



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE NISHA BANU

SECOND APPEAL (MD) No.347 of 2010

and

C.M.P. (MD) No.9534 of 2019

WEB COPY

Matha Educational Society,
rep. by its Secretary,
having its Registered Office,
R.S.House, Sarasavilasom Estate,
Karode Post,
Arumanai Village,
Vilavancode Taluk,
Kanyakumari District.

... Appellant /
Appellant / Plaintiff

Vs.

1.George Joseph

... 1st respondent/
1st respondent/1st defendant

2.The Kuzhithurai Cooperative
Housing Society Y.335,
represented by its Secretary,
Kavalam Building,
Kuzhithurai Junction.

... 2nd respondent/
3rd respondent / 3rd

defendant

3.Baby Janagaraj

4.Ajindeva Kumar

... 3rd and 4th respondents /
Respondents 4 & 5/
LRs of 2nd defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 29.09.2009, passed in A.S.No.180 of 2004 by the District Court, Kanyakumari District at Nagercoil, confirming the judgment and decree, dated 18.09.2003 passed in O.S.No.47 of 1994 by the Subordinate Court, Kuzhithurai.

For appellants ... Mr.K.Sree Kumaran Nair

For 1st respondent ... Mr.K.Ginimanual
for Mr.M.Francis Xavier

For 2nd respondent ... Mr.K.M.Vijeyakumar

For respondents 3 & 4 ... Mr.P.Subramanian



JUDGMENT

This second appeal has been filed by the appellant/plaintiff against the concurrent judgment passed by the Courts below dismissing the suit.

2. For better appreciation and understanding, the parties are referred to as per their rank in the suit.

3. According to the plaintiff, the plaintiff is a registered society and it has been running an Institution in the name and style of Matha Industrial Training Institute at Kuzhithurai from 1982. The plaintiff appointed the 1st defendant as Correspondent of the I.T.I. The plaintiff, by a resolution dated 15.02.1984, authorised the 1st defendant as an agent to seek affiliation to purchase land, tools and to construct building for the Institute and entrusted Rs.90,000/-. But, the first defendant has purchased the suit property in his name on the ground of administrative convenience. On 15.06.1989, the first defendant has executed a deed of agreement in favour of the plaintiff agreeing to reconvey the suit land in favour of the plaintiff society whenever it is demanded by the society. As the first defendant acted against the interest of the society, the plaintiff issued a legal notice dated 25.02.1994 calling upon the first defendant to execute the document transferring the land in the name of the society. But, the first defendant evaded the said notice. The plaintiff again sent a notice dated 26.03.1994, but the first defendant did not turn to execute and register the document on 06.04.1994. The plaintiff expelled the first defendant from the society with effect from 09.04.1995. As the first defendant refused to perform his part of contract and execute the conveyance deed in favour of the plaintiff, the plaintiff has filed the suit for specific performance.

4. According to the first defendant, the plaintiff is a non-existence body and therefore, the suit is not maintainable. He purchased the disputed land on his own fund and constructed building therein by obtaining loan from the third defendant. The deed of agreement alleged in the plaint is a concocted document. The contents of the said agreement were created in the blank letterhead papers signed by the first defendant to be used for official purpose of the Institution. There is no contract. There is no cause of action in the suit. Thus, he prayed to dismiss the suit.

5. According to the 3rd defendant, the 1st defendant took a loan for the construction of the building by producing the original documents and executing hypothecation bond. Hence, for realization of the amount, the 3rd defendant is entitled to sell the property. The plaintiff has no right to restrain them.



6. Before the trial Court, on the side of the plaintiff, two witnesses were examined as PWs.1 and 2 and Exs.A1 to A73 were marked. On the side of the defendants, two witnesses were examined as DW1 and DW2 and Exs.B1 to B46 were marked. In addition to that, the Advocate Commissioner's report and plan are marked as Exs.C1 and C2.

