



SA(MD)Nos.540 nd 550 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.09.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).Nos.549 and 550 of 2010
and CRP(MD)No.1368 of 2010

In both appeals:

- 1.Sundararaj (Died)
- 2.Murugan
- 3.Kupputhayee

... Appellants/Appellants/Defendants 1 and 2/
the lrs of the deceased first appellant

(3rd appellant was brought on record as lrs of the deceased 1st appellant and 2nd appellant and respondents 2 and 3 are already on record and recorded as lrs of the deceased 1st appellant Vide Order dated 14.03.2016 made in MP(MD) Nos. 1 and 1 of 2015 CMP(MD)Nos.549 and 550 of 2010 by RMDJ)

Vs.

- 1.Velankanni
2. Chandra
- 3.Rubu Kalaathy

...1st Respondent/1st Respondent/Plaintiff

..Respondents 2 and 3/Respondents 2 & 3/
Defendants 3 and 4

Common Prayer : Second Appeals are filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 10.08.2009 passed in A.S.Nos. 43 and 50 of 2005 on the file of the Principal Subordinate Court, Dindigul confirming the judgement and decree in O.S.Nos.253 of 2000 and 491 of 2004 on the file of the Principal District Munsif Court, Dindigul dated 31.12.2004.



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In both appeals:

For Appellants : Mr.T.Arul
for Mr.M.R.Srinivasan
For R1 : Mr.I. Vel Pradeep
For R2 & R3 : No appearance

In CRP(MD)No.1368 of 2010:

Velankanni ... Petitioner/3rd Defendant

Vs

1. Pilavendran
2. Santhiyagu ... Respondents 1 and 2/Plaintiffs
3. Sundararaj
4. Murugan
5. Chandra
6. Ruby Kalavathy ... Respondents 3 to 6/Defendants 1 to 4

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India to reject the plaint in O.S.No.587 of 2009 on the file of the District Munsif Court, Dindigul.

For Petitioner : Mr.I. Vel Pradeep
For R3 and R4 : Mr.J.Arul
for Mr.M.R.Sreenivasan
For R1 & R2 : Mr.M.P.Senthil
For R5 & R6 : No appearance



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COMMON JUDGMENT

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1.1 These twin appeals arise out of two separate suits. The first one is O.S.No.491 of 2004 has been laid for specific performance of Ext.B.2 re-sale agreement dated 01.11.1996. The defendants in the suit for specific performance had laid the subsequent suit in O.S.No.253 of 2000 for declaration of his title and for certain ancillary relief of injunction. It may be stated that the first mentioned O.S.No.491 of 2004 was originally laid as O.S.No.100 of 2000 before the Subordinate Court, Dindigul and due to change in pecuniary jurisdiction, it was transferred to the Principal District Munsif Court, Dindigul, where it is assigned as O.S.No.491 of 2004.

1.2 Evidence came to be recorded in O.S.No.253 of 2000. On appreciating the evidence before it, the trial court decreed the suit in O.S.No.253 of 2000 and dismissed the suit for specific performance in O.S.No.491 of 2004. This gave rise to 2 First Appeals in A.S.Nos.43 of 2005 and 50 of 2005. The First Appellate Court found no reasons to interfere with the findings of the trial court and dismissed the same. Hence, these Second Appeals. Henceforth, the parties would be referred by the rank in O.S.No.253 of 2000.

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2. The case of the plaintiff is straight forward and least complicated:

- The suit property described as a mango grove measuring 2.16 acres comprised in S.No.694/2 in Kavanuthu Village which originally belong to the defendants 1 and 2. On 01.11.1996, Vide Ext.A.1 = Ext.B.1 sale deed, the defendants 1 and 2 had sold the property to the plaintiff for a sale consideration of Rs.30,000/-. While so, the defendants required the plaintiff to resell the property and when it was refused, the plaintiff faced threat from the defendants and their men and hence, the suit for declaration of his title and for consequential decree of prohibitory injunction has been laid.
- Dispute commences from now. According to the vendors, under Ext.A1, their purchaser Velankanni executed an agreement for re-sale of the same property on the very date on which Ext.A1=Ext.B1 sale deed was executed. In other words, according to them it is a contemporaneous document. This document is marked as Ext.B2. It is an unregistered document.



