

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.1662 OF 2011
AND M.P.NOS.1 OF 2012 AND 1 OF 2015

K.Ponnusamy

... Appellant/Appellant/
Ist Defendant

Vs.

1.V.R.Subramanian
2.P.Dhanasekaharan

3.Tirukalukundram Co-operative
Housing Society Ltd.,
Tirukalukundram.

... Respondents/Respondents/
Plaintiff/Defendants 2 &3

PRAYER: Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.122 of 2006 dated 15.07.2010 by the Principal District Court, Kancheepuram District at Chengalpattu confirming the decree passed in O.S.No.96 of 2000 dated 15.09.2005 by the Additional Sub Court, Chengalpattu.

For Appellant : Mr.M.Arumugam

For Respondent-1 : Mr.C.Jagadish

For Respondent-2 : Mr.Yuvaraj

J U D G M E N T

The unsuccessful defendant is the appellant before this Court. The suit is for specific performance, on the basis of the agreement of sale made between the appellant and the first respondent. According to the first respondent, the appellant has agreed to sell a Plot measuring 3 cents in favour of him and received a sum of Rs.1,25,000/- out of the total consideration of Rs.1,50,000/- by way of an agreement dated 14.08.1996. It was further agreed by the appellant that after entrusting patta, kist receipts within one year, agreed to receive the balance sale consideration of Rs.25,000/- and to register the property

in the name of the first respondent/plaintiff. Since the appellant failed to perform his part of contract, the first respondent filed the suit for specific performance. The Trial Court framed appropriate issues and decreed the suit. Against which, the appellant preferred an appeal and the Lower Appellate Court has confirmed the decree and dismissed the appeal preferred by the appellant. Aggrieved over the concurrent finding of both the Courts below, the appellant has preferred the above appeal.

2. The Second Appeal was admitted on the following substantial questions of law:

"a) Whether the Courts below were right in not referring the disputed document alleged to be forged to the Handwriting expert to decide on the genuineness of the exhibits relied upon by the plaintiff for the purpose of their admissibility in evidence ?

b) Whether the Courts below erred in not applying the provisions of Sections 45, 47 and 73 of the Evidence Act which are vital and squarely applicable to the facts of the case ? "

3. In so far as the first question of law is concerned, the appellant claims that the agreement of sale is a forged one. On a perusal of the materials available before this Court, it could be seen that the first respondent/plaintiff has let in evidence as P.W.1 that the appellant / first defendant has agreed to sell the property for a sum of Rs.1,50,000/- and received a sum of Rs.1,25,000/- towards sale consideration. While executing the agreement of sale, he had also handed over the original of the title deed to the first respondent / plaintiff. Sale agreement was witnessed by two witnesses and one of the witnesses deposed as P.W.2 would speak that the appellant / first defendant has executed the agreement and has received a sum of Rs.1,25,000/- in cash. The plea of the first respondent / plaintiff was admitted by the second defendant, who is none other than the son of the appellant / first defendant in his written statement. Further, even though the appellant / first defendant complained that the agreement for sale is a forged document and it should be referred to the handwriting expert to prove the genuineness, has failed to take any steps in this direction. In fact, he filed a petition to refer the documents for the purpose of expert opinion. But for the purpose of comparing the signature found in the agreement, the appellant / first defendant failed to produce the admitted signature of his.

4. Both the Courts below have concurrently found that the appellant/first defendant has failed to discharge the burden in proving the forgery alleged by him. Further, during cross examination, he would clearly state that there is no enmity between the witness, who attested the sale agreement and that he is well known to him. Even though the appellant as well as his son are residing in the same house, there is no averment as to the misunderstanding between them. Son would go on record by way of written statement that the sale agreement is in fact was executed by his father and himself and that the sale consideration was also received by his father. In such circumstances, it cannot be said that the sale agreement is a forged document. Secondly, even assuming that it is a forged document, the appellant failed to prove the forgery committed by the first defendant by producing suitable evidence. Further, he has failed to produce the admitted signature for the purpose of comparing the signature found in the sale agreement to prove the forgery. The appellant has drastically failed in discharging the onus of proving the document as forged one and therefore, the questions of law raised in the Second Appeal are answered in the negative.

5. In fine, the Second Appeal merits no consideration and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

TK

To

1.The Principal District Court
Kancheepuram District at Chengalpattu.

2.The Additional Sub Court
Chengalpattu.

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The Section Officer

VR Section High Court, Madras(+2 copies)

+1 cc to Mr.C.Jagadish Advocate sr 19808

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KS (co)
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