

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2017

Coram:

The Hon'ble Mr. Justice S.VAIDYANATHAN

Second Appeal No.222 & 223 of 2012

S.A.No.222 of 2012:

Sivakumar .. Appellant/Appellant

vs.

1. Kumarasamy ..Respondent 1/Respondent 1/
Defendant

2. Pappathi ...Respondent 2/Respondent 2/
Nil

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.10.2011 made in A.S.No.5 of 2011 on the file of the Additional District Court (Fast Track Court No.II), Gobichettipalayam confirming the judgment and decree dated 31.08.2010 made in O.S.No.54 of 2010 on the file of the Sub Court, Sathiyamangalam.

S.A.No.223 of 2012:

Sivakumar ... Appellant/Appellant/Plaintiff

vs.

1. Palanisamy ..Respondent 1/Respondent 2/
Defendant

2. Maniyatha ... Respondent 2/Respondent 2/
Nil

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.10.2011 made in A.S.No.6 of 2011 on the file of the Additional District Court (Fast Track Court No.II), Gobichettipalayam confirming the judgment and decree dated 31.08.2010 made in O.S.No.55 of 2010 on the file of the Sub Court, Sathiyamangalam.

* * * * *

For Appellant in both Appeals : Mr.M.V.Venkataseshan

For 1st Respondent in both Appeals : Mr.P.R.Balasubramanian

For 2nd Respondent in both Appeals : No appearance

C O M M O N J U D G M E N T

Since the issue involved in both the cases is one and the same, the Appeals are taken up for disposal by a common judgment. For the sake of convenience, the 1st respondent in both the Appeals are referred to by their names.

2. The plaintiff who lost before both the Courts below is before this Court by way of two Second Appeals, challenging the judgment and decree dated 28.10.2011 made in A.S.No.5 and 6 of 2011, respectively, on the file of the Additional District Court (Fast Track Court No.II), Gobichettipalayam confirming the judgment and decree dated 31.08.2010 made in O.S.Nos.54 and 55 of 2010, respectively, on the file of the Sub Court, Sathiyamangalam.

3. According to the appellant/plaintiff, the defendants viz. Kumarasamy and Pazhanisamy, who are the 1st respondent in both the Appeals, separately entered into a sale agreement with the appellant/plaintiff on 18.08.2005, each agreeing to sell their respective suit property for a sum of Rs.1,50,000/- by receiving a sum of Rs.1,00,000/- as part of sale consideration and agreed to execute the Sale Agreement within two years from the date of the agreement after receiving the balance sale consideration of Rs.50,000/-. According to the appellant/plaintiff, though he was ready and willing to pay the balance sale consideration, Kumarasamy and Pazhanisamy did not come forward to execute the sale in his favour, thereby tried to evade the transaction. In this regard, the appellant/plaintiff issued a legal notice on 15.06.2007 to Kumarasamy and Pazhanisamy, respectively, to execute the Sale Deed in his favour. Refuting the averments contained therein, Kumarasamy and Pazhanisamy issued reply notice to the appellant/plaintiff. Having no other alternative, the appellant/plaintiff filed two separate suits for specific performance, one in O.S.No.54 of 2010 against the defendant-Kumarasamy and the other in O.S.No.55 of 2010 against the defendant-Palanisamy, both on the file of the Sub Court, Sathiyamangalam, seeking a direction to execute the sale deeds in his favour in respect of the suit properties, after receiving the balance sale consideration.

4. It is the case of the defendants viz. Kumarasamy and Pazhanisamy in both the suits that the plaintiff had lent money

for exorbitant interest and obtained their thumb impression and signature in Fifty Rupees stamp papers. According to them, they paid all the interest dues as well as the principal to the appellant/plaintiff, but failed to collect Fifty Rupees stamp papers from him. It is the further case of Kumarasamy and Pazhanisamy that prior to the issuance of legal notice by the plaintiff on 15.06.2007, they preferred a complaint on 02.06.2007 before the Sathyamangalam Police stating that the plaintiff and his father, by charging exorbitant interest, instigated them to commit suicide and in order to prevent the enquiry, the plaintiff filed a petition before this Court, and hence, the police failed to proceed further regarding their complaint.

5. The Trial Court, on consideration of the oral and documentary evidence, dismissed both the suits for specific performance, however, directed the defendant in both the suits to pay a sum of Rs.1,22,000/- in each suit, with interest at 9% p.a. for the principal amount of Rs.1,00,000/- from the date of filing of the suit till the date of judgment and at 6% p.a. till the date of payment of the same. Aggrieved by the same, the appellant/plaintiff filed two separate appeals before the Additional District Court (Fast Track Court No.II), Gobichettipalayam in A.S.Nos.5 and 6 of 2011. The First Appellate Court, after analyzing the materials on record, by a judgment dated 28.10.2011, upheld the judgment and decree of the Trial Court. Aggrieved by the same, the appellant/plaintiff is before this Court.

