



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.11.2016

C O R A M

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.20 of 2015

Dharmaraj @ Dharmar : Appellant/Appellant/Plaintiff

Vs.

1.M.Kumari
2.Veeramani
3.Mylon

: Respondents/Respondents/Defendants

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to set aside the Judgment and Decree passed in A.S.No.31 of 2013 dated 20.08.2013 on the file of the learned Principal Subordinate Judge, Nagercoil, confirming the Judgment and Decree passed in O.S.No.41 of 2012 dated 20.01.2013 on the file of the learned District Munsif -cum- Judicial Magistrate, Boothapandi.

For Appellant : Mr.G.Ramanathan

For Respondents : Mr.V.Meenakshisundaram
for Mr.R.Murugan for R1 & R2.

:Mr.S.Rajeshkanna for R3

J U D G M E N T

The plaintiff in the suit in O.S.No.41 of 2012 on the file of the District Munsif Court, Boothapandy, is the appellant in this Second Appeal. The suit property in the Eastern 10 cents out of 18.5 ares in R.S.No.129/4 in Aumanallor Village, Thovalai Taluk, Kanyakumari District.

2. The plaintiff filed the suit for specific performance of the agreement of sale. It is the case of plaintiff that the suit property belongs to one Velayuthaperumal Pillai and that while he was alive he entered into an agreement of sale with the plaintiff under Ex.A4 dated 24.05.2003, in respect of 10 cents on the western of suit property. Since the said Velayuthaperumal Pillai sold the property, which was the subject matter of the sale agreement under Ex.A4, to a third party, subsequent to the sale agreement, at the



request of the plaintiff, the said Velayuthaperumal Pillai executed once again a sale agreement in favour of the plaintiff under A1 dated 23.08.2003 in respect of the suit property. However, the said Velayuthaperumal Pillai died on 08.12.2004. Even though the suit notice was issued on 28.05.2004 during the life time of the Velayuthaperumal Pillai, the appellant/plaintiff contended that there was no reply by the said Velayuthaperumal Pillai. After the death of Velayuthaperumal Pillai, the suit property devolved on the defendants who are his legal representatives. Since the original owner, namely, Velayuthaperumal Pillai entered into an agreement for sale in respect of the suit property under Ex.A1 dated 23.08.2003, the plaintiff's claimed that he is entitled to the relief of specific performance as against his legal representatives in respect of the suit property.

3. The suit was contested by the respondents mainly on the ground that the said Velayuthaperumal Pillai had no right to enter into the sale agreement in respect of the suit properties as he had already executed a settlement deed dated 12.08.2003, prior to the sale agreement under Ex.A1 in favour of the first defendant, who is the wife of the said Velayuthaperumal Pillai and the first respondent herein. The defendants also specifically disputed the sale agreement dated 23.08.2003 and described the sale agreement under Ex.A1 as a forged document concocted by the plaintiff.

4. The trial Court dismissed the suit holding that the sale agreement under Ex.A1 is a forged one and that Velayuthaperumal Pillai had no right to execute the sale agreement in favour of the plaintiffs since he had already executed the settlement deed in favour of the first respondent, his wife on 12.08.2003.

5. Aggrieved by the findings of the trial Court, the appellant herein preferred an appeal in A.S.No.31 of 2013 on the file of the Principal Sub-Court, Nagercoil, and the appellate Court also fell in line with the trial Court. Hence, the plaintiff has preferred the above Second Appeal.

6. At the time of admitting the Second Appeal, this Court framed the following substantial questions of law:

1) Whether the Lower Court is right in not considering the absence of denial of signature of Velayuthaperumal Pillai in the agreement of sale, Ex.A1 even after the suit notice Ex.A2 by the plaintiff to Velayuthaperumal Pillai?

2) Whether the findings of the Lower Court that Velayuthaperumal Pillai had no title to the suit property on the date of Ex.A1 agreement of sale dated 23.08.2003, when admittedly Ex.B2 settlement in favour of the first defendant dated 12.08.2003 was in respect of western 10 cents in R.S.No.129/4



and Ex.A1 agreement of sale was in respect of eastern 10 cents in R.S.No.129/4?

3) Whether Ex.A1 agreement signed by vendor alone and handed over to the plaintiff and accepted by plaintiff is valid?"

7. The Courts below, on the question of right of Velayuthaperumal Pillai, have come to a correct conclusion that the sale agreement which was executed by the said Velayuthaperumal Pillai even assuming to be true cannot be enforced as an agreement and is void. The case of the appellant with regard to different properties that were dealt with under Ex.A1 and B2 was focussed by the Courts below and found that the documents under Ex.B2 was relating to the suit property which is also subject matter under Ex.A1 dated 23.08.2003.

8. Regarding the genuineness of the agreement under Ex.A1, the Courts below have given a specific finding against the plaintiff on the basis of material evidence particularly after considering the oral evidence of parties. Merely because the plaintiff has produced the document and examined PW2 who is one of the attesting witnesses, it cannot be assumed that the document is genuine and that the same was executed by the person concerned. The Courts below applied their mind with regard to the document, the signature of the person executing the document and other circumstances before suspecting the genuineness of the agreement.

9. Hence, I find no reason to interfere with the concurrent findings as the Courts below have assigned proper reasons for their conclusion and it is not the case of the appellant that some material evidence or document were escaped from the consideration of the Courts below. Therefore, this Court is of the view that no question of law, much less a substantial question of law, is involved in this second appeal.

10. Accordingly, the Second Appeal stands dismissed. No costs.

Sd/-

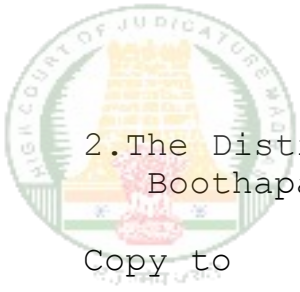
Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

To

1. The Principal Subordinate Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Nagercoil.



2.The District Munsif -cum- Judicial Magistrate,
Boothapandi.

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The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Murugan, Advocate in SR.No.68693

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