BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 24.9.2021
Delivered on : 01.10.2021
CORAM
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
S.A.No.95 of 2017
and
C.M.P.(MD) No.1680 of 2017

Mariappan ... Appellant/Appellant/Plaintiff

vs.

Rajendran ... Respondent/Respondent/Defendant

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 1.12.2015 passed in A.S.No.3 of 2015 on the file of the Principal District Judge, Tirunelveli confirming the Judgment and decree dated 26.6.2014 passed in O.S.No.165 of 2009 on the file of the Principal Sub Judge, Tirunelveli.

For Appellant : Mr.N.Rahamadulla for Mr.S.A.Ganapathyraman
For Respondents : Mr.G.Prabhu Rajadurai

JUDGMENT

Plaintiff, who failed before both the courts below in getting a decree for specific performance, is the appellant in this Second Appeal.

2.The case of the Appellant/plaintiff is as follows:-

(i) The suit property was originally allotted to the defendant by the Tamil Nadu Housing Board, Tirunelveli as per the order of the Board H2/5093/95 dated 12.2.1998. The defendant had entered into an agreement with the Tamil Nadu Housing Board, Tiruneveli in respect of the suit property and in view of the said agreement, possession of the suit property was delivered to the defendant on 28.9.1998. Total sale sale price for the suit property was fixed as Rs.1,38,200/- by the Board and as per the Lease cum Sale Agreement, the defendant had to pay a sum of Rs.1560/- per month.

(ii)The defendant had sufferred huge loss and in order to avoid legal action by the Board, he had decided to sell the suit property and thereby approached the plaintiff through one land broker Murugan.

(iii)The plaintiff accepted the offer and after negotiation, the sale price was fixed as Rs.2,10,000/- for the suit property and as a result, they had entered into a sale agreement on 1.10.1998 and the plaintiff paid a sum of Rs.50,000/- as advance to the defendant and as per their agreement, the plaintiff had to pay the monthly instalment of Rs.1600/- to the Board and after payment of the entire due, the plaintiff would get the sale deed from the Board in his name. The defendant had agreed to extend his cooperation to transfer the suit property in favour of the plaintiff. Apart from that, the plaintiff had to pay the House Tax as well as Electricity Consumption Charges.

(iv)At the time of executing the sale agreement, the defendant had delivered possession of the suit property to the plaintiff. Subsequently, the defendant had shifted his residence to Chennai, but, he did not inform the address to the plaintiff. No time limit is fixed in the agreement. At the time of executing the sale agreement, the defendant had entrusted the original possession certificate dated 28.9.1998 to the plaintiff.

(v)From the date of sale agreement, the plaintiff had been in peaceful possession and enjoyment of the suit property and had started to pay the due amount to the Board in the name of the defendant. The plaintiff has also been paying water charges to the local residents welfare association and the electricity consumption charges.

(vi)Whileso, a financial institution viz., Sam Sung filed a Suit in O.S.No.317 of 1999 before the Trial Court against the defendant for recovery of loan amount with interest and the said suit was decreed on 31.12.2002. The said institution had filed E.P.No.414 of 2003 and attached the suit property. On coming to know of the same, the plaintiff had filed a Claim Petition under Order 21 Rule 58 CPC to raise the attachment order based on the sale agreement and during the pendency of such Claim Petition, the decree holder had withdrawn the attachment petition and thereby the attachment order was raised.

(vii)The plaintiff had been paying tax to the Corporation. Based on the possession, the plaintiff had also obtained ration card for the suit property. In total, the plaintiff had paid a sum of Rs.1,11,580/- to the Board by way of various instalments and requested the defendant to appear before the authority concerned and sign necessary papers. Though the defendant had initially agreed for the same and promised that the would come to Tirunelveli during the 2nd week of August 2009, he had paid the arrears amount and obtained the sale deed on 19.8.2009 from the Housing Board in his name without the knowledge of the plaintiff which is illegal and unjust. In order to defeat the right of the plaintiff, the defendant had paid the amount and got the sale deed in his favour in respect of the suit property.

