



WEB COPY



S.A.No.509 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.509 of 2010

S.M.Ravindranathan

.. Appellant/Plaintiff

Vs.

G.Vijaya

..Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, allow the Second Appeal setting aside the Decree and Judgment in A.S.No.8 of 2008 dated 17.03.2010 on the file of the Principal District Judge, Krishnagiri confirming the decree and the Judgment in O.S.No.56 of 2007 dated 23.06.2008 on the file of Principal Subordinate Judge, Krishnagiri and grant such other relief.

For Appellant : Mr.R.T.Sundari

For Respondent : Mr.P.Dinesh Kumar
for Mr.M.Sriram



S.A.No.509 of 2010

JUDGMENT

The appellant herein was the plaintiff before the Trial Court. The respondent herein was the defendant.

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

The brief facts which give rise to the instant Second Appeal:

3. The suit property belongs to the wife of the plaintiff namely Jayalakshmi, and that for their urgent requirement, requested the defendant to provide a loan of Rs.1,25,000/-. For which, the defendant requested the plaintiff to execute the sale deed. Hence, the sale deed was executed in favor of the defendant on 13.10.2000 as a security. On 15.10.2000, only after two days, both plaintiff and the defendant entered into the sale agreement for reconveyance of the schedule mentioned property and an advance amount of Rs.5000/- was paid and the balance amount was agreed to be paid within a period of 78 months (6 ½ years). Since the defendant evaded to execute the sale deed, the plaintiff came forward with the suit for specific performance.



S.A.No.509 of 2010

4. The above said pleadings were resisted by the defendant and they would state that the sale, which took place on 13.10.2000, was an outright sale. In pursuance thereof, the plaintiff delivered the vacant possession to the defendant. The defendant would also submit that there was no loan transaction between the plaintiff and the defendant and the sale deed was not executed as a security. It is the further submission of the defendant that no sale agreement dated 15.10.2000 was entered into between the plaintiff and the defendant. Hence, the defendant prayed to dismiss the suit.

5. Before the Trial Court, the Trial Court framed the following seven issues:

1. *Whether the sale agreement dated 13.10.2000 entered in between the plaintiff and defendant is a valid one?*
2. *Whether the plaintiff is always ready and willing to perform his part of the contract?*
3. *Whether the sale transaction entered in between Jayalakshmi and defendant is an out right sale?*
4. *Whether there is no cause of action?*
5. *Whether the plaintiff is in possession and enjoyment of the suit schedule property?*
6. *Whether the plaintiff is entitled a specific performance of agreement of sale as prayed for?*



S.A.No.509 of 2010

7. *To what relief the plaintiff is entitled?*

Evidence and Documents:

6. In order to prove the plaintiff's case, he has marked four documents as Ex.A1 to Ex.A4 and the plaintiff himself examined himself as P.W.1. On behalf of the defendant, the defendant examined himself as D.W.1 and as second witness, the scribe of the sale agreement, Ex.A2, was examined as D.W.2. On behalf of the defendant, seven documents were marked as Ex.B1 to Ex.B7.

Finding of the Courts below:

7. The Trial Court, having considered the submissions on either side and on relying the oral and documentary evidence, has ultimately found that Ex.A2-Sale agreement dated 15.10.2000 was a forged one and that the plaintiff did not prove the said sale agreement.

8. Aggrieved by the same, the plaintiff preferred the First Appeal and the First Appellate Court had also confirmed the findings of the Trial Court.



S.A.No.509 of 2010

9. Aggrieved by the same, the plaintiff has approached this Court by way of Second Appeal.

Submissions of the either side counsel:

10. The learned counsel appearing for the appellant/plaintiff would vehemently contend that, both the Courts below have failed to take note of evidence of D.W.2, wherein, D.W.2, in categorical terms, has admitted the execution of Ex.A2-Sale Agreement. It is the further submission of the learned counsel for the appellant/plaintiff that the evidence of P.W.1 namely the plaintiff would prove the loan transaction between the plaintiff and the defendant. It is also further contended that when D.W.2 admits that the signature found in Ex.A2-Sale agreement is that of the plaintiff, the Trial Court ought to have decreed the suit. Hence, the learned counsel for the appellant/plaintiff would pray to allow the Second Appeal.

