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S.A.No.29 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.29 of 2017

S.Devi

...Appellant

Vs.

S.Ponnusamy

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 30.11.2015 made in A.S.No.11 of 2015 on the file of the Principal District Court, Erode, confirming the judgment and decree dated 29.10.2014 made in O.S.No.229 of 2012 on the file of the Principal Sub Court, Erode and pray to set aside the same.

For Appellant : Mr.A.K.Kumarasamy
Senior Counsel
for Mr.S.Kaithamalaikumaran

For Respondent : Mr.G.Pavendhan



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JUDGMENT

The plaintiff, who has filed a suit for specific performance, is the appellant herein. The suit filed by the appellant seeking specific performance of the agreement dated 27.05.1992 was decreed in part by the trial Court by granting alternative relief of refund of advance amount. Aggrieved by the judgment and decree of the trial Court negating the main relief of specific performance, the appellant filed the First Appeal. The First Appellate Court concurred with the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

2. According to the appellant, the respondent/defendant was initially allotted the suit property by the Housing Board under neighbourhood Housing Scheme Nasiyanoor Road, Phase-II Scheme and the allotment order was made in favour of the defendant on 24.07.1991 by Erode Unit of Tamil Nadu Housing Board. Subsequently, the defendant entered into a sale agreement with the plaintiff on 27.05.1992 agreeing to sell the suit property to the appellant after execution of proper sale deed by Housing Board in his favour. The sale consideration was fixed at Rs.60,000/- and the respondent



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received a sum of Rs.59,000/- as advance. The possession of the suit property was handed over to the appellant on the date of agreement itself. However, it was agreed that the sale deed should be executed by the respondent within three months from the date of execution of pucca sale deed by the Housing Board in favour of the respondent. The respondent also handed over all the original documents relating to the allotment of suit property, delivery of possession, pass book etc. The appellant has been in possession and enjoyment of the suit property from the date of agreement. Subsequently, on 27.05.1992 the respondent executed a registered power of attorney in favour of the appellant to strengthen the sale agreement entered into.

3. It was further averred that as per the terms of sale agreement, the appellant remitted the remaining monthly installments to the Tamil Nadu Housing Board from 16.07.1992 to 09.06.2011. The appellant/plaintiff paid a sum of Rs.2,00,137/- to the Tamil Nadu Housing Board and the last payment was paid on 09.06.2011. During April 2012, the appellant came to know that the Housing Board executed a sale deed in favour of the respondent as early as on 20.02.2012. When the appellant requested the respondent to execute a sale deed in her favour as per terms of sale agreement, he gave evasive replies.



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4. In these circumstances, the above suit was filed seeking specific performance of the suit sale agreement with alternative prayer for return of the advance amount together with the interest as well as a sum of Rs.2,00,137/- paid by the appellant to the Housing Board in pursuance of the sale agreement.

5. The respondent herein filed a written statement denying the execution of suit sale agreement. It was the case of the respondent that the appellant's father Shanmugam was a close relative and in that capacity, he was allowed to maintain the suit property. The appellant's father was allowed to collect the rental income from the suit property and pay the said amount due to the Housing Board. It was claimed that the final payment of Rs.1,15,200/- to the Housing Board was paid by the respondent through appellant's father. It was further averred that the ill motive of the appellant and her father came to light only when the respondent decided to cancel the general power of attorney executed in favour of the appellant. During the course of enquiry conducted by the Police at the instance of appellant's father, the respondent acquired knowledge about the concocted suit sale agreement prepared by the appellant.



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6. The respondent has taken a definite stand that the appellant concocted the suit sale agreement by forging his signature. The parties went to the trial and the appellant was examined as PW1. The scribe of suit sale agreement was examined as PW2. On behalf of the appellant, 23 documents were marked as Ex.A1 to Ex.A23. The respondent was examined as DW1. Two documents were marked on behalf of the respondent as Ex.B1 & Ex.B2. The expert witness namely, Assistant Director of the Forensic Laboratory, Kaniyakumari, was examined as DW2. The opinion of handwriting expert was marked as Ex.C1 through DW2.

7. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the signature found in the suit sale agreement was not that of the respondent and therefore, the same had not been proved. However, the trial Court by taking into consideration the power deed executed in favour of the appellant as Ex.A15 which was admitted by the respondent and also the original receipts produced by the appellant for having paid the installment to the Housing Board had rendered a finding that the appellant paid a sum of Rs.2,00,137 towards installments to the Housing Board on behalf of the respondent. Therefore, the



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trial Court granted a decree in favour of the appellant by directing the defendant to repay a sum of Rs.2,00,137 at the rate of 6% interest p.a. The trial Court also granted a decree for charge over the suit property till the repayment of the amount.

