

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1297 of 2019
and
C.M.P.No.27996 of 2019

K.Govindaraj ...Appellant/Appellant/Plaintiff

Vs

P.Myilsamy ... Respondent/Respondent/Defendant

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 30.07.2019 passed in A.S.No.61 of 2017 on the file of the I Additional District Court, Tiruppur confirming the judgment and decree dated 25.10.2016 passed in O.S.No.203 of 2000 on the file of the Principal Subordinate Court, Tiruppur.

For Appellant : Mr.D.Veerasekharan

JUDGMENT

The unsuccessful plaintiff in O.S.No.203 of 2000 on the file of the Principal Subordinate Court, Tiruppur is the appellant herein. The suit was filed for specific performance of the sale agreement dated 04.02.1997.

2. It is the case of the plaintiff that the defendant is the absolute owner of the suit property by virtue of a registered sale deed dated 29.05.1986. The defendant entered into a registered sale agreement with the plaintiff on 04.02.1997, agreeing to sell the property for a sum of Rs.1,60,000/- and on the date of agreement the defendant received Rs.1,50,000/- as advance towards the sale price. It is further stated that the plaintiff is always ready and willing to perform his part of contract, but, the defendant has evaded from the execution of sale. Hence, a notice dated 29.01.1999 was issued. Since there was no reply, the suit was filed.

3. The suit was resisted by the defendant by filing a written statement contending that the defendant is not the absolute owner of the property and the property belongs to the joint family, in which, the defendant's elder brother is also

having half share. It is further stated that the defendant borrowed a sum of Rs.2,00,000/- from the plaintiff for the purpose of purchasing a lorry bearing Registration No.TAR 5556. The defendant repaid a sum of Rs.72,000/- in installments each at the rate of Rs.8,000/- and on 04.02.1997, he paid Rs.48,000/- at one stroke. When the defendant is liable to pay Rs.80,000/- to the plaintiff, the sale agreement was obtained by force. It is further stated that the plaintiff sold the said lorry to one Murugesan for a sum of Rs.2,00,000/- and prayed for dismissal of the suit.

4. On the basis of the above pleadings, the trial Court framed necessary issues. The plaintiff examined P.W.1 to P.W.4 and Exs.A1 to A4 were marked. On the side of the defendant, the defendant examined himself as D.W.1 and produced Exs.B1 to B9. The trial Court, upon consideration of both oral and documentary evidence dismissed the suit. On appeal, the findings of the trial Court was confirmed by the First Additional District Judge, Tiruppur. Assailing the concurrent findings, the present appeal has been filed.

5. Mr.D.Veersekharan, learned counsel for the appellant would urge that the execution of sale agreement dated 04.02.1997 has been proved by the plaintiff and the plaintiff also proved his readiness and willingness to perform his part of contract from the date of agreement. However, the Courts below dismissed the case on the sole ground that the plaintiff is a financier and he has lent money to the defendant. It is the submission of the learned counsel for the appellant that the loan transaction is totally different from the sale agreement and hence, the said findings are liable to be set aside. In support of his contention the learned counsel also relied upon the judgment of the Hon'ble Supreme Court in State of Rajasthan & Ors Vs.Shiv Dayal & Anr., reported in 2019 (10) Scale 768.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. In the case on hand, according to the plaintiff, the defendant entered into a registered sale agreement on 04.02.1997, thereby agreed to sell the suit schedule property for a sale consideration of Rs.1,60,000/- and on the date of agreement the defendant received Rs.1,50,000/- as advance. It is the further case of the plaintiff that he is always ready and willing to perform his obligation in the sale agreement, but, it was evaded by the defendant. Hence, the pre-suit notice dated 29.01.1999 was issued and a suit was filed in the year 2000.

8. Per contra, the defendant has alleged that the plaintiff is a financier and he borrowed loan of Rs.2,00,000/-, for purchasing a lorry bearing Registration No.TAR 5556. It is the further case of the defendant that a total sum of Rs.72,000/- was paid in installments and on 04.02.1997 he paid Rs.48,000/- and to establish the case of the defendant he has produced Exs.B1 to B9. It is further contended that on 04.02.1997, by force the plaintiff obtained the sale agreement Ex.A1, dated 04.02.1997. The plaintiff by examining P.Ws.1 to 4 have proved the execution of sale agreement Ex.A1 dated 04.02.1997.

9. It is relevant to note that the genuineness of Ex.A1 Sale Agreement was doubted on the ground that the defendant has established that he paid Rs.48,000/- on 04.02.1997, but in the plaint, nothing has been stated about the loan transaction between the plaintiff and the defendant. Further, during the course of evidence P.W.1 has admitted that he is a financier and is running a finance company in the name of R.K.G Finance and Padmavathi Finance and he has been earning Rs.80,000/- to Rs.90,000/- per annum. It is to be seen that in pursuance of Ex.A1 Sale Agreement dated 04.02.1997, the plaintiff is said to have paid Rs.1,50,000/- towards advance, out of total sale consideration of Rs.1,60,000/- and two years time was fixed for execution of sale deed.

10. It is evident from the records that between 04.02.1997 to 29.01.1999 no steps were taken by the plaintiff to get the sale deed executed in his name by paying the balance consideration of Rs.10,000/-. It is also established that only on 04.02.1997 the stamp paper was purchased, when the defendant made a payment of Rs.48,000/- to the plaintiff. According to the defendant he was liable to pay Rs.80,000/- to the plaintiff on 04.02.1997 and to prove the same he has marked Exs.B1 to B9. The plaintiff in the course of evidence admitted that he obtained 42 signatures from the defendant in a Book Form including Voucher, T.O Form of R.T.O.Department and Insurance transfer application and he has not produced those documents, despite notice issued by the defendant.

11. In the judgment relied upon by the learned counsel for the appellant, the Hon'ble Apex Court has observed that if any one or more ground is made out in appropriate case on the basis of pleadings and evidence, such ground will constitute substantial question of law within the meaning of Section 100 of Civil Procedure Code. In the case on hand, no ground is made out to entertain this appeal. Hence, this Court is of the view that the above decision does not support the case of the appellant. In the matter on hand, the trial Court as well as the appellate Court after independently analysing the entire

evidence, rendered a finding that the agreement of sale Ex.A1 was not intended to sell the suit schedule property. In my considered view that the factual findings arrived at by the Courts below on proper appreciation of evidence need not be interfered in this appeal.

12. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The I Additional District Judge,
Tiruppur.

2.The Principal Subordinate Judge,
Tiruppur.

+1 CC to Mr.D.Veerasekharan, Advocate sr 4591.

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