

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.193 of 2020

Mathialagan

.. Appellant/Plaintiff

Versus

1. Velayutham

2. Thangam

3. Suresh

.. Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.07.2019 passed in A.S.No.33 of 2016 on the file of the Additional District Judge, Namakkal confirming the decree and judgment dated 20.04.2016 passed in O.S.No.82 of 2004 by the Subordinate Judge, Namakkal.

For Appellant : Mr.R.Nalliyappan

JUDGMENT

The unsuccessful plaintiff in O.S.No.82 of 2004 on the file of the Subordinate Judge, Namakkal is the appellant herein. The suit was filed against the respondents for specific performance.

2. The case of the plaintiff is that the first defendant was the absolute owner of the suit property by virtue of a settlement dated 29.07.2002. He agreed to sell the property to the plaintiff for a sale consideration Rs.2,00,000/- and a sum of Rs.1,25,000/- was paid as advance. One year time was fixed for completion of the sale. Although the plaintiff was ready and willing to pay the balance sale consideration of Rs.75,000/- to get the sale deed executed in his favour, the defendants did not come forward. Despite issuance of notice dated 11.07.2003, there was no response. Hence, the suit.

3. In the written statement filed by the first defendant, the averments and allegations were denied and disputed. It has

been contended that the first defendant had no intention to sell the property, but taking advantage of the misunderstanding between the first defendant and his brother / the second defendant, the sale agreement was created by forging his signature.

4. Based on the above pleadings, necessary issues were framed and the parties adduced oral and documentary evidence. Upon considering the evidence adduced by the parties, the Trial Court dismissed the suit. The findings of the Trial Court were confirmed by the Appellate Court. Aggrieved over the same, the present appeal has been filed.

5. Mr.R.Nalliyappan, learned counsel for the appellant would urge that the Courts below were not correct in dismissing the suit without considering the well settled principles of law and the materials available on record. The respondents either in the written statement or in the evidence have not specifically denied the signature in Ex.A1 sale agreement, but the Courts below have wrongly placed the burden of proof on the side of the plaintiff.

6. In the case on hand, the suit in O.S.No.82 of 2004 came to be filed for specific performance on the basis of Ex.A1 sale agreement dated 07.05.2003. It is true that the plaintiff within a period of two months of the agreement issued a notice under Ex.A2 requesting the defendants to come for registration of the sale deed.

7. It is not in dispute that the first defendant is the absolute owner by virtue of the settlement deed Ex.A6. In the written statement, the first defendant has categorically denied his signature in the sale agreement marked as Ex.A1. PW1 in the course of cross-examination admitted that he had lent Rs.1,25,000/- to the third defendant, who is the son of the first defendant. PW2 also deposed that the plaintiff had lent money to the first defendant, for which, a power of attorney was executed in favour of the wife of the plaintiff. The evidence adduced on the side of the plaintiff, categorically establishes the loan transaction between the plaintiff and the defendants even before the execution of the alleged Ex.A1 sale agreement. Indisputably no step was taken to get the opinion of the handwriting expert to prove the signature of the first defendant in the sale agreement.

8. In the light of the above facts, I am of the considered opinion that the Courts below have rightly reached the conclusion that the execution of Ex.A1 sale agreement was not proved. I find no perversity or illegality in the judgment and decree of the Courts below warranting interference in this appeal.

9. For the foregoing reasons, the second appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Additional District Judge,
Namakkal.

2. The Subordinate Judge,
Namakkal.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No. 15534

S.A.No.193 of 2020

VG II(CO)
GN(01/09/2020)



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