Reserved on : 09.01.2018
Delivered on : 18.01.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

A.S.No.598 of 2010

G.Jothimani ... Appellant/Plaintiff

Vs.

1.P.C.Renganathan (Deceased)
2.R.Jayamani
3.R.Anandakumar
4.B.Umamageshwari ... Respondents/Defendants

(R2 to R4 brought on record as LRS of the deceased sole respondent vide order dated 23.10.2017 made in C.M.P.Nos.6387 & 6388 of 2017 in A.S.No.598 of 2010)

Appeal filed under Order 41 Rule 1 read with Section 96 of the Code of Civil Procedure against the judgment and decree passed in O.S.No.24 of 2007 dated 27.08.2008 on the file of the Additional District cum Session Judget, Fast Track Court II, Coimbatore.

For Appellant : Mr.P.Saravana Sowmiyan
For Respondents : Mr.L.Mouli

J U D G M E N T

The above appeal arises against the judgment and decree passed in O.S.No.24 of 2007 on the file of the Additional District Court cum Sessions Court, Fast Track Court-II, Coimbatore.

2.The plaintiff is the appellant and the respondents 2 to 4 are the legal representatives of the deceased defendant, who had died during the pendency of the appeal.

3.The plaintiff filed the suit in O.S.No.24 of 2007 for specific performance.

4.The brief case of the plaintiff is as follows:

(i)According to the plaintiff, the defendant is the absolute owner of the suit property measuring an extent of 3.24 acres by virtue of Sale Deed dated 20.05.1974 executed by one Rangaraj Pillai. Since the date of purchase, the defendant is in possession and enjoyment of the property as its absolute owner. The defendant agreed to sell the property in favour of the plaintiff at the rate of Rs.2,50,000/- per acre and for the total Sale Consideration of Rs.8,10,000/-. The defendant received a sum of Rs.5,00,000/- as advance on 19.07.2006.

(ii)At the time of execution of the Sale Agreement on 19.07.2006, the defendant informed that the original Title Deeds relating to the suit property was deposited with the Union Bank of India, Thudiyalur Branch, Coimbatore and a valid equitable mortgage has been created by the defendant in favour of the said Bank. The defendant requested the plaintiff that he needs at least Rs.5,00,000/- for clearing the said loan and for getting back all the Title Deeds from the said Bank. The plaintiff also accompanied the defendant to the said Bank and out of the amount of Rs.5,00,000/- paid to the defendant towards the Sale Consideration, the defendant paid the balance amount due to the said Bank and collected the original Title Deeds relating to the said property.

(iii)The defendant assured the plaintiff that he will execute the Sale Deed in favour of the plaintiff or in favour of any person nominated by her after receiving the balance Sale Consideration of Rs.3,10,000/-. Contrary to the assurance given by the defendant, he has not come forward to execute the Sale Deed in favour of the plaintiff. The plaintiff also came to know from reliable sources that suppressing the existence of the Sale Agreement, the defendant, taking advantage of the escalation of the land value in and around Coimbatore, made hurried attempts to sell the property to third party.

(iv)The plaintiff issued a public notice through her counsel informing about the subsisting Sale Agreement executed by the defendant and the same was published in the Tamil Daily "Dinamalar" on 27.10.2006. The plaintiff also launched a protest petition in the Office of the Sub Registrar, Vadavalli on 13.12.2006 with reference of the registration of any document relating to the suit property. The plaintiff was keeping the balance amount of Sale Consideration ready and she was always ready and willing to perform her part of the contract. On 15.12.2006, the plaintiff issued a legal notice and the defendant sent his reply on 20.12.2006. The defendant denied the execution of the Sale Agreement in favour of the plaintiff in the reply. In these circumstances, the plaintiff filed the suit for specific performance.

5.The brief case of the defendant is as follows:

(i)The defendant denied the execution of the alleged Sale Agreement dated 19.07.2006 in favour of the plaintiff. Further, he has stated that the plaintiff is doing Real Estate business and that she purchased a bulk quantity of lands adjacent to the defendant's land and she was urging the defendant and threatened him to sell the property to her, because the land belonging to the defendant is the only access to reach the plaintiff's lands. The alleged Sale Agreement is created by the plaintiff and it is a fabricated and forged document. The defendant also specifically stated that he never received any amount from the plaintiff as alleged in the plaint. The plaintiff never accompanied the defendant to the Union Bank Of India, Thudiyalur Branch, Coimbatore for clearing his loan account.

(ii)The defendant had sent his reply to the legal notice sent by the plaintiff narrating the entire facts. The plaintiff has filed the suit only to cheat and defraud the defendant by creating bogus Sale Agreement to get illegal gain from the defendant. The value of the property is more than Rs.48.75 lakhs. There is no necessity to sell the property to the plaintiff. In these circumstances, the defendant prayed for dismissal of the suit.

6.Before the trial Court, on the side of the plaintiff, 3 witnesses were examined and 8 documents, Exs.A1 to A8 were marked. On the side of the defendant, 2 witnesses were examined and 6 documents, Exs.B1 to B6 were marked. Ex.W1 was marked as witness document.

7.The trial Court, after taking into consideration the oral and documentary evidences let in by both the parties, dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff has filed the above appeal.

8.Heard Mr.P.Saravana Sowmiya, learned counsel for the appellant and Mr.L.Mouli, learned counsel for the respondents.

