

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

Second Appeal No.465 of 2018
& C.M.P.No.12576 of 2018

Velmurugan,
S/o. Vairan,
J.Pappanoor Village,
Jingalkadhirampatti Taraf and post,
Pochampalli Taluk Krishnagiri District.

...Appellant/Plaintiff/Respondent

Vs.

Chinnaraj,
S/o. Ramasamy,
J.Pappanoor Village,
Jingalkadhirampatti Taraf and post,
Pochampalli Taluk,
Krishnagiri District.

... Respondent/ Appellant/Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree of the Learned Subordinate Judge, Uthangarai, dated 27.04.2017 in A.S.No.1 of 2016 reversing the judgment and decree of the Learned District Munsif-cum-Judicial Magistrate Pochampalli, Krishnagiri District, dated 12.07.2012 in O.S.No.63 Of 2010.

For Appellant : Mr.J.Hariharan
for Mr.V.Nicholas

J U D G M E N T

The plaintiff is the appellant. The plaintiff in a suit for specific performance is the Appellant before this Court.

2. The case of the plaintiff is that on 08.02.2017, he entered into a agreement of sale with the defendant and the terms of the agreement of sale is that the total sale consideration of the suit property was a sum of Rs.97,000/- and

the plaintiff on the date of the agreement, had paid an advance of Rs.5,000/-.

3. As per the terms of agreement, the schedule of payment was as follows:-

On 01.03.2007, the plaintiff was required to pay a sum of Rs.52,000/- and on 07.05.2007, he was supposed to pay the balance of Rs.40,000/-. The plaint averments further states that on 05.03.2007, the plaintiff had paid a sum of Rs.67,000/- to the respondent and the payment was acknowledged by one Perumal. Thereafter, on 14.06.2007, a further sum of Rs.10,000/- was paid and the payment was acknowledged by the defendant's daughter-in-law Smt.V.Latha. Thereafter, on 11.07.2007, the plaintiff had further paid Rs.10,000/- which was acknowledged by the defendant himself and on this payment, possession was also handed over to the plaintiff. It is the case of the plaintiff that despite his request to the defendant to receive the balance sale consideration of Rs.5,000/- and execute the sale deed, the defendant has been evading the same. This prompted the plaintiff to issue notice dated 22.06.2010 to which there was no reply from the defendant and therefore, the plaintiff was left with no other alternative except to file the suit.

4. The defendant had resisted the above suit inter alia contending that he is not the absolute owner of the property and that the property is the joint property of the defendant and the siblings. It was the case of the defendant that the agreement of sale is fabricated and the signature therein has been forged by using the signature found in the lease deed, which the defendant had entered into with the plaintiff in respect of the Mangrove and the signature therein has been used by the plaintiff. On 27.12.2010, the lease had come to an end and the plaintiff with the evil intent of usurping the property had created the agreement of sale.

5. The parties had gone to trial and the learned District Munsif-cum-Judicial Magistrate, Pochampalli decreed the suit. Challenging the said judgment and decree the defendant had filed A.S.No.1 of 2016 on the file of the Subordinate Court, Uthangarai. The learned Subordinate Judge had allowed the appeal. Challenging the same, the plaintiff is before this Court.

6. Heard Mr.J.Hariharan for Mr.V.Nicholas Learned Counsel for the Appellant. The learned counsel would argue that the Appellate Court has not considered the fact that the agreement of sale had been proved by examining the witnesses to the deed and in the light of such a finding, the Appellate Court has erred in reversing the same.

7. Heard the counsel and perused the papers.

8. The Appellate Court has found that the persons who have been examined to prove the agreement of sale are the relatives of the plaintiff and interested witnesses. In fact, P.W.3 has given evidence that he would say anything for the plaintiff only this would clearly show that he is not a reliable witness. The Appellate Court has also observed that the trial Court has not considered the evidence of D.W.2 who has adduced evidence to show that the suit property is not the individual property of the defendant but it's a joint family property and remains undivided. The Appellate Court has also drawn adverse inference on the failure of the plaintiff, to send the signature of the defendant for expert examination especially when the execution of the agreement as well as the receipt of money has been denied by the appellant.

9. In the light of the above observations, I do not find any infirmity in the judgment and decree of the learned Subordinate Judge, Uthangari in reversing the judgment and decree of the learned District Munsif-cum-Judicial Magistrate, Pochampalli. Consequently, the Second Appeal does give rise to any Question of Law.

10. Accordingly, the Second Appeal is dismissed. Consequently, Connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Uthangarai, Krishnagiri District.

2.The Learned District Munsif-cum-Judicial Magistrate,
Pochampalli, Krishnagiri District.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.80091

S.A.No.465 of 2018

GJ(CO)
GSP(21/01/2019)