



S.A.No.575 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.575 of 2021

and

C.M.P.Nos.12294 of 2021 & 136 of 2023

Chandra Rajan

... Appellant

Vs.

G.Ramasamy

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree dated 12.02.2021 passed in A.S.No.25 of 2019 on the file of the Principal District Court, Coimbatore, confirming the Judgment and Decree dated 11.01.2019 made in O.S.No.166 of 2011 on the file of Subordinate Court, Pollachi.

For Appellant : Mr.B.Gopalakrishnan

For Respondent : Mr.L.Mouli



S.A.No.575 of 2021

WEB COPY

JUDGMENT

The Second Appeal has been filed by the plaintiff/appellant, who lost his case before both the Courts below.

2. The appellant/plaintiff had filed the Suit seeking for specific performance. The suit was dismissed and the same was confirmed by the first appellate Court. Aggrieved against the same, the appellant/plaintiff has filed this present Second Appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.

4. The case of the plaintiff is as under:-

4.1. The suit property belongs to the defendant by virtue of the sale deed dated 16.09.1986. The defendant and the plaintiff had entered into an agreement of sale on 08.04.2011, by which the defendant agreed to sell the property (6.25 acres of agriculture land) for a sum of Rs.3,00,000/-. The defendant had received a sum of Rs.2,00,000/- as advance amount from the plaintiff on the same day at the residence of plaintiff at Udumalpet and



S.A.No.575 of 2021

the plaintiff agreed to pay the balance sale consideration within the stipulated period of three months.

4.2. The plaintiff was ready and willing to perform his part of the contract, whereas, the defendant was denying to register the sale deed as per the sale agreement. Thereby, on 30.06.2011, the plaintiff had sent a legal notice to the defendant, whereas the defendant had not sent any reply to the same. Since the defendant was postponing the execution of the sale deed, the plaintiff has filed the suit for specific performance

5. The defendant has filed the written statement contending that one of his daughters was married by the plaintiff and the plaintiff had concocted the sale agreement with the help of his close associates with an intention to grab the suit property and hence prayed for dismissal of the suit.

6. On perusal of the plaint and written statement, the trial Court had framed the following issues :-

1. Whether the plaintiff is entitled for specific



S.A.No.575 of 2021

performance as prayed for?

2. Whether the sale agreement is true or not?
3. Whether the plaintiff was ready and willing to perform his part of the contract ?
4. To what other relief the plaintiff is entitled?

7. During the trial, on the side of the plaintiff, the plaintiff examined himself as PW1, one Kaliasammal was examined as PW2 and one Sivakumar was examined as PW3 and Ex A1 to A5 were marked. On the side of defendant, the defendant examined himself as DW1, one Subramaniam was examined as DW2, one Kalaiselvi was examined as DW3, one Thangavel was examined as DW4 and one Aruchamy was examined as DW5 and one Mysamy was examined as DW6 and Ex B1 to ExB14 were marked.

8. The trial Court having found that the market value of the property was more than Rs.30,00,000/- and that the plaintiff, who is the son-in-law of the defendant, had fabricated the sale agreement by forging the signature of the defendant, had dismissed the suit by stating that the plaintiff has not proved his case of payment of the advance amount. Against the



S.A.No.575 of 2021

judgement and decree passed by the trial Court dated 11.01.2019, the plaintiff has filed appeal before the Principal District Court, Coimbatore.

9. The first appellate Court, based on the grounds of appeal, had framed the following points for determination.

1. Whether the finding of the trial Court with regard to the fabrication of the document namely the sale agreement is correct or not?
2. Whether the plaintiff is entitled for specific performance?
3. Whether the judgment and decree passed by the trial Court is liable to be interfered?

10. The first appellate Court, after carefully perusing the documents and evidence on record, found that the defendant had contented that the signature in the sale agreement was forged and he was always ready and willing to refer the document for expert opinion and further he had also produced contemporaneous documents, whereas the plaintiff was not willing to send the document for expert opinion and later, on perusing both the documents under Section 73 of the Evidence Act, the first appellate Court had



S.A.No.575 of 2021

found that the document Ex.A1 is a fabricated document and thereby, dismissed the appeal, confirming the judgement and decree passed by the trial Court in O.S.No.166 of 2011 dated 09.03.2012. Aggrieved against the same, the present Second Appeal has been filed.

11. The dispute is between a son-in-law and a father-in-law. The plaintiff, who is the son-in-law of the defendant claims to have entered into an agreement of sale, Ex.A1 with the defendant and seeks the relief of specific performance. A perusal of the judgments rendered by the courts below reveals that the suit property belongs to the defendant and he had disputed the signature found in the alleged agreement of sale, Ex.A1, however, the plaintiff had not taken any steps for sending the document for obtaining handwriting expert's opinion to prove his case and thereupon, the courts below have perused the document and found that a perusal of the document even with bare eyes would disclose that there exists much variation between the admitted signature of the defendant and the signature found in Ex.A1.



S.A.No.575 of 2021

WEB COPY

12. In short, both the Courts below having found that the defendant had taken a stand that his signature was forged, the plaintiff had not taken any steps to refer the signature for expert opinion and later, on perusing both the documents under Section 73 of the Evidence Act, found that the Ex.A1 was a forged one, had dismissed the suit.

13. Having carefully analysed the materials available on record and perused the judgments of both the Courts below, this Court does not find any illegality or perversity in the findings of the Courts below. Further this Court also found that no substantial question of law is involved to admit this second appeal.

14. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under :-

*"23. Sub-section (1) of **Section 100** of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question*



S.A.No.575 of 2021

of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."



S.A.No.575 of 2021

15. In view of the above, sans any substantial question of law, the Second Appeal fails and the same is dismissed confirming the concurrent findings rendered by the Courts below. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.09.2023

ham/ssk

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The Principal District Court, Coimbatore.
2. The Subordinate Court, Pollachi.
3. The Section Officer, VR Section, High Court of Madras.



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S.A.No.575 of 2021

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