



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.433 of 2005

Kalaimagal Sabha,
rep. by its Joint Receiver Office
at no.48, North Usman Road,
T.Nagar, Chennai-600017.

... Appellant

Vs.

1.Denial
2.Simiyan Rajarathinam,
3.Rathinavelu

.. Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 28.01.2004 made in A.S.No.59 of 2003 on the file of the learned Principal District Judge, Chengalpattu confirming the judgment and decree dated 07.03.2003 made in O.S.No.87 of 2001 on the file of the learned Subordinate Judge, Maduranthagam.

For Appellant

: Mr.V.Ambika

For Respondents

: Mr.M.Muthupandian, for R2

**JUDGMENT**

WEB COPY On an earlier occasion i.e, on 19.09.2022, when the matter came up for hearing, none appeared for the respondents. Therefore, the matter was directed to be listed today.

2.Today, when the matter is taken up, learned counsel for the appellant submits that the first respondent had passed away and the Appeal was dismissed against the first respondent vide order of this Court dated 12.08.2021. As regards the second respondent is concerned, the learned counsel entered appearance. As regards the third respondent, private notice taken was returned with a postal endorsement "no such addressee". Since the plaintiff sought no relief as against the 3rd respondent, this Court proceeds to hear the matter and dispose of the same on merits as this matter is pending for the past 17 years before this Court for final adjudication.

3.The appellant is the plaintiff. The respondents are the



defendants before the trial Court. For the sake of convenience, the parties are hereinafter referred to as it before the trial Court i.e, 'the plaintiff and 'the defendants'.

4.The plaintiff has filed the suit in O.S.No.87 of 2001 for recovery of money, directing the defendants to pay a sum of Rs.76,950/- to the plaintiff with subsequent interest of Rs.50,000/- at 18% per annum from the date of the plaint till the date of realisation and for costs.

5. The case of the plaintiff is as follows:

The land, measuring to an extent of 39 cents comprised in S.No.131/4B at Athimanam Village, Maduranthakam Taluk was agreed to be sold to the plaintiff Kalaimagal Sabha for a sum of Rs.5,40,000/-in the name of the first defendant's brother who is the second defendant's father namely James on 27.07.1998. An advance of Rs.50,000/- was paid through the third respondent to the defendants 1 & 2 and the said



receipt of Rs.50,000/- was acknowledged by the first defendant on behalf of the second defendant by a letter dated 31.07.2000 and the first defendant also agreed to repay a sum of Rs.15,000/-, Rs.15,000 and Rs.20,000/- with interest at 18% p.a. The third defendant was also liable to pay the amount since the amount was paid to him and the defendants 1 and 2 were paid with the suit amount through him. The first defendant had admitted in his letter dated 31.07.2000 about yet another agreement dated 08.08.1998 executed by one Durairaj and the second defendant herein in favour of the plaintiff. The agreement stated to have been executed by James was fabricated in collusion with the defendants and the defendants had fraudulently brought it and therefore, a criminal complaint was lodged by the plaintiff and the special CBCID investigated the matter. Since the plaintiff was directed to collect the amount due from the defendants by this Court, the suit has been filed without prejudice to the criminal complaint for the recovery of the said sum from the defendants 1 to 3.



6. The case of the defendants is as follows:

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The father of the second defendant who is the brother of the first defendant, namely James died on 29.11.1996 itself and the alleged sale agreement said to have executed by James on 20.07.1998 is a false one and the said document is a forged one and the said James was not alive during July 1998 when the alleged agreement was said to have been executed by him and therefore, the alleged execution of sale agreement and the receipt of Rs.50,000/- on 20.07.1998 are false and unbelievable and the letter dated 31.07.2000 mentioned in the plaint was obtained under threat and the defendants are therefore, not liable to pay the suit amount. It is also contended that the defendants 1 & 2 were also threatened by the plaintiff not to send any reply to the notice and therefore, the defendants did not send any reply notice. With these averments, the defendants sought for dismissal of the suit.

7. Based on the pleadings, the trial Court framed the following issues for consideration:



1. Whether it is true that the letter dated 31.7.2000 is said to have given by the 2nd defendant?
2. Whether the plaintiff has obtained the documents from the defendant by coercion?
3. Whether the plaintiff is entitled for the suit claim amount?
4. To what relief, the plaintiff is entitled to?

