



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.306/2022 and CMP.No.6656/2022

S.K.Yadhav

...Appellant/Plaintiff

Vs.

Kuppusamy

...Respondent/Defendant

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed by the learned Additional Subordinate Judge, Kallakurichi in A.S.No.29/2020 dated 09.03.2021 by confirming the judgment and decree passed by the learned I Additional District Munsif Court, Kallakurichi in O.S.No.232/2017 dated 23.03.2020.

For Appellant : Mr.G.Ranganathan

JUDGMENT

- (1) The plaintiff in the suit in O.S.No.232/2017 on the file of the I Additional District Munsif Court, Kallakurichi is the appellant in the above second appeal.
- (2) The plaintiff filed the suit in O.S.No.232/2017 for specific performance of an oral agreement and to direct the defendant to execute and register a Sale Deed in favour of the plaintiff in respect of the suit properties which is a small extent of house site in Vazhavanthankuppam Village, Kallakurichi Taluk.
- (3) It is the case of the plaintiff that the defendant approached the plaintiff offering to sell the suit properties consisting of two items, which are classified as Natham property. It is stated that the defendant got assignment in respect of 1st item and was expecting the assignment in respect of the 2nd item. The plaintiff contended that the defendant entered into a oral agreement on 02.08.2000 fixing the sale consideration as Rs.24,000/-. It is further stated that on date of agreement the plaintiff paid the entire sale consideration of Rs.24,000/- for which the defendant issued a sale receipt. Stating that



WEB COPY

the defendant got assignment patta in respect of one the 2nd item on 04.02.2016, it is his case that he approached the defendant to execute the Sale Deed as agreed between them. It is stated that since the respondent refused to execute the Sale Deed, and hence the plaintiff was constrained to file this suit for specific performance.

- (4) The defendant had filed his written statement specifically denying any kind of sale agreement on 02.08.2000 and that it was forged. The defendant denied the execution of any sale receipt or agreement. It is further stated that there was dispute between the plaintiff and the defendant in respect of some other property before the District Munsif Court, Ulundurpettai and that the plaintiff has filed the suit due to enmity and political rivalry between the plaintiff 's wife and the defendant.
- (5) The Trial Court after considering the pleadings and evidence held that the plaintiff/appellant failed to prove the oral agreement. It is also found that the plaintiff has not proved the signature of the defendant in document Ex.A1, which according to the plaintiff is the unregistered sale agreement. It is seen that the suit was filed in the year 2007, even though, the oral agreement was in the year 2000. It is to be noted that the Trial Court also found that the document in Ex.A1 is a forged document.
- (6) Aggrieved by the judgment and decree of the Trial Court the appellant preferred an appeal in A.S.No.29/2020 on the file of the I Additional District Munsif Court, Kallakurichi.
- (7) The Lower Appellate Court also dismissed the appeal, confirming the findings of the Trial Court on all issues. The Lower Appellate Court also gave a definite finding that the plaintiff/appellant has failed to prove the oral agreement or the document Ex.A1 acknowledging the payment of sale consideration as contended by the appellant. From the discussion in the judgments of the Courts below, this Court is able to see that the plaintiff was examined as PW1 who admitted that he did not know who executed Ex.A1 but stated that Ex.A1 was given to him. Excepting the PW1, the appellant did not examine any other independent witness to prove the oral agreement or the payment of entire sale consideration. It is also admitted that at the time of execution of the the agreement the respondent had no right in the property. Though it is stated that the agreement was entered into by the respondent with the hope of getting



assignment in his favour, this Court is unable to find truth in the contentions of the appellant.

(8) The appellant have raised following substantial questions of law in the Memorandum of Grounds of Second Appeal.

a. Whether the Courts below are right in hold the burden of proof is right on the appellant.

b. Whether the Courts below had considered the Ex.A1 and A3 relied by the appellant in a prescribed manner?

c. Whether the Courts below had not considered the specific performance prayed for?

(9) It is to be noted that all the issues are answered against the appellant by the Courts below as the appellant, on whom the burden of proof lies, has failed to discharge the same with acceptable evidence. In the plaint it stated that the agreement was oral. Hence the document Ex.A1 must be a concocted one. This Court is unable to find any irregularity or illegality in the judgment and decree of the Courts below. The findings are supported by reasons. Therefore there is no substance in the questions of law raised.

(10) Hence, for want of merits, the Second Appeal is dismissed. Consequently connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional Subordinate Judge, Kallakurichi

2.The I Additional District Munsif Court, Kallakurichi.



3.The Section Officer, VR Records,
High Court, Chennai.

WEB COPY

+1 CC to Mr.G.Ranganathan, Advocate sr 25876.

SA.No.306/2022
and CMP.No.6656/2022

PA (CO)
SP (06/05/2022)