

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal No.868 of 2015
and
M.P.No.1 of 2015

B.Ravikumar

... Appellant

vs.

B.Jeyanthi

...Respondent

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 27.11.2014 passed in A.S.No.14 of 2014 on the file of the Principal District Judge, Namakkal, confirming the Judgment and decree dated 17.12.2013 passed by the Sub Judge, Tiruchengode, in O.S.No.76 of 2010.

For Appellant : Mr.M.Rajasekhar

For Respondent : Mr.Silambannan, Senior Counsel
for M/s Profexs Associates

J U D G M E N T

This Second Appeal is directed against the judgment and decree dated 27.11.2014 passed in A.S.No.14 of 2014 on the file of the Principal District Judge, Namakkal, confirming the Judgment and decree dated 17.12.2013 passed by the Sub Judge, Tiruchengode, in O.S.No.76 of 2010.

2. The suit in O.S.No.76 of 2010 has been laid by the respondent for specific performance. This relief has been sought for, based upon Ex.A.1, which is an agreement between the parties to reconvey the suit property in favour of the plaintiff by the defendant, on receipt of a sum of Rs.3,50,000/-. Ex.A.2 is a sale deed executed by the Plaintiff in favour of the defendant/appellant, on the very same day i.e., 02.04.2009.

3. It is the case of the plaintiff that despite being a lady, discharged the loan, followed by the issuance of legal notice, the defendant/appellant is not ready and willing to comply with the terms of Ex.A.2 and thus the suit has been laid.

4. The Courts below decreed the suit as prayed for, placing reliance upon the evidence of P.Ws.1 to 3, coupled with Ex.A.1. Incidentally, it was held that it is the defendant/appellant, who took up the application for comparing the signature in both Exs.A1 and A2 and therefore, it is not open to him to challenge Ex.C.1, which is the Commissioner's report given by the Director and Chemical Examiner to Government, Forensic Sciences Department, Chennai.

5. Heard the learned counsel on either side and perused the materials available on record.

6. When the Second Appeal is taken up for admission on 30.09.2015, this Court has framed the following substantial questions of law:-

"a. When the plaintiff's witness admit in evidence that he did not see the defendant signing the alleged confirmation deed and further the non examination of the expert before Court depriving cross examination of the defendant, still is the learned District Judge right holding that the alleged disputed confirmation deed stands proved?

b. When it is settled in law when a document is disputed and an expert is appointed to file a report and the expert is not examined to prove the report, the document is inadmissible in evidence as right to cross examination to the defendant is denied?

c. The averment made in the plaint refers to a mortgage by conditional sale, and in such circumstances, the absence of any reference of a loan transaction, the original deed of sale, is the plaintiff entitled to enforce the alleged confirmation agreement based on the above said plaint averments? In fact, whether the Courts below are correct in decreeing the suit in the absence of agreement to sell the suit property to establish that a contract has been established between the appellant and the respondent?".

7. The learned counsel for the appellant has made only one submission. It is stated by him that the copy of the report of the Expert under Ex.C.1 has not been given to the appellant. According to him, since the expert has not been examined as the Court witness, no reliance can be placed upon it. To substantiate the same, the following decisions have been relied upon.

1. Keshav Dutt vs. State of Haryana
reported in [(2010) 9 SCC 286]
2. R.Soundarapandian vs. Santhanadevan
reported in (1990 (1) LW 113)

8. The learned Senior Counsel appearing for the respondent/plaintiff submits that no challenge has been laid to Ex.C.1. Therefore, the said document coupled with the evidence of the parties have been rightly taken into consideration by the Courts below and thus no interference is required.

9. It is not in dispute that Exs.A1 and A2 have been executed on the very same day. While disputing the execution of Ex.A.1, the appellant/defendant sought for comparison of the signature by the Government expert and thus he is the author of the exercise carried out by the Government expert under Ex.C.1. Thereafter, it was marked as Ex.C.1 as Court document. He did not challenge Ex.C.1. On the contrary, he feigned ignorance of Ex.C.1 as well as Ex.A.4, which is the notice sent by the counsel of the plaintiff to him. For these two documents, he has stated that he did not know. He has stated in his evidence that he did not know as to whether his lawyer has given any reply to Ex.A.4. Insofar as Ex.C.1 is concerned, he has stated that he did not know about the contents of Ex.C.1. Hence, this Court does not find any perversity in the findings rendered by the Courts below on placing reliance upon Ex.C.1. If the appellant has got any grievance over Ex.C.1, which has been marked as Court document and which came into being at his instance, he could have very well asked the Court to examine the Expert. He has not even chosen to file his objection to Ex.C.1. Further, the Courts below have relied upon the evidence of P.Ws.1 to 3, who are the Attestors and witnesses of Ex.A.1. Both Exs.A1 and A2 were executed on the very same day. Thus, this Court does not find any illegality or perversity in the findings rendered by the Courts below for coming to the conclusion in granting the decree in favour of the plaintiff.