8. Before the trial Court, the plaintiff Sabha has examined its Deputy Administrative Officer as PW1 and Exs.A1 to A12 were marked. On the side of the defendants, defendants 1 & 2 were examined as DW1 and DW2 and Ex.B1 alone was marked.

9. On consideration of both oral and documentary evidence and after hearing both sides, the trial Court dismissed the suit stating that Ex.A1 was obtained by coercion. Ex.A1 said to have been executed on 27.07.1998 as if one Mr.James, agreed to sell the property in favour of the plaintiff, however, the said James died as early as on 29.11.1996 itself, i.e. two years prior to the execution of the sale agreement.



Therefore, the trial Court relied upon Exs.A1 to A5 and dismissed the suit. Against which, the plaintiff preferred an Appeal in A.S.No.59 of 2003.

10.On consideration of the findings of the trial Court and after hearing both the sides, the lower appellate Court, vide judgment dated 28.01.2004 confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved over the said judgment and decree of the lower appellate Court, the plaintiff /appellant has preferred the present second appeal.

11.This Court, while admitting the second appeal on 24.06.2005, framed the following substantial questions of law for consideration:-

(i) Whether the lower Appellate Court was correct in stating that the plaintiff/appellant has to wait till the decision in the criminal case?

(ii)Whether the admission in Ex.A5 was inadmissible in a civil proceedings?



12. The learned counsel appearing for the plaintiff/appellant would submit that they have entered into an agreement (Ex.A1), dated 27.7.1998 with one Mr. James, who had passed away in respect of land measuring 39 cents comprised in S.No.131/4B for a total consideration of Rs.5,40,000/-. Pursuant to Ex.A1 agreement dated 27.07.1998, a sum of Rs.50,000/- was paid to the defendants 1 and 2 through the 3rd defendant and the same was acknowledged by the 1st defendant under letter dated 31.7.2000. The first defendant is the brother and the second defendant is the son of the said Late James. The learned counsel fairly admitted that the said James, who is the brother of the first defendant and the father of the second defendant, had passed away as early as on 29.11.1996, i.e. even before execution of the Ex.A1 sale agreement dated 20.07.1998. The learned counsel would submit that since the third defendant was involved in creation of the alleged Ex.A1 sale agreement, thus they have lodged a police complaint in CBCID, which is pending and as they could not trace out the legal heirs of the said James, no further action was taken. Therefore, the learned counsel for the



plaintiff would submit that the Courts below have not considered these aspects and rendered the judgments, which are liable to be interfered with.

13. On the other hand, the learned counsel appearing for the 2nd respondent/defendant would submit that the suit was filed based on Ex.A1 sale agreement dated 20.07.1998 entered between one James and the plaintiff and it is admitted fact that James had already passed away on 29.11.1996 and the Courts below have rightly come to the conclusion that a dead person could not execute the agreement and thus, Ex.A1 is a false one and the defendants 1 and 2 did not receive any amount from the plaintiff or through the 3rd defendant and hence, the defendants are not liable to pay the amount as claimed by the plaintiff. The learned counsel would further submit that even the plaintiff has not proved the payment of alleged sum of Rs.50,000/- said to have been made by way of DD to the defendants 1 and 2 by examining the bank officials. Therefore, the learned counsel would submit that no interference is required by this Court in respect of well considered concurrent



judgments and decrees rendered by the Courts and hence he sought for dismissal of the appeal.

14. Upon hearing the learned counsel for the plaintiff/appellant and on perusal of the exhibits, it appears that the plaintiff/appellant herein has entered into a sale agreement Ex.A1 dated 27.07.1998 with one James for the purpose of purchasing the land measuring 39 cents comprised in S.No.131/4B for a total consideration of Rs.5,40,000/- and in this regard, a sum of Rs.50,000/- was said to have paid by way of DD and the same was handed over to the said James through the third defendant. The first defendant is the brother and the second defendant is the son of the said James. Further, it appears that Ex.A5 was the acknowledgment letter said to have been issued by the first defendant, who is the brother of the James. However, on consideration of the evidence adduced by both parties, both the Courts below found that the acknowledgment letter Ex.A5 was obtained under coercion from the first defendant before the police station and thereby, the Courts below have not relied upon the said Ex.A5. That apart, since Ex.A1 sale



