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S.A.No.1374 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HON'BLE MR. JUSTICE C.KUMARAPPAN

S.A.No.1374 of 2011

1.Gunaboshanam

2. Robin David Kumar

... Appellants

(2nd Appellant brought on record
as LR of the deceased sole appellant
vide order of court dated 28.03.2016 made
in M.P.Nos. 1 to 3 in S.A.No.1374 of 2011)

Vs.

1.Helan Paul

2.Augustus

3.Anbu Priceilla

4.Anbu Saral

... Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the learned Subordinate Judge, Athur dated 27.01.2011 made in A.S.No.3 of 2009 reversing the judgment of learned District Munsif, Athur made in O.S.No.230 of 2005.

For Appellants : Mr.S.Saravana Kumar

For Respondents : Mr.Ma.Pa.Thangavel



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JUDGMENT

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The instant second appeal has been filed at the instance of the plaintiff. The parties will be referred to according to their litigative status before the trial Court.

The brief facts which give rise to this second appeal are as follows:

2.The plaintiff and first defendant's husband are siblings. It is the case of the plaintiff that the first defendant's husband executed a sale agreement dated 03.06.2001 agreeing to sell the suit property for a total sale consideration of Rs.61,000/-. The time for performance was stipulated in the sale agreement as 4 years 27 days and the sale deed is to be executed on or before 30.06.2005. The plaintiff further submits that on the date of sale agreement, she paid an advance amount of Rs.31,000/- and on 15.09.2001 and 20.01.2002, she paid remaining amount of Rs.15,000/- and Rs.14,000/- respectively and there was only a sum of Rs.1,000/- balance to be paid to her brother Baskar Loganathan, who is the husband of the first defendant. It appears that Baskar Loganathan died on 23.09.2002 and thereafter, the plaintiff has issued a legal notice in the month of April 2005. Since Baskar



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Loganathan's legal heirs, who are defendants herein, have not come forward to execute the sale deed, the plaintiff has filed a suit in O.S.No.230 of 2005 on the file of learned District Munsif, Athur.

3. The said suit was resisted by the defendants by contending that there was no necessity for Baskar Loganathan to sell the property. It is the further contention of the defendants that there was no agreement for sale between the plaintiff and the first defendant's husband. The defendants have also contended that plaintiff has not at all been ready and willing to have the sale deed in their favour.

Evidence and documents:

4. Before the trial Court, on the side of the plaintiff, the plaintiff examined herself as PW1 and one Arulselvam and Chinnathambi were examined as Pws 2 and 3 and marked 28 documents as Exs.A1 to A28. On the side of the defendants, five witnesses were examined as DW 1 to DW5 and 39 documents were marked as Exs.D1 to D39.

5. The trial Court, after having considered all the oral and documentary evidence, decreed the suit. Aggrieved over the same, the defendants have preferred an appeal wherein the first Appellate Court has



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disbelieved the very sale agreement and allowed the appeal thereby dismissed the suit for specific performance. Aggrieved over the same, the plaintiff is before this Court by way of this second appeal.

Substantial questions of law:

6. On 06.01.2012, at the time of admission of the Second Appeal, this Court has formulated the following substantial questions of law for consideration:

“1. Whether the learned Subordinate Judge was right in holding that Ex.A1 agreement has not been proved as required under Law without considering the evidence of Pws 1 to 3 as a whole?

2. Whether the learned Subordinate Judge was right in reversing the well considering judgment of the trial Court without assigning any reason as to why he is unable to agree with the findings of the learned District Munsif?”

7. The above substantial questions of law are in respect of the validity of Ex.A1 sale agreement.

8. According to the plaintiff, the sale agreement Ex.A1 was executed on 03.06.2001. The document which has been filed before this Court as a sale agreement is admittedly a typed document. The first Appellate Court



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has elaborately dealt with the evidence of PW1, who is the plaintiff herein and arrived at the conclusion that even according to the plaintiff the sale agreement was executed in plaintiff's house on the instruction of the first defendant's husband, who is none other than her brother and that said sale agreement was written by one Arulselvam (PW2). Based upon the above admission, the first Appellate Court came to the conclusion that the very execution of the agreement, one by way of typed document and another by way of hand written would cause a serious doubt and agreed with the case of the defendants that the sale agreement was not at all executed by the first defendant's husband. The very reasoning given by the first Appellate Court is plausible and probable and apart from that, when there are wild contradictions between the chief examination and cross examination of PW1 as to the nature of the sale agreement i.e., one is typed and another is hand written would only exemplify the falsity over the plaintiff's case. Therefore, this Court do not find any perversity in disbelieving the sale agreement executed by the first defendant's husband.

9. Apart from that, the learned counsel for the defendants would also submit that when the plaintiff allegedly has handed over a sum of



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Rs.60,000/- as on 20.01.2002 waiting for three years to pay the remaining Rs.1000/- would further vindicate the case of the defendants. The said contention of the learned counsel for the defendants cannot be discountenanced.

10. On a perusal of the record, it is seen that the legal notice was issued only on 25.04.2005, namely after a period of three years from the date of last payment on 20.01.2002. When only Rs.1000/- was due on the date of third payment, the plaintiff could have executed the sale deed by paying the said amount immediately or within a reasonable time. Therefore, the long delay in sending the legal notice and filing the suit for specific performance would also cause serious suspicion over the plaintiff's case. Therefore, this Court is of the indubitable view that there is no infirmity in the finding of fact recorded by the first Appellate Court as to the validity and legality of the Ex.A1 agreement, and the same is based on materials/evidence. Further, this Court do not find any perversity in the said finding and that apart, from the submissions made by the learned counsel for the appellant, this Court do not find any material to deviate from the finding



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rendered by the first Appellate Court. Thus, in view of the above detailed discussion, both the substantial questions of law are answered in favour of the defendants.

11. In the result, the second appeal is dismissed. No costs.

20.12.2023

Index: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order
gpa

To

1. The Subordinate Judge
Athur
2. The District Munsif
Athur
3. The Section Officer
V.R.Section, High Court, Madras.



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C.KUMARAPPAN.J.,

gpa

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