10. The decisions relied upon by the learned counsel for the appellant are not relevant for the purpose of deciding this appeal. In the decision rendered by the Hon'ble Apex Court in the case of Keshav Dutt vs. State of Haryana reported in (2010) 9 Supreme Court Cases 286, the Hon'ble Apex Court was dealing with offences under the Prevention of Corruption Act, whereas, we are dealing with the case of preponderance of probabilities. The opinion of an Expert by its own is a piece of evidence to be appreciated by the Court. When that evidence is not disputed, it is well open to the Court to make reliance upon the same with other evidence available. In a criminal case, the prosecution

has to prove on the principle of "beyond reasonable doubt". At the cost of repetition, it is to be stated that in the present case, the Expert was appointed by the Court at the instance of the appellant, during the proceedings. The Hon'ble Apex Court, in the aforesaid case, was dealing with Section 293 of the Code of Criminal Procedure. Thus, the aforesaid decision does not have an application to the case on hand.

11. A reliance has also been made on the decision of this Court in the case of R.Soundarapandian vs. Santhanadevan reported in 1990(1) LW 113. In the said decision, the issue was as to whether the medical certificate produced will be admissible in evidence, in the absence of at least an affidavit filed by the author. Thus, the facts involved are totally different. In the said case, the medical certificate was produced by a party to the proceedings, which is not the case in this appeal, wherein, it is the Court which marked the document on the application made by the appellant. That is the reason why the document has been marked through the Court as Ex.C.1. Accordingly, substantial question of law (b) is answered against the appellant and in favour of the respondent.

12. Insofar as the 1st question of law is concerned, a reading of the Judgment of the lower Appellate Court would show that all the materials have been taken into consideration. Insofar as the question of law (c) is concerned, there is no substantial question of law involved as the suit itself has been laid based upon Ex.A.1 and thus Ex.A.2 is accepted. Thus, the substantial questions of law (a) and (c) are also answered against the appellant.

13. In the result, this Second Appeal is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

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Sub Assistant Registrar

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To

1. The Principal District Judge,
Namakkal.

2. The Sub Judge,
Tiruchengode.

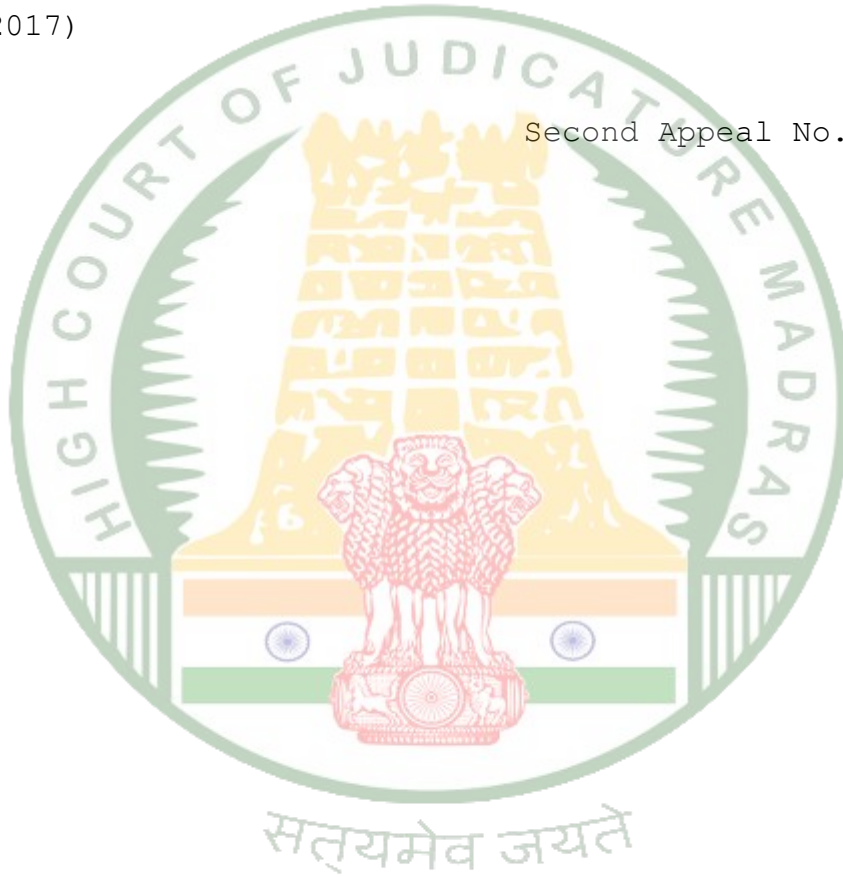
+1cc to Mr.Kaavya Silambanan, Advocate, S.R.No.4612

+1cc to Mr.Raja Sekhar, Advocate, S.R.No.4243

AD(CO)

RS(21/02/2017)

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