

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.833 of 2017

K.Mohamed Farooq

...Appellant/Plaintiff

Vs

1. S.Abdul Rahman

2. Shajid Rahman

3. R.Md.Shameel ...Respondents/Defendants in O.S

Second Appeal is filed under Section 100 of Code of Civil Procedure, to allow the Second Appeal by setting aside the Judgment and Decree dated 28.09.2016 made in A.S.No.1 of 2014 passed by the Sub-Ordinate Judge, Vaniyambadi, Vellore District partly allowing the Judgment and Decree in O.S.No.80 of 2007 dated 19.11.2013 by the Principal District Munsif Cum Judicial Magistrate, Vanniyambadi.

For Petitioner : Mr.P.Chandrasekar

O R D E R

The plaintiff, who had lost before the Court below, has filed the above Second Appeal.

2. The suit was filed for the relief of mandatory injunction directing the defendants to return the two cheques bearing Nos.022848 and 022849 and also the signed unfilled papers by the Plaintiff.

3. The lower Appellate Court had found that in the chief examination, P.W.1 has stated that he was forced to sign one agreement and two cheques and were taken from him. With respect to the other papers mentioned in the plaint, nothing has been stated. The suit is filed only with respect to return of two cheques.

4. In the written statement, it is stated by the defendants that one cheque is for Rs.3,000/- and another one is for a sum of Rs.1,50,000/-. The Cheque of Rs.3,000/- was encashed and another cheque of Rs.1,50,000/- was dishonored and returned as

"insufficient funds". Therefore, the defendants filed a Criminal case under Section 138 A of Negotiable Instrument Act before the Magistrate Court, Bangalore. Further, it is stated by the defendants that the plaintiff had not even produced his Bank Pass Book to show that cheque for Rs.3,000/- was encashed by the defendants. Moreover, the cheques were issued in the year 2004 and the suit was filed in the year 2007. The plaintiff has not given any convincing reason as to why he waited for three years for filing a suit, when there is a specific case that the cheques were taken from him by obtaining his signature on them forcibly. Though it is stated that the plaintiff had given the cheques to the defendants, nothing was brought on record. The next question as to why the Plaintiff had not instructed the bank to stop the payment of cheques, when the cheques were obtained from him by coercion.

5. As mentioned above, one of the cheques had been encashed by the defendants and the second cheque was dishonored. Therefore, both the cheques are not available with the defendants and it is not possible to give a direction to return the cheques to the plaintiff. Therefore, the relief of mandatory injunction directing the defendants to return the cheques, cannot be granted.

6. The Trial Court had rejected the suit, which was partly allowed by the Lower Appellate Court, as the relief sought for by the plaintiff is not capable of being granted. Hence, in the absence of any question of law arising for consideration in the above facts, this Second Appeal is dismissed, confirming the Judgment of the Lower Appellate Court.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Sub-Ordinate Judge,
Vaniyambadi, Vellore District.
2. The Principal District Munsif Cum Judicial Magistrate,
Vanniyambadi.

+1 CC to Mr.P. Chandrasekar, Advocate sr 90641.

S.A.No.833 of 2017

SKV(CO)
SP(17/02/2018)