

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.581 of 2017

and

C.M.P.No.19361 of 2017

M.Mallika

... Appellant/1st defendant

vs.

1.P.Banumathi

2.S.Jai Aswini

3.S.Aarthi

4.P.Abinaya

...Respondents/Plaintiff 1 to 4

5.M/s.City Financial Consumer

Finance India Limited,

rep.by its Branch Manager,

P.T.C.Super Market upstairs,

68/379, Trichy Main Road,

Salem-636 006

...5th Respondent/2nd Defendant

Appeal suit filed against the judgment and decree dated 31.07.2017, passed by the I Additional District Judge, Salem in O.S.No.259 of 2008.

For Appellant :Mr.C.P.Sivamohan

For Respondents : Mr.V.Ayyathurai,Sr.counsel
for M/s.Karan & Uday for R1 to R4
No appearance for R5

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and decree dated 31.07.2017, passed in O.S.No.259 of 2008, by the I Additional District and Sessions Court, Salem.

2.The deceased plaintiff, by name, Pradhaban, has instituted O.S.No.259 of 2008, on the file of the trial Court, praying to pass a decree of specific performance, in pursuance of the sale agreement dated 25.06.2008, alleged to have been executed by the first defendant.

3.The material averments made in the plaint are that the

suit property is the absolute property of the first defendant and she entered into a sale agreement, dated 25.6.2008 with the deceased plaintiff and thereby agreed to sell the same for a sum of Rs.24,10,000/-. On the date of its execution, an advance amount of Rs.8 lakhs has been received by the first defendant. In the sale agreement, dated 25.06.2008, period of execution has been fixed as two months. On 21.08.2008, the deceased plaintiff has paid a sum of Rs.2 lakhs and on 06.09.2008, he has paid another sum of Rs.1 lakh and thereby elongated the time mentioned in the sale agreement. The deceased plaintiff has always been ready and willing to perform his part of the contract. He has also issued a legal notice, whereby called upon the first defendant to receive balance of sale consideration and to execute a registered sale deed. But the first defendant has not come forward to execute a sale deed in favour of the plaintiff, after receipt of balance of sale consideration. Under the said circumstances, a suit has been filed for getting the relief sought therein.

4. In the written statement filed on the side of the first defendant it is averred to the effect that the first defendant is the absolute owner of the suit property. It is true that the first defendant and deceased plaintiff have entered into a sale agreement dated 25.06.2008, whereby she agreed to sell the suit property for a sum of Rs.24,10,000/- and on the date of its execution, an advance amount of Rs.8 lakhs has been received by the first defendant. The first defendant is always ready and willing to perform her part of the contract. But the deceased plaintiff has not come forward to pay balance of sale consideration. It is false to aver that on 21.08.2008 and 06.09.2008, the first defendant has received a sum of Rs.2 lakhs and Rs.1 lakh respectively from the deceased plaintiff. The signatures found in the endorsements dated 21.08.2008 and 06.09.2008 are not the signatures of the first defendant and the same are nothing but a concoction. The present suit is barred by limitation and therefore, the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present appeal suit has been preferred at the instance of the first defendant, as appellant.

6. Before pondering the rival submissions made on either side, it has become shunless to perorate the following admitted facts.

7. It is an admitted fact that the suit property is the absolute property of the first defendant. It is also equally an admitted fact that the first defendant and deceased plaintiff,

by name, Pradhaban, have entered into a sale agreement, dated 25.06.2008, whereby the first defendant has agreed to sell the suit property for a sum of Rs.24,10,000/-. Further it is an admitted fact that on the date of execution of sale agreement, the first defendant has received an advance amount of Rs.8 lakhs and further it is recited in the sale agreement that within a period of two months, the deceased plaintiff has to pay balance of sale consideration and the first defendant is bound to execute a registered sale deed in his favour.

8.The sum and substance of the case of the deceased plaintiff is that the suit sale agreement dated 25.06.2008 has been marked as Ex.A1, wherein, two months time has been fixed. On 21.08.2008, the first defendant has received a sum of Rs.2 lakhs and on 06.09.2008, she received another sum of Rs.1 lakh and thereby elongated the period mentioned earlier. The endorsements made on 21.08.2008 and 06.09.2008 are marked as Exs.A2 and A3.

9.The only defence taken on the side of the appellant/first defendant is that the signatures found in Exs.A2 and A3 are not the signatures of the first defendant.

