

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.02.2020

Date of Verdict : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.915 of 2006

1.Palanisamy (Died)
2.Madhammal
3.Chinnapayan @ Dhanapal
4.Iyyappan
5.Valarmathy
6.Dhanabhakiyam
(Appellants 2 to 6 brought on record
as LR's of the deceased sole appellant
viz., Palanisamy vide order of Court
dated 25.11.2019 made in C.M.P.No.
24962, 24965 and 24968 of 2019
in S.A.No.915/2006. Appellants/Plaintiffs

Vs.

Pallikoodathan Respondent/Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 01.03.2006 made in A.S.No.27 of 2005 on the file of Principal District Court, Salem, reversing the Judgment and Decree dated 09.02.2005 in O.S.No.564 of 1999 on the file of Additional Subordinate Court.

For Appellants : Ms.K.S.Kamakshi
for Mr.T.R.Rajaraman

For Respondent : Mr.M.V.Krishnan

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 01.03.2006 passed in A.S.No.27 of 2005 on the file of the Principal District Court, Salem reversing the Judgment and Decree dated 09.02.2005 passed in O.S.No.546 of 1999 on the

file of the Additional Subordinate Court, Salem.

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

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for specific performance and permanent injunction. The suit property is the ancestral property of the defendant and he entered into an agreement for sale with the plaintiff on 28.05.1998 and agreed to sell the suit property for the total sale consideration of Rs.1,50,000/- in which, he received a sum of Rs.1,30,000/- as an advance. Eighteen months time was fixed for the execution of the sale deed. As per terms of the agreement, if the plaintiff defaulted to pay the balance sale consideration, the plaintiff has to forfeit the advance amount and the sale agreement dated 28.05.1998 stands cancelled automatically. While being so, the plaintiff is ready and willing to perform his part of the contract, but the defendant did not come forward to execute the sale deed as agreed by him. Hence, the plaintiff has issued legal notice on 30.10.1999. Even then nothing was happened and the plaintiff came to understand that the defendant was making arrangements to sell the suit property to third parties. Hence, the suit is filed for specific performance and permanent injunction.

4. Resisting the plaintiff's case, the defendant filed written statement denying the averments and allegations made in the plaint as false and frivolous. The defendant never entered into an agreement for sale with the plaintiff dated 28.05.1998 and also denied the receipt of Rs.1,30,000/- as advance to sell the suit property. Admittedly, the suit property is an ancestral property and not yet divided between his family members. The plaintiff's brother-in-law one Palanisamy was elected as Panchayat President. He is doing illicit arrack business and misusing his official position by uprooting the valuable trees numbering 200 belonged to the defendant which were situated in the patta land of the defendant and tried to lay the road for his convenience. Therefore, the defendant filed a suit in O.S.No.13 of 1998 on the file of the Principal District Munsif Court, Salem for permanent injunction. While being so, the said Palanisamy has obtained the defendant's signature in empty pro-notes and stamp papers in respect of laying the road. The plaintiff is none other than his own brother-in-law and he had fabricated and concocted the alleged agreement for sale using the blank signed stamp papers and filed the present suit. Therefore, prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and marked Exs.A1 to A5. On the side of the defendants

D.W.1 was examined and Exs.B1 to B13 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the judgment and decree of the trial Court, the defendant preferred an appeal suit in A.S.No.27 of 2005 before the Principal District Judge, Salem and the first Appellate Court allowed the appeal and dismissed the suit filed by the plaintiff. Challenging the same, the plaintiff has come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the discrepancies or inconsistencies shown to be available in the evidence of P.Ws.1 to 3 are so very material to affect the plaintiff's case?

b) In other words, when on relevant materials, there is consistency, has not the lower Appellate Court committed an error of law in relying upon the irrelevant inconsistencies in non-suiting the plaintiff?

7. The learned counsel appearing for the appellants/plaintiffs and the respondent/defendant are present and they are reiterated the averments set out in the plaint as well as the written statement.

8. Heard Ms.K.S.Kamakshi, learned counsel appearing for the appellants and Mr.M.V.Krishnan, learned counsel appearing for the respondent.

9. This Court considered the rival submission made by the learned counsel on either side.

10. Admittedly, the suit property is an ancestral property belonged to the defendant. He has one brother and till the alleged agreement for sale there was no partition between them.

11. According to the plaintiff, the defendant agreed to sell the suit property for the total sale consideration of Rs.1,50,000/- and executed an agreement for sale on 28.05.1998 and received a sum of Rs.1,30,000/- as an advance, which was marked as Ex.A1. Eighteen months time was fixed for execution of sale deed. Though the plaintiff was ready and willing to perform his part of the contract, the defendant did not come forward to execute the sale deed in his favour.

12. On perusal of the evidence of P.W.1 to P.W.3, the first Appellate Court concluded that they are not trust worthy witnesses. P.W.2 was an Arrack distiller. Further, the brother-in-law of the plaintiff had enmity with the defendant, in which, the defendant filed a suit against him in respect of laying road in the land belonged to the defendant. In that circumstances, the brother-in-law of the plaintiff had obtained a signed stamp paper of Rs.10/- and signed blank papers from the defendant. Immediately, the defendant lodged police complaint in which, he was called for enquiry. In fact, he also assured to return the signed blank stamp papers. Exs.B1 to B8 categorically proved about the dispute between the defendant and the brother-in-law of the plaintiff. The reply notice issued by the defendant also proved the above facts. Therefore, the first Appellate Court concluded that on perusal of the evidences of P.W.1 to P.W.3 and documents, which were marked by the defendant proved that the alleged sale agreement was created one by the plaintiff, only for the purpose of filing a suit. Further, the signature found in the sale agreement are forged by the plaintiff. The first page of the sale agreement is a stamp paper and subsequent papers are blank papers. Even from the naked eye, the signature differs from first page to other pages. Therefore, the plaintiff failed to prove the agreement for sale. Further, admittedly, the suit property is an ancestral property belonged to his brother also. Therefore, the defendant alone cannot sell the suit property without the consent of his brother, namely, the co-sharer.

13. On perusal of the alleged sale agreement also shows that the time for execution of the sale deed was fixed as 18 months. The total sale consideration was Rs.1,50,000/- in which, Rs.1,30,000/- was paid on the date of agreement, for remaining Rs.20,000/- no prudent man would fix 18 months time to perform their respective part of the contract. The defendant constructed pukka terrace house in the suit property and he is residing there and as such there is absolutely no necessity for him to sell the property as alleged by the plaintiff. Therefore, the first Appellate Court rightly reversed the findings of the Trial Court and dismissed the suit filed by the plaintiff.

14. In view of the above, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the First Appellate Court as such the Court below has analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and allowed the appeal filed by the defendant. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may. All the substantial questions of law, formulated by this

Court in this Second Appeal, are answered in favour of the defendant and as against the plaintiffs.

15. Accordingly, this Second Appeal stands dismissed. No order as to costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rsi

To

1.The Principal District Judge,
Salem.

2.The Additional Subordinate Judge,
Salem.

3.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 cc to M/s.M.V.Krishnan Advocate sr19538

+1 cc to M/s.T.R.Rajaraman Advocate sr19922

S.A.No.915 of 2006

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