(viii)On 5.9.2009, a land broker by name Sivakumar informed the plaintiff about the payment made by the defendant and the sale deed obtained by him in his favour. Thereafter, the plaintiff had verified and confirmed about the said fact by obtaining a certified copy of the sale deed. The defendant had begun to search a suitable buyer for the suit property in order to defeat the rights of the plaintiff and therefore, the plaintiff had given a Public Notice in Dinamalar Daily Newspaper on 23.10.2009.

(ix)Such being the case, the plaintiff was asked to appear before the Assistant Commissioner of Police, Perumalpuram in connection with a complaint given by the defendant and accordingly, he attended the enquiry on 3.11.2009. The complaint is to the effect that the plaintiff had been enjoyment the suit property as lessee and he had refused to vacate the premises. On enquiry, the Assistant Commissioner advised the defendant to act as per the sale agreement. Since the defendant had refused to sell the the suit property, the plaintiff was constrained to file the suit.

3.*De hors* the denial of the pleadings in the plaint, the specific case of the the respondent/defendant as against the averments of the plaintiff is as under:-

(i)Though the original allotment from the Tamil Nadu Housing Board was in the month of February 1998, the suit property was given possession to the defendant only on 10.7.1998, by then, the plaintiff had approached him and accepting his offer, the suit property was handed over to the plaintiff for Othi as per Othi Deed dated 17.8.1998 after receiving a sum of Rs.25,000/- from the plaintiff, for a period of three years. The said deed is with the plaintiff. The said othi and possession of the suit property for three years was in lieu of interest for the said sum of Rs.25,000/- borrowed by the defendant.

(ii)Even after executing the Othi Deed, the defendant was residing at Tirunelveli for one year and by that time, he was paying the loan instalments directly to the Housing Board and in the month of August 1999, the defendant had shifted his residence to Chennai and an understanding was arrived at between the plaintiff and the defendant to the effect that the plaintiff would pay the same in the event of the defendant's rendering the same to the plaintiff and in order to pay the loan amount, the original possession certificate was handed over to the plaintiff.

(iii)On expiry of the three years of Othi period, the defendant asked the plaintiff to vacate the suit property for which, the plaintiff requested the defendant to permit him to continue to occupy the suit property as tenant and the defendant also accepted such offer and a tenancy agreement was entered into between them in the month of August 2001. As per the said agreement, the defendant can retain the sum of Rs.25,000/- as advance and the plaintiff had to pay a sum of Rs.1500/- every month to the Housing Board in lieu of rent payable to the defendant and the plaintiff would vacate the suit property as and when sought for by the defendant.

(iv)Despite the above arrangement, the plaintiff did not keep up his promise and committed default and was irregular in paying the rent for about five years and thereby, he did not even make any payment to the Housing Board. The amount payable by the plaintiff was Rs.1,59,000/-as rent from August 2001 to May 2010, but, he had just paid a sum of Rs.1,11,580/- to the Housing Board on various dates and thereby a sum of Rs.47,420/- became due towards arrears of rent and as a result, the plaintiff is liable to be evicted fro the suit property.

(v)Meanwhile, the Housing Board gave a public notice on 14.7.2009 warning the allottees to settle the amount on or before 15.8.2009 in order to avoid cancellation of the allotment and therefore, on 14.8.2009, the defendant had paid the entire due amount of Rs.1,54,170/- including the principle and interest to the Housing Board and got the sale deed registered in his favour.

(vi)Whileso, the defendant intended to settle at Tirunelveli in the suit property alongwith his family and therefore, he had requested the plaintiff to vacate the same and by then, it came to the knowledge of the defendant that the suit property was sublet for a sum of Rs.1000/- and he had shifted his workshop also to the suit property and when questioned, he had threatened the defendant with dire consequences.

