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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.599 of 2014

Rasheedha Begum

...Appellant/Appellants/Plaintiffs

Vs.

1. The State of Tamil Nadu,
Rep. by the Joint Commissioner,
Commercial Tax Office,
Dr.Balasundaram Road,
Coimbatore.

2. The Commercial Tax Officer,
Commercial Tax Office,
Pollachi Road,
Palladam.

...Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 18.11.2011 passed in A.S.No.19 of 2010 on the file of the Additional Sub Judge, Tiruppur, in confirming the judgment and decree dated 06.04.2010 passed in O.S.No.27 of 2003 on the file of the District Munsif Court, Palladam.

For Appellant : Mr.S.Kasirajan

For Respondents: Mr.M.Venkateswaran
Special Government Pleader

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The case of the plaintiff is that she is the owner of the suit property by virtue of the registered sale deed dated 16.11.1994 and she is in possession and enjoyment of the same. The plaintiff received a notice of attachment along with demand notice dated 09.12.2002 from the second defendant. On going



through the notice, the plaintiff found that the second defendant had demanded the repayment of dues from one A.Chandran of M/s.Sudha Traders and according to the second defendant, the plaintiff had given her property as security.

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3. The grievance of the plaintiff is that she never gave any security and she was not even aware of the above said A.Chandran of M/s.Sudha Traders and that the signature found in the document is a forged signature. Aggrieved by the same, the plaintiff filed a suit seeking for the relief of declaration to declare the proceedings of the defendants as null and void and for a permanent injunction restraining the defendants from in any way attaching and selling the schedule mentioned property.

4. The defendants filed a written statement and took a specific stand that the above said A.Chandran had submitted an application for registration as a dealer to do Iron Scrap business. After verification, the registration certificate was issued. Even at the time of filing the application, the above said A.Chandran had furnished the security by means of landed property owned by the plaintiff. The landed property was given as a security by the plaintiff by signing the security bond in the relevant form provided under the Tamil Nadu General Sales Tax Rules.

5. The further defence taken by the defendants is that the above said A.Chandran had failed to pay the commercial tax and hence through proceedings dated 28.02.1996, the total tax payable along with penalty was assessed. This amount was not paid by the above said A.Chandran and he also left the place and his whereabouts were not known. Hence, the defendants wanted to recover the amount as recovery of arrears under the Revenue Recovery Act from the security provided by the plaintiff. Accordingly, notice was issued to the plaintiff for attachment and sale of the property. The defendants, therefore, have taken a clear stand that the plaintiff cannot wriggle out from her responsibilities and the security that was given by her has to be attached and sold for recovery of the tax arrears.

6. Both the Courts below, on appreciation of the oral and documentary evidence and on considering the facts of the case, dismissed the suit filed by the plaintiff. Aggrieved by the same, the second appeal has been filed before this Court.

7. The learned counsel for the appellant submitted that the appellant never executed Form No.19B and the signature found therein is the forged signature of the appellant. The learned



counsel further submitted that the appellant is a graduate and she puts her signature only in English and whereas, the signature found in the relevant form is in Tamil and this is also spoken by the witness very clearly. It was further submitted that both the Courts below ought to have shifted the burden on the defendants to prove that the plaintiff had in fact signed the relevant form and given the security and whereas, both the Courts below erred in shifting the burden on the plaintiff. The learned counsel also submitted that the title deeds were not deposited before the defendants and the mandatory requirement under Section 58F of the Transfer of Property Act is not even considered by both the Courts below. Therefore, it was contended that the Judgments of both the Courts below are liable to be interfered by this Court.

8. This Court carefully considered the submissions of the learned counsel for the appellant and also the findings rendered by both the Courts below.

9. On a careful reading of the findings of both the Courts below, both the Courts below found concurrently that the plaintiff in spite of taking a specific stand that the signature found in Ex.B1 is not her signature, did not take any steps to send the document for an expert opinion to be compared with the admitted signature. Both the Courts below found that the comparison of the signature by the Court under Section 73 of the Indian Evidence Act cannot be resorted to in every case and in the present case, there was no opportunity for both the Courts below to undertake this exercise since even admitted signature was not produced by the plaintiff during the course of proceedings. Both the Courts below also concurrently found that it is the plaintiff, who had to prove her case by establishing that she did not sign in the statutory form and the plaintiff has failed to do the same. The plaintiff wanted to shift the burden on the defendants and both the Courts below found that the burden does not shift to the defendants unless the plaintiff had discharged her burden as required under Section 101 of the Indian Evidence Act.

10. In the considered view of this Court, the findings rendered by both the Courts below are based on appreciation of evidence and this Court does not find those findings to be perverse. In any event, no substantial questions of law are involved in the second appeal.



11. In the result, this second appeal is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Lpp

To

- 1.The Additional Sub Judge, Tiruppur.
- 2.The District Munsif, Palladam.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

- +1 CC to Mr.S.Kasirajan, Advocate sr 11747
+1 CC to The Special Government Pleader (T) sr 12077.

S.A.No.599 of 2014

NR(CO)
SP(16/03/2022)