

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.01.2019

Pronounced on : 23.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1175 of 2003

Chinnu Gounder

.. Appellant/Plaintiff

..Versus..

K.Narayanan

.. Respondent/Defendant

Prayer: This Second Appeal has been filed under Section 100 of C.P.C., against the Judgment and Decree of the learned Subordinate Judge of Dharmapuri dated 29.01.2003 in A.S.No.22 of 2001 reversing the Judgment and Decree of the learned District Munsif of Harur dated 23.02.2001 in O.S.No.100 of 1996.

For Appellant :: Mr.V.Nicholas

For Respondent :: Mr.T.R.Rajaraman

JUDGEMENT

The plaintiff in O.S.No.100 of 1996 on the file of the District Munsif Court, Harur, is the appellants herein.

2.O.S.No.100 of 1996 had been filed by the plaintiff Chinnu Gounder against the defendant K.Narayanan, seeking specific performance of an agreement of sale on receipt of balance sale consideration of Rs.50/- and also for payment of costs of the suit. This suit came up for consideration before the District Munsif Court, Harur and by judgment dated 23.02.2001, the suit was decreed. There after the defendant filed A.S.No.22 of 2001 before the Subordinate Court, Dharmapuri. By judgment and decree dated 29.01.2003, the appeal was allowed and the judgment and decree of the Trial Court was reversed. Consequently, the plaintiff had filed the present Second Appeal. The Second Appeal had been admitted on 20.08.2003, on the following substantial question of law:

"When the trial Court, after comparing the disputed signature with the admitted signature of the defendant, came to a conclusion that the signature found in the suit agreement is

that of the defendant, whether the lower appellate Court is correct in negating the said finding without even making its own comparison of the disputed signature with that of the admitted signatures or without sending to the opinion of an expert?"

O.S.No.100 of 1996 (The District Munsif Court, Harur):-

3.It was the case of the plaintiff, Chinnu Gounder, that the suit schedule property measuring 0.07.5 hectares in S.No.8/11-B and 0.16.0 hectares in S.No.9/1B2 in Pallipattu Village, Morapur, Harur, Dharmapuri District, absolutely belonged to the defendant K.Narayanan. It was further stated that the defendant had executed an agreement of sale dated 01.09.1994, agreeing to sale the said lands for a total consideration of Rs.1,100/-. An advance of Rs.1,050/- was paid on the date of agreement. It was also stated that for the payment of balance of Rs.50/-, two years time was stipulated in the agreement. It was also stated that the plaintiff took possession of the property. Thereafter, the plaintiff felt sick. It was stated that the plaintiff thereafter demanded specific performance of the agreement by the defendant who avoided the same. The plaintiff therefore issued a notice dated 08.02.1996. The defendant issued a reply dated 16.02.1996. The suit had been filed seeking specific performance of the agreement dated 01.09.1994 on receipt of balance sale consideration of Rs.50/-.

4.The defendant filed a written statement denying execution of the agreement of sale. It was also stated that the plaintiff did not take possession under the sale agreement. The defendant denied receiving an advance of Rs.1050/- from the plaintiff. It was also denied that the plaintiff called upon the defendant to execute the sale deed. It was stated that the suit has no cause of action. It was further stated that the suit property was a joint family property. It was situated in the Eachambadi Canal. It was stated, it was valued Rs.20,000/- even in the year 1994. There was also no necessity to sell the property. It was stated that the defendant had leased out the property to the plaintiff for two years from 1994 Aadi month and the lease period came to an end in 1996 Aadi month. The defendant refused to extend the period of lease. It was stated that the plaintiff had created a forged document. Subsequently the defendant by way of amendment to the written statement stated that the UDR patta, in the possession of the plaintiff had been obtained from Chinnasamy, the brother of the defendant, who was on inimical terms with the defendant. It was stated that the possession of the patta by the plaintiff will not grant him any right over the suit property. It was finally stated that, the suit should be dismissed.

