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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2021	Pronounced on: 01.04.2021
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CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A.No.251 of 2010

Parimala ... Plaintiff/ Appellant /Appellant

Vs.

Jaya ... Defendant/ Respondent/ Respondent

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree of the subordinate Judge's Court at Dharmapuri dated 23.04.2009 in A.S.No.52 of 2006 confirming the judgement and decree of the District Munsif Court at Dharmapuri, dated 06.03.2006 in O.S.No.163 of 2004.

For Appellant : Mr.P.Valliappan

For Respondent : No appearance

J U D G M E N T

This second appeal has been preferred against the judgment and decree of the subordinate Judge's Court at Dharmapuri dated 23.04.2009 in A.S.No.52 of 2006 confirming the judgement and decree of the District Munsif Court at Dharmapuri, dated 06.03.2006 in O.S.No.163 of 2004.

2. The appellant is the plaintiff.

3. The short facts of the case of the plaintiff is that she entered into a sale agreement with the defendant on 07.02.2001



for a sale consideration of Rs.73,500/- (Rs.24,500/-per cent X 3 cents). On the same day of sale agreement itself he paid an advance amount of Rs.20,000/- and agreed to pay the remaining sale amount within the three months. The plaintiff was ready and willing to pay the remaining sale amount, and to get the sale deed registered. Subsequent to the sale agreement, the defendant received a part sale consideration for a sum of Rs. 37,500/- in the first week of Tamil Month of Chithirai, to meet out his urgent expenses. The plaintiff was always ready to pay the balance sale consideration also and called upon the defendant on 05.05.2001 to receive the balance sale consideration and executed the sale deed; but the defendant did not come forward to get the balance sale amount and execute the sale deed. The plaintiff sent notices to the defendant on 22.05.2003 and 19.05.2003. But the defendant avoided to receive the notices. Again the plaintiff sent pre-suit notice on 14.07.2003 and the same was received by the defendant on 18.07.2003, whereas the plaintiff has filed a suit for specific performance.

4. The short facts of the written statement is as under:

The allegation that the plaintiff entered into a sale agreement with the defendant on 07.02.2001, is false. The defendant did not receive any sale consideration as alleged by the plaintiff. The husband of the plaintiff came forward to purchase 0.03cents out of 0.058 hectares in Natham survey No.655/A1/A. The said 0.03 cents is situated on the Northern side of the Pennakaram salai and the South-Western side of the remaining lands of the defendant and Eastern side of the lands Balaji. As agreed, the defendant has executed a sale agreement on 25.01.1999 in favour of the plaintiff's husband in respect of the above said property. At that time the plaintiff has entered into a sale agreement with one Jayaram to sell the adjacent property.

5. In pursuance of the sale agreement dated 25.01.1999 the defendant has executed a sale deed in favour of plaintiff's husband/Appunu on 29.09.1999. Subsequent to the Sale Deed, the plaintiff encroached the adjacent site of the defendant's property and erected a construction. So the defendant has filed a suit in O.S.No.75/2003 to remove the said construction. The plaintiff and her husband have assaulted the defendant by claiming that there is a pathway in the lands belonging to the defendant. So the defendant has given a police complaint also. Further the plaintiff's husband filed a suit in O.S.NO.95/2003 by claiming that he has a pathway right in the lands of the defendant. The plaintiff and her husband continued to give troubles to the defendant with some ulterior motive; the



defendant concocted a sale agreement by making use of papers given to him while entering the sale agreement. The defendant did not enter in to any sale agreement and receive any sale consideration. Hence the plaintiff is not entitled to any relief as prayed for. Since the plaintiff made a false claim on the basis of the concocted document, the defendant did not choose to send any reply.

6. During the course of trial, on the side of the plaintiff 4 witnesses were examined and Exs. A1 to A12 were marked. On the side of the defendant 1 witness was examined as DW.1 and no document was marked.

7. After the completion of the trial, the trial court has dismissed the suit. Aggrieved over the same the plaintiff has filed the first appeal and the first appeal was also dismissed. Now the plaintiff has filed this second appeal, challenging the judgment and decree of the First appellate Court. The second appeal has been admitted on the following substantial questions of law:-

"(1)Whether the Courts below are correct in reaching a conclusion without comparison of disputed signatures in any of the ways permissible under law?

