

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2018

Delivered on : 18.12.2018

Coram

THE HONOURABLE MS. JUSTICE P.T. ASHA
S.A.No.637 of 2018

Manikandan ... Appellant/ Plaintiff

Versus

Selvi ...
Respondent/ Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree passed in A.S.No.75 of 2016 dated 22.08.2017 on the file of Principal District Court, Salem and reversing the Judgment and Decree passed in O.S.No.47 of 2015 dated 13.04.2016 on the file of Principal Sub-Court, Salem.

For Appellant : Mr. C. Rajasekaran

J U D G M E N T

The plaintiff is the appellant before this Court. The Second Appeal is filed challenging the dismissal of the suit for specific performance filed by the plaintiff herein on the file of the Principal Sub Court, Salem, in O.S.No.47 of 2015, vide judgment and decree dated 13.04.2016, which is confirmed by the learned Principal District Judge, Salem in A.S.No.75 of 2016 vide judgment and decree dated 22.08.2017.

2. For the sake of convenience, the parties have also been referred to in the same array as in the suit. The facts in brief, necessary for disposing of the above Second Appeal is herein below narrated:

The plaintiff had filed the suit in O.S.No.47 of 2015 for specific performance, i.e., for enforcing the Agreement of sale dated 07.02.2014 entered into between the plaintiff and the respondent, in and by which the defendant had promised to sell the suit schedule property for a total sale consideration of Rs. 1,80,000/- and an advance of Rs.1 lakh was paid on the date of the execution of the Agreement of Sale and its registration. The time fixed for the payment of the balance sale consideration was a period of 2

years from the date of registration of the Sale Deed. It is the further case of the plaintiff that he had been always been ready and willing to proceed with the agreement, but however, the defendant was seeking time to complete the contract. However, contrary to her assurance, the defendant has approached the Kondalampatti Police Station with a complaint stating that the Sale Agreement pertains to a loan transaction and that the plaintiff should cancel the sale agreement dated 07.02.2014. Pursuant to the complaint, the plaintiff was summoned to the police Station on 12.01.2015 and he was directed by the Police Authorities to cancel the said sale agreement. The plaintiff refused to do so and informed them that he would file appropriate proceedings before the competent Forum by filing a suit for specific performance. Hence, the suit.

3. The defendant herein had resisted the above suit inter alia contending that her estranged husband Ranganathan had colluded with the plaintiff into creating the Agreement of Sale and she has narrated the incidents preceding the execution of the Deed. In her written statement, it is her further case that she had married one Ranganathan, 25 years prior to the suit and two female children were born from out of the said wedlock. The said Ranganathan had married for the second time, 18 years ago without the knowledge of his first wife and daughters. Since the defendant and her children were not maintained by her husband, she had filed a suit in O.S.No.446/1999 on the file of the learned II Additional Sub Judge, Salem, against her husband and co-owners for a partition of their share in the ancestral property. After a full-fledged trial, a preliminary Decree was also passed in favour of the Defendant and her daughters and no appeal has been preferred against the said Judgment and Decree and the final decree proceedings are pending.

4. Meanwhile, she was in dire need of money for conducting the marriage of her two daughters and she was looking out for some source to borrow. Her husband knowing her urgency and need, offered to help her and he had taken her to his friend's house (the plaintiff herein) who was in the habit of giving credit facilities at low rate of interest and the document pertaining to the defendant's property was taken by the plaintiff as a security for the loan borrowed. The defendant believing the words of her husband, signed the papers and had gone to the Sub-Registrar office, thinking that she was executing the loan document in favour of the plaintiff. It has never been her intention to sell the property. In fact, the money was also handed over to her only by her husband and she was informed that the loan should be repaid within one year at 15 % interest per annum. The defendant being an illiterate,

her left thumb impression was obtained in the document and the document was not read over to her.

5. On 12.01.2015, when she went to repay the loan, the plaintiff refused to give back the documents and therefore, the defendant had to approach the Police Authorities. The defendant would therefore submit that she has not entered into an agreement for sale of the property and the property continues to be with her and there are no merits in the suit and the same lacks bona fides.

6. The Trial Court after an extensive enquiry and on perusing the oral and documentary evidence, had partly allowed the suit by directing the defendant to repay the sum of Rs. 1 Lakh with interest at the rate of 9% from the date of the borrowal till date of the Decree and thereafter, at the rate of 6% per annum till the date of payment.

7. This Judgment and Decree was taken up on appeal by the plaintiff in A.S.No.75 of 2016 on the file of the learned Principal District Judge, Salem. The defendant had also filed a suit in O.S.No.213 of 2015 for cancelling the Sale Agreement dated 07.02.2014 as null and void and for handing over the original sale Deed registered as document No.1149 of 1998 on the file of the Sub-Registrar Veerapandi, which was given by the defendant as security. This suit was also dismissed by the learned Principal District Judge, Salem and challenging the same, the defendant had filed A.S.No.76 of 2016.

8. The said appeals A.S.Nos.75 of 2016 and 76 of 2016 were taken up for hearing and vide a common Judgment dated 22.08.2017 the learned Principal District Judge, dismissed A.S.No.75 of 2016 filed by the plaintiff and allowed A.S.No.76 of 2016 filed by the defendant herein. The plaintiff has only challenged the Judgment and Decree dated 22.08.2017 made in A.S.No.75 of 2016.

9. This Court heard Mr. C. Rajesakaran, learned counsel for the appellant/plaintiff, who would argue that the defence lacks bona fides in as much as the daughter who has signed as a witness to the said document in question, is educated and therefore, the contention of the defendant that she has not aware about the nature of the document is unbelievable. The counsel would further argue that the Court below has also ignored the evidence of PW2 in toto. The counsel would further argue that the Court below after holding that the Court Fee paid by the defendant in her suit in O.S.No.213 of 2013 was incorrect ought to have allowed the suit filed by the plaintiff.

10. The Court heard the submission of the learned counsel for the appellant and perused the materials placed before it.

11. It is seen that PW 2 has not supported the case of the plaintiff though he has been examined as the attesting witness.

- It is also seen that the plaintiff has not evinced any interest in proceeding further with the agreement of sale which clearly supports the defence that the document in question was only a loan transaction and not agreement of sale.
- It is also seen that the value of the property has been grossly undervalued.
- Yet another point is that the document in question was only entrusted as a security for the loan and this view is further fortified as the possession of the property continued to remain with the defendant despite a recital in the agreement that the possession is handed over to the plaintiff. The plaintiff having failed to prove the document as also his readiness and willingness, cannot question the Judgment and Decree of the Courts below and there is no substantial questions of law made out in the Second Appeal.

In these circumstances, I do not find any infirmity in this Second Appeal. Hence, the Second Appeal stands dismissed and confirms the Judgment and Decree in A.S.No.75 of 2010 on the file of the District Court, Sale and there shall be no order as to costs.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

jrs

To

The Principal Sub Judge,
Salem.

2.The Principal District Judge,Salem.

+1cc to Mr.C. Rajasekaran , Advocate SR.No. 88838

S.A.No.637 of 2018

A.SK(04/02/2019)