

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:06.12.2018

Delivered on:22.01.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.Nos.607 and 811 of 2010

R.Durai

.... Appellant

in both the appeals/

Defendant in O.S 887/2004/

Plaintiff in O.S.317/2005

Vs

V.Manoharan

.... Respondent

in both the appeals/

Plaintiff in O.S 887/2004/

Defendant in O.S.317/2005

Prayer in A.S.No.607 of 2010: Appeal suit is filed under Section 96 of the Code of Civil Procedure against the Common Judgment and Decree of the learned Additional District Sessions Judge Fast Tract Court No.III, Coimbatore dated 05.08.2009 passed in O.S.No.887 of 2004.

Prayer in A.S.No.811 of 2010: Appeal suit is filed under Section 96 of the Code of Civil Procedure against the Common Judgment and Decree of the learned Additional District and Sessions Judge Fast Tract Court No.III, Coimbatore dated 05.08.2009 passed in O.S.No.317 of 2005.

For Appellant : Mr.Satish Parasaran
Senior Counsel
for Mr.R.Parthasarathy

For Respondents : Mrs.Nalini Chidambaram
Senior Counsel
for Ms.C.Uma

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JUDGMENT

The Judgment and Decree in the suit O.S.No.887 of 2004 and O.S.No.317 of 2005 are the subject matter of the appeals A.S.No.607 of 2010 and A.S.No.811 of 2010 respectively.

The plaintiff in the suit O.S.No.887 of 2004, which is a suit filed for specific performance, is the defendant in the suit O.S.No.317 of 2005, a suit for recovery of a sum of Rs.1,33,250/- together with interest filed by the defendant in the suit O.S.No.887 of 2004. As the pleadings in both the suits overlap and as a common Judgment has been passed in both the suits this Court also proposes to pass a common Judgment. In the trial Court Viz; Additional District and Sessions Judge, (FTC III) Coimbatore evidence has been recorded in the suit O.S.No.887 of 2004 therefore the parties are referred to in the same litigative status as in the suit O.S.No.887 of 2004.

2.Plaintiff's Case:

2.1.The suit property belonged to the defendant by virtue of a family arrangement dated 18.10.1991 made among the defendant's family and the suit property was described as the 1st Item of the E-Schedule therein.

2.2.It is the case of the plaintiff that he was originally inducted as a tenant into the suit property in the month of December 1999 on a monthly rental of Rs.6,500/- for non-residential purpose and a sum of Rs.4,00,000/- was paid as interest free deposit by the plaintiff.

2.3.Pending the tenancy the defendant and the plaintiff entered into an agreement of sale in respect of the suit property on 14.04.2002. The total sale consideration was agreed at a sum of Rs.14,00,000/- and the rental deposit of Rs.4,00,000/- was agreed to be treated as advance for the agreement and it is the case of the plaintiff that the defendant has permitted him to enjoy the suit property any which way he chose. The plaintiff was also permitted to put up construction to suit his enjoyment and in exercise of this concession the plaintiff had put up additional constructions and the plaintiff had put up an RCC roof construction.

2.4.While so, the plaintiff was surprised to receive a legal notice dated 21.11.2002 from the defendant stating that the plaintiff was in arrears of rent and when the plaintiff questioned the defendant about the same, the defendant asked him to ignore it as the same was sent at the behest of his brother R.Mani and he promised to execute the sale on or before 24.04.2003. Plaintiff was always ready and willing to perform his part of the contract. Incidentally it was only in the cause of action paragraph that the plaintiff had made a reference to the legal notice sent by him and the reply by the defendant are

not in the statement of facts. These averments formed the basis of the written statement in O.S.No.317 of 2005. The plaintiff prayed for a decree in the suit O.S.No.887 of 2004 and the dismissal of the suit O.S.No.317 of 2005.

3. Defendant's Case:

3.1. The allegations that the plaintiff and the defendant had entered into an agreement of sale is totally false. The agreement of sale is a fabricated document. The signature in the agreement of sale does not belong to the defendant. The market value of the suit property is over a sum of Rs.30,00,000/- and it was inconceivable that the defendant would agree to sell the same at such paltry sum. The property is situated in the heart of the bazaar area of Coimbatore at Rangae Gowder Street. The agreement contains several self serving terms and conditions.

3.2. The truth of the matter is that the defendant had inducted the plaintiff as a tenant in the suit property for carrying on business in groceries and oil. The ground floor alone was leased out under a lease deed dated 15.12.1999. An advance of Rs.4,00,000/- was paid by the plaintiff. The agreed rent was Rs.6,500/- subject to a revision with effect from 01.04.2002 at Rs.7,474/-. Burking all these details and with an intention to grab the property the plaintiff has filed this false suit. The defendant sought for a dismissal of the suit O.S.No.887 of 2004 and a decree in the suit O.S.No.317 of 2005 filed by him.

