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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE S. S. SUNDAR

Second Appeal (MD) No.116 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

M.Muthurakku

... Appellant/Petitioner/Plaintiff

-Vs-.

Ponnuchamy Pillai

... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to reverse the decision of the Courts below, the decree and judgment of the Court of the Subordinate judge, Sivagangai made in A.S.No.71 of 2010, dated 26.06.2013 confirming the decree and judgment of the Court of the District Munsif, Sivagangai made in O.S.No.36 of 2007 dated 26.02.2010 and to decree the said suit as prayed for.

For Appellant : Mr.M.S.Balasubramaniya Iyer

For Respondent : No appearance

JUDGMENT

The plaintiff in the suit in O.S.No.36 of 2007 on the file of the District Munsif Court, Sivagangai, is the appellant in this Second Appeal. The suit in O.S.No.36 of 2007 was filed by the appellant for specific performance of an agreement of sale dated 10.07.2002 and for consequential relief.

2.The case of the plaintiff, as set out in the plaint, are as follows:

2.1.The suit property belongs to the defendant. Plaintiff and defendant entered into an agreement of sale on 10.07.2002 for a total sale consideration of Rs.15,400/- and on the date of sale agreement, the defendant received a sum of Rs.3,000/- as advance for his family expenses and the receipt of the advance was acknowledged by him in the sale agreement. As per the sale agreement, the balance sale consideration of Rs.12,400/- is payable at the time of executing the sale agreement and it should be done within a period of six months from the date of sale agreement. Though the period of six months is mentioned in the sale agreement, time is not the essence of the contract and hence,



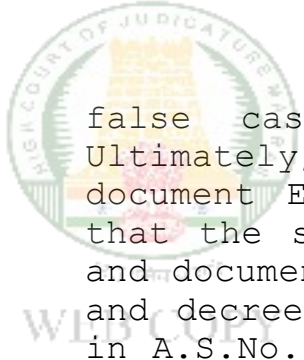
both parties did not give importance to the time specified in the sale agreement.

2.2. Though the plaintiff was ready and willing to perform her part of the contract, the defendant was making attempts to sell the suit property in favour of third parties. Hence, the plaintiff issued a suit notice on 11.11.2005 calling upon the defendant to execute the sale deed. However, the defendant did not respond. Hence, the plaintiff submits that she was constrained to file a suit for specific performance.

3. The suit was contested by the defendant on various grounds. It was the specific case of the defendant that the sale agreement dated 10.07.2002 is a forged document and that he never executed the sale agreement. Since the plaintiff and defendant were not in talking terms for about twenty years, the sale agreement was also described as a fraudulent concoction.

4. It is the specific case of the defendant that there was a dispute between the plaintiff and defendant for about twenty years relating to the right to seek partition in some of the properties in Kurunthankulam Village. As a matter of fact, it was pointed out by the defendant that the suit was filed against the defendant in O.S.No.21 of 2002 for recovery of a sum of Rs.12,500/- and that an *ex parte* decree was also obtained on 29.04.2002 by fraudulently suppressing the real address of the plaintiff. Upon knowing the fraudulent decree that was obtained in the suit in O.S.No.21 of 2002, the defendant took steps and it is very much important and relevant to mention that the suit property was shown as one of the items in the execution proceedings filed by the plaintiff. The fact that the plaintiff has filed the earlier suit and that he has been demanding partition in respect of properties including the suit property and existence of several disputes between them were referred to in the written statement filed by the defendant.

5. The trial Court decreed the suit after specifically holding that the suit agreement was not executed by the defendant and that the signature found in the suit agreement is not that of the defendant. Since the execution of the suit agreement was found against the plaintiff the trial Court found that the sale agreement is not a genuine transaction. The trial Court also considered various circumstances and the conduct of the plaintiff and ultimately came to the conclusion that the suit is nothing but another attempt to wreak vengeance against the defendant. It is also relevant to mention that the plaintiff has not even disclosed the relationship between the plaintiff and the defendant. The conduct of the plaintiff in a suit for specific performance is also a relevant factor and hence, the trial Court has commented against the plaintiff. Having regard to the other circumstances wherein the plaintiff has come to Court after considerably a huge delay, the trial Court declined to show any indulgence to the plaintiff especially when the plaintiff has come forward with the



false case as fortified by evidence of D.W.2 and D.W.3. Ultimately, the trial Court gives a specific finding that the document Ex.A1 namely the suit agreement is a rank forgery and that the stand of the defendant is proved by evidence both oral and documentary and dismissed the suit. Aggrieved by the judgment and decree of the trial Court, the plaintiff preferred an appeal in A.S.No.71 of 2010 on the file of the Sub Court, Sivagangai and the appellate Court also fell in line with the trial Court and dismissed the suit. As against the concurrent findings of the Courts below, the present Second Appeal is filed by the plaintiff.

