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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2021
Pronounced on : 07.04.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.520 of 2010
and
MP.No.1 of 2010

1.Palanisamy
Kandasamy (Died)
2.Sellamuthu

... Appellants/plaintiffs

Vs.

1.Samathal
2.Venkatachalam
3.Vennila
4.Thenmozhi

... Respondents/defendants

PRAYER : The Second Appeal filed under Section 100 of C.P.C., against the Judgement and Decree dated 02.12.2009 made in A.S.No.8 of 2007 on the file of the First Additional District Judge, Coimbatore, reversing the Judgement and Decree dated 21.04.2006 made in O.S.No.280 of 1992 on the file of the Subordinate Court, Tiruppur.

For Appellants : Mr.J.Ramakrishnan
for Mr.N.S.Sivakumar

For Respondents: Mr.P.R.Ramakrishnan
for M/s.Sarvabhauman Associates

JUDGEMENT
(Heard through Video Conferencing)

This Second Appeal has been filed against the Judgement and Decree dated 02.12.2009 passed in A.S.No.8 of 2007 on the file of the First Additional District Judge, Coimbatore, reversing the Judgement and Decree dated 21.04.2006 passed in O.S.No.280 of 1992 on the file of the



Subordinate Court, Tiruppur.

2. The appellants are the plaintiffs.

3. The entire extent of 6 Acres and 70 cents in S.No.185/2A in Kanakkampalayam Village, Tiruppur Taluk (Old Palladam Taluk) belonged to the defendant. The defendant agreed to sell half of the property (suit property) in favour of the plaintiffs by virtue of a sale agreement dated 05.02.1992. An advance amount of Rs.1,80,000/- was received by the defendant at the time when the agreement was entered and it was agreed to pay the balance sale consideration within five months and get the sale deed executed. As per the agreement, the defendants did not receive the balance sale consideration and come forward to execute the sale deed in favour of the first and second plaintiffs. Hence the plaintiffs sent a legal notice on 23.06.1992. On receiving the same, the defendant requested to send a copy of the alleged sale agreement. Accordingly, the plaintiffs sent a copy to the defendant's counsel. On receipt of the same, the defendant sent a reply stating that the sale agreement is a forged one and a signature affixed therein, is not his signature. The second plaintiff therein, died on 11.05.2001. During his lifetime, he executed a registered Will dated 01.11.1999 in favour of 3rd plaintiff and bequeathed his right with regard to the sale agreement in favour of 2nd appellant/3rd plaintiff. Hence 3rd plaintiff/2nd appellant has been impleaded as a party. Since the defendant refused to execute the sale deed despite the plaintiffs were ready, this suit has been filed for specific performance.

The written statement

4. The plaintiffs are not entitled to get the reliefs as prayed for. The worth of the property belonged to the defendant was not less than Rs.5,00,000/- in the year 1992. The defendant never agreed to sell the property to the plaintiffs. The sale agreement and the allegation that the defendant received the sale advance are all false.

5. One Manoharan and Jeevarathinam were the tenants of the suit property and they were running a bleaching factory. As per the tenancy agreement, they had the right to make some improvements and additions to the property in order to facilitate their business. Though the lease period was 3 years, they stopped their business within 2 years. As per the agreement, if the tenants did not want to dismantle and take away the improvement made by them, the defendant and his father in law should pay its value to them. The tenants demanded exorbitant sum towards those



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improvements. The defendant was not willing to pay the huge money. So a misunderstanding arose between the defendant and the said Manoharan. The defendant was forced to file a suit in O.S.No.523 of 1992 and seek reliefs. Just in order to extract money from the defendant, the said Manoharan has concocted the sale agreement in the names of the plaintiffs who are his associates and confidants. This suit has been filed on the basis of a fabricated documents and it is false to state that 2nd plaintiff had executed a Will in favour of 3rd plaintiff. Since the sale agreement dated 15.02.1992 itself is a false one, the Will in favour of 3rd plaintiff would be of no effect. Hence the suit has to be dismissed.

6. During the trial, on the side of the plaintiffs, 6 witnesses were examined as P.W.1 to P.W.6 and Exs.A1 to A9 were marked. On the side of the defendant, 1 witness was examined as D.W.1 and Exs.B1 to B6 were marked.

7. At the conclusion of the trial, the Trial Court granted the Decree for specific performance as prayed. The defendant filed the first appeal challenging the decree passed by the Trial Court. During the pendency of the first appeal, the defendant died. Hence his legal representatives have been impleaded as defendants 2 to 5. The First Appellate Court reversed the judgment of the Trial Court by setting aside the same and by allowing the appeal. Now these appellants who were plaintiffs in the suit have filed this second appeal.

8. The second appeal has been admitted on three substantial questions of law. Since the substantial questions of law Nos.1 & 3 are found to be superfluous, the appeal is limited to the substantial question of law No.2 alone and the question of law on which the appeal now stands, is reframed as under:-

Whether in law the plaintiffs are not entitled to get a relief of specific performance when the execution and genuineness of Ex.A1, sale agreement has been proved beyond any suspicion?

9. The arguments of the learned counsel for the appellants and the respondents heard at length. The learned counsel for the appellants submitted that the appellants have proved the execution of the sale agreement and the signature of the deceased first defendant on Ex.A1 also proved to be true on the basis of the report of the handwriting Expert, but the first appellant court ignored



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to accept the same and decreed the suit as prayed. The learned counsel for the respondents submitted that the execution of Ex. A1 sale agreement is not true and the signatures on Ex.A1 are not of the deceased first defendant. And that the report of the handwriting expert is not conclusive. And further that the learned First Appellate Judge appreciated the evidence in correct perspective by taking note of the doubtful circumstances surrounding the case.

