



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.232 of 2012
and M.P.No.1 of 2012

A.Mohanasundaram

... Appellant/Plaintiff

Vs.

1.Avinashi Gounder

2.Thimmaiyan

3.Madhaiyan

... Respondents/Defendants

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree made in A.S.No.92 of 2010, by the learned First Additional District Judge, Coimbatore, dated 21.09.2011, confirming the judgment and decree of the learned III Additional Subordinate Judge, Coimbatore, made in O.S.No.683 of 2007, dated 05.07.2010.

For Appellant : Mr.P.Dinesh Kumar

For Respondents : Mrs.Vijaya Kumari Natarajan

JUDGMENT

The unsuccessful plaintiff is the appellant herein.

2.This Second Appeal has been filed against the judgment and decree dated 21.09.2011, passed by the learned First Additional District Judge, Coimbatore, in A.S.No.92 of 2010, wherein, the learned Judge has confirmed order passed by the learned III Additional Subordinate Judge, Coimbatore, in O.S.No.683 of 2007, dated 05.07.2010.

3.For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

4.The plaintiff has filed a suit in O.S.No.683 of 2007 before the learned III Additional Subordinate Judge, Coimbatore, for specific performance of Ex.A1/suit sale agreement on the ground that, he is ready and willing to perform his part of the



contract and the said suit was dismissed by holding that Ex.A1/suit sale agreement is forged and fabricated document. Aggrieved against the same, the plaintiff has preferred an appeal suit in A.S.No.92 of 2010, before the learned First Additional District Judge, Coimbatore and the said appeal was dismissed and hence, the Second Appeal.

5.This Court heard the rival submissions made by the learned counsel on either side and perused the materials placed on record.

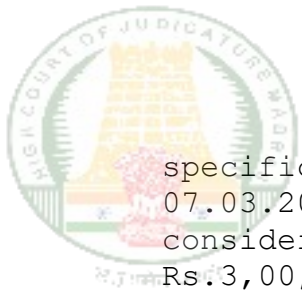
6.The above Second Appeal was admitted on 21.02.2012, on the following substantial questions of law:

"1.In the light of Section 15(a) of Specific Relief Act and Section 54 of the Transfer of Property Act, whether signature by both parties to the contract is necessary and as such the judgment and decree of the learned Trial Court and First Appellate Court in non suiting the plaintiff holding that Ex.A1 is not bilateral agreement is sustainable in law? (VIDE 1998 3 LW - page 189)

2.Whether in law, was not the execution, genuineness and enforceability of Ex.A1 proved, through the evidence of PW1 (the plaintiff) and P.W.2 (the attester) who is the close relative of both plaintiff and first defendant, especially when there was no reply denying plaintiff's genuine claim, to plaintiff's pre-suit notice under Ex.A2 to A4 sent defendants 1 to 3?

3.Having regard to scope of Section 16(c) of the Specific Relief Act and by notice under Ex.A2 to Ex.A4 whether in law the plaintiff is not ready and willing to perform his part of contract when substantial portion of sale consideration was paid as advance? (VIDE 200 6 SCC page - 420)."

7.On a perusal of records, it appears that the plaintiff has filed the above said suit in O.S.No.683 of 2007 before the III Additional Sub Court, Coimbatore, seeking the relief of



specific performance of Ex.A1/Suit Sale Agreement dated 07.03.2017. As per the terms of the agreement, the sale consideration was fixed at Rs.3,60,000/-, and a sum of Rs.3,00,000/- was paid on the very same date as advance and for the balance amount of Rs.60,000/-, six months time from the date of the agreement was stipulated. The balance amount was not paid within the stipulated time and hence, the plaintiff had issued Ex.A2/legal notice on 06.08.2007, calling upon the defendants to execute the sale deed as agreed between the parties and the same was certified under Ex.A3/acknowledgment card, dated 07.08.2007. Since the defendants have not given any reply, the plaintiff has filed the above said suit on 19.11.2007. It appears that after Ex.A2/legal notice dated 06.08.2007, the defendants have executed a sale deed on 26.09.2007 under Ex.B10/selling of the property in favour of the defendants 2 & 3. Title of the first defendant is not in dispute.

