



S.A(MD).No.1096 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.1096 of 2011

and

M.P(MD).No.2 of 2011

S.Rajendran

... Appellant/Appellant/Defendant

Vs

S.Murugan

... Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 13.04.2010 and passed in A.S.No.106 of 2006 by the Subordinate Court, Thoothukudi as confirmed by the judgment and decree dated 20.06.2006 and passed in O.S.No.75 of 2004 by the District Munsif Court, Srivaikundam.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondent : Mr.R.T.Arivukumar

JUDGMENT

The defendant, who suffered a money decree in O.S.No.75 of 2004 on the file of the District Munsif Court, Srivaikundam and also lost his appeal



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against the said decree in A.S.No.106 of 2006 on the file of the Sub Court, Thoothukudi, is the appellant herein. For narrative convenience, the parties would be referred to as per their rank before the trial Court.

2. The plaintiff comes with a straightforward case. According to him, on 31.05.2002, the defendant borrowed a sum of Rs.50,000/- and executed an unregistered agreement under which, he had parted with the possession of his agricultural property to the plaintiff to adjust the interest payable against the usufructs to be obtained from the said property. Subsequently, the plaintiff demanded money and as it was not returned, the plaintiff issued Ex.A2-suit notice, which was responded with Ex.A3-reply. The agreement itself is marked as Ex.A7.

3. The case of the defendant is that he had borrowed a sum of Rs.50,000/- from the plaintiff and executed a sale agreement pertaining to his properties as a security, and had executed two signed blank stamp papers and two blank sheets. Utilizing one set, the plaintiff had manufactured Ex.A7-agreement. He has also pleaded discharge of his loan liability of Rs.50,000/-. (It may be mentioned that the sale agreement he refers to matches with his line of defence in SA(MD) 132 of 2011, which this Court



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had occasion to hear and dispose of along vide a separate judgement)

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4. The matter went to trial and before the trial court, the plaintiff examined himself as P.W.1 and the attesting witness of Ex.A7 was examined as P.W.

2. He produced Ex.A1 to Ex.A7. The defendant examined himself as D.W. 1 and produced no documents on his side. On appreciating the evidence the trial court decreed the suit, which as already indicated, the First Appellate Court has declined to interfere. Hence the defendant has come forward with the present appeal.

5. This appeal was admitted for considering the following substantial question of law:

“Whether the Courts below are correct in law in holding a sale deed executed on 25.08.2003 is affected by lis pendens whereas the suit was filed only in October 3?”

6. As has been outlined in the concluding portion of paragraph 3 above, other than the present appeal, there is another second appeal in S.A. (MD).No.132 of 2011 between the same parties, and that appeal arises out of specific performance instituted by the respondent/plaintiff in O.S.No.150 of 2004. Now, the substantial question hereinabove framed is essentially



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one relevant for SA(MD).No.132 of 2011 and not for this case. No substantial question material to the present appeal is framed as yet, and indeed no relevant substantial question was even suggested in the appeal memorandum. Therefore, this Court has proceeds as if no substantial question is framed.

7. Heard Mr.Prabhu Rajadurai, the learned counsel submitted that the Courts below have miserably ignored the fact that the plaintiff indeed converted two signed blank stamp papers for fabricating Ex.A.7. He also took the Court extensively through the evidence.

8. Notwithstanding the optimism of the learned counsel for the appellant, this Court finds that there is little material on evidence to aid that optimism. Indeed, the defendant had pleaded in his written statement that he had signed two stamp blank papers of the value of Rs.20/-, whereas Ex.A.1 is executed in a stamp paper of the value Rs.10/-. Secondly, the stamp papers are also purchased two days prior to the date which Ex.A.7 bears. Thirdly, the title document Ex.A.7 does not have anything internal to the document to prove the allegation of the defendant that Ex.A.7 was manufactured by



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the respondent/plaintiff.

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9. On perusing the judgment of the Courts below, this Court is satisfied that those courts have approached the dispute sensibly and arrived at a conclusion which is not distanced from law and evidence. They left zero space for this Court to even consider entertaining this appeal.

10. In fine, this Court does not find any merit in this Second Appeal and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.06.2022

Index : Yes/No

Internet: Yes/No

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N.SESHASAYEE, J.,

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To

- 1.The Subordinate Judge, Thoothukudi.
- 2.The District Munsif, Srivaikundam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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