

IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on 15.02.2017

Date of Verdict : 22.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.Nos.98 and 99 of 2008
and M.P.Nos.1 and 1 of 2008

S.A.No.98 of 2008 :-

Gethini. Ethirajalu Naidu

.... Plaintiff/Appellant/Appellant in both
Second Appeals

Vs.

1. Gethini. Muni Kanniaya Naidu
2. Kanderi Munusamy Naidu (Deceased)
3. Adhilakshmi Ammal
4. Mani @ Venkatesan
5. Divakaran

(R3 to 5 brought on record as LRs
of deceased second respondent
Vide order of Court dt. 09.02.2010
made in M.P.No.1 of 2010)

...Defendants

1,2/Respondents 1,2/LRS of Defendant 2/

LRS of Respondent 2/Respondents in

S.A.No.98 of 2008

1. Kanderi Munusamy Naidu (Deceased)
2. Kanderi Krishnama Naidu
3. Kanderi Srinivasalu Naidu @ Kullama Naidu
4. Mani @ Venkatesan
5. Diwakaran
6. Adhilakshmi Ammal

(R6 brought on record as LR of
deceased R1 vide order of
Court dated 09.02.2010)

...Defendants 1

to 5&LR of Defendant 1/

Respondents 1 to 5 & LR of Respondent 1/

Respondents in S.A.No.99 of 2008

Prayer in S.A.No.98 and 99 of 2008:- These Second Appeals are filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.Nos.17 and 18 of 2005, on the file of the learned Additional District Judge cum Fast Track Court No.V, Chengalpattu at Thiruvallore, and dated 20.02.2007 in confirming the judgment and decree in O.S.Nos.44 and 56 of 2004 on the file of the learned District Munsif Court,

Pallilpattu and dated 20.01.2005.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.J.Jothish Chander
for R3 to R5 in
S.A.No.98/2008
for R2 to R6 in
S.A.No.99/2008

R1 : Exparte(SA.98/2008)

COMMON JUDGMENT

In both the appeals the plaintiff is the appellant. S.A.No.98 of 2008 is directed against the concurrent finding of the Courts below dismissing the suit for specific performance or in alternate to refund the sale consideration of Rs 50,000/- and S.A.No.99 of 2008 is directed against the concurrent finding of the Courts below dismissing the suit for injunction and costs.

2. The facts in nutshell, is that, the plaintiff entered into a sale agreement in respect of the suit property on 10.01.1981 with the first defendant. The sale consideration was fixed as Rs.44,000/- and advance of Rs.17,000/- was paid to the first defendant. On 29.11.1986, a fresh sale agreement was entered between the parties fixing the sale consideration at Rs.50,000/-. According to the plaint, the entire sale consideration of Rs.50,000/- was paid to the first defendant. The possession of the property was given to the plaintiff. The plaintiff was ready and willing to have the sale deed executed. Finally he approached the first defendant on 14.03.1992 and demanded execution of sale deed. The first defendant evaded, hence notice dated 16.3.1992 was issued to the first defendant. He inturn replied on 26.03.1992, denying the execution of sale agreement with the plaintiff and also Intimated the sale of the property to the second defendant on 30.12.1991 itself.

3. The first defendant filed written statement in which he contended that, there was no sale agreement executed by him on 29.11.1986. The earlier agreement dated 10.01.1981 was duly cancelled and advance money was returned. The property jointly owned by him, his mother and sister. They all joined together and sold the property to the second defendant. Due to enmity, this suit is filed based on a fabricated sale agreement.

4. The second defendant in his written statement contented that he is a bonafide purchaser for value, the suit was filed after duly execution of sale deed. The alleged sale agreement is a forged document and further more the suit is barred by limitation.

5. In the injunction suit the plaintiff's averment is that, his brother agreed to sell the suit property to him on 10.01.1981. Thereafter on 29.11.1986 received full sale consideration of Rs 50,000/- executed another sale agreement and handed over the possession of the suit property. While, the suit for specific performance pending, the defendants trying to interfere his peaceful possession and enjoyment. The written statement filed by the purchaser is that, he is a bonafide purchaser for value. After purchase of the property on 30.12.1991 he is in possession of the property. The plaintiff never objected her possession.

6. Since the facts and parties are same and the litigation arises out of same cause of action, both the cases were tried together. In the common judgment, the trial Court as well the first appellate Court held that the alleged sale deed dated 29.11.1986 is not enforceable in law by a suit for specific performance in the year 1992. The suit is barred by limitation. The alleged sale agreement Ex A-2 found to be a fabricated document. The possession found to be with the first defendant till he executed sale deed in favour of the second defendant on 30.12.1991. Thereafter the possession is with the subsequent purchaser second defendant. Exs.B.11 to B.14 are in the name of the second defendant. The Courts below held that the second defendant is a bonafide purchaser for value. He was put in possession of the property. Patta transferred in the name of the second defendant.

7. Before admitting the second appeals, notice regarding admission was issued and the respondents enter appearance through counsel.

8. The Learned counsel for the appellants submitted that the Courts below ought not to have compared the signature of the first defendant in Ex A-2 and Ex B-18 and rejected the sale agreement as forged. It is the burden of the subsequent purchaser to prove that he is a bonafide purchaser. The Courts below has shifted the burden of proof on the plaintiff. The Court below ought to have drawn adverse inference for not examining the first defendant who is the common vendor. When the entire sale consideration already passed on to the vendor, the Courts below has wrongly held that the plaintiff has not proved his ready and willingness.