4. Trial Court:

The learned Additional District Sessions Judge (FTC III), Coimbatore had framed the following issues in respect of O.S.No.887 of 2004:

- (a) Whether the plaintiff is entitled to a decree for specific performance?
- (b) Whether suit is maintainable?
- (c) To what other reliefs is the plaintiff entitled to?

With reference to O.S.No.317 of 2005 the following issues were framed:

- (a) Whether the plaintiff is entitled to a decree for the suit claim as prayed for?
- (b) To what other relief is the plaintiff entitled to?

The learned District Judge decreed the suit O.S.No.887 of 2004 and dismissed the suit O.S.No.317 of 2005. Challenging these Judgments and Decree the instant appeals have been filed.

5.1. The points for consideration in the above appeal are:

- (a) Whether the plaintiff and the defendant had entered in Ex.A.1 - Agreement of Sale?
- (b) Whether Ex.A.1 has been fabricated and the signature of the defendant forged?

(c) If the agreement of sale Ex.A.1 is true whether the plaintiff has proved his readiness and willingness to go ahead with the sale?

(d) Whether the plaintiff is in arrears of rent?

5.2. The plaintiff has come forward with the case that the defendant and he had entered into Ex.A.1 agreement of sale on 14.04.2002 and that the total sale consideration was fixed at a sum of Rs.14,00,000/- and that the parties had agreed that the rental advance of Rs.4,00,000/- would be adjusted towards the sale advance. The plaintiff has also contented that the defendant had permitted the plaintiff to effect changes upon the suit property. He has further contended that despite the fact that he was ready and willing to go ahead with the agreement of sale the defendant did not come forward to execute the sale deed. This was also the defense to the suit O.S.No.317 of 2005.

5.3. Per contra, the defense to the above contentions of the plaintiff was that the agreement of sale Ex.A.1 was a rank forgery since the signature found in Ex.A.1 was not his. The agreement of sale had been fabricated. It was the case of the defendant that the petitioner was inducted as a tenant on 15.12.1999 on a monthly rental of Rs.6,500/- however the plaintiff entered into possession only on 01.01.2000 and the payment of rentals were due on the 1st of every month. It was further agreed that from 01.01.2003 the monthly rental would be a sum of Rs.7,475/-. The plaintiff had paid an interest free deposit of Rs.4,00,000/- on 15.12.1999. The premises was taken on lease for the purpose of running a grocery and oil store. It is the further case of the defendant that with effect from 01.04.2002 the plaintiff was in arrears and the total arrears was a sum of Rs.1,33,250/-. In addition to that the plaintiff had committed acts of waste by putting up the 1st floor and sub-letting the said premises to one D.Raja who is running a Jewellery shop in the name and style of R.D.K.R Jewellery in the ground and 1st floor. The defendant had issued a legal notice dated 21.11.2002 (Ex.A.11) to the plaintiff to pay up the arrears and to hand over vacant possession of the premises. This was followed by a rent control proceedings being filed by the defendant on 22.01.2003 in R.C.O.P.No.13 of 2003 (Ex.B.2) for eviction on the ground of wilful default.

5.4. While so, after the issue of the notice under Ex.A.11 and the filing of the rent control proceedings, the plaintiff had sent a notice dated 14.02.2003 under Ex.A.8 calling upon the defendant to execute the sale deed on the basis of the agreement of sale (Ex.A.1). The suit O.S.No.887 of 2004 is a counter blast to the Rent Control proceedings.

5.5. Mr. Satish Parasaran, Senior Counsel appearing on behalf of the defendant/appellant would make the following submissions after narrating the facts supra:

(a)The agreement of sale is a fabricated document for the following reasons:

- i.The signature in Ex.A.1 is not that of the defendant.
- ii.The first time the agreement of sale surfaces is after the Ex.A.11 legal notice of the defendant to the plaintiff and the filing of the rent control petition.
- iii.Ex.A.8 talks about an agreement of sale dated 14.01.2003 whereas the agreement of sale Ex.A.1 filed along with the suit O.S.No.887 of 2004 is dated 14.04.2002 and the 1st notice by the defendant was on 21.11.2002.
- iv.That the market value of the property on the date of the alleged execution of Ex.A.1 was much higher than the quoted sum of Rs.14,00,000/-.
- v.The witnesses to Ex.A.1 were friends/relatives of the plaintiff.