8.The first defendant has filed written statement before the trial Court challenging the very genuineness of Ex.A1/sale agreement, on the ground that Ex.A1 contains the signature of the person said to be the first defendant. The first defendant, never in his life time, has signed in letters, but he used to affix only the thumb impression and therefore, with active connivance of PW2, Ex.A1/Sale deed has been forged and fabricated, besides non issuance of legal notice to a person, when Ex.A1 is forged and fabricated, does not arise.

9.Before the Trial Court, on behalf of the plaintiff, the agreement holder/plaintiff was examined as PW1; a common relative of both the parties was examined as PW2 and marked documents Exs.A1 to A5 and on behalf of the defendants, DW1 and DW2 were examined and marked documents Exs.B1 to B12. The first defendant examined himself as DW1, who is the agriculturist and was selling potatoes to the agricultural producer Cooperative Society, wherein, he used to put only the thumb impression and had never signed in the document. Ex.B6 is the sale agreement entered between the first and second defendants with respect to suit property; Ex.B7 is sale deed thereon, wherein also the first defendant has put only the thumb impression and never signed, so also in Ex.B8/copy of the Ration Card and Ex.B9/original sale agreement, dated 05.07.2007 and in the sale deed of the years 2007 and 2008 and under Exs.B10, B11 & B12.

10.Further, on a perusal of the records, it is seen that the Trial Court has framed necessary issue as to whether Ex.A1/sale agreement is true and genuine document or in the



the Courts below that the plaintiff has miserably failed to prove that the signature found in Ex.A1/suit sale agreement is as that of the first defendant and such finding being concurrent in nature, based upon the documents Exs.B1 to B11, I find that the concurrent findings rendered by both the Courts below do not require any interference at this appellate stage.

15.Further, it is seen from the records that Ex.A1/original sale agreement stamp paper was purchased in the year 2004 while agreement of sale in the year 2007. Though, the stamp paper was purchased by the plaintiff, it is hardly acceptable that even prior to three years he had purchased the documents. No doubt true that unilateral agreement may be enforced but when the same is disbelieved and doubted, the same cannot be enforced in law. Ex.B9/original sale agreement & Ex.B10/copy of the sale deed were entered by the second and third defendant. Consequently, they have accepted Ex.B7/sale deed, dated 26.09.2007 and Ex.B8/copy of the ration card, which are between the period 2005 and 2009. Therein also the first defendant has affixed the thumb impression and hence, both the Courts below have rightly come to the conclusion that the defendant is used to affix thumb impression and never used to sign in the documents.

16.Yet another point is that the admission of PW1 that he has not disclosed the alleged payment of advance for the Income Tax Returns also held against the plaintiff and hence, both the Courts below as rightly concluded that the plaintiff has not proved his case and also taking note of the fact that under Section 20 of the Specific Relief Act, the relief of specific performance cannot be granted for merely for asking relief is not automatic and when Ex.A1 is highly doubtful, both the Court below has rightly come to the conclusion.

17.As stated supra, PW2 is the attester, who is common friend for both the parties. There is no positive evidence to indicate that the signature found in Ex.A.1 is as that of the first defendant. Merely because there is no reply, it cannot be construed that the defendants have accepted the case of the plaintiff. Though a plea has been raised in the plaint that the plaintiff is ready and willing to perform his contract, in view of the clear and categorical findings which are concurrent in nature, it is seen that Ex.A1/sale agreement is a fabricated document. Since Ex.A1/sale agreement is said to be the fabricated and forged document, all the substantial questions of law framed does not arise for consideration and the concurrent findings rendered by both the Courts below do not suffer from



any irregularity or illegality warranting interference at this appellate stage. Accordingly, the Second Appeal is devoid of merits and the same is liable to be dismissed.

18. In the result, this Second Appeal stands dismissed and the judgment and decree dated 21.09.2011 passed by the learned First Additional District Judge, Coimbatore, in A.S.No.92 of 2010, confirming the judgment and decree dated 05.07.2010 passed by the learned III Additional Subordinate Judge, Coimbatore, in O.S.No.683 of 2007, are hereby confirmed. Consequently, connected miscellaneous petition stands closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The First Additional District Judge, Coimbatore.
2. The III Additional Subordinate Judge, Coimbatore.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

- +1 CC to Mr.S.Natarajan, Advocate sr 66965
- +1 CC to Mr.J.Ramakrishnan, Advocate sr 67123.

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and M.P.No.1 of 2012

BP(CO)
SP(28/03/2022)