

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2019

PRONOUNCED ON : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.834 of 2019

M.Mohanasundaram ... Appellant

Vs.

1.K.Kandasamy

2.M.Vasanthi

... Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.03.2019 passed in A.S.No.95 of 2018 on the file of the Principal District Court, Erode, Erode District, confirming the Judgment and Decree dated 12.12.2017 passed in O.S.No.144 of 2015 on the file of the Subordinate Court, Perundurai, Erode, Erode District.

For Appellant : Mr.M.Guruprasad

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 12.03.2019 passed in A.S.No.95 of 2018 on the file of the Principal District Court, Erode, Erode District, confirming the Judgment and Decree dated 12.12.2017 passed in O.S.No.144 of 2015 on the file of the Subordinate Court, Perundurai, Erode District.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for specific performance.

4.The suit has been laid by the plaintiff for the relief of specific performance in respect of the sale agreement dated 05.10.2012 marked as Ex.A1. Ex.A1 is found to be a registered sale agreement. The main defence projected by the defendants is that they had borrowed a sum of Rs.5,00,000/- from the plaintiff and in that connection, according to them, they were compelled

by the plaintiff to execute the sale agreement Ex.A1. However, on an appreciation of the materials available on record, the Courts below had noted that the first defendant, during the course of his evidence examined as DW1, has clearly admitted that he had received a sum of Rs.5,00,000/- from the plaintiff and celebrated his daughter's marriage and further, admitted that the suit property has been described in the sale agreement and it is true that he had received a sum of Rs.5,00,000/- as per the sale agreement, but would also state that he had received the sum by way of loan and further, also admitted that on 05.10.2012, he, his wife and the witnesses Thangaraj, Selvaraj had signed in the registrar's office and the sale agreement Ex.A1 was registered and admitted that the agreement was entered into on 05.10.2012. Therefore, it is evident that the defendants are very well aware of the execution of the sale agreement Ex.A1 and accordingly, it is found that as put forth by the plaintiff, only with a view to alienate the suit property, it is seen that the defendants had entered into the sale agreement Ex.A1 with the plaintiff for a sum of Rs.6,00,000/- and accordingly, received Rs.5,00,000/- as advance on the date of the sale agreement and without any resistance in the presence of the witnesses, had chosen to execute the same and also the document had come to be registered in the manner known to law. In this connection, the plaintiff has also examined Thangaraj as PW2 and Selvaraj as PW3 and both of them have tendered evidence as regards the receipt of Rs.5,00,000/- by the defendants from the plaintiff pursuant to the sale agreement and the registration of Ex.A1 sale agreement and as rightly held by the Courts below, nothing has been culled out from the evidence of PWs2 & 3 to discredit their evidence with reference to the case projected by them.

5.As abovenoted, according to the defendants, Ex.A1 had been obtained by way of compulsion. If that be so, the defendants, at least, thereafter would have endeavoured to challenge the obtainment of Ex.A1 from them as alleged in the written statement. However, when there is no further action initiated by the defendants against the plaintiff qua their case that Ex.A1 sale agreement had been obtained from them by the plaintiff by way of compulsion, in such view of the matter, the abovesaid defence had been rightly discarded by the Courts below and in my considered opinion, no interference is called for with reference to the same.

6.The plaintiff, prior to the levy of the suit, has issued the legal notice dated 26.03.2015 marked as Ex.A3, the defendants had acknowledged the receipt of the said notice. Despite the same, the defendants had not replied to the same and also failed to comply with the demand made by the plaintiff under the said notice. If really as now put forth by the

defendants, Ex.A1 sale agreement had been obtained from them by the plaintiff coercively or if according to the defendants, Ex.A1 had been secured by the plaintiff only in lieu of the loan transaction as now projected by them, the defendants would have endeavoured to repudiate the claim made by the plaintiff by way of Ex.A3 legal notice by sending a proper reply to the same. Therefore, when as abovenoted, the defendants have not established their case that Ex.A1 sale agreement had been obtained from them coercively and the same has been taken by the plaintiff only in lieu of the loan transaction and furthermore, when the abovesaid case has not even put forth by the defendants by sending a reply to the notice sent by the plaintiff and furthermore, as above pointed out, when the plaintiff through his evidence as well as the evidence of PWS2 & 3 had clearly established the case put forth by him and further, as abovestated, DW1 the first defendant has also admitted the case of the plaintiff as determined by the Courts below, in such view of the matter, it is clear that the plaintiff has established the truth and validity of Ex.A1 sale agreement and therefore, it is seen that Ex.A1 sale agreement is binding upon the defendants.

7.The plea has been taken by the defendants that the plaintiff and the witnesses examined by him and one Periyasamy are the partners of the Finance Company and they had obtained a power of attorney deed in the name of the partner Periyasamy and put forth the case that based on the said power of attorney deed, PWS1 to 3 along with Periyasamy had colluded together and filed the present suit to grab the suit property. However, as held by the courts below, the first defendant, during the course of cross examination, has clearly admitted that there is no document available to evidence that Periyasamy and PWS 1 to 3 were engaged in finance business, other than Ex.B2 General power of attorney and also further admitted that he has not pleaded in the written statement about the finance said to have been jointly run by Periyasamy and PWS 1 to 3 and also further, admitted that he had not averred in the written statement having any transactions with the abovesaid finance company. Therefore, when with reference to the alleged finance business said to have been run by Periyasamy and PWS 1 to 3 had not even averred by the defendants in the written statement, merely on the production of Power of attorney deed, as rightly held by the courts below, it cannot be held that the plaintiff along with his witnesses had colluded and filled the present suit for grabbing the suit property, as such, cannot be countenanced.

8.The plaintiff has established the truth and validity of Ex.A1 sale agreement. The plaintiff has also further established that he has been always ready and willing to perform his part of the contract by paying the balance sale consideration. In this connection, he had issued the legal notice Ex.A3. Despite the

same, the defendants having not responded to the same as above pointed out, in such view of the matter, considering the materials available on record, in toto, the Courts below are found to be wholly justified in holding that the plaintiff is entitled to seek and obtain the relief of specific performance as prayed for qua the sale agreement Ex.A1.

9.In the light of the abovesaid discussions, the reasonings and conclusions of the Courts below for upholding the plaintiff's case are based on the proper appreciation of the materials available on record and also in accordance with the principles of law governing the issues involved between the parties and not suffering from any infirmity or perversity, in all, it is found that no interference is warranted against the judgment and decree of the Courts below.

In conclusion, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

sms

To

- 1.The Principal District Court, Erode, Erode District.
- 2.The Subordinate Court, Perundurai, Erode, Erode District.

+1cc to Mr.M.Guruprasad, Advocate, SR.No.68575.

Judgment made
in S.A.No.834 of 2019

RV (CO)
CSR: 26.02.2020

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