(b)The plaintiff who says he is doing Jewellery business has not produced any proof for the same particularly when he had taken the ground floor of the premises on lease to run a grocery and oil store. There is also no pleading to this effect.

(c)That the alternative prayer will itself prove that the plaintiff was aware that he would be non-suited where he asks for compensation of a sum of Rs.8,00,000/-.

(d)The report of the Expert has clearly held that the signature in the agreement of sale Ex.A.1 is not that of the defendant.

(e)the contradictions in the oral evidence of the plaintiff was highlighted with reference to the execution of the sale deed as well as the payment of rents.

(f)The contradictions in the evidence of P.W.2 was also brought to the notice of this Court.

5.6.The learned Senior counsel would argue that the learned District Judge has totally overlooked the above factors and has proceeded to decree the suit O.S.No.887 of 2004 without the plaintiff substantiating/proving his case.

5.7.Per contra, Mrs.Nalini Chidambaram, learned Senior Counsel appearing on behalf of the plaintiff/respondent would contend that the Court below has rightly rejected the expert's report and taken note of the admissions of the defendant that he is in the habit of putting different signatures. She would argue that comparison by the Court would be sufficient and the report can be ignored. She would also highlight the fact that the defendant as D.W.1 has admitted that he had handed over the notarised copies of the documents to the plaintiff which is done only if the parties had agreed to the sale of the property and documents were not required for drafting a lease deed. She would also point out that the defendant who had claimed that the value of the property was much more than the amount shown

in the agreement of sale has not proved the said contention. That the defendant was aware of the construction and had not raised an objection, is yet another circumstance which would go a long way to prove that the parties have entered into an agreement of sale. She therefore argued that the Judgment and Decree of the Trial Court has been passed after considering all factors and the same should be confirmed. She also submitted that the balance sale consideration of Rs.10,00,000/- has been deposited. She has relied on the Judgments of the Honourable Supreme Court in Ishwari Prasad Mishra Vs. Mohammad Isa reported in 1963 AIR 1728 and the one reported in 2017 (6) SCC 263 - State of Karnataka Vs. J.Jayalalitha and other to substantiate her argument about the probative worth of an experts evidence.

6.Discussion:

6.1.The admitted facts are that the plaintiff had been inducted as a tenant in respect of the suit property under Ex.A.1 on a monthly rental of Rs.6,500/- and a rental advance of Rs.4,00,000/- has been paid by the plaintiff to the defendant. The premises has been taken on lease by the plaintiff to run his grocery and oil business.

6.2.The disputed fact is the agreement of sale Ex.A.1. While the plaintiff would contend that the said deed was a valid and genuine document, the defendant would contend that the same is a rank forgery.

6.3.The learned District Judge has decreed the suit on the ground that the defendant has not been able to prove that the agreement of sale was fabricated. The learned Judge has overlooked the fact that where the defendant has denied his signature and the very document itself, the onus is upon the plaintiff to prove that the document has been duly executed by the defendant. To discharge this onus the plaintiff has not taken any steps to have the disputed signature of the defendant compared with the admitted one and it is the defendant who has filed I.A.No.557 of 2006 to send the signature for comparison. It is seen that this petition was opposed by the plaintiff and ultimately allowed by the learned District Judge. The report of the expert categorically states that the disputed signatures does not match the admitted signature of the defendant. The report would state that the person who signed the admitted documents Ex.A.9, Ex.A.11 and Ex.B.11 has not signed the disputed document Ex.A.1 agreement of sale.

6.4.The report Ex.C.1 was marked through D.W.2 who has deposed about the unique characteristics in the admitted signature which are missing in the disputed signature. Comparison has been made with documents of the year 2002 and 2003 which are just 2 years later to the disputed signature. D.W.2 is an handwriting expert and his report contains the reasons/proof as to why the signature in the admitted document and the disputed document differs. This Court is not relying

only upon Ex.C.1 but is considering the other oral and documentary evidence that has been let in by both sides. Thereby adhering to the dicta laid down by the Hon'ble Supreme Court in the Judgments cited supra. The plaintiff has sought to prove Ex.A.1 by examining P.W.2. P.W.2 is the plaintiff's wife's maternal uncle and therefore an interested witness. A close scrutiny of his cross examination would clearly expose the above fact. P.W.2 would admit that he does not know where the defendant lives, what was his business and what his telephone number is but the witness would submit in chief that on 14.04.2002 the defendant had asked him to sign as a witness in an agreement of sale. However in cross examination P.W.2 would submit that on 13.04.2002 he had met the defendant at the five corner Junction and then he went to the defendant's office. The defendant had telephoned him between 8.00 and 8.30 a.m in the morning and he had gone to the defendant's office at 10.30 a.m and from there they went to the suit property where the agreement was signed. Therefore as per the evidence of P.W.2 the agreement of sale Ex.A.1 was signed on 13.04.2002.

