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SA.No.466 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.466 of 2010

and

MP.No.1 of 2010

Anandhan

... Appellant

- Vs -

Narayanasamy

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 17.11.2009 in A.S.No.27 of 2007 on the file of the Principal District Judge at Puducherry as confirmed the judgment and decree dated 12.02.2007 made in O.S.No.362 of 2000 on the file of the Principal Sub Judge, Puducherry.

For Appellant : Mr.G.Krishnakumar

For Respondent : Served -No Appearance

JUDGMENT

The appellant is the defendant and the respondent is the plaintiff before the Trial Court.



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2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts, which give rise to the instant second appeal is as follows:-

3. According to the plaintiff, the suit property belongs to him by virtue of a Sale Deed dated 17.03.1997. In order to sell the said property, he has executed a Power of Attorney dated 04.04.1997 in favour of the defendant. Based upon the said Power of Attorney, the defendant, who is the power agent of the plaintiff, has sold the property under two sale deeds for a total sum of Rs.5,42,700/-. In spite of selling the suit property, the defendant did not pay the sale consideration to the plaintiff. Hence, the plaintiff has come forward with a suit for recovery of a sum of Rs.5,42,700/- being the sale consideration of the suit property and also for interest from the date of the suit.

4. The said suit was resisted by the defendant by contending that he was instrumental in purchasing the property, and that the sale consideration was paid by him for the purchase of the property. Since the plaintiff did not repay the amount paid by the defendant to purchase the property, he was



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constrained to sell the property through Power of Attorney. Hence, he pleaded that he is not liable to pay the suit claim.

Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, the plaintiff examined 2 witnesses as PW1 and PW2 and marked as many as 8 documents as Exs.A1 to A8. On behalf of the defendant, 4 documents have been marked as Ex.B1 to B4 and 3 witnesses were examined as DW1 to DW3. As a Court document, 3 documents have been marked as Exs.X1 to X3.

6. After considering both oral and documentary evidence and having considered the submissions made by either side, the Trial Court decreed the suit directing the defendant to pay a sum of Rs.2,70,900/- to the plaintiff, on the finding that the defendant has not paid the sale price received from the vendor. Though the First Appellate Court confirmed the said finding, the First Appellate Court modified the decree and reduced the amount and directed the defendant to pay a sum of Rs.2,59,196/-. Aggrieved with the said order, the defendant is before this Court.



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Substantial Question of law:

7. At the time of admission on 30.04.2010, this Court has formulated the following substantial question of law:-

“1. Whether the Courts below have committed an error in holding that the non-examination of the vendors under Exs.A3 and A4 sale deeds is fatal to the defence case of the appellant/defendant?.

2. Whether the respondent/plaintiff, who has chosen to revoke the Power of Attorney given in favour of the appellant/defendant, can claim the consideration based on a document executed by the appellant/defendant subsequent to such cancellation without giving up her claim that the cancellation was valid?”

Submission of the counsel:-

8. Despite the respondent name is printed in the cause list, no one appeared on behalf of the respondent.

9. The learned counsel for the the appellant/defendant would vehemently contend that, the entire sale consideration for the purchase of the suit property for in the name of the plaintiff was paid by the defendant, and would submit that he was very much instrumental in purchasing the suit



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property. Therefore, it is the submission of the learned counsel for the appellant/defendant that the very order passed by both the Courts below is liable to be interfered with. It is also the submission of the learned counsel for the appellant/defendant that the suit as framed is not maintainable. He would further submit that, though the plaintiff has cancelled the Power of Attorney (Ex.A2), through the cancellation of Power of Attorney dated 02.08.2006 (Ex.B2), he has suppressed the said fact. Therefore, the conduct of the plaintiff has to be seen, and that taking into consideration of his surreptitious conduct, prayed to allow the Second Appeal.

10. I have given my anxious consideration to the submissions of the learned counsel for the appellant.

Analysis of the submissions:-

11. The sum and substance of the appellant's case in the Second Appeal is that whether, the defendant being the Agent of the plaintiff, has paid the purchase money to the plaintiff, who is the owner of the property. The Trial Court as well as the First Appellate Court, taking into consideration of the evidence of the plaintiff and also by relying Exs.A3 and A4-Sale



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Deeds, was of the view that the defendant has received a sum of Rs.2,15,000/- as sale consideration for 5 Kanies by virtue of Ex.A3-Sale Deed, and by virtue of Ex.A4-Sale Deed, received a sum of Rs.44,196/- for 1 Kani and 3 Kuzhis.

12. It is pertinent to note that under Section 92 of The Indian Evidence Act, in the place of written documents, the oral evidence has to be excluded. Based upon the said principle, the Trial Court has found that there are no material available in the respective Sale Deeds to prove the payment of sale money to the plaintiff. Hence, recorded the finding of fact that the defendant is liable to pay a sum of Rs.2,70,900/-. However, the First Appellate Court, as discussed hereinabove, has found that under Ex.A3, the defendant has received only Rs.2,15,000/- and under Ex.A4, he has received another sum of Rs.44,196/-. Thus, the First Appellate Court found that the defendant has received only a sum of Rs.2,59,196/- from the purchasers. Hence, modified the decree of the Trial Court and directed the defendant to pay a sum of Rs.2,59,196/-.

13. This Court is of the view that the finding of fact recorded by the First Appellate Court is based on the material and evidences available on



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record. It is pertinent to mention here that, there are no contra evidence projected by the defendant before the Court below to substantiate any alleged payment. Therefore, this Court is of the view that there are no material available to deviate from the said concurrent finding. Thus, the substantial question of law are decided against the appellant.

14. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected MP is closed.

08.11.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Principal District Judge,
Puducherry.

2. The Principal Sub Judge,
Puducherry.



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C.KUMARAPPAN,J

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