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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.262 of 2009

Indira @ Thenmozhi

.. Appellant/Plaintiff

Vs.

Sakuntala @ Kanthammal

.. Respondent/Defendant

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 06.08.2007 passed in A.S.No.29 of 2007 on the file of the Principal District Judge, Salem, confirming the judgment and decree dated 17.08.2006 passed in O.S.No.56 of 2005 on the file of the Subordinate Court, Sankari.

For Appellant : Mr.D.Shivakumaran

For Respondent: Mr.S.Saravanan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 06.08.2007 passed in A.S.No.29 of 2007 on the file of the Principal District Court, Salem, confirming the judgment and decree dated 17.08.2006 passed in O.S.No.56 of 2005 on the file of the Subordinate Court, Sankari.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The second appeal has been admitted on the following substantial questions of law:

"1.When Ex.B4, expert opinion, has proved that Ex.A5 sale agreement is not a



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forged document, are the Courts below correct in law in holding that the Ex.A5 sale agreement is a fabricated document in the absence of any specific evidence to that effect?

2. When P.W.2 and P.W.3 the scribe and the attester have clearly and cogently deposed that Ex.A5 sale agreement was executed by the parties thereto, are the Courts below correct in law in holding that the evidence of outsiders are not admissible, when the family members of the plaintiff and defendant are available at the time of Ex.A5 sale agreement?"

4. The plaintiff in O.S.No.56 of 2005 is the appellant in the second appeal.

5. Suit for specific performance or alternatively for the refund of the advance amount.

6. The plaintiff claims the relief of specific performance based on the sale agreement dated 05.12.1995, whereunder, according to the plaintiff, the defendant had agreed to sell the suit property for a sum of Rs.3,00,000/- and received a sum of Rs.2,75,000/- as advance and only the balance sale price of Rs.25,000/- remains to be paid and as the defendant had not come forward to execute the sale deed, despite the readiness and willingness on the part of the plaintiff in paying the balance sale consideration and also not come forward to execute the sale deed, despite the issuance of the legal notice, according to the plaintiff, she has been necessitated to lay the suit against the defendant for appropriate relief.

7. The defendant resisted the plaintiff's suit contending that the sale agreement projected by the plaintiff is a fabricated document and she had not executed the sale agreement in favour of the plaintiff as claimed in the plaint and not received any amount under the sale agreement and taking advantage of the close relationship between the parties, the plaintiff has fabricated the sale agreement with a view to grab the suit property belonging to the defendant and the defendant had not



delivered the possession of the suit property to the plaintiff pursuant to the sale agreement as claimed in the plaint and accordingly, the suit is liable to be dismissed.

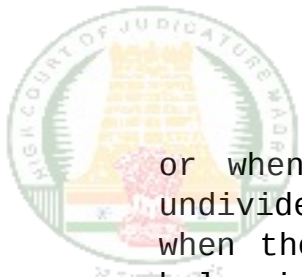
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8. In support of the plaintiff's case, PWS1 to 4 were examined and Exs.A1 to A36 were marked. On the side of the defendant, DWS1 & 2 were examined and Exs.B1 to B14 were marked and Exs.X1 & X2 were marked.

9. On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the Courts below were pleased to dismiss the plaintiff's suit, particularly, holding that the genuineness of Ex.A1 sale agreement has not been established by the plaintiff. Impugning the same, the second appeal has been preferred by the plaintiff.

10. Considering the pleas put forth by the respective parties and the materials placed on record, it is found that the plaintiff and the defendant are sisters. The plaintiff by way of the suit laid for specific performance is endeavoring to claim right in the undivided share of the defendant in the suit survey No.192/1 measuring an extent of 4.65 cents. Therefore, as rightly concluded by the Courts below, when the plaintiff has laid the suit based on the sale agreement marked as Ex.A5 with reference to the undivided half share said to be belonging to the defendant, the plaintiff should clearly project as to where actually the suit property lies, within which the boundaries the same is located etc.,. However, considering the evidence adduced on the side of the plaintiff, when it is seen that the suit property is only the undivided share and the plaintiff is unable to identify the suit property, as such, particularly, the location of the suit property in the suit survey number, the claim of the plaintiff for the relief of specific performance based on the indistinct and weak description of the suit properties, as such, cannot be accepted and on that ground, the Courts below are found to be justified in declining the equitable and discretionary relief of specific performance.

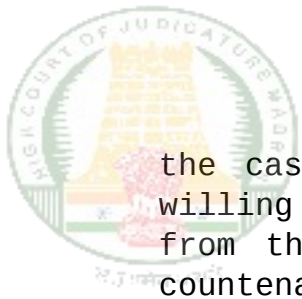
11. The plaintiff would claim that she had been put in the possession of the suit property pursuant to the sale agreement. The same has been disputed by the defendant. When the plaintiff is unable to locate the suit property with the clear boundaries



or when as above pointed out, the suit property is only the undivided share of the defendant in the suit survey number and when the plaintiff and the defendant had not divided the shares belonging to them in the suit survey number by metes and bounds, the claim of the plaintiff that she had been put in the possession and enjoyment of the undivided share of the defendant in the suit survey number cannot be accepted even prima facie and therefore, the Courts below are found to be justified in holding that the plaintiff has falsely come forward with the case as if the suit property had been put in her possession and enjoyment pursuant to the sale agreement marked as Ex.A5.