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The trial Court on appreciating evidence before it, decreed the suit in O.S.No.253 of 2000 and dismissed the specific performance suit laid by Sundaraj and Murugan in O.S.No.491 of 2004. Challenging the same, they preferred A.S.No.43 of 2005 and A.S.No.50 of 2005. Both these First Appeals met the same fate as the suits before the trial Court. Hence, these two appeals at the instance of the plaintiffs in O.S.No.491 of 2004.

3. Sundaraj's daughters were impleaded in both suits even when the suits were pending before the trial Court contending that the property is an ancestral property and that they are entitled to a share in the same by virtue of Section 29(A) of the Hindu Succession Act. Now a third party, named, Bilavendran and another had laid a suit in O.S.No.587 of 2009 for bare injunction seeking to protect their possession on the strength of the document of license. The suit was laid against Velankanni. She would now approach this Court in C.R.P.(MD)No. 1386 of 2010 under Article 227 of the Constitution of India to strike off the pleadings in O.S.No.587 of 2009.

4. The dispute went to trial. Before the trial court, both sides adduced their



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respective oral and documentary evidence. On the side of the plaintiff, the plaintiff had examined himself as P.W.1. He had produced Ext.A.1 to Ext.A.4 of which Ext.A.1 has already been introduced. On the side of the defendants, the first defendant examined himself as D.W.1. He then examined D.W.2 and D.W.4, all of whom are the attestors to Ext.B.2 sale agreement. They would then proceed to examine D.W.5 to D.W.7 all of who are independent witnesses of whom D.W.5 is the daughter of D.W.1. They have produced Ext.B.1 to Ext.B.5.

5. On appreciating the evidence before it, the trial court decreed O.S.No.253 of 2000 and dismissed the suit for specific performance in O..S.No.491 of 2004. The line of reasoning can now be bullet pointed:

- Ext.B.2 is bristled with many alterations as to inspire the confidence about the genuineness of the document.
- On the face of denial of execution of Ext.B.2, the defendants ought to have obtained an expert opinion on the admitted signature of the plaintiff in the registration endorsement compared to Ext.A.1 with that in Ext.B.2

6. When the matter reached the First Appellate Court, it concurred with the



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findings of the trial court and hence it did not interfere with the decree passed by the trial court and hence, this Second Appeal.

7. The Second Appeals are admitted for considering the following questions of law:

“i) Were not the Courts below erred in concluding that there are material alteration in Ext.B.2? and

ii) Were not the Courts below in egregious error in their appreciation of evidence of P.W.1. to override the effect of Section 91 and Section 92 of the Indian Evidence Act?

8. Mr.T.Arul, learned counsel along with Mr.Srinivasan made the following submissions:

- The property admittedly measures 2.16 acres of mango grove, and it is inconsiderable that this property could have been sold for Rs.30,000/-. This would imply that transaction could only be a loan transaction and only because it is as a loan transaction, Ext.B.2 sale agreement came to be executed contemporaneously with Ext.A.1 sale agreement. However, the plaintiff acted against the trust that was originally kept between the parties



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and asserted title based on Ext.A.1. This is a fraud played by the plaintiff on the defendants and this aspect of the matter has not been adequately appreciated by the courts below. Fraud does not parade with the placard in the hands and it is the duty of the court to infer the same from the facts before it.

- The courts below have attributed great attachment to certain corrections in page No.1 of Ext.B.2. A written contract does not fail merely because there are corrections. It fails only when those corrections are material corrections. The corrections in the document are so insignificant. In all, there are 3 corrections and 2 are related to the nature of the document. The document was written in Tamil and originally it is written as sale agreement and what is inserted is the Tamil word for re-sale. This by itself does not alter the material terms of the contract but only makes Ext.B.2 more accurate as to its character. The next correction is with regard to the date of the document. Ext.A.1 was executed on 01.11.1996. The stamp paper for preparing Ext.B.2 was purchased from the very same stamp vendor, who had sold the same paper for preparation of Ext.A.1. The serial number in the document also come calculative to each other. This would signify that



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there is a strong intent in the parties for re-sale of the property.

