

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.667 OF 2016

R.Ganesh

... Appellant/Plaintiff

Vs

B.Nagalakshmi

... Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.28 of 2015 on the file of the Subordinate Judge, Ranipet, Vellore dated 10.09.2015 reversing the Judgment and Decree made in O.S.No.06 of 2014 on the file of the District Munsif, Ranipet, Vellore dated 09.03.2015.

For Appellant : Mr.A.Gowthaman

For Respondent : Mr.K.V.Anantha Krushnan

O R D E R

The above Second Appeal is filed challenging the Judgment and Decree in A.S.No.28 of 2015 on the file of the Subordinate Judge, Ranipet, Vellore in and by which the learned Judge has reversed the Judgment and Decree in O.S.No.06 of 2014 on the file of the District Munsif, Ranipet, Vellore.

2.The suit O.S.No.06 of 2014 has been filed for recovery of sum of Rs.69,013/- together with an interest at 24% per annum due under an agreement of sale dated 24.12.2010.

3.Plaintiff's Case:

It is the case of the plaintiff that the defendant and he had entered into sale agreement on 24.12.2010 for purchasing the suit schedule property for a total consideration of Rs.80,000/-. On the date of the agreement of sale a sum of Rs.40,000/- was paid as advance and the defendant agreed to execute the sale deed whenever demanded upon payment of the balance amount by the

plaintiff. At the time of the execution of the sale agreement the defendant handed over the original registered sale deed dated 01.04.1991 standing in his name to the plaintiff. The plaintiff further submits that when he entered into the agreement the defendant had assured him that there is no encumbrance in respect of the suit schedule property. The plaintiff came to know that even prior to the execution of the agreement the defendant had sold the property to one Mani under a sale deed dated 26.10.1994 registered under document No.1033/1994. The plaintiff would submit that the defendant had fraudulently entered into the agreement of sale and therefore he demanded return of advance amount of Rs.40,000/- in the month of May, 2013. The defendant evaded repayment constraining the plaintiff to issue a legal notice dated 30.05.2013 demanding repayment of advance amount together with interest at 24% per annum. The defendant, according to the plaintiff refused to receive the legal notice and returned the same stating that she is hospitalised. So the plaintiff had come forward with the said suit.

4. Defendant's Case:

4.1. The defendant on receiving summons had entered appearance and filed a written statement in which the defendant had denied execution of the agreement of sale and the receipt of the sum of Rs.40,000/- on 24.12.2010. It was the case of the defendant that the plaintiff was money lender who used to extend loan and credit facility to farmers and would collect agricultural produce towards the dues of the money lending. The defendant has further contended that in view of the urgent family needs she had sold a major portion of the suit property to said Mani under sale deed dated 26.11.1994 and thereafter had approached the plaintiff for loan. The plaintiff who lent some money also obtained signatures in blank Non Judicial Stamp papers, promissory notes and also demanded the plaintiff to submit her original sale deed. The defendant had repaid the entire amount with interest and she had demanded the return of the blank signed papers as well as the original registration sale deed. The plaintiff put her off on the pretext that he had misplaced the same elsewhere and he would return the papers as soon as they were traced. However, contrary to this the plaintiff has made use of the blank signatures to create the agreement of sale. The defendant had categorically denied execution of the promissory note as well as the receipt of the money.

4.2. The learned District Munsif, Ranipet, Vellore had framed two issues and an additional issues and the plaintiff had examined himself as P.W.1 and marked EX.A.1 to EX.A.5. Apart from examining P.W.2 the attesting witness to the agreement of sale, the defendant's husband had examined himself as D.W.2 and

marked EX.B.1 to EX.B.3. The learned Trial Judge decided this issue in favour of the plaintiff and decreed the suit.

5.Challenging the same the defendant filed A.S.No.28 of 2015 on the file of the subordinate Judge, Ranipet. The learned Judge reversed the Judgment and Decree of the Trial Court by holding the demand for repayment of the advance on the basis of the agreement of sale EX.A.1 was not maintainable as EX.A.1 does not contain any clause with reference to refund of the advance amount and on those lines had allowed the appeal. The learned Judge had also observed that the EX.A.1 was fraught with suspicion.

6.Challenging the same the plaintiff is before this Court. The above Second Appeal was admitted on the following Substantial Questions of Law:

"a.Whether the lower Appellate Court is correct and justified in coming to a conclusion that the plaintiff is not having any rights to claim the suit amount (earnest money) even after the defendant failed to perform her part of the Sale Agreement?

b.Whether the lower Appellate Court was right in dismissing the suit on the ground that in EX.A1 no recital about the return of advance amount, ignoring the law when the signature of defendant in EX.A1 is admitted and the receipt of amount also admitted by the defendant, when the defendant being party to agreement does not come forward to execute a sale deed without mentioning in the agreement of sale, is not the duty of defendant to repay the advance amount to the plaintiff?"