10. This is the case where the defendant has denied even the execution of the sale agreement right from the inception. Even when the appellants have sent the legal notice on 23.06.2002, the deceased 1st defendant received the same and asked the plaintiffs to send a copy of the alleged sale agreement in order to enable him to send his reply. In the reply sent by the deceased 1st defendant on 04.07.1992, he had specifically denied that the alleged sale agreement is a concocted one and his signature has been forged on it. Having faced with such a defense, the appellants who were the plaintiffs in the suit, had sent the alleged signatures of the defendant in Ex.A1 (sale agreement) to handwriting expert in order to compare the same with the admitted signatures of the defendant in his additional written statement, counter statement and the reply notice. After comparing the same, the handwriting expert has observed that there are similarities in the signatures and gave a report stating that the signature in Ex.A1 tallied with the admitted signature of the deceased 1st defendant.

11. While reversing the Trial Court judgment, the learned First Appellate Judge has observed that the report of the handwriting expert is not a conclusive one. It should also be noted that the handwriting expert who was examined as P.W.6, has stated in his evidence that she is not a Government recognized handwriting expert. The plaintiffs have not chosen to send the signatures for analysis to the Forensic Science Department which is a Government body. Whatever may be the qualification of the handwriting expert, the fact remains that the report of the handwriting expert is not a conclusive one, though it might serve as one among several probabilities that would help the case of the plaintiffs. However in order to get a decree, such a probability supplied by the report of the handwriting expert should outweigh the other improbabilities that would be available from other evidence, facts and circumstances of the case. So it is the duty of the appellants/plaintiffs to prove the



genuineness of Ex.A1 (sale agreement) through preponderance of probabilities.

12. The learned First Appellate Judge has outlined certain facts and circumstances which caused cloud on the case of the plaintiffs and the appellants had challenged the same in this appeal. The deceased 1st defendant has raised an important defense by stating that he had a dispute with his past tenant by name Manoharan, who was a tenant in the suit property and who had been running his bleaching factory therein. In fact, the deceased 1st defendant had filed a civil suit against the said Manoharan in the District Munsif Court, Tiruppur in O.S.No.523 of 1992 and he claimed that the Ex.A1 (sale agreement) was the brain child of the said Manoharan and he concocted the same with the connivance of the appellants 1 & 2, who were his close associates.

13. During the pendency of the suit, 2nd plaintiff died and 3rd plaintiff has been impleaded as a party to the proceedings on the basis of an alleged Will dated 01.11.1999. It is claimed by 3rd plaintiff that during the lifetime of 2nd plaintiff, he had bequeathed his right in the sale agreement (Ex.A1) in favour of 3rd plaintiff - Sellamuthu. 3rd plaintiff, who was examined as P.W.2, has stated in his evidence that the deceased 2nd plaintiff is in no way related to him but he was known to him. It is strange to note that the deceased 2nd plaintiff is said to have executed a Will in favour of 3rd plaintiff, who was neither his legal heir nor his relative. During his examination, P.W.2 denied that Manoharan, who was the tenant of the deceased 1st defendant is in no way related to him. However, the defendant could establish successfully through the addresses admitted by P.W.2 in his evidence and the voters' list produced as Exs.B5 & B6 that the said Manoharan is not a stranger and he is the son of Sellamuthu (3rd plaintiff), who was examined as P.W.2. The defendants have also produced Exs.B1 to B4 which are the copies of the plaint in O.S.No.523 of 1992, written statement and the Judgement and Decree passed in the said suit. Exs.B1 to B4 would show that Manoharan had previous motive against the deceased 1st defendant. These facts have been stated by 1st defendant in his written statement also. So it is understandable that only view of these



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suit the plaintiffs. It is also strange to notice that the handwriting expert who had given a report as to the similarities of the signature affixed in Ex.A1 has not ventured to note and give a report about the dissimilarities which is patently visible to the bare eyes examination. However, the positive report of the handwriting expert alone will not entitle the plaintiffs for a decree for specific performance, unless the plaintiffs prove in entirety that he is entitled to get a decree in all equitable terms and circumstances. In this case the very existence of Ex.A1 itself is proved to be doubtful in the background of the previous enmity between the deceased 1st defendant and Manoharan, the son of PW2.

18. The evidence of P.W.1 and P.W.2 would make it clear that the plaintiffs in whose name Ex.A1 was made, have served as the handmaides of Manoharan. The unrealistic circumstances and other doubtful circumstances surrounding the suit were omitted to be noticed by the Trial Court. The First Appellate Court had done a fair exercise by reappreciating the evidence in all fairness and given due weightage to the evidence of both sides.

19. Even if it is accepted for the sake of argument that a sale agreement is true, it is reiterated that this by itself will not entitle the plaintiffs a Decree for specific performance, unless it is proved that the plaintiffs are entitled to get such a Decree in all equitable terms. In the circumstance of this case and in the backdrop of the above discussion, the appellants/plaintiffs cannot claim for a decree for the relief of specific performance solely on the basis of the report of the handwriting expert. Hence the substantial question of law is answered against the appellant.

In the result, the Second Appeal is dismissed. The Judgment and Decree of the First Appellate Court is upheld. No costs. Connected miscellaneous petition in M.P.No.1 of 2010, is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Sni



To

1. The First Additional District Judge,
Coimbatore
2. The Subordinate Court,
Tiruppur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.22073

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.22305

S.A.No.520 of 2010

RGN(CO)
SU(28/09/2021)