(2)Whether the material evidence was ignored by the Courts below with reference to the admission of the defendant as to the possession of the appellant?"

8. On perusal of the judgment and decree of the Courts below, it is seen that the Courts did not accept Ex.A1, sale agreement as genuine and that the plaintiff did not prove that the signature on the sale agreement is of the defendant.

9. The learned counsel for the appellant submitted during his course of arguments that the trial court omitted to notice that the plaintiff was in enjoyment of the suit properties and the court ought to have believed the evidence of the scribe of Ex.A1. When the defendant denies the signatures in the sale agreement, the burden is on the plaintiff to prove that the signature on Ex.A1 was affixed by the defendant and Ex.A1 is a true and valid agreement. Ex.A1, sale agreement is a typed document. The typist who had typed the same, did not make any endorsement that he had typed.



10. On perusal of Ex.A1 Sale agreement, it is seen that even the signatures of the parties were not affixed on the respective spaces in the agreement; but it is found somewhere beside the signature of the scribe and below the signatures of the witnesses. Further there is overwriting in the alleged signature of the defendant.

11. The signatures of the defendant in Ex.A12 sale deed dated 29.09.1999 are the admitted signatures of the defendant/Jaya. The admitted signatures of the defendant is available in her written statement and the acknowledgment Ex.A3. The similarities in the several of the admitted signatures of the defendant in Ex.A12, Ex.A3, and her written statement would show that she was not a person who was in the habit of putting different styles and types of signatures. If these admitted signatures of the defendant is compared with the disputed signatures of the defendant found in Ex.A1 by making use of the powers of the court under sec.73 of the Evidence Act, it could be seen that there are gross difference in the signatures of the defendant in Ex.A1 and that would fortify the defence that Ex.A1 sale agreement has been concocted.

12. The defendant has contended that the plaintiff has concocted Ex.A1 sale agreement by making use of stamp papers given to the plaintiff and her husband at the time when the earlier sale agreement was effected. The earlier sale agreement in respect of the property conveyed vide Ex.A12 sale Deed was dated 25.01.1999. The said sale agreement and the sale deed Ex.A12 would show that the said transactions between the plaintiff and the defendant had taken place in the year 1999. The agreement stamp paper in which Ex.A1 sale Agreement was written seems to have been purchased in the year 1999 itself vide No.6593. Though the date is visible as 23 in the stamp paper, it is seen there was an attempt to conceal the month and year with blank ink. Despite the ink, the year could be got as '99'. The date on the stamp paper of Ex.A1 would also show the year 1999 only. These facts would also probablise and lend support to the defense of the defendant that the stamp paper which was given to the plaintiff at the time of the earlier sale transaction has been misused by the plaintiff. So I don't find any error in the findings of the courts that the plaintiff failed to prove the execution of the suit sale agreement.

13. The learned counsel for the Appellant submitted that the first Appellate Court has got the duty to deal with all the issues and evidence led by the parties before recording its findings and the first appeal is a valuable right and hence the



parties should have a right to be heard on both questions of law and on facts and that the judgement of the first appellate court should address all the issues of law and fact and decide it by giving reasons in support of its findings. In support of his above submission he cited the decision cited in 2015 (2) Madras Weekly Notes Civil 556. In the said case the Hon'ble Supreme Court has held as follows:

"2015 (2) Madras Weekly Notes Civil 556

[Shasidhar & Others Appellant(s) Vs.Smt. Ashwini Uma Mathad & Anr. Respondent(s)]

23. In our considered opinion, the High Court did not deal with any of the submissions urged by the appellants and/or respondents nor it took note of the grounds taken by the appellants in grounds of appeal nor took note of cross objections filed by plaintiffs under Order XLI Rule 22 of the Code and nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided case laws applicable to the issues arising in the case with a view to find out as to whether the judgment of the trial Court can be sustained or not and if so, how, and if not, why?

24.

25. Being the first appellate Court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order XLI Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law."

