

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.959 of 2019
and
CMP.No.20439 of 2019

K.T.Shanmuganantham

..Appellant

Vs.

1.K.Parvatham
2.K.Bakkiyam
3.R.Thulasimani
4.Kumar
5.Deivasigamani

..Respondents

PRAYER:

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 01.04.2013 passed in A.S.No.109 of 2012 on the file of the Principal District Judge, Erode confirming the decree and judgment dated 17.11.2011 passed in O.S.No.138 of 2010 on the file of the Subordinate Judge, Perundurai, Erode District by allowing the above Second Appeal.

For Appellant : Mr.I.C.Vasudevan

For Respondents : Mr.A.Sundaravadhanan
for caveator

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J U D G M E N T

The 4th defendant in O.S.No.138 of 2010 has come up with this appeal having suffered a decree for payment of money before the courts below.

2. The suit in O.S.No.138 of 2010 was filed by the respondent 1 and 2 herein seeking a direction to the defendants to jointly and severally pay a sum of Rs.5,33,200/- to the plaintiffs with subsequent interest at the rate of 12% per annum on Rs.4,00,000/- from the date of suit till the date of realization.

3. It is the case of the plaintiffs that their husband Kumarasamy had entered into an agreement of sale on 11.04.2005 with the defendants 1 and 2 and had paid an advance of Rs.4,50,000/-. Subsequently, before conclusion of the sale Kumarasamy fell terminally ill and eventually died on 12.06.2007. He was diagnosed with Brain cancer.

4. The 4th defendant who is the sister's son of Kumarasamy influenced the plaintiffs to cancel the agreement dated 11.04.2005 and within 2 days of his death on 14.06.2007 took the plaintiffs to the Sub-Registrar's Office at Avalpoondurai and got certain documents registered. The plaintiffs who were in grief had signed on the dotted lines believing the 4th defendant.

5. Subsequently, the plaintiffs discovered that they have been cheated by the 4th defendant. The documents that were registered on 14.06.2007 are one cancelling agreement dated 11.04.2005 and the other a sale deed in favour of one Mustafa conveying the property of Kumarasamy situate in R.S.No.1171/1, Thenmugam Vellode Village, Prundurai Taluk for a consideration of Rs.3,57,300/-. It is the further case of the plaintiffs that they have not been paid even a single pie on the date of the transaction. According to them, the 4th defendant prevailed over them to execute these documents and he received the entire consideration. Being the sister's son of Kumarasamy they expected the 4th defendant to pay the monies, but the 4th defendant did not do so. Hence, they have come forward with the present suit for recovery of a sum of Rs.4,00,000/- which was paid as advance by Kumarasamy under the agreement dated 11.04.2005. The plaintiffs had taken separate proceedings seeking cancellation of the sale deed in favour of Mustafa.

6. The 1st defendant filed a written statement contending that the cancellation deed was registered on 14.06.2007 and the entire amount of Rs.4,00,000/- was paid to the 4th defendant. The defendants 1 and 2 claim that they had no knowledge of the transactions inter se between the plaintiffs and the 4th defendant.

7. The 3rd defendant filed a written statement denying the averments in the plaint and claiming that he was helping the family of Kumarasamy and as he was well known to them for more than 3 decades. The 3rd defendant supported the claim of the 4th defendant.

8. The 4th defendant filed a written statement contending that he had received a sum of Rs.4,00,000/- paid by the defendants 1 and 2 at the time of registration of the cancellation deed. He would however contend that he had spent money for the treatment of Kumarasamy. Kumarasamy had borrowed

money from one Mahesh at Karattupalayam. Out of the sale consideration and out of the refund of advance obtained he had repaid the monies borrowed by Kumarasamy.

9. The courts below upon consideration of evidence on record found that the claim of the 4th defendant that he had spent monies for the treatment of Kumarasamy and that he has repaid the debts is false. The courts below disbelieved the evidence of Mahesh who had deposed as DW5 regarding the loan as claimed by the 4th defendant. The courts below also found that the 4th defendant had received the entire consideration as well as the advance refunded on 14.06.2007 and he has not proved that he had repaid the loans and that he had incurred medical expenses leaving a balance Rs.1,21,000/- with him. In as much as the 4th defendant has admitted the receipt of the monies and he had claimed that he had spent the monies on the medical treatment of Kumarasamy and for repaying the loans, the courts below concluded that the 4th defendant alone would be liable to answer the claim of the plaintiffs.

10. Upon the conclusion that the 4th defendant has miserably failed to prove that the monies received were spent either for medical expenses or for repaying the debts of Kumarasamy, the courts below granted a decree in favour of the plaintiffs. Aggrieved the 4th defendant is on appeal.

11. I have heard Mr.I.C.Vasudevan, learned counsel appearing for the appellants and Mr.A.Sundaravadhanan, learned counsel appearing for the caveator.

12. Mr.I.C.Vasudevan, learned counsel appearing for the appellant/ 4th defendant would vehemently contend that the plaintiffs had admitted the execution of the cancellation deed as well as execution of sale deed dated 14.06.2007. The plaintiffs had also admitted that the 4th defendant was in fact taking care of Kumarasamy as well as the plaintiffs. Therefore, the 4th defendant had expended monies for the treatment of Kumarasamy and for repaying the loans borrowed by Kumarasamy.

13. According to Mr.I.C.Vasudevan, the courts below were not justified in disbelieving the evidence tendered on behalf of the 4th defendant with regard to the expenses incurred by him. The 4th defendant had produced Ex.B4 bills for Rs.90,000/-. The 4th defendant had also attempted to prove the debt by examining one Mahesh as DW5. Though the said Mahesh has deposed that Kumarasamy borrowed monies from him under promissory note, the promissory note was not produced. The courts below disbelieved the evidence of Mahesh with reference to borrowing.

14. The courts below also disbelieved the theory of the 4th

defendant that he had paid for the medical bills as evidenced by Ex.B4. The courts below had come to the conclusion that the production of original medical bills will alone not prove the payment of the medical expenses. The reasonings of the courts below for disbelieving the claim of the 4th defendant that he has paid the medical bills of Kumarasamy cannot be said to be perverse. It is not in dispute that the 4th defendant is the sister's son of Kumarasamy and he was in fact staying in the house of Kumarasamy during hospitalisation of Kumarasamy even as per the evidence of plaintiffs. Therefore, the courts below concluded that the 4th defendant had taken monies that belonged to Kumarasamy and he has not paid over the same to the plaintiffs.

15. Hence, I do not find any illegality or perversity in appreciation of the evidence by the courts below in order to interfere with the factual findings of the courts below. I do not find any question of law much less a substantial question of law enabling me to entertain this Second Appeal. Hence, the appeal is dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

16. Mr.I.C.Vasudevan, learned counsel appearing for the appellant would submit that some time may be given for payment of decree amount. Considering the said request, three months time is granted to pay the amount on condition that the appellant files an affidavit undertaking to pay the amount within three months within a period of two weeks from today.

Sd/-
Assistant Registrar(CO)

//True Copy//

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To

- 1.The learned Principal District Judge, Erode.
- 2.The learned Subordinate Judge, Perundurai, Erode

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.81236
+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.81086

S.A.No.959 of 2019

RGN(CO)
CS/25/09/2019