5. On the basis of the above pleadings, the learned District Munsif, Harur, framed the following issues for trial:-

1. Whether the agreement of sale was a true and valid document?

2. Whether the court fees paid is proper?

3. Whether the plaintiff is entitled to the relief sought?

4. To what other relief the plaintiff is entitled to?

6. During trial, the plaintiff Chinnu Gounder, examined himself as PW1 and also examined Bangaru Reddy and Thangavel as PW2 and PW3. The defendant Narayanan, examined himself as DW1 and examined Saakan, Vasudevan and Palanisamy as DW2, DW3 and DW4. The plaintiff marked Exs.A1-A5. Ex.A1 was the agreement dated 01.09.1994. Ex.A2 was the copy of the Advocate notice dated 08.02.1996. Ex.A4 was the reply notice dated 16.02.1996. Ex.A5 was the patta dated 04.03.1987, in the name of the defendant. The defendant marked Exs.B1-B3. Ex.B1 were tax receipts. Ex.B2 was the Chitta in the name of the defendant. Ex.B3 was the Adangal in the name of defendant.

7. In his judgment, the learned Trial Judge, took upon the task of examining the signature found in Ex.A1, to determine whether it was actually signed by the defendant. For this purpose, the learned District Munsif, compared the signature in Ex.A1 which was dated 01.09.1994 with the signatures of the defendant in the summons forms, vakalats, written statement and the counter in Interlocutory Application. The learned District Munsif found that the signatures varied in each one of the documents.

8. The learned District Munsif also observed that there were discrepancies in the evidence of PW1 when compared with the pleadings in the plaint. In the plaint, it was stated that the advance amount of Rs.1,050/- was paid on the date of agreement, whereas in his evidence, PW1 stated that Rs.50/- was given on the previous day and Rs.1,000/- was paid on the next day. He also stated that the said amount of Rs.1,000/- was actually given to Balasubramaniam, who gave it to the defendant. Even the amount of Rs.50/- was said to have been paid to Bangaru Reddy, who gave it to the defendant. The learned District Munsif also found that there were variances in the evidence with respect to purchase of stamp paper in which the agreement was executed. However, the learned District Munsif held that the discrepancies pointed out were minor in nature and since PW2, the attesting witness affirmed execution of the agreement, decreed the suit as prayed for.

A.S.No.22 of 2001 (The Subordinate Court, Dharmapuri):-

9.The defendant filed an appeal challenging the judgment and decree of Trial Court. The learned Subordinate Judge, reappraised the evidence and framed points for consideration. The learned Subordinate Judge, did not approve the methodology adopted by the Trial Court in comparing the signatures under Section 73 of the Evidence Act. It was stated in the judgment, that, on the other hand, the signatures should have been forwarded for obtaining opinion from handwriting expert. It was also found that according to the evidence of DW3, Vasudevan who was the Assistant in the Sub-Registrar officer, Morapur, the guideline value in 1994 of the lands in S.No.8/11B was Rs.15,200/- and of the lands in S.No.9/1B2 was Rs.18,600/-. It was consequently held that an agreement of sale for the said lands for a meagre sum of Rs.1,100/- was unbelievable. It was also found that Ex.A1 was not a registered agreement of sale. The learned Judge held that Ex.A1 was not a true and genuine document and consequently, allowed the appeal and dismissed the suit.

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10. Challenging the said judgment in A.S.No.22 of 2001 dated 29.01.2003, the plaintiff had filed the present Second Appeal. The Second Appeal had been admitted on 20.08.2003, on the following substantial question of law:

"When the trial Court, after comparing the disputed signature with the admitted signature of the defendant, came to a conclusion that the signature found in the suit agreement is that of the defendant, whether the lower appellate Court is correct in negating the said finding without even making its own comparison of the disputed signature with that of the admitted signatures or without sending to the opinion of an expert?"