8. In view of the fact that the possession of the appellant is admitted, a permanent injunction was also granted in favour of the appellant against the defendant till legal steps are taken for recovering the possession. Aggrieved by the portion of the decree dismissing the main relief of specific performance, the appellant filed an appeal in A.S.No.11 of 2015 on the file of the Principal District Court, Erode.

9. The respondent herein on his part filed a Cross Appeal challenging the portion of the decree that was passed against him. The first Appellate Court concurred with the findings of the trial Court and dismissed the appeal filed by the appellant. The First Appellate Court partly modified the decree passed by the trial Court while directing the respondent to pay a sum of Rs.2,00,137/- with 6% interest as ordered by the trial Court. Aggrieved by the said judgment and decree, the appellant has filed this Second Appeal.



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10. At the time of admission, this Court formulated the following substantial question of law:

“Whether the Courts below are right in holding that Ex.A14 (unregistered sale agreement dated 27.05.1992) is invalid without considering the legal position that the amendment to Section 17 of the Registration Act, with regard to compulsory registration of the sale agreements came into force only in the year 2001?”

11. Both the Courts below negated the main prayer for specific performance mainly on the ground that the suit sale agreement relied by the appellant is not a genuine document. The respondent in his written statement specifically denied his signature found in the suit sale agreement. The disputed signature of the respondent in the suit sale agreement was compared with the admitted signature of the respondent found in the general power of attorney, which was marked as Ex.A15. The handwriting expert was examined as DW2 and his report was marked as Ex.C1. The handwriting expert in his evidence clearly deposed that there are lot of differences between the disputed signature and admitted signature with regard to the style, flow etc.



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12. A perusal of the report of the handwriting expert, which was marked as Ex.C1, it is found that the expert compared the respondent's signature found in the suit sale agreement with the admitted signature and mentioned minute details and analyzed various differences. Though the learned Senior Counsel appearing for the appellant submitted that the expert opinion is not binding on the Court and the Court is at liberty to compare the disputed signature with the admitted signature, I do not want to venture into such comparison, in view of the fact that expert in his report analyzed various points of differences in detail and reached the final conclusion that the signature found in the suit sale agreement is not that of the respondent. Since expert's final conclusion is based on the sound reasoning, this Court prefers to accept the same.

13. In fact both the Courts below by accepting the expert opinion came to the conclusion that the suit sale agreement was not a genuine document. Hence, I do not find any legal ground to interfere with such concurrent finding of fact by the Courts below. Once this Court came to the



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conclusion that the suit sale agreement is not a genuine document and the signature found thereon is not that of the respondent, the dismissal of the suit in respect of the main relief of specific performance need not be disturbed.

14. Apart from the above reasoning, the first Appellate Court also pointed out that the suit sale agreement was prepared in insufficient stamp papers with the face value of Rs.5/-. It has also pointed out the ink used for writing the name of the plaintiff on the stamp paper was different from the ink used by stamp vendor for putting his signature.

15. The first Appellate Court also observed that since the suit sale agreement is executed in an insufficient stamp paper, the same is hit by Section 35 of the Indian Stamp Act and consequently, the same cannot be relied on for any purpose. The trial Court erroneously observed that unregistered sale agreement cannot be admitted in evidence. Actually it had referred to only Section 35 of the Indian Stamp Act, which relates to bar of admission of an unstamped and insufficiently stamped document. However, the First Appellate Court rightly held that the suit sale agreement could not be looked into for any purpose, as it was insufficiently stamped document. Even



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if the sale agreement is an unregistered one, still it can be pressed into service in the suit for specific performance for contract. The bar is only with regard to reliance on the said document for part performance. However, in the case on hand, the suit sale agreement is not only unregistered but it is also an insufficiently stamped document. In such circumstances, the same is hit by the total bar under Section 35 of the Indian Stamp Act and it cannot be looked into for any purpose.

16. Even otherwise, both the Courts below correctly came to the conclusion that the suit sale agreement was not signed by the respondent based on evidence of DW2 and Ex.C1. This Court already came to the conclusion that the said factual findings require no interference by this Court while exercising jurisdiction under Section 100 of Code of Civil Procedure.

17. Accordingly, the question of law framed at the time of admission is answered that Section 17 of the Registration Act is not a bar for using suit sale agreement in a suit for specific performance of contract. However, in view of the factual findings rendered by the Courts below that the suit sale agreement was not signed by the respondent, the final decision of the



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Courts below negating the main relief of specific performance, requires no interference by this Court.

18. In view of the discussion made earlier, the Second Appeal is dismissed by confirming the judgment and decree passed by the Courts below.

a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below..

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

11.10.2023

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

To

- 1.The Principal District Court, Erode.
- 2.The Principal Sub Court, Erode.



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S.SOUNTHAR, J.
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