

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.40 of 2014
and
M.P.No.1 of 2014

Ramachandira Reddiar ..Appellant/Appellant/Defendant

Vs.

Vijaya .. Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 30.11.2012 passed in A.S.No.149 of 2010 on the file of the II Additional Subordinate Court, Villupuram confirming the judgment and decree dated 19.03.2010 passed in O.S.No.173 of 2007 before the II Additional District Munsif Court, Ulundurpet.

For Appellant : Mrs.R.Meenal

For Respondent : Mr.N.K.Srinivasan

J U D G M E N T

The defendant who suffered a decree for recovery in O.S.No.173 of 2007 on the file of the II Additional District Munsif, Ulundurpet which was confirmed on appeal by the learned II Additional Subordinate Judge, Villupuram in A.S.No.149 of 2010 has come forward with this Second Appeal.

2. The suit in O.S.No.173 of 2007 was filed by the respondent herein seeking declaration of title and recovery of possession claiming that the property originally belonged to Raju Naidu, her father, who sold the same to her for a valuable consideration on 17.02.2005. According to her, the defendant had trespassed into the property.

3. The said claim was resisted by the defendant. The defendant admitted the ownership of Raju Naidu, the vendor of the plaintiff. He however contended that the said Raju Naidu entered into an agreement of sale on 14.02.1999 itself agreeing to sell the property to the defendant for a consideration of Rs.23,000/-. He had also received entire consideration and put the defendant in possession of the property. Therefore, the defendant is entitled to protection under Section 53(A) of Transfer of Property Act as a person in possession of part performance of the agreement of sale.

4. Upon consideration of evidence on record, the courts below came to a conclusion that the defendant has not established the agreement of sale dated 14.02.1999. Though the defendant had examined the scribe and attesting witness to the said document, the courts below pointing out the inconsistencies in the evidence of the scribe as well as the attesting witness concluded that the defendant has not proved the sale agreement Ex.B1. On the said finding, the courts below negated the defence set up by the defendant and the defendant having admitted the title of the vendor of the plaintiff found that the plaintiff is entitled to declaration and recovery of possession. Aggrieved the defendant has come forward with this Second Appeal.

5. I have heard Mrs.R.Meenal, learned counsel appearing for the appellant and Mr.N.K.Srinivasan, learned counsel appearing for the respondent.

6. Notice of motion was ordered on 21.01.2014. Pursuant to the said notice, the respondent had entered appearance through his counsel.

7. Mrs.R.Meenal, learned counsel appearing for the appellant would vehemently contend that once the signature in the agreement Ex.B1 is not denied by the plaintiff, the courts below were not right in disbelieving the said agreement.

8. It should be pointed out that the document as such was not put to PW1 when she was in the box. It was marked as Ex.B1 through DW1 after the evidence of plaintiff was completed. Therefore, the plaintiff did not have an opportunity to either affirm or deny the signature of Raju Naidu found in Ex.B1. The courts below have pointed out certain vital discrepancies in the evidence of the attesting witness and the scribe to come to the conclusion that the agreement is not proved.

9. It is also pointed out that the agreement is of the year 1999, till the year 2007 i.e., the year in which the suit for recovery of possession was instituted, the defendant has not

claimed specific performance of the said agreement. The courts below have also found that even assuming Ex.B1 agreement to be true, the defendant has not proved that he was always ready and willing to perform his part of the contract.

10. These conclusions are factual conclusions which cannot be lightly interfered with particularly in a Second Appeal, the scope of which is restricted by Section 100 of the Code of Civil Procedure. I do not think that I can reappraise the evidence and substitute my own conclusions to the conclusion of the courts below. Therefore, I do not find any question of law much less a substantial question of law enabling me to entertain this Second Appeal.

11. Hence, this Second Appeal is dismissed without being admitted. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

dsa

To

1.The learned II Additional Subordinate Judge,
Villupuram.

2.The learned II Additional District Munsif,
Ulundurpet.

+1cc to Mrs.R.Meenal, Advocate SR.No.77959

+1cc to Mr.N.K.Srinivasan, Advocate SR.No.77641

+1cc to Mr.N.K.Srinivasan, Advocate SR.No.77641(03/12/2019)

S.A.No.40 of 2014

BS (CO)
GMY (07/11/2019)