

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.697 of 2018

and CMP No.20680 of 2018

Parimala

..Appellant/Respondent/
Plaintiff

Vs.

Venkatesan

..Respondent/Appellant/
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree made in A.S.No.04 of 2017 on the file of the Principal District Judge, Vellore, Vellore District, dated 23.07.2018 reversing the Judgment and decree made in O.S.No.68 of 2012 on the file of the Subordinate Judge at Gudiyattam, Vellore District, dated 18.02.2016.

For Appellant : Mr. K.A.Ravindran

For Respondent : No appearance

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The plaintiff in OS No.68 of 2012, who was able to convenience the Trial Court to grant him a decree for specific performance based on the agreement of sale dated 22.02.2011 having suffered a reversal of the said decree at the hands of the Appellate Court in AS No.4 of 2017, has come up with this Second Appeal.

2. The suit was laid by the plaintiff claiming that the defendant agreed to sell the property for a consideration of Rs.1,50,000/- and has entered into an agreement on 22.02.2011. An advance of Rs.1,00,000/- was paid on the said date and 1½ years time was fixed for payment of the balance sale consideration. It is claimed that the plaintiff has always been ready and willing to perform his part of the contract. It is

stated that the plaintiff has issued a notice on 13.08.2012 demanding a specific performance. The defendant sent a reply denying the very agreement on 20.08.2012. This prompted the plaintiff to file the suit on 22.08.2012.

3. The defendant resisted the suit contending that the suit agreement was not intended to be an agreement of sale. According to him, he wanted to borrow a sum of Rs.1,00,000/-, and the plaintiff who is a money lender has taken him to the Registrar's Office stating that he was to execute a mortgage and has got this agreement of sale registered. It is also claimed that the defendant is an illiterate person, who does not know even to read Tamil. The plaintiff taking advantage of the same obtained the signatures of the defendant representing that the document was a Mortgage Deed. It is also claimed that the defendant has been paying interest 2,500/- per month regularly. It is also pointed out that the fixation of time of 18 months for payment of Rs.50,000/- would itself demonstrate that the agreement was not intended to be acted upon as a sale agreement.

The defendant also claimed that the value of the property is more than Rs.7,00,000/- and therefore, the agreement of sale for a consideration of Rs.1,50,000/- cannot be said to be true and genuine.

4. At trial, the plaintiff was examined as P.W.1 and Exhibits A1 to A3 were marked. One Vajeravel was examined as P.W.2. On the side of the defendant, the defendant was examined as D.W.1 and two other witnesses were examined as D.Ws.2 and 3. Exhibits B1 to B4 were marked.

5. The learned Trial Judge on a consideration of the evidence concluded that the suit agreement being true and valid, is enforceable. The learned Trial Judge also found that the value of the property was not Rs.7,00,000/- as claimed by the defendant. On the said finding, the learned Trial Judge decreed the suit. Aggrieved the defendant preferred an Appeal in AS No.4 of 2017.

6. The learned Principal District Judge, who heard the Appeal disagreed with the findings of the Trial Court and concluded that the very execution of the suit agreement is shrouded in mystery. The learned Principal District Judge adverted to Exhibits B1 and B2, viz. a sale agreement between the same parties dated 14.06.2010 and the cancellation deed dated 22.02.2011, under Ex.B1, the plaintiff had agreed to purchase the same property for a sum of Rs.75,000/- and it is shown that she has paid an advance of Rs.50,000/- A period of two years was fixed for performance of the said agreement. However, on 22.02.2011, Ex.B2 came into existence.

7. Ex.B2 is a cancellation of Ex.B1 agreement. The plaintiff was examined as P.W.1 has admitted both Exs.B1 and B2. She has also admitted that the defendant has repaid the advance of Rs.50,000/- received under Ex.B1 on 22.02.2011. The Exhibit A1 agreement is said to have been executed on 22.02.2011, wherein, it is shown that the defendant has received a sum of Rs.1,00,000/- as advance for the sale of the property for Rs.1,50,000/-. An extraordinarily long period of 1½ half years was fixed for the payment of the balance of Rs.50,000/-.

8. The suit notice was issued at the fag end of the 1½ years period i.e., on 13.08.2012 and the same was followed by the suit immediately thereafter even without waiting for a reply. All these factors put together created a doubt in the mind of the learned Principal District Judge regarding the purpose and object of execution of Ex.A1 agreement. The learned Principal District Judge recorded a finding that the very execution of Ex.A1 is shrouded in mystery and therefore, the plaintiff is not entitled to a decree for specific performance. On the above conclusions, the learned Principal District Judge allowed the Appeal and dismissed the suit. Aggrieved the plaintiff has come up with this Second Appeal.

9. I have heard Mr.K.A.Ravindran, learned counsel appearing for the appellant. Though notice of motion was ordered and the respondent was served, none appears for the respondent.

10. Mr.K.A.Ravindran, learned counsel appearing for the appellant would vehemently contend that the Lower Appellate Court was not right in concluding that the execution of Ex.A1 has not been proved in accordance with law. He would also submit that the Appellate Court was not right in relying upon Exhibits B1 and B2 which were not referred to in the pleading. It is the further submission of the learned counsel that the Appellate Court must have at least ordered refund of advance.

11. I am unable to agree with the contentions of the learned counsel for the appellant. Even though Exs.B1 and B2 have not been referred to the pleadings, the plaintiff as P.W.1 has categorically admitted the execution of those documents. Ex.B1 is an agreement of sale for the sale of the very same property for Rs.75,000/-. It is stated therein that the plaintiff has paid an advance of Rs.50,000/- and for the payment of balance of Rs.25,000/- a period of two year was fixed. Even within eight months of execution of EX.B1, the same was cancelled by EX.B2. The plaintiff as P.W.1 has categorically said that Ex.B2 was entered into because she did not intend purchasing the property. On the same day, Ex.A1 came into existence and it recites the sale consideration at Rs.1,50,000/- and advance paid at Rs.1,00,000/-. Again a period of 1½ years is

fixed for performance. This conduct of the parties coupled with the plea taken by the defendant that he is illiterate and he has been deceived in signing the agreement Ex.A1 becomes more probable.

12. The learned Principal District Judge has analysed the evidence of the plaintiff and has come to the conclusion that the very oral evidence of the plaintiff contains a several loose ends leading to the conclusion that the execution of Ex.A1 agreement itself may not be true. May be the document contains the signature of the defendant, but whether the defendant knew the impact of the document before he signed the same is unknown.

The learned Principal District Judge has concluded that the defendant was not aware of the contents of the documents and it appears that the document was extracted from him using his illiteracy.

13. I find that the said conclusion is also probable and cannot be termed as perverse. In the absence of perversity, I do not think that I can interfere with the factual findings recorded by the Appellate Court, which is a final Court of fact.

I do not find any question of law much less substantial question of law which would enable me to entertain the Second Appeal. Hence the Second Appeal fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

jv
To

1. The Principal District Judge, Vellore,
Vellore District.
2. The Subordinate Judge at Gudiyattam,
Vellore District.

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