



S.A.No.10 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 10 of 2017 and
C.M.P.No.177 of 2017

N.Palanisamy

...Appellant

Vs.

Mariappan (Died)

- 1.Velu
- 2.Radhakrishnan
- 3.Jaganathan
- 4.Chinnammal
- 5.Sampooranam
- 6.Palaniammal

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.57 of 2013 dated 27.01.2015 on the file of the Principal District Judge, Salem confirming the judgment and decree passed in O.S.No.115 of 2006 dated 25.08.2012 on the file of the Principal Subordinate Judge, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondents : No appearance



S.A.No.10 of 2017

JUDGMENT

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The unsuccessful plaintiff in the suit for specific performance is the appellant herein. The deceased Mariappan is the father of the respondents 1 to 3, 5 & 6 and husband of 4th respondent. The appellant herein filed the suit in O.S.No.115 of 2006 against one Mariappan and the respondents 1 to 3, seeking performance of agreement dated 20.04.2005. The said suit was dismissed by the Trial Court. The First Appeal filed by the appellant in A.S.No.57 of 2013 was also dismissed. Hence, the unsuccessful plaintiff is before this Court.

2. According to the appellant/plaintiff, he entered into a sale agreement with the respondents 1 to 3 and their father Mariappan on 20.04.2005, for purchase of 543½ sq. ft. of land. The agreed sale consideration was fixed at Rs.1,35,875/-. On the date of agreement itself, the appellant paid the advance of Rs.50,000/-. Subsequently, the agreement vendors received a further sum of Rs.10,000/- on 09.06.2005 and made an endorsement on the backside of the sale agreement. The time fixed for performance was 3 months. The 2nd respondent / 3rd defendant sent a notice on 10.02.2006, denying the execution of suit sale agreement and the appellant sent a reply on 17.02.2006, asserting genuineness of the agreement. Thereafter, the appellant issued a suit notice to all the respondents / defendants on 21.02.2006, seeking execution of the sale



S.A.No.10 of 2017

deed in pursuance of the suit sale agreement. The 2nd respondent sent a reply notice on 23.02.2006, with false averments. Hence, the suit was laid for specific performance with alternative prayer for recovery of advance.

3. The 2nd respondent/ 3rd defendant filed a written statement denying the execution of suit sale agreement and he also denied the payment of advance of Rs.50,000/- and further payment of Rs.10,000/- by the appellant to the respondents. The 2nd defendant remained exparte. The 1st and 4th defendants filed a written statement stating that when they approached the appellant / plaintiff for the purpose of borrowing, he obtained their signatures in the blank papers. It was further averred by them that they had not received any amount from the appellant and the suit had been filed by utilizing the signature of the defendants 1, 2 & 4 obtained in the blank papers.

4.The appellant was examined as P.W.1. The attester to the suit sale agreement was examined as P.W.2. The attester to the endorsement found in the suit sale agreement was examined as P.W.3. The scribe of the agreement was examined as P.W.4. The second respondent was examined as D.W.1 and the third respondent was examined as D.W.2. On behalf of the appellant, 12 documents were marked as Ex.A1 to Ex.A12. No documents were marked on



S.A.No.10 of 2017

behalf of the respondents.

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5. The trial Court on appreciation of the oral and documentary evidence available on record, disbelieved the evidence of the attester to Ex.A1 and the endorsement found thereof namely P.W.2 and P.W.3 and came to the conclusion that the appellant failed to prove the due execution of the suit sale agreement. Therefore, the suit was dismissed by the Trial Court. Aggrieved by the same, the appellant preferred an appeal in A.S.No.57 of 2013 on the file of Principal District Judge, Salem. The first appellate Court concurred with the findings of the Trial Court. Aggrieved by the same, the appellant is before this Court by way of Second Appeal.

6. At the time of admission of Second Appeal, this Court formulated the following substantial question of law;

“Have not the Courts below committed an error of law in placing the onus on the appellant to prove the execution and contents of Ex.A1 when the defendants did not dispute the execution?”

7. Elaborating the substantial questions of law framed at the time of admission, the learned counsel for the appellant submitted that the execution of suit sale agreement was denied only by the 2nd respondent and the execution



S.A.No.10 of 2017

was admitted by the other respondents. In such circumstances, the dismissal of the suit by the Courts below in its entirety is not maintainable in law. The learned counsel further submitted that the respondents, except the second respondent, though denied that they never entered into an agreement of sale, admitted that there was a loan transaction with the appellant / plaintiff. In such circumstances, the Courts below ought to have directed the respondents to pay the amount received by them under the suit transaction.

8. The second respondent has denied the execution of suit sale agreement and he has raised a specific plea that the suit sale agreement is a forged document. As far as the defence of 1st , 3rd and 4th defendants are concerned, they raised a plea that when they approached the appellant for the purpose of borrowing, he obtained their signatures in the blank papers and the same had been utilized to file the suit for specific performance. Therefore, the contention raised by the learned counsel for the appellant as if the other respondents /defendants admitted the execution of suit sale agreement cannot be accepted. In such circumstances, it is for the appellant to prove the due execution by leading acceptable evidence. In order to prove the execution of suit sale agreement, the appellant examined the attester to Ex.A1 agreement as P.W.2 and the attester to endorsement found in the suit sale agreement was



S.A.No.10 of 2017

examined as P.W.3. Though P.W.2 and P.W.3 in their chief examination mentioned about the consideration agreed between the parties, during cross examination deposed that they did not know anything about the sale consideration agreed between the parties. In view of serious discrepancies, their evidence is not believable. Further perusal of evidence of P.W.3 would indicate that he deposed in favour of the appellant in his chief examination. But, during his cross examination he had gone to the extent of saying that he never attested. Therefore, both the Courts below on appreciation of evidence of P.W.2 and P.W.3, came to a factual conclusion that due execution of suit sale agreement Ex.A1 has not been proved. I do not see any perversity in the findings of the Courts below. The second appeal does not involve any substantial question of law and hence deserves dismissal.

9. Accordingly, the second appeal stands dismissed.

a) by confirming the judgment and decree dated 27.01.2015 passed by the learned Principal District Judge, Salem in A.S.No.57 of 2013 confirming the judgment and decree dated 25.08.2012 passed by the learned Principal Subordinate Judge, Salem in O.S.No.115 of 2006.

b) In the above facts and circumstances of the case, there is no order as



S.A.No.10 of 2017

to costs.

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c) Consequently, connected miscellaneous petition is closed.

09.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The learned Principal District Judge, Salem.
2. The learned Principal Subordinate Judge, Salem

S.SOUNTHAR, J.
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S.A.No.10 of 2017

S.A.No. 10 of 2017 and
C.M.P.No.177 of 2017

09.10.2023