



S.A.No.288 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.288 of 2017
and CMP.No.6808 of 2017

1.M.Subramani
2.S.Vinayagam
3.Velu

...Appellants

Vs.

1.G.Azhagesan
2.M.Shanmugam
3.M.Sundaram
4.M.Manokaran

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the learned Principal Subordinate Judge, Chengalpet, in A.S.No.28 of 2009, dated 10.02.2016 confirming the judgment and decree passed by the learned District Munsif-cum-Judicial Magistrate, Thirukazhukundram in O.S.No.118 of 2004, dated 29.01.2009.

For Appellants : Mr.E.Prabhu

For Respondents : Mr.M.Vijayakumar
for R1
No Appearance for R2 and R4



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JUDGMENT

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The unsuccessful defendants 1 to 3 in a suit for specific performance is the appellant. The first respondent herein filed a suit seeking specific performance of agreement dated 17.07.2003. The trial Court granted a decree for specific performance and the first appeal filed against the same was also dismissed. Aggrieved by the same, the appellants have come up by way of this second appeal.

2. According to the first respondent/plaintiff, he entered into a suit sale agreement dated 17.07.2003 for purchase of the property covered under agreement for the sale consideration of Rs.45,000/-. On the date of agreement itself, an advance of Rs.15,000/- was paid to the appellants. The balance amount of Rs.30,000/- had to be paid within a period of three months. It is further averred that on the very same day, D1 also executed a power of attorney in respect of the very same property in favour of the first respondent's brother-in-law. In order to overcome the sale agreement with the first respondent, the appellants in collusion with their brothers namely the respondents 2 to 4 created another sale agreement as if the appellants agreed to sell the very same property to the respondents 2 to 4 on 21.07.2003. On the



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very same day, the general power of attorney executed by the appellants in favour of Kasthuri Naicker was also cancelled. In these circumstances, the first respondent issued a legal notice on 23.08.2003 calling upon the appellants to execute a registered sale deed in his favour by tendering the balance sale consideration. The cheque for balance sale consideration of Rs.30,000/- was enclosed with the legal notice. However, the first respondent issued a reply notice stating that the suit agreement was executed as a security for loan transactions. In the reply notice, the appellants also relied on a previous agreement dated 03.03.2003 allegedly entered with other respondents. In such circumstances, the first respondent was constrained to file a suit for specific performance.

3. The appellants herein filed a written statement and denied execution of sale agreement with first respondent. The first respondent approached one Kasthuri Naicker for financial help. He arranged for loan from the first respondent and as a security for loan transaction, he said to have put his signature in blank stamp paper. It was the case of the appellants that the signed blank stamp papers could have been utilized by the first respondent to file the present suit. It was also averred by the appellants that the cheque



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enclosed with the legal notice of the first respondent was returned by him. The appellants also relied on previous sale agreement with the respondents 2 to 5 and submitted that in pursuance of the earlier sale agreement property was sold by them to the respondents 2 to 5 on 18.08.2003. On these pleadings, the appellants sought for dismissal of the suit.

4. Before the trial Court, the first respondent was examined as PW.1 and one of the attestors to suit sale agreement/Ex.A1 was examined as PW.2. Eight documents were marked on behalf of the first respondent as Exs.A1 to A8. On behalf of the appellants the first appellant and second respondent were examined as DW.1 and DW.2. Two documents were marked on behalf of the appellants as Exs.B1 and B2.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit sale agreement which was marked as Ex.A1 was duly proved and accordingly granted a decree for specific performance. Aggrieved by the same, the appellants herein preferred a First Appeal in A.S.No.28 of 2009 on the file of the Principal Subordinate Judge, Chengalpattu. The First Appellate Court



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confirmed the findings of the trial Court. Aggrieved by the same, the appellants have come up by way of this Second Appeal.

