



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.146 of 2010

SP.Chandrasekar (Died) ... Appellant / Appellant /Plaintiff

2. C.Saravanakumar

3. C.Manimaran

4. C.Senthil Kumar

5. C.Alagusundari ... Appellants

Vs.

1. K.Mani

2. M.Manjula ... Respondents /Respondents/ Defendants

3. N.Jeyarani ... Respondent

(Appellants 2 to 5 and 3rd respondent
were *suo motu* impleaded as LR's. of
the deceased sole appellant vide Order
dated 14.03.2022)

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.10.2009 in A.S.No.3 of 2009 on the file of the District Judge, Sivagangai, confirming the Judgment and Decree dated 30.10.2008 in O.S.No.25 of 2004 on the file of the Sub Court, Devakottai.

For Appellant : Mr.V.R.Shanmuganathan
For R-2 : Mr.R.Sundar Srinivasan
For R-1 : No appearance.

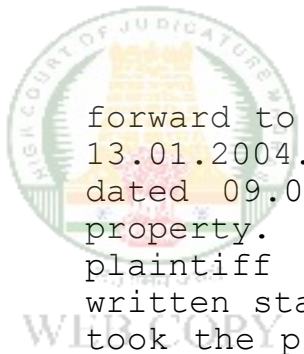
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J U D G M E N T

The unsuccessful plaintiff in O.S.No.25 of 2004 on the file of the Sub Court, Devakottai, filed this second appeal.

2. During the pendency of the second appeal, he passed away and his legal heirs have come on record.

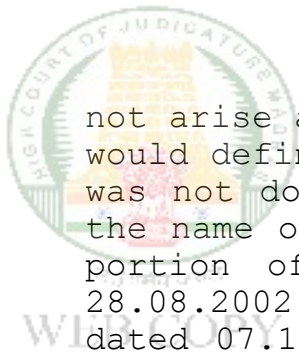
3. The suit was filed seeking specific performance. According to the plaintiff, the defendants entered into a sale agreement dated 07.10.2003 agreeing to sell the suit property for a consideration of Rs.1,90,000/-. According to him, they received advance amount of Rs.1,55,000/- on the same day. The balance amount was to be paid within a period of three months. Since the defendants did not come



forward to execute the sale deed, the plaintiff issued notice dated 13.01.2004. After receiving the same, the defendants sent reply dated 09.02.2004 denying that they ever agreed to sell the suit property. On account of the stand taken by the defendants, the plaintiff filed the said suit on 19.03.2004. The defendants filed written statement controverting the plaint averments. The defendants took the plea that they had borrowed a sum of Rs.30,000/- from the plaintiff's wife some time in July 2002. The signatures of the defendants were said to have been obtained in blank stamp papers in connection with the said transaction. The defendants had also handed over the original title deed in respect of the suit property. The defendants were paying usurious interest. The defendants also filed counter claim for directing the plaintiff to return the original title documents. Based on the divergent stand taken by the parties, the trial Court framed the necessary issues. The plaintiff Chandrasekar examined himself as P.W.1. One Ganesan who is said to have attested the sale agreement (Ex.A.1) was examined as P.W.2. Ex.A.1 to Ex.A.7 were marked. The second defendant examined herself as D.W.1. Ex.B.1 to Ex.B.5 were marked. After consideration of the evidence on record, the Trial Court by judgment and decree dated 30.10.2008 dismissed the suit. It also negatived the counterclaim. The defendants did not file any appeal challenging the dismissal of their counterclaim. The plaintiff alone filed A.S.No.3 of 2009 before the District Judge, Sivagangai. The first Appellate Court by the impugned judgment and decree dated 30.10.2009 dismissed the appeal and confirmed the decision of the Trial Court. Aggrieved by the same, this second appeal came to be filed.

4. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame substantial questions of law and admit the second appeal and then taken it up for disposal. He pointed out that the Courts below had held that Ex.A.1 sale agreement had not been proved by taking note of certain discrepancies in the evidence adduced by the plaintiff. The suit property actually measures 2400 sq.ft. To a question put to him, the plaintiff had replied that he had not personally measured the property and that the transaction was arranged by one broker named Thiru.Samiayya. The said Samiayya was not examined as a witness. Even though the sale agreement bears the date 07.10.2003, the stamp papers actually bears the date 3.10.2003. Even though the defendants denied their signatures in the sale agreement, the plaintiff did not take steps for referring the same to a handwriting expert. According to the appellant, none of these reasons are sustainable.

5. Per contra, the learned counsel appearing for the respondents submitted that the genuineness or otherwise of the suit sale agreement is essentially and primarily a pure question of fact. When the Courts below have concurrently rendered a finding that Ex.A.1 has not been proved, interference under Section 100 CPC does



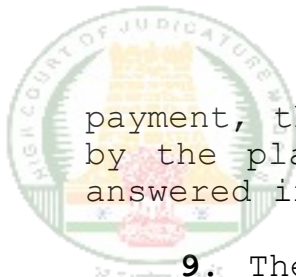
not arise at all. He pointed out that a person purchasing a property would definitely apply for encumbrance certificate. In this case, it was not done. He drew my attention to Ex.B.5 sale deed standing in the name of one Vijaya. The defendants had already sold substantial portion of the suit property in favour Vijaya under Ex.B.5 on 28.08.2002 itself. This was clearly prior to the sale agreement dated 07.10.2003. This single circumstance in my view is more than sufficient for me to sustain to agree with the concurrent findings of the fact rendered by the Courts below that the suit sale agreement has not been proved.

6. However, after hearing the learned counsel on either side, the following substantial question of law was framed :-

" Whether the Courts below ought to have passed a decree for payment of money? "

7. The learned counsel appearing for the respondents submitted that the plaintiff merely asked for the relief of specific performance. He did not seek any alternative relief. The defendants had specifically taken the stand in their written statement that the signatures attributed to them in Ex.A.1 is not theirs. Therefore, the defendants cannot be bound by the contents of Ex.A.1. The defendants had only admitted that they received a sum of Rs.30,000/- from the plaintiff. The plaintiff failed to prove that he had parted with a sum of Rs.1,55,000/-. Therefore, there cannot be a direction for repayment of a sum of Rs.1,55,000/- with or without interest.

8. The plaintiff had marked Ex.A.2. In other words, the title deed in respect of the suit property is with the plaintiff. According to him, the suit property is worth around Rs.1,90,000/-. The valuation has not been disputed by the defendants. I sustain the stand of the respondents that the transaction between the parties was one of borrowal and not an agreement to sell. The defendants would claim that they had borrowed only a sum of Rs.30,000/- from the plaintiff. On that basis, they even filed the counterclaim. The counterclaim filed by the defendants was dismissed. The defendants did not prefer any appeal. If the property is worth around Rs.1,90,000/- and if the defendants borrowed only a sum of Rs.30,000/-, the title deed could not have been handed over as a security. According to the defendants, they had borrowed a sum of Rs.30,000/- with interest @ 5% p.a. There is nothing on record to show that they had made any payment either towards principal or towards interest. The defendants had remained silent till issuance of Ex.A.3 dated 13.01.2004. The defendants also stated that the plaintiff had taken their signatures in blank stamp papers. I come to the conclusion that the plaintiff has proved that he had paid a sum of Rs.1,55,000/- to the defendants. Therefore, there shall be a decree directing the respondents to repay the said amount of Rs.1,55,000/- together with 6% interest from 7.10.2003. On such



payment, the respondents will be entitled to take back Ex.A.2 marked by the plaintiff in the suit. The substantial question of law is answered in favour of the appellant.

9. The impugned judgment and decree are modified. This second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized 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 District Judge,
Sivagangai.

2.The Sub Judge,
Devakottai.

COPY TO:-

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

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-15397[F] dated 30/03/2022)

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-15783[F] dated 31/03/2022)

S.A.(MD)No.146 of 2010
30.03.2022

SP(CO)
GC(17.05.2022) 4P 7C