11.The plaintiff is the appellant herein. For the sake of convenience the parties would be referred as plaintiff and defendant. The plaintiff had filed the suit seeking specific performance of an agreement of sale dated 01.09.1994, said to have been executed by the defendant. The agreement of sale had been executed with respect to 0.07.5 hectares in S.No.8/11B and 0.16.0 hectares in S.No.9/1B2 totally measuring 60 cents in Pallipattu Village, Morapur, Harur, Dharmapuri District. The total consideration was fixed at Rs.1,100/-. In the evidence of DW3, Vasudevan who was the Assistant in Sub-Registrar office, Morapur, the guideline values of the lands in S.No.8/11B in the year 1994 was Rs.15,200/- and guideline value of the lands in S.No.9/1B2 in the year 1994 was Rs.18,600/-. This would mean that the total guideline value of the 60 cents of lands in the year 1994 was Rs.33,800/-. The agreement of sale was for a total

sum of Rs.1,100/-. It is obvious why the agreement was not presented before the Sub-Registrar officer for registration. In the plaint, it had been mentioned that an advance of Rs.1,050/- was paid and for payment of balance of Rs.50/-, two years of time had been sought. However, in the evidence of PW1, it had been stated that, the plaintiff paid the sum of Rs.50/- on the previous day evening to Bangaru Reddy, who paid the amount to the defendant. The next day he paid Rs.1,000/- to Balasubramaniam, who gave the amount to the defendant. The learned Trial Judge pointed out the discrepancies in the payment of advance amount between the averments in the plaint and the evidence of PW1.

12.The substantial question of law surrounds the method adopted by the learned Trial Judge and by the First Appellate Court Judge regarding comparison of signature as found in the agreement Ex.A1, with the other signatures of the defendant in the Court records. The learned Trial Judge, compared the signature as found in Ex.A1 of the defendant with the signatures of the defendant in summons forms, vakalath, written statement and a counter in Interlocutory Application. The learned Trial Judge found that signatures totally varied. In fact, the signatures of the defendant in the Court records also varied from one another. The signatures were of the year 1996. The agreement was in the year 1994. Even though Section 73 of the Evidence Act, gives the power to the Judge to compare signatures, it should be used very sparingly. A Judge is not an handwriting expert. If there is a doubt, then the documents have to be forwarded for comparison of the signatures with contemporaneous documents to an handwriting expert. This would do complete justice to the parties. The reason why the Court should not undertake this venture is because the mind of the Court would be prejudiced and if in the opinion of the Court the signatures appear to be same, then a decision based on that would be given without there being any independent assessment of that aspect.

13.In the present case, having found that the signatures vary the learned Trial Judge also brushed aside all other contradictions including the discrepancies between the plaint averments and the evidence with respect to the handing over of the advance amount and decreed the suit. The method adopted is unacceptable and it was only proper that the First Appellate Court reversed that finding.

14.The second portion of the substantial question of law was whether the First Appellate Court should have independently compared the signatures. It is for the parties to establish their case and if the signatures in the documents produced by them vary, then they should seek the assistance of handwriting

expert to compare the signatures. This onus cannot be mulcted on to the Courts.

15. Consequently, I hold that the Lower Appellate Court was correct in reversing the finding of the Trial Court which came to the conclusion that the signature in Ex.A1 was that of the defendant. The First Appellate Court was also correct in not venturing to compare the signatures by itself or in not sending the documents for the opinion of the handwriting expert. That should have been the outlook of the plaintiff in the appellate stage. In view of all the above reasons, I hold that, no ground has been made out to interfere with the judgment and decree of the First Appellate Court. The Second Appeal is dismissed, no costs.

-s/d

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Smv

To

- 1.The District Munsift Court, Harur.
- 2.The Subordinate Court, Dharmapuri.
- 3.The Section Officer, VR Section,
Madras High Court.

+1 CC to Mr.V.Nicholas, Advocate sr 4954.

+1 CC to Mr.T.R.Rajaraman, Advocate sr 5727.

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GP(CO)

SP(19/07/2019)

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