

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

SA.No.201 of 2010
and
MP.No.1 of 2010

G.Natesan

... Appellant/Plaintiff

vs.

Chinnappa Gounder

... Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and Judgment dated 20.07.2009 passed in AS.No.75 of 2009 by the Additional District Judge, Fast Track Court No.2, Gobichettipalayam upholding the decree and Judgment dated 20.01.2009 passed in OS.No.20 of 2006 by the Principal Subordinate Judge, Gobichettipalayam.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.V.Anandhamoorthy

J U D G M E N T

The appellant is the plaintiff in OS.No.20 of 2006 on the file of the learned Principal Subordinate Judge, Gobichettipalayam and he filed the said suit for specific performance of contract.

2. The case of the appellant/ plaintiff in nutshell is as follows:

(i) The appellant / plaintiff and the respondent/defendant entered into a sale agreement dated 10.08.2005 (Ex.A1) whereby, the respondent/defendant agreed to sell his property to the plaintiff for a sale consideration of Rs.1,10,000/- out of which a sum of Rs.1,00,000/- was paid by the appellant/ plaintiff on the same date towards advance. It is further agreed between the parties that the balance sale consideration of Rs.10,000/- should be paid by the respondent/ defendant within a period of six months from the date of the sale agreement. According to the plaintiff, though he was always ready and willing to perform his part of the contract, the respondent/ defendant did not come

forward to execute the sale deed and that the notice dated 20.01.2006 (a copy of which is marked as Ex.A2) sent by the plaintiff to the defendant did not evoke any response from the respondent, even though he received the said notice on 23.01.2006, as evidenced by Postal Acknowledgment Card (Ex.A3). Therefore, the plaintiff filed the suit for specific performance of contract.

3. The suit was resisted by the defendant on the following grounds:

(i) The defendant did not execute the sale agreement dated 10.08.2005 as alleged by the plaintiff.

(ii) The signature of the defendant is forged in the sale agreement (Ex.A1)

(iii) The defendant borrowed a sum of Rs.10,000/- during 2005 and executed a promissory note and the plaintiff had forged the signature of the defendant in the sale agreement (Ex.A1) by misusing the said promissory note. He therefore prayed for dismissal of the suit.

4. The learned Principal Subordinate Judge, Erode after framing necessary issues, dismissed the suit vide his decree and judgment dated 20.07.2009. Aggrieved over the same, the plaintiff filed an appeal in A.S.No.75 of 2009 on the file of the learned Additional District Judge cum Fast Track Court No.2, Gobichettipalayam.

5. The learned Additional District Judge, Gobichettipalayam after analysing the evidence on record, upheld the findings recorded by the Trial Court and dismissed the suit. Now, the plaintiff has filed the present Second Appeal under Section 100 of Code of Civil Procedure on the following substantial question of law:

(i) Whether the courts below are justified in granting the relief of specific performance of the contract of sale Ex.A1, when the respondent had admitted the receipt of part of the sale consideration?

(ii) Whether the courts below are justified in not granting the relief of specific performance on the ground of escalation of price of suit properties?

6. When the second appeal came up for admission, notice regarding admission was issued to the respondent/defendant and subsequently posted before this Court.

7. The learned counsel appearing for the appellant/plaintiff contended that when both the attestors to

the sale agreement Ex.A1 were examined as PW.2 and PW.3 and the due execution of Ex.A1 was also proved by the plaintiff, both the courts below were not right in dismissing the suit filed by the plaintiff. He also contended that the observations of both the Courts below that the fact that Ex.A1 was written on old stamp papers itself would go to show that Ex.A1 was not genuine, cannot be sustained in the light of the decision in Thiruvengadam Pillai Vs. Navaneethammal and another reported in (2008) 4 SCC 530, wherein it is held that:

"The fact that very old stamp papers of different dates have been used, may certainly be a circumstance that can be used as a piece of evidence to cast doubt on the authenticity of the agreement. But that cannot be a clinching evidence. There is also a possibility that a layman unfamiliar with legal provisions relating to stamps, may bona fide think that he could use the old unused stamp papers lying with him for preparation of the document and accordingly use the old stamp papers."

8. He would further contend that the signatures of the defendant in Ex.A1 and in the Postal Acknowledgment Card Ex.A3 are one and the same and that both the courts below did not consider the same. Therefore, he would contend that the findings recorded by both the courts below are perverse, which would warrant interference by this Court.

9. Per contra, Mr.V.Anandhamoorthy, learned counsel appearing for the respondent/ defendant contended that PW.2 and PW.3 are also doing business with PW.1 and their evidence cannot be taken up as gospel truth. He would further contend that the plaintiff did not take steps to get the opinion of an expert with regard to the signature of the defendant found in Ex.A1, especially when the defendant denied his signature on Ex.A1. According to Mr.V.Anandhamoorthy, the suit filed by the plaintiff has rightly been dismissed by both the courts below.