10.The learned counsel appearing for the appellant/first defendant has repeatedly contended to the effect that the suit sale agreement has come into existence on 25.06.2008, wherein, time for paying balance of sale consideration and also for execution of registered sale deed has been fixed as two months. Within the said period, the deceased plaintiff has not come forward to perform his part of the contract. Under the said circumstances, the present suit is barred by limitation and further, the signatures found in Exs.A2 and A3 are not the signatures of the first defendant and the trial Court, without considering the vital infirmities found in the case of the plaintiff, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

11.To repudiate the contentions put forth on the side of the appellant/first defendant, the learned counsel appearing for the respondents/plaintiffs has laconically contended to the effect that even though a specific stand has been taken on the side of the appellant/first defendant to the effect that the signatures found in Ex.A2 and A3 are not her signatures, no attempt has been taken so as to prove the same. But on the side of the plaintiffs, an expert has been appointed and admitted signature of the first defendant has been compared with the disputed signatures and ultimately, the expert has filed a report and the same has been marked as Ex.C1, wherein it has been clinchingly stated to the effect that the disputed signatures are nothing but the signatures of the first defendant and the trial Court,

after considering the oral evidence adduced on the side of the plaintiffs as well as documentary evidence, has rightly come to a conclusion that the signatures found in Exs.A2 and A3 are the signatures of the first defendant and ultimately decreed the suit, by way of passing the impugned judgment and the same does not require any interference.

12.As pointed out earlier, execution of Ex.A1 has been clearly admitted by the appellant/first defendant. The only defence taken on the side of the appellant/first defendant is that Exs.A2 and A3 are nothing but concocted documents and the signatures found therein are not the signatures of the appellant/first defendant.

13.Before looking into Ex.C1, by virtue of Section 73 of the Indian Evidence Act, 1872, the Court has to compare the admitted signature of the first defendant with the disputed signatures found in Exs.A2 and A3. In fact, this Court has collated the disputed signatures found in Exs.A2 and A3 with the admitted signature found in Ex.A1 and ultimately opined that the disputed signatures found in Exs.A2 and A3 are nothing but the signatures of the first defendant.

14.It is seen from the records that in the trial Court, service of an expert has been exercised so as to compare the disputed signatures of the first defendant found in Exs.A2 and A3 with her admitted signature found in Ex.A1 and ultimately the expert has given a report and the same has been marked as Ex.C1, wherein it has been clinchingly stated to the effect that the disputed signatures are the signatures of the first defendant.

15.Considering the overall evidence available on the side of the plaintiff and also considering the comparison made by this Court and also by expert, coupled with the opinion given in Ex.C1, this Court is of the considered view that the defence taken on the side of the appellant/first defendant cannot be accepted.

16.The trial Court, after considering the available evidence on record, has rightly found that the signatures found in Exs.A2 and A3 are the signatures of the appellant/first defendant and in view of the foregoing enunciation of factual aspects, this Court has not found any subsisting force in the contentions put forth on the side of the appellant/first defendant and altogether, the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.259 off 2008, by the trial

Court, are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msk

To

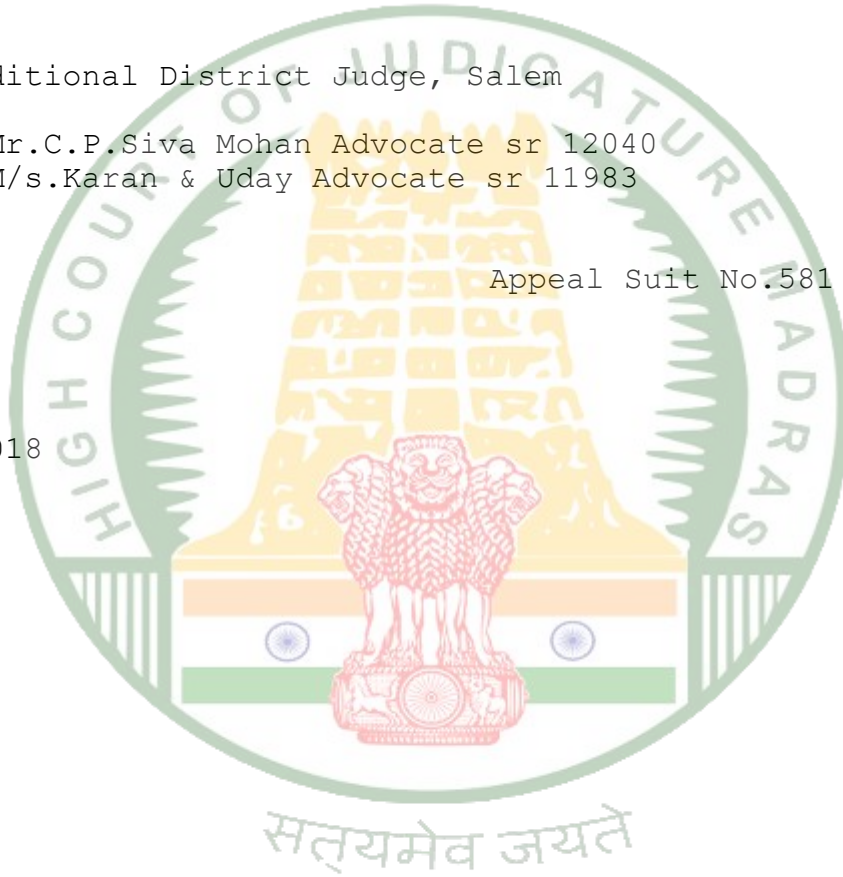
The I Additional District Judge, Salem

+1 cc to Mr.C.P.Siva Mohan Advocate sr 12040

+1 cc to M/s.Karan & Uday Advocate sr 11983

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vsn(co)
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