

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1270 of 2019 and
CMP No.27539 of 2019

1. Subramani
2. Nagarthinam
3. S.Parakash
- 4.S.Shobanadevi

...Appellants/Appellants/Defendants

Vs.

1. M.Krishnan
- 2.C.C.Rajendran
- 3.S.A.Suriananth

... Respondents/Respondents/Plaintiffs

Prayer: The Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree passed in A.s.No.105 of 2018 dated 01.07.2019 on the file of the Principal District Judge of Erode, Erode District, confirming the Judgment and Decree made in O.S.No.16 of 2014 dated 27.08.2015 on the file of the learned Subordinate Judge of Perundurai of Erode, Erode District.

For Appellants : Mr.M.Guruprasad

For Respondents : Mr.N.Senthil Kumar

JUDGMENT

The defendants in O.S.No.16 of 2014 who suffered a decree for return of advance of a sum of Rs.5,00,000/- with interest at 12 % from the date of suit till date of Judgment and 6% thereafter, at the hands of the trial Court, upon its affirmation by the appellate Court, have come up with this second appeal.

2.The suit was laid by the plaintiffs seeking refund of advance of a sum of Rs.5,00,000/- paid under the agreement, dated 22.11.2010. The agreement was for sale of immovable properties for a consideration of Rs.25,00,000/-, and it recites that an advance of Rs.5,00,000/- was paid by the plaintiffs on the date of agreement. The last date for performance of the contract was 21.03.2011. The plaintiffs issued a notice seeking performance on 24.10.2011 and the defendants sent a reply on 22.11.2011 denying the the very agreement. This led to the filing of the suit.

3. The suit was resisted by the defendants contending that the agreement itself is false and there was no such agreement between the parties. It was also claimed that the defendants 3 and 4 were minors on the date of the agreement and therefore an agreement entered into by minors, who are under a legal incapacity, is void.

4. At trial, the 3rd plaintiff was examined as PW1 and one Eswaran was examined as PW2. Exs.A1 to A8 were marked. the 1st defendant was examined as DW1 and Exs.B1 and B2 were marked.

5. The trial Court upon a consideration of the evidence on record concluded that the execution of the agreement and payment of 5,00,000/- as advance has been established by the plaintiffs. The trial Court also disbelieved the claim of the plaintiff that he has spent a sum of Rs.2,00,000/- in levelling the property after the agreement. On the said finding, the trial Court granted a decree for refund of advance of Rs.5,00,000/- with interest at 12 % per annum from the date of suit till date of the Judgment and 6% thereafter. Aggrieved, the defendants preferred an appeal in A.S.No.105 of 2018.

6. The Appellate Court upon a re-appreciation of the evidence, concurred with the findings of the trial Court and dismissed the appeal. Aggrieved the defendants have come up with this second appeal.

7. Notice of motion was ordered on 09.01.2020.

8. I have heard Mr.M.Guruprasad, learned counsel appearing for the appellants and Mr.N.Senthilkumar, learned counsel appearing for the respondents.

9. Mr.M.Guruprasad, learned counsel appearing for the appellants would vehemently contend that once the execution of the agreement had been denied, it is for the plaintiffs to prove the same by having the signatures compared. According to him, the Courts below were not right in believing the evidence of PWs.1 and 2. He would also contend that since the defendants 3 and 4 were minors on the date of the agreement, the agreement as a whole will be void. I am unable to accept the said submissions.

10. The proof of documents by securing expert opinion is not the only mode. The plaintiffs have examined P.W.2 who is not shown to be an interested witness. The Courts below have believed his evidence and held that the suit agreement was in fact entered into by the defendants and the defendants had received a sum of Rs.5,00,000/- on 22.11.2010.

11. Despite his best efforts, Mr.M.Guruprasad is unable to show that this finding of the Courts below is perverse. Being concurrent finding, I do not think it can be interfered with, unless it is shown to be totally perverse. I do not find any question of law, much less substantial question of law arising in this second appeal. The question of law that sought to be raised by the counsel for the appellants namely the minors having signed the contract, cannot be considered to be a pure question of law. It is an admitted fact that the defendants 3 and 4 were not described as minors in the agreement. They had claimed to be majors and they had signed in the agreement. Therefore, the agreement cannot be wholly invalidated because of the fact that the minors were shown as majors and they had signed in the agreement. In any event, the contract will bind on the defendants 1 and 2. Hence, I do not find any ground to entertain this second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vum

To:

1. The Principal District Judge of Erode,
Erode District.
2. The Subordinate Judge of Perundurai,
Erode.
3. The Section Officer, सत्यमेव जयते
V.R. Section,
Madras High Court,
Chennai.

+1 CC to Mr.M.Guruprasad, Advocate sr 25615.

S.A.No.1270 of 2019 and
CMP No.27539 of 2019

RSV(CO)
SP(21/12/2020)