

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

S.A.No.42 of 2016
and
C.M.P.No.1287 of 2016

1 Selvi
2 Manju
3 Indu
4 K.K.Krishnan ... Appellants/Appellants/Defendants

Vs.

Dennis ...Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree dated 28.07.2015 made in A.S.No.397 of 2014 on the file of the XVI Additional Judge, City Civil Court, Chennai concurring the Judgment and decree dated 06.08.2013 made in O.S.No.11455 of 2010 on the file of the XIV Assistant Judge, City Civil Court, Chennai.

For appellants : Mr.S.Rajendrakumar for
Mr.S.Ramajayam

For Respondent : Mr.G.Veerapathiran

JUDGMENT

The unsuccessful defendants before both the Courts below are the appellants herein challenging the decree for payment of money.

2. The respondent herein as the plaintiff filed the suit for recovery of a sum of Rs.6,69,482/- with interest on the principal sum of Rs.5,00,000/- with 24% interest by contending that the said sum of Rs.5 lakhs received by the defendants 1 and 4 pursuant to a sale agreement, dated 14.6.2007 and failed to execute the sale deed. It is the further case of the plaintiff that instead of executing the sale deed in favour of the plaintiff, the defendants 1 and 4 executed a gift deed in favour of the defendants 2 and 3 who are their daughters. It is the specific case of the plaintiff that on the date of agreement i.e. 14.6.2007, a sum of Rs.3,00,000/- was paid as advance and another sum of Rs.50,000/- was paid on 14.8.2007 and Rs.1,50,000/- was paid on 23.12.2007.

3. The defendants contested the said suit by filing written statement generally by denying the execution of the sale agreement.

4. The plaintiff examined himself as P.W.1 and marked Ex.A1 sale agreement, Ex.A2 and A3 acknowledgments, dated 14.8.2007 and 23.12.2007. He also examined one Haridas as P.W.2.

5. The defendants have examined first defendant as D.W.1 and fourth defendant as D.W.2. They have not marked any document.

6. The trial Court after considering the rival contentions of the parties and the evidence let in by them, found that the plaintiff has proved his claim for recovery of money and thus decreed the suit as prayed for.

7. The Appellate Court concurred with the finding rendered by the trial Court and consequently dismissed the appeal.

8. This appeal has been listed before me under the 'Adjourned Admission' caption after notice to the other respondents.

9. The learned counsel for the appellants submitted that a substantial question of law exists in this case for entertaining the appeal since the suit itself was filed before a wrong forum which is not having jurisdiction as the suit agreement was entered into at Kancheepuram. Therefore, his primary contention is that the suit filed at City Civil Court, Chennai is not maintainable for want of territorial jurisdiction. The learned counsel for the appellants further contended that when the defendants 1 and 2 have specifically denied the execution of the sale agreement, the trial court as well as the Appellate Court erred in granting decree for recovery of money based on Ex.A1 Sale agreement. He further invited this Court attention to the evidence of P.W.2 to contend that as though the endorsements viz., Ex.A2 and A3 were not made at Chennai.

10. As already stated supra, this matter is listed before this Court at the adjourned admission stage and therefore, this Court has to first see as to whether any substantial question of law arises for consideration of this Court for entertaining this appeal for admission based on the facts, circumstances of the case and the findings rendered by both the Courts.

11. I have given careful consideration to the submission made by the learned counsel for the appellants and the findings of both the Courts below.

12. Learned counsel for the appellant submitted that the trial Court does not have territorial jurisdiction to entertain the suit. Needless to say that a question involving territorial jurisdiction of a Court is a question depending upon the facts and circumstances of a particular case and the relief sought for

therein and thus, not a pure question of law alone. Therefore, only when the appellants could satisfy this Court on the factual aspects of the matter touching upon territorial jurisdiction as raised by them, then such question on the jurisdiction of the trial Court, can be considered as a substantial question of law.

13. The learned counsel for the appellants submitted that when admittedly suit agreement was said to have been entered into by the plaintiff and the first defendant at Kancheepuram, the endorsement made by the fourth defendant under Ex.A2 and A3 cannot give raise to a cause of action to file the suit before the City Civil Court, Chennai as the fourth defendant was not a party to the agreement and he was only a witness to the same. I am unable to appreciate the above contention for the simple reason that the suit is the one for recovery of money alone and not for specific performance of the agreement of sale. When the plaintiff pleaded that the part of the suit claim was paid at Chennai, the Court at Chennai is also having jurisdiction to entertain the suit when the part of cause of action i.e. receipt of Rs.2,00,000/- had taken place at Chennai through Ex.A2 and A3. The Courts below have considered all the factual aspects of the matter and found that the endorsements under Ex.A2 and A3 were made at Chennai and both such endorsements were made by the fourth defendant. Therefore, part of cause of action for filing the suit has certainly arisen before the City Civil Court, Chennai. Therefore, I do not find that these factual aspects of the matter as found by both the Courts below in respect of the jurisdiction, raise any substantial question of law for consideration of this appeal.