10. The plaintiff had mainly prayed for specific performance of contract based on the sale agreement dated 10.08.2005 (Ex.A1). The defendant had denied his signature in the sale agreement Ex.A1. As per Ex.A1, a sum of Rs.1,00,000/- was paid as advance and the balance of Rs.10,000/- should be paid within six months from the date of the sale agreement Ex.A1. Ex.A4 is the sale deed dated 10.04.2000 which stands in the name of the defendant. The defendant had purchased the suit property through Ex.A4 on 10.04.2000 for a sale consideration of Rs.83,300/-. The present agreement to sell is dated 10.08.2005 (Ex.A1). Therefore, both the courts below have raised a doubt whether the defendant would have been willing to sell his property for a

mere sum of Rs.1,10,000/-especially when the consideration in Ex.A4 sale deed is Rs.83,300/- even in the year 2000.

11. Further more, in the instant case, the plaintiff who has filed the suit based on the sale agreement Ex.A1, did not take steps to get the

opinion of a hand writing expert, especially when the defendant had denied his signature on the sale agreement Ex.A1.

12. Both the courts below had also carefully compared the signatures of the defendant on Ex.A1 and on the Postal Acknowledgment Card Ex.A3 and found several variations in the signature of the defendant. Moreover, both the courts below have concurrently held that the sale agreement has not been executed by the defendant and the findings recorded by both the courts below are based on the evidence adduced on both sides and they have exercised their discretion judiciously. Infact, there is no substantial question of law involved in the second appeal. Hence, I do not see any reason to interfere with the findings recorded by both the courts below.

13. In the result,

(i) The second appeal is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The decree and Judgment dated 20.07.2009 passed in AS.No.75 of 2009 by the Additional District Judge, Fast Track Court No.2, Gobichettipalayam and the decree and Judgment dated 20.01.2009 passed in OS.No.20 of 2006 by the Principal Subordinate Judge, Gobichettipalayam are upheld.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

vkrr

To

1.Additional District Judge,
Fast Track Court No.2,Gobichettipalayam.

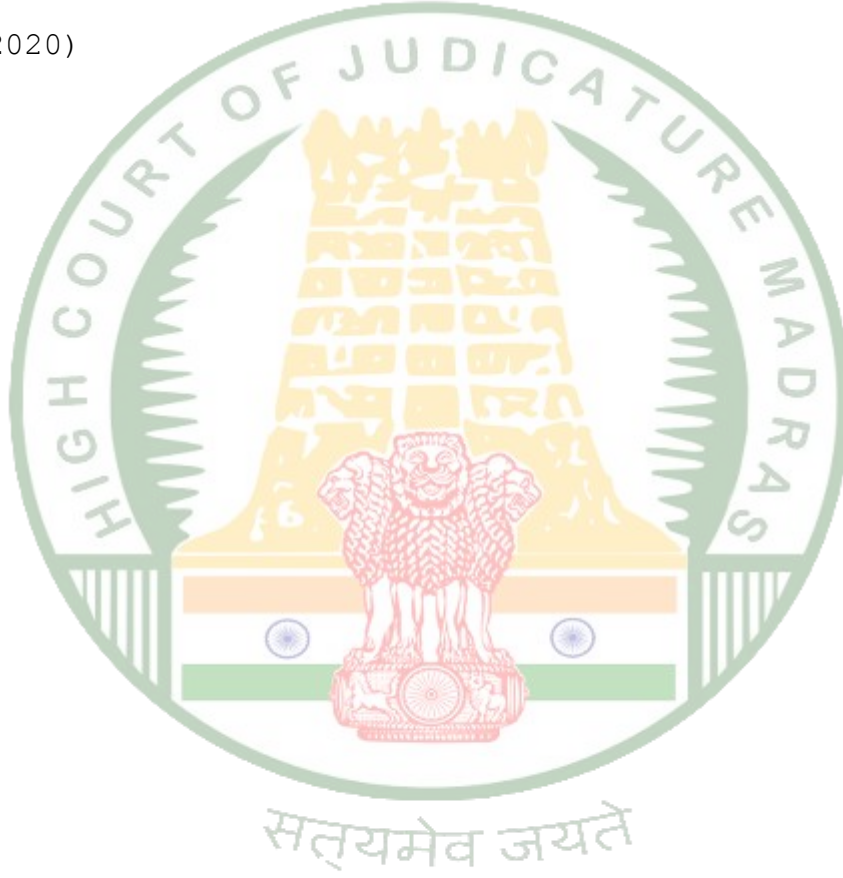
2.The Pricipal Subordinate Judge, Gobichettipalayam.

3.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Kaithamalai Kumaran, Advocate sr 68796.
+1 CC to Mr.V.Anandhamoorthy, Advocate sr 68990

SA.No.201 of 2010
and
MP.No.1 of 2010

SKV(CO)
SP(27/01/2020)



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