



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2021

PRONOUNCED ON: 25.03.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.938 of 2012

and

M.P.No.1 of 2012

Mahalingam

... Appellant / Plaintiff

Vs.

1.Viruthambal

2.Ellammal

... Respondents / Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment, dated 05.06.2012 passed in A.S.No.47 of 2010 by the learned Principal Subordinate Judge, Thiruvannamalai confirming the decree and judgment dated 27.09.2010 passed in O.S.No.139 of 2008 by the learned Principal District Munsif, Thiruvannamalai.

For Appellant : Mrs.G.Sumithra

For R2 : Mr.Selvaraj

For R1 : No appearance

J U D G M E N T

Unsuccessful plaintiff is the appellant herein.

2.For the sake of convenience, the parties are referred to as per the ranking before the trial Court.

3.The plaintiff/appellant filed suit in O.S.No.139 of 2008 for specific performance of Ex.A3-sale agreement. The defendants have raised plea that the documents are forged and fabricated not signed by the defendants and therefore it is not agreement in the eye of law in the absence of any sale consideration the said document is void.



4. On appreciation of oral and documentary evidence, both the Courts below have rejected the claim of the plaintiff and hence the second appeal.

5. The above second appeal is admitted on the following Substantial Questions of Law:

"1. Whether the lower Appellate Court was right in not drawing an adverse inference against the 2nd respondent for not issuing a reply to the legal notice, dated 04.04.2008?

2. Whether the lower Appellate Court was right in not considering the effect of Ex.A10 sale deed, dated 21.03.2005 wherein 1 feet by 19 feet of the lane as claimed had been sold by DW2?

3. Whether the lower Appellate Court was right in not considering Ex.A3 as an agreement sale though it is an unregistered sale deed?"

6. According to the learned counsel for the appellant/plaintiff, there was an oral agreement of sale in respect of 'A' schedule property as mentioned in Ex.A3 and in respect of 'B' schedule property there was an agreement, failing which, the second party has to give property to the first party. Based upon the same, specific performance suit was filed. Both the Courts below disbelieved the version of PW1.

7. Both the Courts below have rendered a concurrent finding that it is a bogus document. Ex.A4 is the unregistered sale deed, said to have been executed by the defendants' brother in favour of the plaintiff. Both the Courts below have held that the signature of the predecessor is not found and accordingly disbelieved the same and in the absence of any receipt for handing over the possession the case stands rejected. Besides, in Ex.A3, it is cited as a vacant site.

8. Heard the learned counsel for the respondents/defendants and he would draw my attention to the finding rendered by the trial Court as well as the lower Appellate Court.

9. The learned Subordinate Judge, Tiruvannamalai, in paragraph Nos.12,13,14 have assigned reason for disbelieving the fact also disbelieved the version regarding coming into existence of Exs.A3 and A4. Both the Courts below have



disbelieved the alleged fact and the coming into existence of Exs.A3 and A4 have rendered a concurrent finding that the said Exs.A3 and A4 are unenforceable and rejected the claim.

10. The case of the plaintiff/appellant is for the relief of specific performance of the suit property as per the agreement styled as 'cld;gof;if' under Ex.A4. On perusal of Ex.A4 dated 14.08.2007, only on the failure of execution of sale deed on payment of Rs.2,35,500/- to the appellant, by the 2nd respondent/defendant, the 2nd respondent/defendant has to execute the sale deed for suit property without receiving any consideration. According to the 2nd respondent/defendant the agreement is forged document. Both the Trial Court and the lower Appellate Court concurrently found that the Ex.A4 dated 14.08.2007 is not a genuine document. The relevant portion in the DW1 Ellammal is extracted hereunder:

2 அடி அகலம் 19 அடி நீளம் 18.2007ல் வாதி எனக்கும் 1ம் பிரதிவாதிக்கும் 10,000/ வாய்மொழி ஒப்பந்த அடிப்படையில் என்னிடம் கொடுத்தார் என்றால் தவறு. அவ்வாறு 10,000/ பெற்றவுடன் வாதிக்கு அந்த இடம் சுவாதீனம் கொடுத்து விட்டோம் என்றால் தவறு.

11. In view of the evidence of DW1 and the plea taken in the defendant's written statement the onus of prove for proving the Exs.A3 and A4 is squarely falls on the appellant/plaintiff.

12. It remains to be stated that the alleged oral agreement said to have entered between the parties on 01.08.2007 does not reflected either in Ex.A3 or in Ex.A4 assumes significance. No receipt was produced to show Rs.10,000/- was paid to the second defendant/second respondent on 08.01.2007 for sale consideration in full also assumes significance. The oral agreement is said to have taken place on 01.08.2007 and a composite agreement was said to have came into force on 14.08.2007 and hence it is for the plaintiff to prove the coming into existence of Exs.A3 and A4.

13.It remains to be stated that the second defendant both in the pleadings as well as in his evidence disputed his signature. Both the Court have concurrently held that the Exs.A3 and A4 are not genuine by assigning valid and proper reasoning as the plaintiff is unable to prove the reasons for non-registration.

14. Further more, on proper appreciation of evidence adduced before the Courts, both the Courts below have rightly non-suited the plaintiff/appellant by holding that Ex.A4 is not a genuine document and plaintiff failed to prove the oral agreement and alleged payment of Rs.10,000/- on 01.08.2007 as found in Ex.A3



१२.५ आमेव अर्थ

<https://hcservices.ecourts.gov.in/hcservices/>



WEB COPY

terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonable capable of supporting the finding."

17. As stated supra, the first Appellate Court as final Court of finding the fact and examined the evidence and record



it rightly and arriving a reasonable conclusion that the plaintiff/appellant has not made out the case and Exs.A3 and A4 are not genuine documents and fraudulent document. This finding is based on cogent and binding document of title and hence, I find the finding rendered by the Court below does not suffer by any irregularity or illegality warranting interference at the appellate stage and there is no erroneous inference from any proved fact nor had the burden of proof erroneously shifted. The third substantial question of law does not arise since reasons have been clearly spelled out by both the Courts below and hence, I find no merits in this case. Accordingly, this second appeal stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

PJL
To

- 1.The Principal Subordinate Judge,
Thiruvannamalai.
- 2.The Principal District Munsif,
Thiruvannamalai.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.G.Sumitra, Advocate Sr.20259

S.A.No.938 of 2012

ak[co]
srg 25/04/2022