

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.967 of 2010

S.Jaffar Ali

..Appellant/Plaintiff

/versus/

1.Mr.Sheik Dastagir

2.Mrs.Mumtaj

..Respondents/Defendants

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.90 of 2006 dated 29.02.2008 on the file of the first Additional District Judge, Erode, confirming the judgment and decree passed in O.S.No.86 of 2002 on the file of the I Additional Subordinate Judge of Gopichettipalayam dated 18.11.2005.

For Appellant :Mr.K.V.Babu

For Respondents

1 & 2 :Mr.R.T.Doraisamy

J U D G M E N T

(The case has been heard through Video Conferencing)

The appellant is the plaintiff in the suit filed for Specific Performance. Being aggrieved by the dismissal of the suit by both the Courts below, the present Second Appeal is filed.

2.According to the plaintiff/appellant, the first defendant entered into an agreement of sale in respect of the suit property on 10.07.2001 for consideration of Rs.3,25,000/- and received Rs.2,75,000/- on the date of executing the agreement and later, on 10.10.2001 received a further sum of Rs.25,000/- towards balance sale consideration. Though the period for performing the agreement contract was fixed as six months, the same was extended subsequently. In spite of the plaintiff being ready and willing to pay the balance amount, the defendants

refused to execute the sale deed. Hence, the suit has been filed for Specific Performance to direct the defendants to execute the sale deed on receiving the balance sale consideration.

3.The suit was contested by the defendants stating that there was no contract between the plaintiff and the defendants to sell the suit schedule property, which stands in the name of the 2nd defendant, who is the wife of the 1st defendant. According to the defendants, their specific case that there was business transaction between the plaintiff and the 1st defendant in which there was due of Rs.2,75,000/- for the goods sold and delivered by the plaintiff. The said amount was subsequently settled by the 1st defendant. Meanwhile, for reconciling the account, the plaintiff obtained signature in a blank stamp paper, which has been misused for fabricating the suit agreement.

4.The trial Court, considering the pleadings has framed the following issues:-

(1)Whether the plaintiff is entitled for execution of the sale deed as per the agreement?

(2)Whether the plaintiff is entitled for possession and permanent injunction?

5.To prove the case, the plaintiff examined two witnesses and marked seven exhibits. On behalf of the defendants, two witnesses were examined and 9 exhibits were marked.

6.The Trial Court, on appreciating the evidence has held that the plaintiff has failed to prove the genuineness of the agreement marked as Ex.A1 and further, the ignorance of the plaintiff regarding the stamp paper and its date of purchase caused doubt about the genuineness of the documents. Particularly, the Trial Court has considered the fact that the property valued Rs.3,25,000/-. The plaintiff has paid Rs.2,75,000/-. While so, for the balance of Rs.50,000/- six months time has been granted for completion of agreement and even by that time, the plaintiff has not paid the balance amount. Further, the endorsement made in Ex.A1 was signed only by the 1st defendant, as the property stands in the name of the 2nd defendant to which the plaintiff had fully knowledge. Due to suspicious circumstances surround the suit agreement Ex.A1, the Trial Court dismissed the suit and the same was confirmed by the first appellant Court.

7.The learned counsel appearing for the appellant would submit that pending first appeal, before the first appellant

Court an amendment application has been filed seeking alternate relief of refund of advance money. The said application was dismissed by the first appellant Court. On revision, this Court allowed the same. If the agreement could be specifically enforced, as alternate relief, the advance money paid by the plaintiff may be refunded.

8.The learned counsel appearing for the respondents/defendants would submit that both the Courts below have categorically held that the alleged agreement is a fabricated document and no consideration as alleged by the plaintiff was passed to the defendants and therefore, the question of refund of sale consideration does not arise.

9.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

10.This Court, on considering the rival submissions made by the respective learned counsel, finds that Ex.A1-sale agreement is in respect of the property owned by the 2nd defendant. Whereas the alleged sale agreement was signed by the first defendant alone and that too in the last page of the document. Neither passing of consideration nor execution of the document could be proved by the appellant through the witnesses. PW-2, who is one of the witnesses to the said document, has tumbled in the cross examination. Further the endorsement relied by the plaintiff for extension of time was also signed only by the 1st defendant, not by the owner of the property. In the said circumstances, the Courts below have gone into the facts of the case and held concurrently that the sale agreement is not proved in the manner known to law and passing of consideration is also not established. In such circumstances, the question of refund of advance money does not arise. Therefore, this Court finds no merit in the Second Appeal. Hence, this Second Appeal is dismissed. No order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To:

1. I Additional District Judge, Erode.

2.The I Additional Subordinate Judge,
Gobichettipalayam.

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S.A.No.967 of 2010

SAI (CO)
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