6.5.The report of the expert who has been marked as C.1 Clearly states, with reasons, that the disputed signature has not been made by the same person who has signed the admitted documents. It is no doubt true that the Court cannot rely only upon the evidence of the expert but the same should also be corroborated by other evidence. In the instant case the evidence of P.W.2 in cross that the signature in Ex.A.1 had been affixed as 13.04.2002 and the statement in Ex.A.8 legal notice issued by the plaintiff to the defendant that the parties had entered into an agreement on 14.04.2002 would clearly lend credence to the report. That apart, mention of an agreement of sale has been made only under Ex.A.8 notice that too after Ex.A.1 notice dated 21.11.2002 sent by the defendant to the plaintiff asking the plaintiff to vacate on account of the default in the payment of rents and filing of R.C.O.P.No.13 of 2003 by the defendant against the plaintiff.

6.6.Yet another fact that urges this Court to arrive at a conclusion that Ex.A.1 agreement of sale is a fabricated document is the evidence of the plaintiff as P.W.1 that the payment of rents have always been made by him by cheque and that the rents have been paid up to date (Cross examination dated 23.11.2009). Later on the very same day the plaintiff has deposed that the rents for the period June 2001 to December 2001 was paid by a single Cheque in the month of December 2001. However the plaintiff has not produced his Pass Book/Bank Statement to prove these payments and therefore an adverse inference has to be drawn against the plaintiff for the non-production of the Bank Statement/Pass Book. Therefore it can be concluded that the plaintiff is in arrears of rent.

7.A cumulative reading of the evidence both oral and documentary would clearly prove that Ex.A.1 agreement of sale is a fabricated document. The agreement appears tailor made for the plaintiff with the plaintiff being given the right to reside in the suit property without rents, to put up whatever constructions, induct anyone as a tenant etc. All of these rights have been given without the plaintiff paying any further amount other than the Rs.4,00,000/- paid as rental advance.

Therefore point Nos. a and b are answered against the plaintiff.

8.The next point for consideration is point C whether the plaintiff has proved his readiness and willingness. Although this Court has held that Ex.A.1 is a fabricated document for the sake of completion this point is also considered. Infact in his cross examination to a question as to the dishonour of the Cheques given by him towards the arrears of rent, though the plaintiff had denied the statement he has not been able to refute the same by letting in any documentary evidence. As already observed the plaintiff has kept away the best evidence viz: his Bank Statement/ Pass Book. The plaintiff except for pleading his readiness and willingness has not proved the same. The learned District Judge has also not framed an issue regarding readiness and willingness.

9.The Honourable Supreme Court in its Judgment reported in 2010 (10) SCC 512 - Man Kaur (dead) by Lrs. Vs. Hartar Singh Sangha has held that in a suit for specific performance the plaintiff should not only plead but also prove the readiness and willingness.

10.In the Judgment reported in 2009 (1) MLJ 457- Vasantha Ammal Vs. Bahu Chettiar (died) and others this Court has held that "depositing remaining amount of sale consideration is not a sine qua non for seeking specific performance of the agreement of sale. Burden of proof is entirely upon the plaintiff/purchaser to prove that he has been ready and willing to perform his part of the contract throughout and he cannot pick holes in the case of the defendant/vendor."

Therefore point for consideration 'C' is answered against the plaintiff.

11.Considering the fact that the agreement of sale Ex.A.1 has been held as fabricated and also considering the fact that the plaintiff has not been able to prove that he is not in arrears, this Court holds that the plaintiff has committed default in the payment of rents from 01.04.2002 onwards and accordingly point for consideration (d) is answered in favour of the defendant and against the plaintiff.

In the result A.S.No.607 of 2010 and A.S.No.811 of 2010 are allowed with costs and the Judgment and Decree in O.S.No.887 of 2004 and O.S.No.317 of 2005 on the file of the Additional District and Sessions Judge (FTC III), Coimbatore is set aside.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To,

The Additional District Sessions Judge Fast Tract Court No.III,
Coimbatore.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.Parthasarthy, Advocate Sr.4462

+2cc to Ms.C.Uma, Advocate Sr.5113 and 5114

A.S.Nos.607 and 811 of 2010

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