14. The other contention of the learned counsel for the appellants is that the defendants have denied the execution of the suit agreement and therefore, the Courts below are not correct in decreeing the suit. I am unable to appreciate this contention as well. The defendants in their written statement only made general denial with regard to execution of the sale agreement. However, in their depositions as D.W.1 and D.W.2, contra to such pleading, they deposed that their signatures were obtained in blank stamp papers and used as sale agreement. At this juncture, it is to be noted that total denial of execution is one thing, whereas admitting the signature and denying the contents is another thing. Both will not lie in the same footing. Therefore, when the defendants 1 and 4 have admitted their signatures, it is for them to prove that their signatures were obtained in blank papers. It is seen that no evidence to that effect has been let in before the Court below by the defendants in support of such contention even though such was not the stand taken by them in the written statement.

15. Therefore, the Courts below have rightly rejected such contention of the defendants and decreed the suit with which I find no infirmity or irregularity warranting interference by this Court. Accordingly, I find no substantial question of law arises for consideration for entertaining this appeal. Thus, the Second Appeal

fails and the same is dismissed. Consequently, C.M.P.No.1287 of 2016 is also dismissed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The XVI Additional Judge, City Civil Court, Chennai.

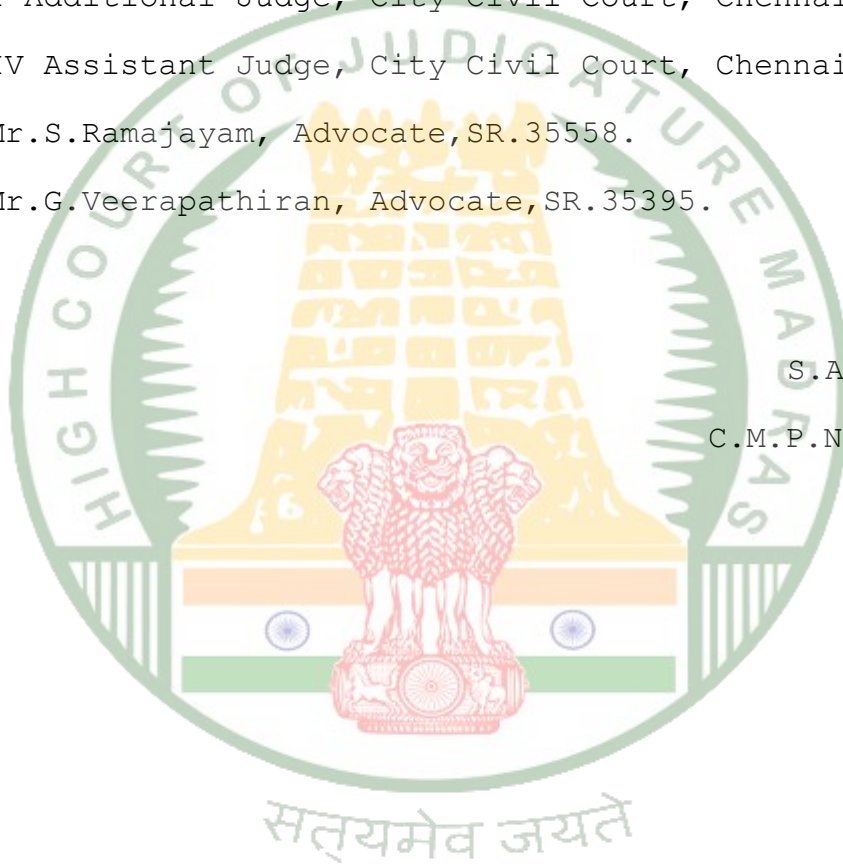
2. The XIV Assistant Judge, City Civil Court, Chennai.

+1 cc to Mr.S.Ramajayam, Advocate,SR.35558.

+1 cc to Mr.G.Veerapathiran, Advocate,SR.35395.

pvr (co)
krd 19/7

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