9.It is the case of the plaintiff that she entered into Ex.A1 Agreement of Sale dated 19.07.2006 with the defendant for the purchase of the suit property for a total Sale Consideration of Rs.8,10,000/- and paid a sum of Rs.5,00,000/- as advance to the defendant on the same day. The defendant denied the execution of the Sale Agreement in favour of the plaintiff and he has specifically stated that the Sale Agreement was created and fabricated by the plaintiff for the purpose of filing the suit and for grabbing the defendant's property. The defendant also contended that there is material alteration in Ex.A1 Sale Agreement, which was not explained by the plaintiff, therefore, the suit filed by the plaintiff is liable to be rejected. The plaintiff was examined as P.W.1, the attestor of Ex.A1 Sale Agreement was examined as P.W.2 and the Officer of the Union Bank of India was examined as P.W.3. The defendant was examined as D.W.1. His son was examined as D.W.2.

10.On a perusal of Ex.A1 Sale Agreement, it is clear that the last sentence in the said document has been written in a different ink. In the last sentence, it has been stated that the defendant had received a sum of Rs.5,00,000/-. That apart, the document was attested by two witnesses. However, the plaintiff is not in a position to say who the other attestor is.

11.The non-explanation of the details about the other attestor by the plaintiff cannot be brushed-aside. That apart, she has not explained as to the interpolation of the last sentence in the document. When the defendant had sent Ex.A4 his reply dated 20.12.2006 denying the execution of the document and also filed his written statement re-iterating the stand taken in Ex.A4 reply, the plaintiff should have proved the due execution of Ex.A1 Agreement by acceptable evidence. She should have taken steps to send the signature found in Ex.A1 Agreement for comparison by an expert.

12.It is settled position that the disputed signature cannot be compared with the signature found in the pleadings and vakalat.

13.To support her case, the plaintiff had examined the Officer of the Bank as P.W.3. In his cross examination, P.W.3 has stated that the loan was discharged on 10.02.2006. However, the alleged suit Agreement was executed on 19.07.2006. Even according to the plaintiff, the advance amount of Rs.5,00,000/- was paid by her to the defendant only on 19.07.2006. That being the case, when P.W.3, the Manager of the Union Bank of India, has stated that the loan was discharged on 10.02.2006 itself, the case putforth by the plaintiff cannot be accepted. Even according to P.W.3, the loan was discharged about five months prior to Ex.A1 Agreement. The trial Court had compared Ex.A1 document and found that the interpolation has been made in Ex.A1 Agreement subsequently. When the plaintiff had paid a sum of Rs.5,00,000/- on 19.07.2006, she would have mentioned the same at the first instance in the Agreement, but, inserting the said sentence subsequently would itself create a doubt with regard to the genuineness of the document.

14.It is settled position that the burden of proof lies on the plaintiff to prove the truth and genuineness of the document.

15.In the case on hand, inspite of the defendant taking a stand that the document is a fabricated document, the plaintiff has not taken any steps to prove the truth and genuineness of the document.

16.The learned counsel appearing for the respondent, in support of his contention relied upon the judgment reported in (1977) 1 Supreme Court Cases 379 [Seth Lookaran Sethiya and others Vs. Mr.Ivan E.John and others] wherein the Apex Court held as follows:

> "...
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> 23.Question 5: Before proceeding to determine this question, it would be well to advert to the legal position bearing on the matter. As aptly stated in paragraph 1378 of Volume 12 of Halsbury's Laws of England (Fourth Edition)

if an alteration (by erasure, interlineation, or otherwise) is made in a material part of a deed, after its execution, by or with the consent of any party to or person entitled under it, but without the consent of the party or parties liable under it, the deed is rendered void from the time of the alteration so as to prevent the person who has made or authorised the alteration, and those claiming under him, from putting the deed in suit to enforce against any party bound by it, who did not consent to the alteration, any obligation, covenant, or promise thereby undertaken or made.

24.A material alteration, according to this authoritative work, is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed.

17.The ratio laid down by the Hon'ble Supreme Court in the above referred judgment squarely applies to the facts of the present case.

18.That apart, under Section 16(c) of the Specific Relief Act, the plaintiff should prove her readiness and willingness to perform her part of the contract. The plea of readiness and willingness should be pleaded and proved by the plaintiff. In the case on hand, though the plaintiff had contended that she was always ready and willing to perform her part of the contract, she has not proved the same by oral and documentary evidences. In the absence of proof with regard to the readiness and willingness, under Section 16(c) of the Specific Relief Act, a suit for specific performance cannot be decreed.

19.It is also pertinent to note that P.W.1, in her evidence, has stated that earlier she entered into an Agreement of Sale with the defendant as early as in the year 1997 in respect of the suit property. However, the Sale Deed was not executed pursuant to the said Agreement by the defendant. However, in the plaint, she has not stated anything about the prior Agreement between herself and the defendant. Only in the cross examination, when a question was put to her with regard to the earlier Agreement, she has stated that an Agreement was executed in the year 1997. Therefore, the suppression of this fact would establish that since the plaintiff has not taken any steps to get the Sale Deed executed pursuant to the Agreement executed in the year 1977 and the same is barred by limitation, she has filed the present suit based on Ex.A1 Agreement, which was rightly found by the trial Court as fabricated document.

20.As already stated, the plaintiff has not explained anything about the material alteration in Ex.A1 document. From the available evidence, it is clear that the plaintiff has not come to the Court with clean hands.

21.Taking into consideration the oral and documentary evidences, the trial Court has rightly dismissed the suit. I do not find any ground to interfere with the judgment and decree of the trial Court. The appeal is liable to be dismissed. Accordingly, the Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To
1. The Additional District cum Session Judge,
Fast Track Court II,
Coimbatore.

2. The Section Officer,
VR Section, High Court, Madras.(2-copies)

+ 1 cc to M/s. P. Saravaan Sowmiyan, Advocate sR.4198
+ 1 cc to M/s. L. Mouli, Advocate Sr.4035

A.S.No.598 of 2010

NMI(CO)
EU(21/02/2018)