(vii)Aggrieved over the action of the plaintiff, the defendant had given a police complaint and during the police enquiry, the plaintiff took a stand that his possession of the suit property was based on an agreement of sale deed dated 1.10.1998 alleged to have been executed by the defendant, which is nothing but a forged, manipulated and created one using the signature of the defendant obtained by the plaintiff on a blank paper with revenue stamp, by attaching a stamp paper for Rs.20/- and the signature found on the first page of the stamp paper is not that of the defendant and thereby the plaintiff had committed forgery with an intention to grab the suit property which led the defendant to lodge a criminal case in Crime NO.3/2010 on 17.1.2010 against the plaintiff with the Tirunelveli City Crime Branch Police and it is under investigation.

(viii)The defendant neither executed any sale agreement nor he had intended to sell the suit property to the plaintiff or anybody else. The suit filed based on the forged and manipulated agreement of sale is liable to be dismissed.

4.The Trial Court framed the following issues for consideration:-

(1) Is the document dated 1.10.1998 a sale agreement?
(2) Is it true to state that the plaintiff is a tenant of defendant?
(3) Is the said document dated 1.10.1998 a forged one?

(4) Is it true to state that the defendant only paid the entire loan amount to the Housing Board?
(5) Is the plaintiff entitled for a relief of getting a sale deed to be executed in his favour?
(6) Any other relief?

5.During the trial, the plaintiff examined himself as PW1 apart fro examining two other witnesses and marked 19 documents while the defendant examined himself as DW1 and examined seven other witnesses and marked 22 documents.

6.On analysing the oral and documentary evidence, the Trial Court had dismissed the suit which was concurred by the first appellate court and aggrieved against the same, the present second appeal has been filed by the plaintiff.

7.The second appeal came to be admitted on 22.2.2017 on the following substantial questions of law:-

> *"(i) Whether the Courts below are correct in rejecting Ex.A13 document, when no contemporaneous admitted document had not been taken into consideration by the expert for arriving at the conclusion in Ex.B22 report?*
>
> *(ii) Whether the Courts below are correct in not discussing about the impact and conclusion regarding Ex.A6 and Ex.A7 document which are relevant to prove the bona fideness and genuineness of the case of the appellant?*
>
> *(iii) Whether the Courts below are correct in coming to a conclusion that there existed a landlord tenant relationship when no document proving the same have been produced by the respondent and in the light of payment of property tax receipt by the appellant, who is said to be alleged tenant?"*

8.Learned counsel appearing for the appellant/plaintiff would submit that the courts below have failed to note that there was no necessity for the appellant/plaintiff to pay the amount to the Housing Board without there being an agreement of sale and the report of the handwriting expert is not a conclusive one and that there is no explanation by the respondent regarding the possession and custody of possession transfer certificate Ex.A1 on 28.9.1998 by the plaintiff. He would further submit that the courts below have not properly dealt with the evidence of PW2, who is a common friend of both plaintiff and the defendant, who speaks about the entrustment of the Agreement of Sale by the defendant. He would also submit that the courts below have wrongly placed reliance upon the documents which came into picture after filing of the suit and therefore prayed for setting aside the judgment and decree of the courts below and for a decree for specific performance.

9.Learned counsel for the respondent/defendant would submit that the defendant had never executed any sale deed and he had executed only a Othi Deed and that the defendant had already borrowed a sum of Rs.5000/- from the plaintiff for which, the plaintiff had obtained the signature of the plaintiff on a blank paper with revenue stamp and such a signature had been misused by the plaintiff to create a forged and manipulated document as agreement of sale and therefore, the plaintiff is not entitled to the relief sought for.

10.Having perused the entire materials available on record in the light of the submissions made by the learned counsel for the parties, this court is able to find that the Trial Court had analysed Ex.A13, the sale agreement around which the issue revolves and found that the following:-

(i)The sale agreement is prepared in an unusual manner by attaching the additional sheet required apart from the stamp paper with revenue stamp.

(ii)The stamp paper was obtained in the name of one Vijayan, Umarikadu long prior to the date of the alleged Agreement of Sale.

(iii)Since the defendant had denied the signature found on the stamp paper as that of his signature, it was subjected to Forensic Analysis and as per the Report and the evidence of DW7, Forensic Sciences Expert, the person who affixed his signature on the revenue stamped paper had not signed in the stamp paper.