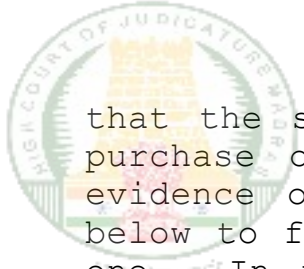
6.The learned counsel for the appellant strenuously argued on several issues apart from the following substantial questions of law that were raised in the memo of grounds:

(a) *When the documents produced by the plaintiff were missing from the Court records and when the copies of those documents alone are exhibited in the case, whether Courts below are correct in stating that the plaintiff had not taken steps for the comparison of the disputed signature in agreement for sale Ex.A1?*

(b) *Whether Courts below are correct in referring to various proceedings between the parties and entertaining the prejudice against the plaintiff, when those proceedings are not relevant to the case?*

(c) *When the evidence on record is that defendant had produced the stamp paper for engrossing the agreement for sale Ex.A1 whether Courts below are correct in expecting the plaintiff to explain the corrections made by stamp vendor on that stamp paper?*

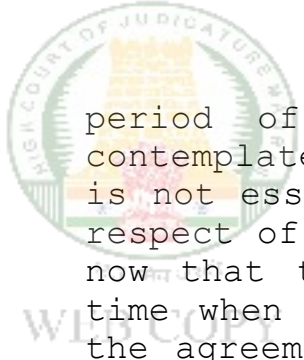
7.One of the main contentions that was raised by the learned counsel for the appellant is that the plaintiff / appellant has deposed about the execution of the sale agreement under Ex.A1. Though it is open to the plaintiff to send for the document for getting expert opinion by resorting to Section 45 of the Indian Evidence Act, it is not proper on the part of the Courts below to find fault with the plaintiff for not resorting to get an expert opinion without expressing an opinion on the comparison of the signature of the defendant, found in the document Ex.A1 with the admitted signature of the defendant. This submission of the learned counsel for the appellant has no merit as there is no factual basis in this submission and it cannot be accepted as a legal proposition having regard to the settled position of law expressed in various precedents. In the present case, the trial Court as well as the appellate Court on the examination of several evidence, came to the conclusion that the plaintiff has not proved Ex.A1 as a bona fide transaction. Apart from the admission of the plaintiff with regard to several disputes between the plaintiff and the defendant and pendency of proceedings between them in connection with properties, the trial Court as well as the appellate Court have various reasons to find



that the suit agreement cannot be a *bona fide* transaction. The purchase of stamp papers for the suit agreement Ex.A1 and the evidence of D.W.2 and D.W.3 also were considered by the Courts below to find that the suit agreement must have been a fabricated one. In these circumstances, the Court also has considered the fact that the plaintiff has not taken steps to get the expert opinion to prove the signatures of the defendant in Ex.A1. The signatures of the plaintiff is found in some of the documents filed by the defendant. However, it is important to note that the suit agreement itself was missing from the case bundle and the trial Court had only reconstructed the papers. From this, it was argued that mischief was done by some one and the plaintiff cannot be deprived of her right in enforcing the suit agreement. The suit is about the genuineness of the sale agreement. The missing of original document need not be put against any one of the parties. However, the entire case and surrounding circumstances apart from available evidence were considered by the Courts below while deciding the issues.

8.First of all, pendency of the suit between the plaintiff and defendant in O.S.No.21 of 2002 before the same Court is a relevant circumstance. The certified copy of the promissory note alleged to have been executed by the defendant was also marked in the previous suit. Again the exchange of notices in connection with the plaintiff's claim for partition and other disputes are also relevant to show that the plaintiff and defendant were in strained relationship for quite sometime particularly during the relevant point of time namely the execution of the suit agreement. In such circumstances, it is very difficult to believe the case of the plaintiff to accept the suit agreement under Ex.A1 as a *bona fide* transaction. As admitted, the suit agreement is dated 10.07.2002 and the earlier suit in O.S.No.21 of 2002 was filed on 17.08.2001 for recovery of a sum of Rs.12,500/-. Even in connection with a claim for partition, there were exchange of notices in the year 2005. There was a complaint also against the defendant by the plaintiff for stealing her bullock cart. In such circumstances, the conclusion reached by the Courts below on the genuineness of the document Ex.A1 cannot be interfered with.

9.It is also evident that the suit notice was issued only on 11.11.2005. The suit notice was received by the defendant and the defendant sent a reply on 21.11.2005. Even after the reply notice was issued to the plaintiff, the suit for specific performance came to be filed only on 10.01.2006. As seen from the dates, the suit agreement is dated 10.07.2002 and the notice itself was issued after a period of three years. Despite the specific denial regarding the agreement by way of reply, the suit came to be filed only in January, 2006. The conduct of the plaintiff / appellant in keeping silent for more than three years after the suit agreement does not appear to be a prudent behaviour of the *bona fide* agreement holder. Hence, the plaintiff is also guilty of delay and laches in issuing a notice nearly after a



period of three years despite the fact that the agreement contemplates a time limit of six months. It is true that the time is not essence of the contract in cases where the agreement is in respect of sale of an immovable property. But it is well accepted now that the agreement has to be performed within a reasonable time when the parties intent to make or specify a time limit in the agreement. Having regard to the conduct of the plaintiff in this case that she issued suit notice only on 21.11.2005 nearly after a period of three years, the plaintiff is also guilty of delay and laches and she is not entitled to any indulgence from Court for getting an equitable relief of specific performance. For valid reasons, the appellate Court has refused to interfere with the discretion of the trial Court. Since the relief of specific performance is a discretionary and equitable, the findings of the Courts below on the entitlement of the plaintiff to get the equitable relief for valid reasons cannot be interfered with by this Court. In the above circumstances, I find that there is no merit in this Second Appeal and hence, the Second Appeal is **dismissed**. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Sivagangai

2.The District Munsif,
Sivagangai

Copy to:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+2 cc to M/s.M.S.Balasubramania Iyer, Advocate, SR.No.72293,10236

srm

RL/5C/SS2/4.1.2017

Judgment made in
Second Appeal (MD) No.116 of 2014