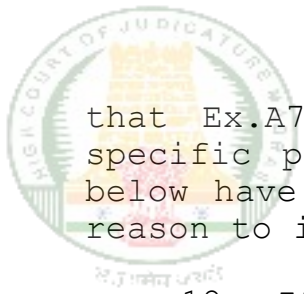
7. The plaintiff has filed another suit in O.S.No.37 of 1996 for permanent injunction against the first and second defendants. Both the suits were tried together by the The trial Court. The trial Court, after considering the oral and documentary evidence, has dismissed the suit in O.S.No.47 of 1994 and allowed the suit in O.S.No.37 of 1996. Aggrieved by the dismissal of the suit in O.S.No.47 of 1994, the plaintiff filed appeal suit in A.S.No.180 of 2004. The first appellate Court, after reappraising the oral and documentary evidence, has dismissed the appeal, confirming the judgment and decree passed by the trial Court. Aggrieved by the said concurrent judgments, this second appeal has been filed by the plaintiff.

8. It is seen from the records that though the appeal is of the year 2010, till date it has not been admitted.

9. Heard the learned counsel appearing for the parties and perused the records carefully.

10. According to the plaintiff, the suit property has been purchased by the first defendant using the funds of the plaintiff/Society and the first defendant has executed an agreement - Ex.A7, promising to convey the suit property in the name of the Society without any condition as and when a demand is made by the plaintiff. According to the first defendant, Ex.A7 is a fabricated document and that he has put his signatures for official purposes in the blank letterhead of the Institute, while he was correspondent of Institution and one such paper has been used for creating Ex.A7.

11. Admittedly, Ex.A7 is an unregistered and unstamped document. A bare perusal of Ex.A7 would show that it is a typewritten agreement and there is a long gap between the contents and signature of the first defendant and no date is found in the signature of the first defendant. It would clearly fortify the submission of the first defendant that it is a created one. It is seen that PW1, PW2 and DW1 are brothers and they formed the society and now the dispute is between the first defendant and PW1 and PW2 and the attestors in Ex.A7 are only the brothers of the first defendant. It is also seen that in the earlier proceedings in O.S.No.60 of 1992, the plaintiff did not even aver about Ex.A7, but the first defendant had took a stand that he had put his signatures in blank letterhead papers for official purpose and the same is ~~being used by the plaintiff in order to defeat him.~~ Having found



that Ex.A7, based on which the plaintiff claimed the relief of specific performance, has not been proved as genuine, the Courts below have non suited the plaintiff. This Court does not find any reason to interfere with the said findings of the Courts below.

12. It is seen from the record that the Courts below have dismissed the suit not only on the ground of non proving of Ex.A7 but also on the ground of limitation. In the grounds of appeal, the plaintiff/appellant wanted to raise two questions of law relating to the point of limitation. As stated earlier, when Ex.A7 itself has been categorically held to be not proved as genuine, the questions of law sought to be raised need not be decided. There is no substantial questions of law arises for consideration in this appeal. Hence, this Court is inclined to dismiss this second appeal.

13. The plaintiff has filed C.M.P.(MD).No.9534 of 2019 praying to receive the five documents filed along with the petition and mark the same as Exs.A74 to A79. The documents sought to be marked by the plaintiff are the certified copy of the demand notice issued by housing society for the dues of loan amount and certified copy of receipts issued by the Housing Society for payment of dues. According to the plaintiff, the Housing society has informed him that if the loan amount due has not been paid, the suit property would be brought for auction and therefore, he has paid entire dues during the pendency of this second appeal. In order to substantiate the said contention, he wanted to produce the those documents in this case. It is seen that in all the documents which wanted to be marked only the name of the first defendant has been mentioned, which gives an impression that the amount has been remitted only by the first defendant. As the documents sought to be marked are after the suit documents and they would not be useful to prove the case of the plaintiff in this case, this Court is inclined to dismiss the petition for reception of additional documents also.

14. In the result, this second appeal is dismissed. C.M.P. (MD).No.9534 of 2019 is also dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

gcg



To

1.The District Judge,
Kanyakumari District
at Nagercoil.

2.The Subordinate Judge,
Kuzhithurai.

Copy to

The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MrK.M.VIJAIYAKUMAR, Advocate (SR-100475[F] dated
22/11/2019)

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20.11.2019

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