12.The plaintiff would also claim that following the obtainment of the possession of the suit property based on Ex.A5 sale agreement, she had made various improvements in the same amounting to Rs.1,50,000/-. However, pointing to the same, there is no acceptable and reliable materials projected on the part of the plaintiff. If the abovesaid case of the plaintiff has any element of truth, as rightly concluded by the Courts below, when the plaintiff is required to part only with a sum of Rs.25,000/- under the sale agreement towards the sale price, it has not been explained by the plaintiff as to why she had not endeavored to pay the sum of Rs.25,000/- immediately to the defendant and obtain the execution of the sale deed from her. The abovesaid factor has not been properly explained by the plaintiff.

13.Further more, when according to the plaintiff, the sale agreement has been entered into for a sum of Rs.3,00,000/- and she had paid a sum of Rs.2,75,000/- as advance, if the plaintiff had really intended to purchase the suit property and claim ownership over the same, the plaintiff would endeavour to pay the balance sale consideration at the earliest point of time and complete the sale transaction. However, the recital in Ex.A5 sale agreement would go to show that the parties had reserved 10 years period of time for paying the paltry balance sale price of Rs.25,000/-. The abovesid factor itself throws a serious suspicion over the genuineness of the sale agreement. When the parties are closely related to each other, when the plaintiff had endeavoured to purchase the undivided share of the defendant in the suit survey number and when only a sum of Rs.25,000/- remains to be paid as per law, if the abovesaid case of the plaintiff has element of truth, there is no necessity for fixing time limit of 10 years for paying the balance sale consideration. Therefore,



the case of the plaintiff that she has always been ready and willing to pay the balance sale consideration on her part right from the inception of the sale agreement, as such, cannot be countenanced.

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14.The sale agreement is dated 05.12.1995 and the suit has come to be laid by the plaintiff on 21.11.2005, that is nearly 10 years after the execution of the sale agreement. As above noted, the time limit of 10 years fixed for the completion of the sale transaction is found to be totally artificial, unacceptable and untenable, particularly, considering the factor that only a paltry sum of Rs.25,000/- remains to be paid. As above pointed out, when according to the plaintiff, assuming the plaintiff's case is true, she claiming to have spent a sum of Rs.1,50,000/- for making the improvements in the suit property, if really, the sale agreement is a true agreement and the defendant had agreed to convey the suit property to the plaintiff, the primary task of the plaintiff would be only to complete the sale transaction at the earliest point of time and there is no need for waiting 10 years to pay the balance sale consideration and thereafter, belatedly lay the suit for securing the equitable and discretionary relief of specific performance.

15.In addition to that, the plaintiff to establish the genuineness of the sale agreement had examined Pws2 & 3. However, considering the evidence adduced by Pws2 & 3 in toto and when the Courts below have in detail given cogent and convincing reasons as to why their evidence could not be relied upon and furthermore, when according to the plaintiff, at the time of the execution of the alleged sale agreement, the plaintiff's husband, the defendant's husband and their relatives being present, it does not stand to reason as to why the third parties had been solicited to stand as witnesses to the sale agreement. As held by the Courts below, Pws2 & 3 are found to be closely associated with the plaintiff's husband one way or the other and when as above pointed out, the Courts below having not relied upon the evidence of Pws2 & 3 for reliable and convincing reasons, at this stage of the matter, I am not inclined to take a different view and therefore, the sale agreement cannot be held to be a true document based on the unreliable and unacceptable testimony of Pws2 & 3.

16.Though it is argued that the signature of the



defendant in the sale agreement has been established by the expert's opinion marked as Ex.X1, however, considering the totality of the facts and circumstance of the case, particularly, when the plaintiff is not sure as to for which property, she is claiming the relief of specific performance and the plaintiff having failed to establish that she had parted with the sum of Rs.2,75,000/- to the defendant under Ex.A1 sale agreement and considering the unnatural and unacceptable period of time limit fixed in the sale agreement as 10 years for completing the sale transaction, that too only for paying the balance sum of Rs.25,000/- and the plaintiff having failed to establish her claim of possession and enjoyment of the suit property pursuant to the sale agreement and when the evidence adduced on the part of the plaintiff through Pws2 & 3 is found to be totally unreliable and unacceptable, in all, it is found that the Courts below had correctly declined the relief sought for by the plaintiff.

17.Merely because, the expert's opinion go to show that the signature of the defendant is available in the sale agreement that by itself would not be sufficient to conclude straightaway that the sale agreement is a genuine document. The expert's opinion is not a substantive piece of evidence by itself and when the plaintiff has miserably failed to establish the authenticity of Ex.A5 sale agreement by placing acceptable and reliable materials as well as having failed to establish the other factors projected by her said to have taken place pursuant to Ex.A5 sale agreement, all put together, the reasonings and conclusions of the Courts below for rejecting the plaintiff's case being found to be bared on the proper appreciation of the materials available on record, both oral and documentary on factual matrix as well as the point of law and when they are not shown to be in any manner perverse, illogical and irrational, I do not find any valid reason to interfere with the same.

18.For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

In conclusion, the judgment and decree dated 06.08.2007 passed in A.S.No.29 of 2007 on the file of the Principal District Court, Salem, confirming the judgment and decree dated 17.08.2006 passed in O.S.No.56 of 2005 on the file of the Subordinate Court,



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Sankari, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

SMS

Copy to

- 1.The Principal District Judge,
Salem.
- 2.The Subordinate Court,
Sankari.
- 3.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to M/s.S.Saravanan, Advocate, S.R.No.13277

+1cc to M/s.S.D.Shivakumaran, Advocate, S.R.No.13781

S.A.No.262 of 2009

RSI(CO)
SB(26/10/2021)