

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.07.2022**

CORAM: **JUSTICE N.SESHASAYEE**

S.A(MD)No. 27 of 2012

C.Rajendran

.... Appellant/Appellant/Plaintiff

Vs.

Yagammal

... Respondent/Respondent/Defendant

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree 07.03.2011 in A.S.No.31 of 2010 on the file of the Subordinate Judge, Sivaganai confirming the judgement and decree dated 28.10.2009 in O.S.No.38 of 2004 on the file of the District Munsif cum Judicial Magistrate, Illayangudi.

For Appellant : Mr.Prahalad Ravi

For Respondent : Mr.S.Parthasarathy

J U D G M E N T

The plaintiff, who successively had lost his suit for specific performance both in O.S.No.38 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Ilayankudi and then in A.S.No.31 of 2010 before the Sub Court, Sivagangai, has come forward with this appeal.

2. The case of the plaintiff is that the suit property belonged to the defendant, that on 10.12.2001, he entered into a sale agreement with the defendant for the sale of the suit property for a total sale consideration of Rs.1,00,000/-, that he had paid a sum of Rs.75,000/- on the said date. The agreement, however, did not stipulate any time for performance of the remaining part of mutual contractual obligation. On 29.03.2004, the plaintiff issued a notice to the defendant offering to perform his part of the contract and this was responded to by the defendant, vide Ext.A3-reply dated 03.04.2004. This evoked further response from the plaintiff, who had issued Ext.A4-rejoinder, dated 07.04.2004. On this set of facts, the suit is laid.

3. Refuting and disputing the allegations in the plaint, the defendant would plead that the plaintiff is the son-in-law of her sister, Irudhayam, that the defendant's husband, Gnanaprakasam had essentially been in Malaysia, that she was illiterate and largely depended on her sister, Irudhayam and Irudhayam's husband Royappan for managing her affairs, that earlier on 12.04.1999, she had sold a piece of property at Paramakudi, vide Ext.B7 and suspected that the plaintiff might have created some false documents purporting to be a sale agreement and might have obtained her thumb

impression on the same. In addition, she pleaded that since she was depending hugely on Royappan, she handed over all the title documents of her property to Royappan and making use of one set of documents, Royappan had instituted a suit in O.S.No.70 of 2004 alleging that the defendant herein had borrowed a certain sum of amount and handed over the document as a security for the same and sought for recovery of that amount.

4. The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1 and examined the attestors of the document as P.W.2 and P.W.3. He also examined his father-in-law, Royappan as P.W.4. For the defendant, she examined herself as D.W.1 and further examined a certain Susai as D.W.2. While the plaintiff had produced Ext.A1 to Ext.A4, the defendant had produced Ext.B1 to Ex.B12. Of the 12 documents, which the defendant had produced, Ext.B7 has already been introduced earlier. Ext.B8 and Ext.B9 are copies of the pleadings in O.S.No.70 of 2004.

5. On appreciating the evidence, both the Courts below disbelieved the case of the plaintiff. One of an interesting circumstance that the Courts below have relied on is the time of purchase of the stamp paper used for the

preparation of Ext.A1. It is a case of the defendant that she had executed Ext.B7 – sale deed in favour of the plaintiff herein and the stamp papers necessary for the preparation of Ext.B7-sale deed were purchased as Document Nos.4005 to 4012, all dated 12.04.1999 and the document for the preparation of Ext.A1 was purchased as Document No.4014, dated 12.04.1999 and all were purchased from the same stamp vendor. Secondly, it also accepted the plea of *non est factum* pleaded by the plaintiff, which even the thumb impression in the document would establish. The Courts below also took into account the proximity of relationship between Rajendran and the role played by Royappan to arrive at their conclusion. This is now in challenge and the second appeal is not yet admitted.

6. Aggrieved by the decree of the trial court, the plaintiff preferred First Appeal in A.S.No.31 of 2020 only to loose it on the same ground on which he had lost before the trial court. Hence, the Second Appeal. This Second Appeal is not yet admitted.

7. The learned counsel for the appellant argued that the defendant had admitted her thumb impression in Ext.A.1 and hence, it has to be held that it

is adequate enough proof to prove that Ext.A.1 is genuine besides the plaintiff had also examined both the attestors of the document and also his father-in-law Royappan as P.W.4, who had speak in unison in support of the document.

8. The submission of the learned counsel is least impressive, is it suffice to clear the cloud or suspicion that surrounds execution of Ext.A.1? Ultimately, the defendant/respondent herein is an illiterate and this is indisputable fact. Added to this, is there the date of purchase of stamp paper also serial number given to it by the stamp vendor, which has already been highlighted in paragraph No.5 above. If Ext.A.1 is perused, in page 2 which leaves considerable space between the schedule of property and the space where thumb impression of the executant is placed. Besides, the date of the stamp paper and executant coincidence the stamp paper being purchased from the same stamp vendor along with same papers purchased for the purchase of Ext.B.7 sale deed and the second page of Ext.A.1 would go to prove that the approach of the courts below is in order.

9. In conclusion, this Court finds that there is nothing on record that warrants interference by this Court invoking Section 100 C.P.C. Accordingly, this Second Appeal is dismissed. No costs.

06.07.2022

Index : Yes/No

Internet: Yes/No

CM

To

- 1.The Subordinate Judge, Sivaganai
- 2.The District Munsif cum Judicial Magistrate, Illayangudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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N.SESHASAYEE, J.,

Abr/CM

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