11. Per contra, the learned counsel for the respondent/defendant would submit that the findings recorded by both the Courts below are based upon the materials, more particularly, the evidence of D.W.2. According to the learned counsel for the respondent/defendant, D.W.2



S.A.No.509 of 2010

during his examination had stated that he has written only the 1st and 3rd pages, whereas, the 2nd page was not at all written by him.

12. It is the submission of the learned counsel for the respondent/defendant that only by relying upon the material admission made by D.W.2, the Trial Court disbelieved Ex.A2-Sale Agreement. The learned counsel would further contend that even for the pre-suit notice, while sending reply, the defendant had disputed the very execution of Ex.A2-Sale Agreement. Still, the plaintiff did not think fit to examine the attester. Therefore, he would contend that the findings recorded by both the Courts below are based on material evidence. Hence, prayed to dismiss the appeal.

13. I have given my anxious consideration on either side submissions and perused the orders of both the Courts below. While perusing the same and from the submissions made by the learned counsel for the appellant/plaintiff, what emerges for discussion is that, whether the plaintiff has proved Ex.A2-Sale Agreement? In this regard, except P.W.1, namely the plaintiff, no other witness was examined. As rightly contended by the learned counsel for the respondent/defendant, that for



S.A.No.509 of 2010

the pre-suit notice Ex.A3, the defendant has sent reply under Ex.B2.

According to the submission of the learned counsel for the respondent/defendant, while sending Ex.B2-Reply Notice, the respondent/defendant has categorically disputed the very execution of the sale agreement. In this regard, the Trial Court found that though there was a reply under Ex.B2, disputing the very execution of the sale agreement, non examination of the attesor of Ex.A2-Sale Agreement would only result in the finding that Ex.A2-Sale Agreement has not been proved. This Court is in full agreement with the findings of the Trial Court.

14. Apart from that, the learned counsel for the respondent/defendant would also invite the attention to the admission made by D.W.2 scribe. According to the admission of D.W.2, in the three pages sale agreement, he has written only the 1st and 3rd pages, whereas the 2nd page was not at all written by him. All these factual aspects were taken into consideration by both the Courts below and ultimately found that Ex.A2-Sale Agreement is a forged one.



S.A.No.509 of 2010

15. It is pertinent to mention that the Trial Court relied upon the ratio laid down in ***N.Kamalan (Dead) and ors. Vs. Ayyasamy and ors. [AIR 2001 SC 2802]***, in order to support the findings that in the case of denial of any execution of agreement, the examination of attesor is very much essential and not the examination of the scribe. The Trial Court has also relied upon the ratio laid down in ***Kannu Reddia Vs. T.Palanirajan and ors. [1996 (1) MLJ 118]***, that the plaintiff must succeed on his own case, not on the fault of the defendant.

16. Therefore, this Court is of the firm view that since the agreement was disputed by the plaintiff, the burden is fully upon him to prove the same. Whereas, he miserably failed to prove the same. Once Ex.A2-Sale Agreement is not proved, as a natural concomitant, the plaintiff is not entitled to have any relief of specific performance. Therefore, this Court is of the firm view that there are no materials available to deviate from the findings recorded by both the Courts below and that there are no questions of law much less any substantial question of law arises in this case. Hence, the second appeal is dismissed.



S.A.No.509 of 2010

17. At this juncture, the learned counsel for the appellant/plaintiff would submit that at the time of filing the suit, he has deposited some amount before the Trial Court. In the event of such deposit is made, the appellant/plaintiff is entitled to withdraw the same by filing appropriate application, subject to the availability of the amount. There are no order as to costs.

09.11.2023

mac

Internet : Yes/No

Index: Yes/No

To

- 1.The Principal District Judge, Krishnagiri
2. The Principal Subordinate Judge, Krishnagiri
- 3.The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



S.A.No.509 of 2010

C.KUMARAPPAN,J.

mac

S.A.No.509 of 2010

09.11.2023