9. Per contra, the learned counsel for the respondents submitted that, the learned trial Court judge compared the disputed signature and admitted signature only at the instance of the appellant herein. When the execution of the sale deed Ex A-2 is denied, it is for the plaintiff to prove that the document is genuine. There is no legal impediment for the Court to compare the signature under section 73 of the Indian Evidence Act, of course subject to certain restriction. In this case, the learned trial Judge has

applied his mind and compared the disputed signature with that of the admitted signature in Ex B-18. Having found that the link and curves in the handwriting differs, he has held that the signature found in Ex A-2 is not a genuine. Above all, when the alleged sale agreement is of the year 1986, the suit for specific performance filed only in 1992 after lapse of six years. Therefore there is no substantial question of law to decide in this appeal.

10. While the learned counsel for the appellant citing the judgment of the Hon'ble Supreme Court in "Thiruvengadam Pillai -vs- Navaneethammal and others reported in 2008 (4) SCC 530", contended that, while Court can compare the disputed handwriting, such comparison by Court without the assistance of any expert, is always hazardour and risky.

11. The learned counsel for the respondents relied upon "Ulaganantha Reddy -vs- Nandagopal Chetti and others reported in 2005 (4) CTC 426" submitted that, relief of specific performance being a discretionary relief, such relief must be granted in accordance with sound and reasonable judicial principles. In this case, the agreement is forged, and the alleged payment of Rs 50,000/- is false. Therefore the appeal has to be dismissed with cost.

12. In the case in hand, the opportunity to sent the document for handwriting expert opinion was always available to the appellant. He did not opt to get an expert opinion. He himself has volunteered the Court to compare the signature. The trial Court had taken enough care to compare the admitted signature and the disputed signature and has arrived at the conclusion. Court has compared the signature with due diligence and not in a casual manner. Even if the document Ex.A-2 on the face of it accepted as genuine, the filing of suit after 6 years from the date of agreement is not explained. Handing over the possession does not save the limitation to file suit for specific performance. Further, the documents like patta and Sagupadi Adangal, Kists all stands in the name of the respondent after he purchased the property. Therefore, this Court finds no substantial question law involved in this case.

13. In the result, both S.A.Nos.98 and 99 of 2008 is dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rts

To

1. The Additional District Judge cum Fast Track Court No.V,
Chengalpattu at Thiruvallore.

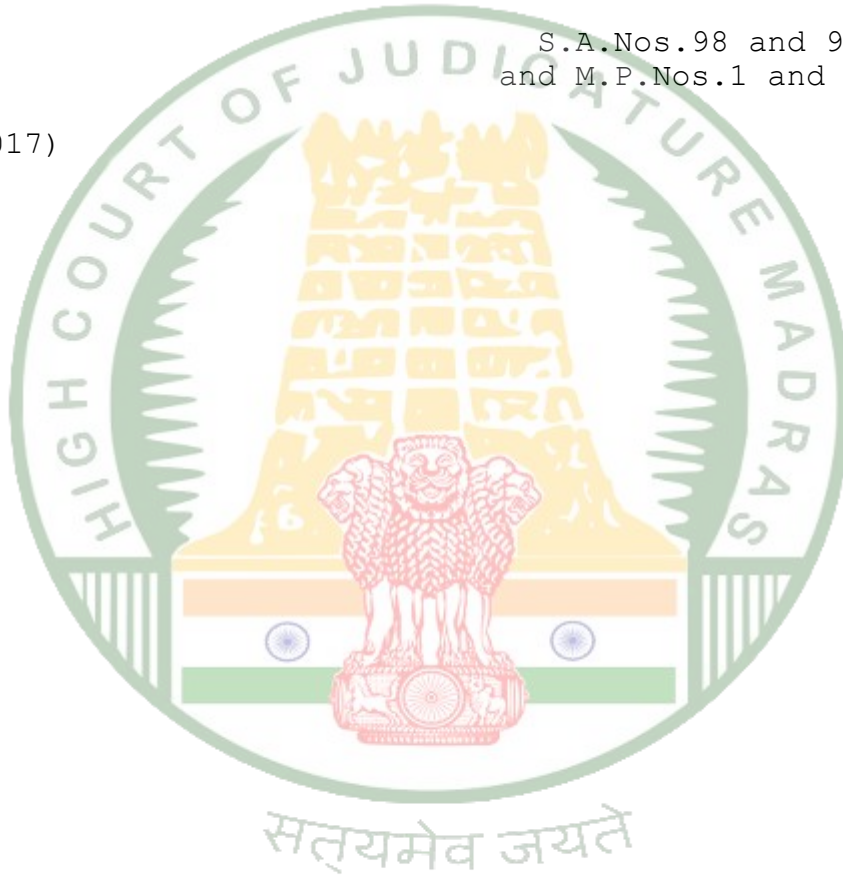
2. The District Munsif Court, Pallilpattu.

+1cc to M/s.Y.Jyothish Chander Advocate sr.11475

+2cc to M/s.Mr.V.Ragavachari, Advocate sr.11067&11065

S.A.Nos.98 and 99 of 2008
and M.P.Nos.1 and 1 of 2008

cnr(co)
ss(16/3/2017)



WEB COPY