



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.558 OF 2020

1. Dhanammal (alias) Dhanam
Kandasamy (Deceased)
2. Govindammal
3. Raghupathy
4. Karthikeyan
5. Periyasamy
6. Bhuvaneswari

... Appellants/Plaintiffs

Vs

1. Krishnasamy
Valliammal (Deceased)
Vettrikodi (Deceased)
2. Tamilkodi
3. Vanitha
4. Arul
Pushpa (Deceased)
5. Kundan
6. Minor Mahalakshmi
Daughter of Kundan
Rep by Mr.Sathish Kumar
Court Guardian
7. Jayaperumal
8. Minor Charanya
Daughter of Jayaperumal
Rep by Tmt Madhumathy
Advocate Court Guardian

... Respondents/
Defendants

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgement and decree dated 21.06.2019 made in A.S.No.35 of 2014 on the file of the Principal Sub Court, Namakkal confirming the Judgment and decree dated 17.02.2014 made in O.S.No.15 of 2011 on the file of the Principal District Munsif, Namakkal.

For Appellants : Mr.S.Senthil



J U D G M E N T

The plaintiff in O.S.No.15 of 2011 whose suit for specific performance, was dismissed by the trial Court, upon confirmation of the same by the appellate Court in A.S.No: 35 of 2014 has come up with this second appeal.

2. The plaintiff sought for performance of an agreement dated 04.10.1982. According to the plaintiff, the defendants agreed to convey the suit property measuring an extent of about 0.41 cents in Survey No.240/8 for a consideration of Rs.12,000/- and they had received a sum of Rs.10,000/- on the date of the agreement. According to the plaintiff, no time was fixed under the agreement and the defendants have specifically agreed to execute the sale deed as and when required by the plaintiff. According to the plaintiff, they were also put in possession of the property and are in enjoyment of the same. The plaintiff would further plea that they sought for execution of the Sale Deeds in the year 2010 and have also prepared a Sale Deed dated 06.10.2020. Since the defendants did not come forward to execute the Sale Deed, the plaintiff has come up with the present suit.

3. The suit was resisted by the defendants contending that the Sale agreement is not true. It was specifically pleaded that taking advantage of the old age of 2nd defendant, promising to get him Senior Citizen pension, the plaintiff has created the sale agreement. The readiness and willingness of the plaintiff was also questioned.

4. At trial, the plaintiff was examined as PW1 and one Duraisamy was examined as PW2. The defendants 1 and 2 were examined as Dws 1 and 2. While Exs.A1 to A5 were marked on the side of the plaintiff, no documents were marked on the side of the defendants.

5. The learned trial Court upon consideration of the evidence on record, concluded that the agreement itself is doubtful after referring to the manner in which Ex.A1 agreement has been written. He would point out that a perusal of the agreement would show that the agreement has been written or prepared on a pre-signed blank Stamp paper. On the said findings, the learned trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.35 of 2014. The learned appellate Judge upon reconsideration of the evidence, concurred with the conclusions of the trial Judge and dismissed the appeal. Aggrieved, the plaintiff has come up with this second appeal.



6. I have heard Mr.S.Senthil, learned counsel appearing for the appellants. Mr.S.Senthil, learned counsel appearing for the appellants would vehemently contend that the Courts below were not right in concluding that the agreement has been written on a pre-signed blank stamp paper, overlooking the specific plea taken by the defendants in the written statement to the effect that the agreement has been created or forged. He would also further point out that the Courts below have not framed an issue regarding the readiness and willingness on the part of the plaintiff to perform his part of the contract. I have considered the submissions of the learned counsel for the appellant.

7. The suit being one for specific performance, the plaintiff has to come to Court with clean hands. As rightly pointed out by the Courts below, a look at Ex.A1, particularly the manner in which it is written creates a doubt as to its genuineness. It is very clear that the same has been written on a pre signed blank stamp paper. Of course, the trial Court has stated that in the third page of the document Ex.A1, the date of purchase of the stamp paper is stated as 11.10.1982 and hence the agreement could not have been executed on 04.10.1982. That observation of the trial Judge may be wrong but it will not dilute the other findings.

8. Considering the readiness and Willingness, the Courts below have found that the Sale agreement Ex.A1 is dated 04.10.1982, but the plaintiff has come forward with the suit on 05.10.2010 after lapse of 28 years. The suit cannot be decreed after such long time.

9. I do not see any perversity in the findings of the Courts below and I do not find any question of law, much less a substantial question of law, in order to enable me to entertain the second appeal. The appeal, therefore fails and it is accordingly dismissed without being admitted.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Namakkal.
2. The Principal District Munsif,
Namakkal.
3. The Section Officer,
VR Section, Madras High Court,
Chennai.

+1cc to Mr.S.Senthil, Advocate, S.R.No.35157

S.A.No.558 of 2020

EV(CO)
CS/09/09/2021