(iv)The evidence of DW8, the witness to Ex.A13, the alleged sale agreement reveals that he had affixed his signature only on the second page of the alleged sale deed viz., the revenue stamped paper and that he had signed only in witness of a loan amount availed by the defendant from the plaintiff.

11.Considering the above aspects, the Trial Court had the alleged Sale Agreement is not a proper document and it is a forged one and thereby the plaintiff is not entitled to the relief of specific performance.

12.The first Appellate Court also while endorsing the view of the Trial Court, found that the name of the purchaser of the stamp paper was also manipulated to appear as of the defendant and affirmed the view of the Trial Court. Further, the Appellate Court, relying in Ex.B21, Xerox copy of the Ledger of Sub Registrar's Office, found that the challenge made by the appellant/plaintiff with regard to the genuineness of the said Register was not sustainable as the entry was made in the year 1998 itself.

13.The entire case of the appellant/plaintiff has to stand on the basis of the Agreement of Sale, Ex.A13 alleged to have been executed by the defendant. It's genuineness had been stoutly denied by the defendant and the Report and evidence of the Forensic Sciences Export also confirms the same. All other documents relied upon by the plaintiff would get its value only on acceptance of the Agreement of Sale, which is the core of the issue.

14.The totality of the circumstances leads this court to infer that the signature obtained by the appellant/plaintiff on a blank, revenue stamped paper for some money lent by him to the defendant had been misused and it is a clear forgery and manipulation. Thus, the appellant/plaintiff is not entitled to the relief of specific performance sought for. The courts below have analysed the oral and documentary evidence in their right perspective to come to such a conclusion. There is no infirmity or illegality in the findings of the courts below.

15.So far as Substantial Question of Law No.1 is concerned, this court is of the view that when the defendant had admitted his signature on a revenue stamped blank paper, there is no question of consideration of any other contemporaneous document as the claim of the appellant/plaintiff itself is that the signatures found on the stamp paper as well as the second page viz., the revenue stamped paper are that of the defendant and therefore the courts below are correct in rejecting Ex.A13 document without taking into consideration any other contemporaneous document, relying on the Report of the Forensic Sciences Expert and the first question of law is answered against the appellant/plaintiff.

16.So far as the second question of law is concerned, the courts below have rightly held that the closure of Claim Petition Ex.A6 without any finding on the claim made by the appellant/plaintiff is of no use at all. It is the case of the appellant/plaintiff himself that the claim petition was closed at the instance of the decree holder therein who had withdrawn the attachment petition and therefore, there is nothing wrong on the part of the courts below in discussing the impact of such closure of the claim petition in the present suit and the second question of law is answered against the appellant/plaintiff.

17.With regard to the third question of law is concerned, it could be seen that the appellant/plaintiff himself had produced the copy of the RCOP proceedings as Exs.A14 and A15 to show that it had, subsequently, been withdrawn by the defendant in lieu of the earlier litigation viz., the present suit. The possession of the suit property was also admitted by the defendant, of course, as that of a servant which had to be relied when the plea of the appellant/plaintiff with regard to Agreement of Sale failed. It is a settled law that payment of property tax or any charges alone would not confer any title upon such person. When the document relied on by the appellant/plaintiff viz., Agreement of Sale is proved to be a forged and manipulated one, the other documents produced in support of his possession of the property have to be inferred that they are created with some intention for the purpose of the suit. Therefore, the third question of law is also answered against the appellant plaintiff.

In the result, the Second Appeal fails and is, accordingly, dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal District Judge,
Tirunelveli.

2.The Principal Sub Judge,
Tirunelveli.

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

+1 CC to Mr.S.A.Ganapathyraman, Advocate (SR-31288 dated 05/10/2021)

+3 CC to Mr.G.Prabhu Rajadurai, Advocate (SR-31073 dated 04/10/2021)

S.A.No.95 of 2017 and
C.M.P.(MD) No.1680 of 2017
01.10.2021

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RS (27.10.2021) 8P 9C