agreement said to have been executed on 27.07.1998, i.e. subsequent to the death of James, both the Courts below came to the conclusion that the same was not proved for the reason that the said sale agreement could not have been executed by a dead person, namely, James who died on 29.11.1996, while the Ex.A1 sale agreement was said to have been executed on 27.7.1998. Therefore, both the Courts below have not accepted the said Ex.A1 sale agreement and held that the said agreement is not valid in the eye of law. Both the Courts below also found that a demand draft was drawn in the name of James and handed over to the third defendants for encashment of the same by the defendants 1 and 2, while so, the plaintiff has not taken steps to summon the concerned bank officials to prove with regard to the encashment of the said Demand Draft by any of the defendants through their accounts. The demand draft itself was issued in the name of the dead person. In such circumstances, the Courts below have rightly come to the conclusion on Ex.A1 that it is a false one and the plaintiff has not established the same.



15.As regards Ex.A5 letter dated 31.07.2000 is concerned, according to the plaintiff, the first defendant has given Ex.A5 wherein, he admitted that he and the second defendant are liable to pay a sum of Rs.50,000/- which they received pursuant to the sale agreement. According to the defendants, Ex.A5 was obtained by using force in the police station. It is not in dispute that the plaintiff also lodged a police complaint against the defendants and the first defendant was called by the CBCID for enquiry, where, he was asked to give a statement and accordingly, he gave a statement on 31.07.2000 by putting his signatures in both sides of the statement. The learned first appellate Court has carefully gone through the said Ex.A5 and found the following:

“On 31.07.2000 he had given a statement in the course of enquiry and he put his signature in both sides of the statement. The said two signatures are found at the foot of each page. Ex.A.5 was referred as a letter given by the first defendant even though it is styled as statement of Mr. Daniel, In the said statement Ex.A.5 it is not referred about any of the places where the statement of first defendant was recorded. There is no signature or



attestation in the statement to the effect that it was given by Mr. Daniel, the first defendant. In the first page the writings of the contents are on the equal and proportionate line. In the second page in the upper half, the lines had been arranged in such a manner equally and in the second half the lines were not written in an equal space but they are getting very close at the end of the page, just before the signature of the first defendant. Therefore, we can see that the signatures of the first defendant should have been obtained with the help of police and thereafter the contents would have been written to the suitability of the plaintiff. If really the Ex.A.5 statement had been recorded, it would have been signed by the person who had recorded it and the attestation would have also been made to the signature of the first Defendant. The absence of such attestation, would go a long way to show that the said statement Ex.A.5 was not purely given by the first defendant. The alleged statement would also raise to a suspicious cause which is alleged to have been given on behalf of the second defendant also. Therefore, it is not considered to be a true statement given by the first defendant.”



16. Even after going through the Ex.A5 letter, this Court also found the discrepancies as pointed out by the lower appellate Court which would establish that Ex.A5 was not given purely by the first defendant and it is not safe to rely upon the said letter Ex.A5. When such being the case, the admission made in Ex.A5 by the first defendant, in the circumstances as narrated above, is inadmissible. Accordingly, the second substantial question of law is answered against the appellant/plaintiff.

17. Though the learned counsel has referred to CBCID report, but it is pertinent to note that in the present case, the plaintiff has not proved Exs.A1 and A5 in the manner known to law. The lower Appellate Court has observed that since the case is pending before the Criminal Court and there is a likelihood of availing fresh evidence during the course of investigation and in the event the defendants are found guilty of the offence and held that they are liable to pay the amount, it would give a fresh cause of action in favour of the plaintiff to recover the same from



the defendants. Therefore, it is only an observation, which has been rightly made by the lower Appellate Court in case the defendants are found guilty and criminally held liable to pay the amount, the plaintiff can work out its remedy and since the plaintiff has not proved the suit claim, no relief can be granted in the suit and therefore, this Court does not find any infirmity in such conclusion arrived by the lower appellate Court and therefore, the first question of law is also answered negatively against the plaintiff.

18. In the light of the above discussion, this Court does not find any infirmity or illegality in the judgments rendered by the Courts below in order to interfere with the same.

19. Accordingly, the Second Appeal fails and it is dismissed. The parties shall bear their own costs.

13.10.2022

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KRISHNAN RAMASAMY.J.,

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To

- 1.The Principal District Judge, Chengalpattu
- 2.The Subordinate Judge, Maduranthagam

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