7.Mr.A.Gourtham, learned counsel who appears on behalf of the appellant would vehemently contend that the reversal of the Judgment by the learned Subordinate Judge, Vellore was totally erroneous. He drew the attention of this Court to the paragraph No.6 of the written statement where the defendant had admitted receipt of money from the plaintiff. He would also draw the attention of this Court to the Judgment of the Trial Court wherein the Trial Court has held that the agreement of sale clearly shows that the sum of Rs.40,000/- was paid and witnesses have also been examined to prove this. He would therefore contend that in the light of the admission of the defendant/respondent that she had borrowed money from the appellant/plaintiff and that she had repaid the same, the Lower Appellate Court was wrong in coming to the conclusion that the agreement of sale EX.A.1 did not give her right.

8.Per contra, Mr.K.V.Anantha Krishnan, learned counsel appearing on behalf of the respondent/defendant would draw this

Court's attention to the notice dated 25.07.2014 which is marked as EX.B.1 issued by the plaintiff in the year 2014 wherein the plaintiff had claimed amounts were due from the defendant under the Promissory notes. The learned counsel had drawn this Court's attention to this notice to show that the plaintiff is a professional money lender and that he and the defendant have been having transactions even before the alleged sale agreement. He would contend that under the sale agreement there is no clause for refund of money and further there is denial of not only execution but also a receipt of money. He would contend that the Judgment and Decree of the Appellate Court should be confirmed.

9. Heard either sides and perused the documents. The sale agreement EX.A.1 is one in which there are no clauses regarding the time for performance, default clause etc. On the contrary the agreement would read that the sale is indefinitely postponed subject only to a demand being made by the plaintiff. The recitals contained in the agreement of sale gives rise to a suspicion that the agreement of sale has been created using the signature of the defendant obtained in blank sheets.

10. Apart from the agreement of sale and P.W.2 evidence (which happens to be his relatives) there are no other independent witnesses on the side of the plaintiff to prove the execution of the agreement and passing of consideration particularly when both these ingredients have been denied by the defendant. It is to be noted that the defendant has denied execution of the sale agreement in fact the sale agreement includes property which has been sold as early as in the year 1994, these facts prove that the agreement of sale was not genuine one. Since the original document has been in the custody of the plaintiff it can be presumed that he has utilised that documents to create the agreement of sale. In the absence of the proof of the execution of the agreement of sale and passing of consideration, I find no infirmity in the order passed by the learned Subordinate Judge, Ranipet, Vellore. I therefore answered both the question of law against the appellant. The Second Appeal stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

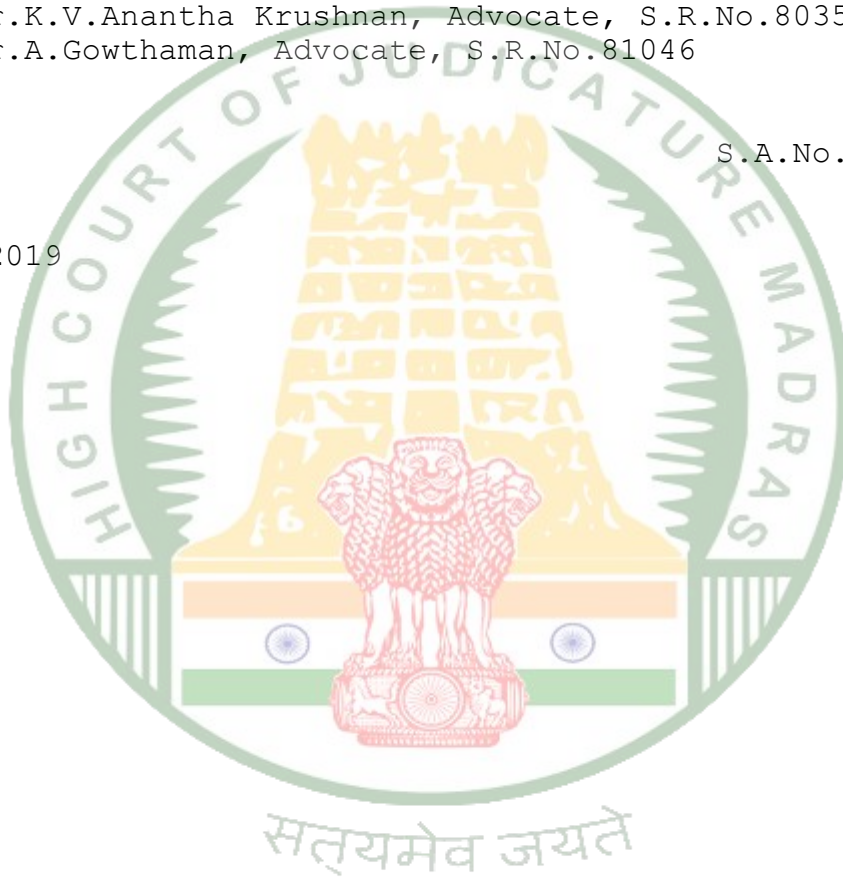
1. The Subordinate Judge,
Ranipet, Vellore
2. The District Munsif,
Ranipet, Vellore.
3. The Section Officer,
VR Section, High court,
Madras-104 (2 Copies)

+1cc to Mr.K.V.Anantha Krushnan, Advocate, S.R.No.80358

+1cc to Mr.A.Gowthaman, Advocate, S.R.No.81046

S.A.No.667 of 2016

KJI (CO)
CS/21/01/2019



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