6. The substantial question of law that arises for consideration in this Second Appeal is as follows:

"Whether the First Appellate Court was right in rendering a finding in favour of the 1st respondent in both the cases in holding that the Sale Agreement dated 18.08.2005 is perfectly valid?

7. According to the learned counsel for the appellant/plaintiff, the defendant in one suit had affixed his signature and the defendant in another suit had affixed his thumb impression in the Fifty Rupees Stamp paper and it was established before the Trial Court that the value of the Stamp paper is only Rupees Twenty. He pointed out that the Trial Court, after taking note of the evidence let in by the parties and also the documentary evidence, rendered the finding that the Sale Agreement is a genuine one.

8. On the other hand, learned counsel for the respondents contended that the suit itself is barred by limitation and there is no specific period for performance of the so-called Sale Agreement in the said contract. According to him, the

appellant/plaintiff is a money lender and the 1st respondent in both the Appeals have borrowed money from him and that in order to usurp the property, the appellant has come forward with a prayer for specific performance based on the Sale Agreement, dated 18.08.2005. He further contended that in order to bring it within the period of limitation, since the time for specific performance has barred the contract dated 18.08.2005, the appellant/plaintiff has presented the suit on 18.07.2007. Learned counsel also added that the Agreement dated 18.08.2005 has been created for the purpose of obtaining loan and it cannot be termed as an Agreement of Sale.

9. In reply, learned counsel for the appellant/plaintiff submitted that apart from two witnesses, the plaintiff was examined as P.W.1; the scribe to the Sale Agreement was examined as P.W.2; the defendant in each suit, viz. Kumarasamy and Pazhanisamy were examined as D.W.1, respectively and three other independent witnesses have also been examined. It is his contention that the Trial Court having held that the Sale Agreement is genuine, has ordered only refund of money based on the said Sale Agreement. While so, the First Appellate Court, instead of allowing the Appeal Suits, has rendered a finding that it is only a loan transaction and a reading of paragraphs 15 and 17 of its judgment would clearly establish that the First Appellate Court has given a tangent reasoning, even though it has accepted the contract between the parties. It is his further contention that there is no whisper about D.W.5 in the cross-examination of P.W.1.

10. Heard the learned counsel for the appellant and the learned counsel appearing for the 1st respondent in both the appeals, gave careful consideration to the same and perused the material documents available on record.

11. On a reading of the judgment of the First Appellate Court, it is clear that stamp papers have been obtained from one Thiagarajan for a sum of Rs.10/- each and documents have been prepared. When the First Appellate Court accepted the finding of the Trial Court that it is only a loan transaction for which money has been received by Kumarasamy and Pazhanisamy in both cases, the plea of the appellant/plaintiff that he is entitled to specific performance cannot be accepted.

12. The First Appellate Court has further held that even though the total extent of property is 2.67 acres and that Kumarasamy and Pazhanisamy would be entitled to a share of Rs.50,000/- each, unless and until it has been demarcated, it cannot be held that the finding of the First Appellate Court is bad, as it has been held that the defendant in both the suits are entitled to seek a share. Even though it has not been disputed by Kumarasamy and Pazhanisamy that the balance amount

of Rs.50,000/- due to each of them has already been deposited, at no stretch of imagination, Ex.A1 in both the suits can be construed as an Agreement to sell the property, as there is no demarcation with regard to the property mentioned in the suit schedule. Further, the stamp paper of Rupees Fifty as pointed out by the appellant/plaintiff is only a typographical error and it will not give any right to him to seek the relief of specific performance.

13. Both the Courts below have rendered a finding that the Sale Agreement dated 18.08.2005 vide Ex.A1 in both the suits is a genuine one and it is only for the purpose of loan transaction and not for sale of property. Furthermore, the alternative plea in the suit that in the absence of specific performance, the amount paid to the defendant must be returned to the plaintiff has been accepted by the Trial Court and the relief has been granted to the appellant/plaintiff. Taking note of the efflux of time and the conduct of the parties, it appears that it is only a loan transaction for which, an Agreement has been entered into between the plaintiff and the defendant vide Ex.A1 in both the suits. Thus, the substantial question of law is answered against the appellant/plaintiff.

14. In view of the above discussion, this Court finds no reason to interfere with the finding of the First Appellate Court in all respects and the same is confirmed. The Second Appeals are dismissed. No costs. Consequently, connected M.P.Nos.1 and 1 of 2012 in both the appeals are closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To:

1. The Additional District Judge,
(Fast Track Court No.II), Gobichettipalayam.

2. The Sub Ordinate Judge, Sathiyamangalam.

+2cc to Mr.M.V.Venkataseshan, Advocate sr.25197 &25196

+2cc to Mr.P.R.Balasubramanian, Advocate sr.25647 & 25647

Common Judgment in
S.A.No.222 of 2012

&

S.A.No.223 of 2012

ev (co)

ss (13/6/2017)