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- The courts below have given much prominence to variation in the spelling of the defendant's name both in registration endorsement in Ext.A.1 and in Ext.B.2.
- The courts below ought to have exercised their authority under Section 73 of the Indian Evidence Act and compared the signature. Here, it needs to be mentioned that the plaintiff who has not come to the court with clean hands since in all the documents including the plaint, vakalat and depositions in these cases he had altered the spelling of his name. He had signed in these documents in Tamil. Phonetically while his name may not sound very different from what it is written in Ext.A.1 and Ext.B.2. Given the peculiarity of Tamil language, he had picked up entirely a different consonant for writing his name.
- P.W.1 in his evidence says that though Ext.A.1 refers to the sale consideration only as Rs.30,000, he in effect had paid Rs.80,000/- and that the actual value has not been disclosed in the document only to save money on the stamps. In other words, he concedes that he has played fraud and hence the document Ext.A.1 is vitiated.



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9. Per contra, the learned counsel appearing for the first respondent submitted from the lines of findings of the courts below.

10. After weighing the rival submissions, it may be stated with some anxiety over certain aspects of the submissions of the appellant's counsel, this Court considers that the appellant's case has to fail. The reasons are:

- Nowhere in his pleadings be it in the plaint in O.S.No.491 of 2004 or in written statement in O.S.No.253 of 2000, have the defendants put forth a theory which the court may have to say a plausible defence or theory available for the defence and contended that Ext.A.1 was not intended to be a sale deed. Ingenuity and the draftsmanship of the counsel if kept aside, this Court essentially have to confine its flow to the pleadings.
- Secondly, they have not attacked Ext.A.1 sale deed nor they have sought any relief pertaining to the same.
- There is no law that takes away the right from the owner of the property to fix the price for it. Ultimately, it is for the revenue to take care of its interest for which Section 47(A) of the Stamp Act is available to them. It



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may be added here that neither in the pleadings nor in evidence have they projected what would be the approximate market price of the property and tried to build the case on that. Even if it is so done, it would be futile exercise in the absence of any evidence.

- Thirdly, turning to the material alteration in Ext.B.2, it has occupied the consideration of the courts below concerned. It may be stated that some of these alterations are inter-lineation of page No.1 of Ext.B.2 may not be material *vis-a-vis* the operative terms of Ext.B.2. However, the defendants, who having examined as many as 7 witnesses on their side, did not choose to examine the scribe.

11. This Court also perused the document very carefully with a magnifier and found that it is not just about certain inter-lineation but bothers the conscience of this Court, more significantly the very sudden narrowing down of the lines faced with page No.1. Added to this, is the scribe's note about the alterations in page No.1 takes a joint bent above the signature of the executant of the document. This implies that the note of the scribe should have been inserted after the signature of the executant was fixed to the document. The problem with line space is also seen



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in page No.2 as well.

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12. The writing is on the wall. At the end of the day, in every suit and more so in a suit for specific performance, the plaintiff have to approach the court with utmost fairness. A shadow of doubt over his conduct is adequate to non-suit him. On this aspect, this Court cannot find fault with the concurrent findings of the courts below and hence, this Court does not consider it necessary to interfere with them under Section 100 of Code of Civil Procedure.

13. In fine, these Second Appeals are dismissed. Accordingly, the judgment and decree dated 10.08.2009 passed in A.S.Nos.43 and 50 of 2005 on the file of the Principal Subordinate Court, Dindigul confirming the judgement and decree in O.S.Nos.253 of 2000 and 491 of 2004 on the file of the Principal District Munsif Court, Dindigul dated 31.12.2004 is confirmed. No costs.

14. The Civil Revision Petition in CRP(MD)No.1368 of 2010 is filed by the plaintiff in O.S.No.587 of 2009 on the file of the District Munsif Court, Dindigul.



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This suit is laid by a licensee of the usufruct against the licensor and also the vendors of the licensor. The maintainability of the suit is now challenged in this Civil Revision Petition.

15. This Court is informed that the suit filed by the licensee itself has been dismissed on 10.12.2014. Hence, nothing survives in this Civil Revision Petition. This Civil Revision Petition too is dismissed as infructuous. No costs.

15.09.2022

Index : Yes/No
Internet : Yes/No
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To,

1. The Principal Subordinate Court, Dindigul
2. The Principal District Munsif Court, Dindigul



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N.SESHASAYEE,J.

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