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S.A.No.37 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.37 of 2023

Gurumoorthy

.. Appellant

Vs.

1. Revathy

2. Baskaran

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree of the Learned 1st Additional District Judge, Tindivanam in A.S.No.21 of 2019 dated 22.08.2022 in confirming the Decree and Judgment of the Learned Additional Subordinate Judge, Tindivanam in O.S.No.76 of 2010 dated 29.08.2018 and grant such or other orders that this Hon'ble Court may deem fit under the circumstance of the case.

For Appellant : Mr.M.R.Thangavel

JUDGMENT

This second appeal has been filed as against the Judgment and Decree dated 22.08.2022 made in A.S.No.21 of 2019 on the file of the learned 1st Additional District Judge, Tindivanam, confirming the Judgment and Decree dated 29.08.2018 made in O.S.No.76 of 2010 on the file of the learned Additional Subordinate Judge, Tindivanam, thereby dismissing the suit for return of advance amount.



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2. The appellant is the plaintiff and the respondents are the defendants.

The appellant filed a suit for recovery of the advance amount to the tune of Rs.6,08,872/- with interest and to create charge over the suit schedule property. According to the appellant, the respondents agreed to sell the suit schedule property for a sum of Rs.2,750/- per cent and received a sum of Rs.5,00,100/- as advance on 10.09.2006. There was a stipulation to make a balance payment within 09.07.2007 and it was agreed by the respondents to handover the title deeds to the appellant within a stipulated period. The respondents again executed payment of consideration on 10.09.2006. However, thereafter the respondents did not come forward to execute any sale deed. Therefore, the appellant decided to get back the advance amount and filed a suit.

3. Resisting the same, the respondents filed their written statement denying the very execution of agreement for sale itself. According to them, they need not sell the suit property, since they do not require any money. There is no recital with regard to the balance payment. The referred fact that the sale agreement is in a printed format. The appellant is none other than a real estate agent. In the year 2005, the appellant informed that he would sell the suit schedule property for good price. He had obtained a copy of the title deeds



from the husband of the first respondent herein. Thereafter, the appellant insisted upon the husband of the first respondent to execute the sale deed.

When it was brought to the notice of the respondents herein, they had not given consent for the same. Therefore, the appellant has created the agreement and forged the signatures of the respondents and filed a suit.

4. On the side of the appellant, he had examined P.Ws.1 and 2 and marked Ex.A1. On the side of the respondents, they had examined D.W.1 and marked Exs.B1 to 3. The expert opinions were marked as Exs.C1 and 2 and the Court had examined C.W.1. On a perusal of oral and documentary evidences, the Trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.

5. The appellant raised the following substantial questions of law,

“A. Whether a sale agreement could be rejected on the basis of the format used when law does not prescribe drafting of a sale agreement in a specific format?

B. Whether non-mentioning of the total sale consideration in a sale agreement could lead to rejection of the said agreement when the rate per extent and the total extent is mentioned in the sale agreement?



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C. Whether it is mandatory to seek for a discretionary relief of specific performance of a contract when the agreement holder had chosen to seek for a relief of recovery of advance amount?

D. Whether the Courts below right in rejecting the claim for refund of advance amount on the basis of non-claim for enforcement of the contract?

E. Whether the Courts below right in holding the suit sale agreement is forged on the basis of the contents of the sale agreement when the Court had rejected the opinion of the handwriting expert?

F. Whether the appellate Court right in rejecting the claim to adduce additional evidence having found that there was a shadow transaction?

G. Whether the Court could presume that the witness sought to be examined would not support the plaintiff as he happens to be the relative of the defendant? ”

6. The learned counsel for the appellant would submit that though the expert opinion was accepted by the Trial Court, the first appellate Court was constrained to reject the same for the reason that admittedly, the signatures obtained were subsequent to the suit i.e, after 5 years from the date of the suit. Though, the first appellate Court does not believe the expert opinion, the first appellate Court had dismissed the appeal suit on the ground that Ex.A1 was in a printed form. Further, the appellant failed to prove the same in accordance with law. In fact, pending suit, the appellant filed an application to examine the



husband of the first respondent herein and the same was rejected on presumption. He is none other than the husband of the first respondent and father of the second respondent. The first appellate Court without going into the ground raised by the appellant, simply, on presumption, dismissed the suit.

7. A perusal of records revealed that admittedly, the respondents are the owners of the suit schedule property. According to the appellant, they agreed to sell the same for a sale consideration of Rs.2,750/- per cent and entered into an agreement for sale on 10.09.2006. On the same day, they received a sum of Rs.5,00,100/- as advance. A perusal of the recitals of the agreement for sale revealed that to perform contract time was fixed, viz., within 09.07.2007. However, the respondents failed to come forward to receive the balance sale consideration and also failed to execute the sale deed in their favour. Except the agreement for sale dated 10.09.2006, no other document was filed by the appellant in order to prove the same.

8. Whereas, the specific stand of the respondents is that the agreement itself is a fabricated one and forged their signature. Therefore, pending suit, they filed an application under Section 45 of the Indian Evidence Act to compare the signature with the handwriting expert. The signature found in



Ex.A1 was compared with the signature of the sale deed, subsequent to the suit.

It was opined that the signature found in Ex.A1 does not tally with the signatures found in the sale deed. That apart, the agreement is in a printed form. Though, there were two witnesses to Ex.A1, the appellant failed to examine any witness in order to prove Ex.A1. Though, the first appellate Court was constrained to disbelieve the expert opinion on the ground that the document which was sent for comparing the signatures are subsequent to the suit, the appellant failed to prove Ex.A1, since a plea of forgery has been taken by the respondents. Even then, the appellant did not take any steps to prove the genuineness of Ex.A1. Hence, the appellant failed to discharge his initial burden to prove the very execution of agreement for sale and advance amount allegedly paid by him. Further, the appellant did not file the suit for specific performance. He filed a suit only for recovery of money without any reasons.

9. Therefore, both the Courts below rightly dismissed the suit and this Court finds no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

10. Accordingly, this Second Appeal is dismissed. No costs.



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Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.



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To

1. The 1st Additional District Judge, Tindivanam.
2. The Additional Subordinate Judge, Tindivanam.

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