6. At the time of admission, this Court formulated the following substantial question of law by order dated 24.04.2017:

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”1. *Whether the Courts below are correct in law, in decreeing the suit of the respondent/plaintiff despite the sale deed marked as Ex.B2, dated 18.08.2003 in favour of D4 to D6 based upon Ex.B1-Agreement of sale deed dated 03.03.2003 which was earlier in point of time Ex.A1 dated 17.07.2023.?*

2. *Whether the Courts below are correct in law, in decreeing the suit and also dismissing the appeal inspite of not making challenge to Ex.B2-sale deed, dated 18.08.2003, executed in favour of defendants 4 to 6?.*

7. The learned counsel appearing for the appellants submitted that the Courts below overlooked Ex.B1 earlier agreement between the



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appellants and respondents 2 to 5 and sale deed executed in pursuance of the earlier agreement which was marked as Ex.B2. It is the submission of the learned counsel for the appellants that when there was an earlier agreement between the appellants and other respondents, the first respondent herein is not entitled to seek specific performance. The learned counsel further submitted that conclusions reached by the Courts below that Ex.A1-sale agreement was duly proved is vitiated by misleading evidence of PW.1 and PW.2. The learned counsel further submitted that the contradictions in the evidence of PW.1 and PW.2 creates suspicion with regard to due execution of Ex.A1 and the same has not been properly appreciated by the Courts below.

8. The appellants herein admitted the signature of the first appellant in the suit sale agreement. Their only case was that the suit sale agreement was executed as a security for loan transaction. Therefore, there was no consensus ad item between the parties to enter into the suit sale agreement. As far as a suit sale agreement is concerned, in order to prove the same, the first plaintiff/first respondent herein examined himself as PW.1 and deposed in support of the averments found in the plaint. One of the attestor to the suit sale agreement Ex.A1 had been examined as PW.2. The Courts below,



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on appreciation of oral evidence of PW.1 and PW.2 came to the conclusion that

Ex.A1 was proved. The learned counsel for the appellants submitted that there are certain contradictions with regard to the version of PW.1 and PW.2 and the averment found in the plaint. Merely, because there are certain contradictions in the evidence of PWs the document cannot be ignored unless the contradictions pointed out is going to the very foundation of case of first respondent/plaintiff. The factual finding rendered by the Courts below on appreciation of oral evidence of PW.1 and PW.2 is binding on this Court, when there is no perversity in the approach. It is also pertinent to note that before issuing a pre-suit notice by the first respondent/plaintiff on 18.08.2003, the 4th respondent/6th defendant issued a notice to the first appellant, Kasthuri Naicker and Sub Registrar stating that there was a previous agreement between the appellants and himself dated 21.07.2003. The copy of the said agreement was also enclosed along with the notice. The same was marked as Ex.A6 on behalf of the first respondent. A perusal of Ex.A6 would show that on 18.08.2003, the 6th defendant in the suit has taken a stand as if there was an agreement in respect of the very same suit property on 21.07.2003. However, in a subsequent reply issued by the appellants, it was mentioned that an agreement between the appellants and other respondents



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was entered into on 03.03.2003 itself. If really an earlier agreement was entered into between the appellants and respondents on 03.03.2003 then absolutely there was no necessity for another agreement on 21.07.2003. The existence of two sale agreements between the appellants and other respondents dated 03.03.2003 and 21.07.2003 creates a serious doubt with the defence raised by the appellants.

9. The appellants had admitted their signature in the suit sale agreement but however came up with a defence that he signed the blank stamp papers and the same could have been utilized for preparing the suit sale agreement. In order to prove there was a loan transaction between himself and the first respondent/plaintiff, he failed to examine any independent witnesses. The first appellant and the second respondent namely his brother who is a beneficiary of the subsequent sale deed executed by the appellants alone were examined as witnesses on the side of the appellants. Therefore, except interested testimony of PW.1 and PW.2, there is no other acceptable evidence available on record to support the plea of the appellants that he subscribed his signature in blank stamp papers as security for loan transaction.



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10. In such circumstances, the conclusion reached by the Courts below that the execution of Ex.A1-sale agreement was proved by the first respondent by leading acceptable evidence requires no interference by this Court.

11. In view of the discussions made earlier, the questions of law framed at the time of admission are answered against the appellants and the Second Appeal is dismissed by confirming the judgment and decree passed by the First Appellate Court.

12. In nutshell,

(a) The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.28 of 2009 on the file of the Principal Subordinate Judge, Chengalpet, dated 10.02.2016, affirming the judgment and decree in O.S.No.118 of 2004, on the file of the District Munsif-cum-Judicial Magistrate, Thirukazhukundram, dated 29.01.2009.



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(b) In the facts and circumstances of the case, there shall be no order as to costs;

(c) consequently, connected Miscellaneous Petition is closed.

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

1. The Principal Subordinate Judge, Chengalpet.
2. The District Munsif-cum-Judicial Magistrate,
Thirukazhukundram.



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S.SOUNTHAR, J.
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