

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.895 OF 2018

AND

C.M.P.NO.23643 OF 2018

A.Azizulkarim

...Appellant

Versus

1. Shaik Noorudeen

2. The Sub-Registrar,
Office of the Sub-Registrar,
North Beach,
Chennai - 600 001.

...Respondents

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree passed by the III Additional City Civil Judge, Chennai in A.S.No.31 of 2017 dated 18.06.2018 confirming the judgment and decree passed by XII Assistant City Civil Judge, Chennai in O.S.No.457 of 2011, dated 17.11.2016.

For Appellant : Mr.R.Barnabas

J U D G M E N T

The above Second Appeal is filed challenging the judgment and decree passed by the III Additional City Civil Judge, Chennai in A.S.No.31 of 2017 dated 18.06.2018, in and by which the learned Judge had confirmed the judgment and decree of the learned XII Assistant City Civil Judge, Chennai in O.S.No.457 of 2011, dated 17.11.2016.

2. The plaintiff in a suit for specific performance is the appellant before this Court. Parties are referred to in the same array as in the trial Court. The events preceding the filing of the Second Appeal are narrated hereinbelow:

The case of the plaintiff is that he had entered into an agreement of sale to purchase the suit property from the

defendant who is the exclusive and absolute owner of the suit property. The defendant had given out that he is the absolute owner who is in possession and enjoyment of the suit schedule property. It is the case of the plaintiff that in the first week of October 2007, the defendants had come over and insisted the plaintiff to purchase the property on a total sale consideration of Rs.1 Crore. Based on the faith and confidence that the plaintiff had reposed on the defendants, he had agreed to purchase the said property for the price quoted and he had advanced a sum of Rs.50,00,000/- on the date of agreement. The defendants had also executed the receipt and on 04.09.2008, the defendants and plaintiff have entered into an agreement of sale in respect of the suit schedule property. As per the agreed terms, the defendants agreed to execute the sale deed as and when the plaintiff came forward with the balance amount of Rs.50,00,000/-. Since the defendants were known to the plaintiff, the plaintiff have requested time for paying the balance amount and the defendants had also tacitly accepted the same. However, to his utter shock, the plaintiff in the first week of January 2011 came to know that the defendant was attempting to sell the suit property to third parties. Immediately, on 10.01.2011, the plaintiff had contacted the defendant who informed the plaintiff that he was not willing to sell the property to the plaintiff and that he was taking steps to refund the advance amount. The plaintiff's attempt to file a complaint against the defendants had also failed. Therefore, considering the emergency, the plaintiff had filed the above suit for bare injunction in order to avoid third party interest being created. The plaintiff would contend that he is reserving his right to file a suit for specific performance as he had a further period of three years from the date of refusal.

3. The defendants had resisted the above suit inter alia contending that the agreement of sale is a fabricated one created by the plaintiff in collusion with their relation are Mr.Md.Kabir who was collecting the loans and submitting the accounts periodically to the first defendant. The said Kabir had embezzled a lot of money and since the first defendant had started questioning him he had set up the plaintiff and together they had created the said document. The defendant therefore sought for dismissal of the suit.

4. The learned XII Assistant City Civil Judge, Chennai had dismissed the suit O.S.No.457 of 2011 by her judgment and decree dated 17.11.2016. Challenging the said judgment and decree, the plaintiff had filed A.S.No.31 of 2017 on the file of the III Additional City Civil Court, Chennai. The Appellate Court had also confirmed the judgment and decree of the trial Court and dismissed the said appeal. Challenging the same, the plaintiff is before this Court.

5. Heard Mr.R.Barnabas, learned counsel for the appellant.

6. The Courts below have observed that the plaintiff has not been able to prove the execution of Ex.A1, Agreement of sale as also the passing of consideration. This assume significance since the defendant has denied the execution of document as well as receipt of the sale consideration. The plaintiff has not discharged the onus of proof cast upon him. It is also seen that though the defendants had denied the execution of the agreement, no steps whatsoever had been taken by the plaintiff to have the signature of the defendants compared with the admitted signatures and this omission is fatal to the case of the plaintiffs.

7. I find no infirmity in the order passed by the Courts below and further no question of law much less substantial question of law in the Appeal. Therefore, this Second Appeal shall stand dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional Judge,
City Civil Court, Chennai.
2. The XII Assistant Judge,
City Civil Court, Chennai.
3. The Sub-Registrar,
Office of the Sub-Registrar,
North Beach,
Chennai - 600 001.

+1cc to Mr.R.Barnabas, Advocate, S.R.No.478

S.A.No.895 of 2018

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NR/03/04/2019