgaged the suit property with Vettambadi Primary Agricultural Co-operative Bank, Namakkal, they shall have to repay the mortgage amount along with the interest with the above said advance amount and they have to execute a registered sale deed in respect of the suit property in favour of the appellant on or before 04.01.2000. The mortgaged amount was paid to the above said Bank on 31.03.2000 and subsequently, the mortgage was also discharged. Despite the appellant was ready and willing to perform his part of contract by paying the remaining balance of sale consideration, the respondents had not come forward to execute the registered sale deed in his favour as agreed by then in the sale agreement and hence, he was constrained to file the above said suit.

5. On the other hand, the first respondent in the written statement has contended that the alleged sale agreement dated 04.07.1999 is not genuine and forged one and that the signature found in the sale agreement is not that of his signature and that the plaintiff had never put in possession of the suit property. Further, the first respondent has contended that in fact, he had filed a suit against one Ganesan in O.S.No.404 of 1996 before the trial Court and same was decreed in his favour (1st respondent/1st defendant) on 08.12.1998. The said Ganesan is none other than the co-brother of the appellant and therefore, the suit was filed on the instigation of the said Ganesan as a counter blast to the suit in O.S.No.404 of 1996.

6. Based on the pleadings of the parties to the suit, the trial Court had formulated the following three issues:-

- (i) Whether the plaintiff is entitled to the relief of specific performance?
- (ii) Whether it is true that the sale agreement is a forged one?
- (iii) To what other relief?

7. The trial Court, on appreciation of evidences, proceeded to dismiss the suit on 16.08.2011 on the following two grounds:- (i) Ex.A1-alleged sale agreement dated 04.07.1999 is not true. (ii) the appellant (plaintiff) had failed to prove that he was put in possession of the suit property in pursuant to the sale agreement -Ex.A1.

8. Challenging the correctness of the judgment of dismissal dated 16.08.2011, the appellant/plaintiff had

preferred an appeal in A.S.No.52 of 2011 on the file of the learned Subordinate Judge, Namakkal. After hearing both sides, the first appellate Court had endorsed the finding given by the trial Court and also proceeded to dismiss the appeal. Hence, the Second Appeal is preferred by the appellant.

9. On verification of the records, it is explicit that this appeal is not at all admitted. Though two Substantial Questions of Law have been formulated by the appellant in the grounds of the appeal, this Court is of the view that no Substantial Question of Law is involved in this Second Appeal as contemplated under Section 100 of Code of Civil Procedure.

10. Sub Clause (1) to Section 100 envisages that if the High Court is satisfied that the case involves a Substantial Question of Law, an appeal shall lie to the High Court from every decree passed in appeal by any Subordinate Court to the High Court. The Second Appeal is contemplated only, if the case involves, at the stage of admission, the Substantial Question of Law. Further, it is also significant to note here that as per Section 100 of the Code of Civil Procedure, the jurisdiction of the High Court to interfere with the judgment of the Courts below is confined to hearing on Substantial Question of Law.

11. Interference with the finding of fact by the High Court is not warranted, if it is involved re-appreciation of evidence, where on the basis of evidence on record, the trial Court and the first Appellate Court had concurrently arrived at a finding of fact, the High Court in the Second Appeal, cannot reverse the said concurrent finding on ordinary circumstances.

12. On coming to the instant case on hand, it is the specific case of the first respondent that his signature has been forged to make it appear that he had executed the sale agreement in respect of the suit property. He has specifically denied the signature find a place in Ex.A1-sale agreement. In order to substantiate his contention, on his application, Ex.A1 was sent to the experts along with the admitted signature of the first respondent find a place in vakalat filed by him in a suit in O.S.No.20 of 1996 for comparison and also for opinion. Accordingly, Ex.C1-Report was received by the trial Court. On an examination as well as on comparison, the expert had found that the disputed signature find a place in Ex.A1 was not that of the first respondent. The Handwriting Expert from the Forensic Science Laboratory was also examined as D.W.2. His chief examination withstood the test of cross examination and based on Ex.C1-Report given by D.W.2, the trial Court had proceeded to dismiss the suit with a finding that Ex.A1-sale agreement is not genuine, which has also been admitted by the first appellate Court. When the sale agreement itself was found forged and fabricated by the Courts below, this Court is of the

considered view, as observed in the forgoing paragraphs that no Substantial Question of Law is involved and hence, the Second Appeal deserves to be dismissed.

13. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Court,
Namakkal.

2. The Principal District Munsif Court,
Namakkal.

3. The Section Officer, VR Section
High Court, Chennai

+1 cc to Mr. T. Dhanyakumar Advocate sr.16700

+1 cc to Mr. C. Prakasam Advocate sr.16724

+1 cc to Mr. T. Dhanyakumar Advocate sr.16397

S.A.No.865 of 2013

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