



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.399 of 2015

WEB COPY

V.Subburam

.. Appellant/Appellant/Plaintiff

vs.

Siva Shanmugeswaran

.. Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree dated 18.11.2013 in A.S.No.18 of 2012, on the file of the Principal District Court, Theni in confirming the decree and judgment dated 02.02.2012 in O.S.NO.74 of 2009, on the file of the Subordinate Court, Uthamapalayam.

For Appellant

: Mr.K.Guhan

For Respondent

: Mr.B.Saravanan

JUDGMENT

The plaintiff, who lost the legal battle in both the Courts, has come forward with the Second Appeal, challenging the Decree and Judgment passed in A.S.No.18 of 2012, dated 18.11.2013 by the Principal District Court, Theni, by confirming the Decree and Judgment made in O.S.No.74 of 2009, dated 02.02.2012 by the Subordinate Court, Uthamapalayam.

2. Heard the learned counsel for the appellant and perused the materials available on record.

3. The appellant/plaintiff filed a suit for specific performance stating that in respect of the suit property belonging to the respondent/defendant, the respondent/defendant appointed one Gurusamy as his Power Agent, to whom the appellant/plaintiff entered into an oral sale agreement on 20.09.2000 and even though, the total sale consideration was arrived at Rs.2,55,000/-, they fixed the sale price at Rs.2,50,000/- and a sum of Rs.10,001/- was paid as advance by the appellant/plaintiff on that date and he also paid a sum of Rs.90,000/- as further advance and entered into a sale agreement in respect of the suit property. On 20.09.2000 itself, the possession has been handed over by Gurusamy and from that onwards, the appellant/plaintiff is in possession and enjoyment of the property and on that date, it was agreed to



execute the sale agreement. But the respondent/defendant did not turn up for sale agreement. Hence, on 08.10.2000, R.Thangaraj and S.Latheif went to Andipatti and met Gurusamy and asked about the sale agreement. Gurusamy gave a positive answer, but he has not executed the sale agreement. Hence, on 16.10.2000, the appellant/plaintiff issued notice to Gurusamy requesting him to bring the respondent/defendant to the Sub-Registrar's Office and execute the sale deed at plaintiff's costs, after receiving the balance of sale consideration. The appellant/plaintiff waited, however the respondent/defendant did not come to the Sub-Registrar's office. But, Gurusamy sent a reply dated 11.04.2001 and repudiating the contents of the lawyer's notice.

4. After that, on 08.11.2000, the Surveyor surveyed the property adjacent to the suit property and the suit property was properly located and allocated with correct measurement. On 21.11.2000, a sale agreement was made between the appellant/plaintiff, respondent/defendant. As per the sale agreement, both the plaintiff and the defendant agreed that the payment of Rs.10,001/- to Gurusamy towards advance for the sale agreement by the plaintiff will be treated as advance and the defendant received a sum of Rs.2,00,000/- from the plaintiff and the balance sum of Rs.39,999/- has to be paid by the plaintiff to the defendant. After that, the respondent/defendant has not executed the sale deed. Hence, the appellant/plaintiff issued lawyer's notice and filed a suit for specific performance.

5. Resisting the same, the respondent/defendant filed a written statement stating that Gurusamy is not his Power of Attorney and he never executed any sale agreement. For surveying the property, he signed in the white paper and gave the same to Lathif, which was concocted for the purpose of filing the case and the plaint averments itself shows that it is a concocted story. Hence, he prayed for dismissal of the suit.

6. The trial Court, after considering the averments in plaint and written statement, framed necessary issues and also considering the oral evidence of P.W.1 to P.W.5 and D.W.1 and the documentary evidence viz., Exs.A.1 to A.10 and Exs.B.1 to B.5 and Exs.C.1 and C.2, dismissed the suit stating that the sale agreement was not proved as true and genuine and it was concocted for the purpose of case and hence, it held that the plaintiff is not entitled to any relief. Against which, first appeal has been preferred by the plaintiff, in which the first Appellate Court has confirmed the decree and judgment passed by the trial Court. Against which, the present Second Appeal has been preferred.

7. The learned Counsel appearing for the appellant/plaintiff submitted a plea that once the signature in sale agreement - Ex.A.3 has been admitted, it is the duty of the respondent/defendant to prove that under what circumstances, he



signed in the paper.

8. It is a well settled dictum of the Honourable Supreme Court that once a person filed a suit for specific performance, which is an equitable relief, it is the duty of the plaintiff to prove that the sale agreement is true and genuine. It is pertinent to note that before the alleged sale agreement deed dated 21.11.2000, there was a oral sale agreement between the appellant and Gurusamy, who is the Power of Attorney, but no single scrap of paper has been filed to show that on 20.09.2000, Gurusamy is the Power of Attorney for the defendant to enter into sale agreement. It is pertinent to note that after the issuance of notice and reply notice sent by Gurusamy stating that he is not a Power of Attorney, then only the plaintiff stated that he has entered into a sale agreement viz., Ex.A.3, dated 21.11.2000. Furthermore, even in the alleged sale agreement deed - Ex.A.3 dated 21.11.2000, it contains only 3 pages and in that, the last page only contains the signature of the defendant and in first two pages, there is no signature. It is the duty of the plaintiff to prove that Ex.A.3 is true and genuine. The alleged sale agreement was written only in the white paper and not in a prescribed stamp paper. Both the Courts below have considered all these aspects in a correct, proper and perspective manner and came to the conclusion.

9. Perusal of the records and considering the arguments made by the learned counsel for the appellant, I am of the view that there is no substantial question of law arises for consideration in this second appeal and the second appeal is liable to be dismissed at the stage of admission.

10. Accordingly, this second appeal is dismissed in the admission stage itself. No costs.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Principal District Judge, Theni.
2. The Subordinate Judge, Uthamapalayam.

+1 cc to M/s.K.Guhan, Advocate in SR.No.34648

+1 cc to M/s.B.Saravanan, Advocate in SR.No.34657

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