14. By citing the above judgement it is submitted by the learned counsel for the Appellant that the first Appellate Court has not dealt the issues and evidence and has given reasons to its findings in compliance with Or. 41 R.31. But the judgement of the First Appellate Court would show that it has analysed the facts of the case in the light of the evidence on record and has given reasons for its findings and it is not a cryptic order as

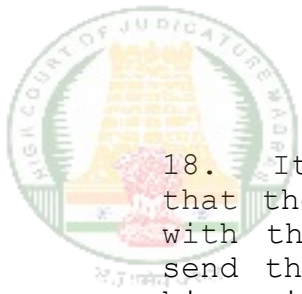


it was referred in the citation cited above. It has also been held by the Courts that even when the points for determination are framed under Order 41 Rule 31 in its strict compliance, if due justification is given by discussing the matter in issue and give reasons for the findings, that itself will amount to substantial compliance of Or41 R.31. The whole reading of the judgement of the First Appellate Court rightly fits into this principle and at any stretch the judgement of the First Appellate Court cannot be called as a cryptic one.

15. It is submitted by the learned counsel for the appellant that the plaintiff was put in possession of the suit property and that has been admitted by the defendant himself in his evidence. The allegation of the defendant itself is that the plaintiff has encroached the suit property after purchasing the property in Ex.A12 sale deed. When the legality of the possession of the plaintiff in the suit property itself is challenged, the submission of the Appellant/plaintiff that his possession over the suit property would prove the genuineness of Ex.A1 can not be accepted. Even in Ex.A1 sale agreement, it is not mentioned that the plaintiff had been put in the possession in pursuance of the sale agreement. It was neither the pleadings of the plaintiff in her plaint. The patent differences of the signatures of the defendant as found in Ex.A1 itself will render it doubtful and unreliable.

16. On perusal of the typed set of papers filed in this appeal, it is seen that an affidavit is affixed vide pages from 59 to 61. In the said affidavit there were certain allegations have been made against the learned First Appellate Judge. But it was not supported by any documents. It is alleged that the learned first Appellate judge has adjourned the appeal from 16.04.2009 to 28.04.2009; but without the knowledge of the appellant's counsel, the learned First Appellate Judge heard the arguments on 18.04.2009 and pronounced the judgement on 23.04.2009 itself. These allegations were not supported by any documents, much less with the copies of the docket orders of the case. Since allegations as to the integrity of the learned First Appellate Judge had been made, this court got it clarified from the concerned Section. From the information so received, it is noted that there was no material on this.

17. It is submitted that the learned First Appellate Judge did not take the petition filed by the appellant to send the disputed signatures of the defendant in Ex.A1 to handwriting expert for comparing it with her admitted signatures and get his opinion and that it was neither returned nor taken on file for 6 months, but the appeal is disposed. Even for this allegation no supporting material is produced.



18. It is submitted by the learned counsel for the Appellant that the matter should be remanded to the first Appellate Court with the direction to give an opportunity to the Appellant to send the disputed signatures to the handwriting expert and get his opinion and then decide the appeal afresh. It is already observed that comparison of the disputed signatures of the defendant with her admitted signatures, made as per sec. 73 of the Evidence Act showed that the signatures of the defendant in Ex.A1 did not tally with her admitted signatures. When the difference is patent and perceivable even to the bare eyes, the matter need not be remanded to the First Appellate Court for the reasons submitted by the Appellant.

19. In view of the above said reasons, I do not find any factual or legal infirmity in the appreciation of facts and evidence and the findings rendered by the courts below and hence I find no reason to interfere with the judgement and decree of the first Appellate Court. Thus the substantial questions of law are answered against the appellant.

In the result the Second Appeal is dismissed and the Judgment and the decree of the First Appellate Court is confirmed. No costs. The connected Miscellaneous Petitions if any are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Subordinate Judge's Court at Dharmapuri
2. The District Munsif Court at Dharmapuri.
3. The Section Officer, V.R.Section, High Court, Madras.

+1cc to M/s.P.Valliappan, Advocate, S.R.No.21725

S.A.No.251 of 2010

AD(CO)
SU(23/11/2021)