BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 27.08.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

S.A(MD)No.657 of 2015

Girija :Appellant/Appellant/Plaintiff

Vs.

Nagamani :Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C, against the Judgment and Decree dated 17.12.2014 made in A.S.No.67 of 2012 on the file of 2nd Additional Sub Court(Camp Court), Kuzhithurai, Nagercoil confirming the Judgment and Decree dated 11.07.2012 made in O.S.No.353 of 2002 on the file of 2nd Additional District Munsif Court, Kuzhithurai.

For Appellant : Mr.V.Jayaprakash
For Respondent : Mr.M.R.Sreenivasan

J U D G M E N T

The plaintiff, having lost her suit for specific performance successively before the courts below, has come forward with the present Second Appeal.

2.The case of the plaintiff in brief is that;

- The suit property belongs to the defendant, that on 02.03.2001 under Ex.A.1, the defendant had entered into a sale agreement with the plaintiff for the sale of the suit property for a total consideration of Rs.25,000/-, that the defendant had received Rs.20,000/- as advance and agreed to execute the sale deed on or before 24.04.2002 after receiving the balance sale consideration of Rs.5000/-.
- There were subsequently exchange of notices between the parties. Denying the very execution of Ex.A.1, the defendant alleged in his written statement that the plaintiff's husband was one Mohandhas @ Bank Thankappan, that he was a money lender, that the defendant had borrowed a sum of Rs.5000/- some time in June 1998 from him and he had discharged the said loan. The defendant runs a grocery shop and the plaintiff's husband had purchased materials worth Rs.8,322.40 on credit. it is very obvious that the value of the credit purchase made by the plaintiff's husband executed the debt amount of Rs.5000/-.

3.Before the trial court, the plaintiff examined P.W.2, the attesting witness to Ex.A.1, but he turned hostile. He merely admitted his signature in Ex.A.1, but, did not talk in support of Ex.A.1. So far as the defendant, he produced Ex.B.2 to Ex.B.7, all of which are the documents produced about the time when the sale agreement was executed and admittedly, contains his admitted signatures. Notwithstanding the denial of execution by the defendant, the plaintiff did not take any steps to compare the disputed signature of the defendant in Ext.A.1 with his admitted signatures in Exts.B.2 to B.7. While the trial Court did not attempt to compare the admitted signature of the defendant with the disputed signature in Ex.A.1 within the powers it has under Section 73 of the Indian Evidence Act, the First Appellate Court did compare the same.

4.Heard both sides and perused the materials placed on record.

5.The key to this case at the first stage is to establish that the finding of the First Appellate Court as to the genuineness of the execution of Ext.A.1 is the most probable approach that the court had. To ascertain the same, this Court also compared the purported signature of the defendant in Ext.A.1 with the admitted signature of the defendant in Exts. B2 to B.7 and this Court is satisfied that the purported signature of the defendant in Ex.A.1 shows considerable variance to his admitted signatures in Ex.B.2 to Ex.B.7. Placing this fact along side the testimony of P.W.2, this Court cannot find any improbable, much less perversity in the approach of the First Appellate Court. Necessarily, this Court cannot hold that the Second Appeal rises any substantial question of law.

6.Having held thus, it is an admitted case of the defendant that he had borrowed a sum of Rs.5000/-. Though he had pleaded that this debt was discharged through the credit purchase made by the plaintiff's husband and that the plaintiff's husband owes him a balance of Rs.3320.40/-, he has not made anything to the fact that there was any credit purchase actually made.

7.In one sense, given the scope of litigation, it was not required, however, placing reliance on the Authority in ***Srinivas Ram Kumar Vs. Mahabir Prasad and Others***(AIR 1951 SC 177) wherein, the defendant admits to have borrowed, in a suit for specific performance, it was held that the Court has ample powers to mold the relief and direct the defendant to repay the debt to the plaintiff. Accordingly, this Court while dismissing the suit on the cause of action, molds the relief based on the admission of the defendant in the written statement and directs the defendant to repay the plaintiff a sum of Rs.5000/- with interest at 6% per annum from 03.05.2002, which is the date of representation of the plaint till the date of this decree along with future interest at the same rate.

8.In the result, the Second Appeal is dismissed and this Court confirms the Judgment dated 17.12.2014 made in A.S.No.67 of 2012 on the file of the II Additional Sub Court(Camp Court), Kuzhithurai but, modifies the decree passed therein and directs the respondent/defendant to pay the appellant/plaintiff a sum of Rs.5,000 with interest at 6% per annum from 03.05.2002 till the date of this decree along with future interest at the same rate. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The II Additional Subordinate Judge(Camp Court),
   Kuzhithurai, Nagercoil

2. The 2nd Additional District Munsif,
   Kuzhithurai.

Copy to: The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2)

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