



S.A.No.533 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.533 of 2017

I.Madhaiyan

...Appellant

Vs.

Saroja

...Respondent

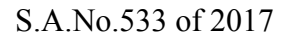
Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 07.12.2015 in A.S.No.83 of 2014 on the file of the Principal District Judge, Salem, reversing the judgment and decree dated 19.04.2013 in O.S.No.202 of 2010 on the file of the First Additional Subordinate Judge, Salem and allow the suit and grant the relief.

For Appellant : Mr.M.Ravi

For Respondents : Mr.R.Marudhachalamurthy

J U D G M E N T

The unsuccessful plaintiff before the First Appellate Court is the appellant before this Court. The appellant filed a suit seeking recovery of balance advance amount payable under sale agreement. The suit was decreed



2. According to the appellant, the defendant/respondent, who is the mother-in-law of the plaintiff, entered into a sale agreement with the plaintiff on 03.12.2009 and agreed to purchase the suit property for the sale consideration of Rs.6,06,000/- . It was averred that on the date of sale agreement itself, a sum of Rs.6,50,000/- was paid to the respondent as advance and the balance amount of Rs.44,000/- agreed to be paid within one year. It was further averred by the appellant that two or three days from the date of sale agreement at the instance of son of respondent, she expressed her inability to sell the suit property to the appellant and agreed to return the advance amount. The respondent returned a sum of Rs.3,50,000/- on various dates to the appellant, the balance amount of Rs.2,56,000/- remained unpaid. Therefore, the appellant issued a legal notice on 16.06.2010 to the respondent calling upon her to execute a sale deed. However, the respondent came up with a false reply. In these circumstances, the appellant was constrained to file a suit for recovery of balance advance amount payable by the respondent together with interest.



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3. The respondent herein filed a written statement denying execution of sale agreement and receipt of any advance amount under the alleged sale agreement. It was further averred in the written statement that the appellant's wife filed a suit for partition in O.S.No.230 of 2010 on the file of the II Additional Subordinate Court, Salem, claiming share in the suit property. The appellant herein taking advantage of illiteracy of the respondent had come up with the present suit.

4. Before the trial Court, the appellant was examined as PW.1 and one of the attestors to Ex.A1/sale agreement was examined as PW.2 on behalf of the appellant and eleven documents were marked as Exs.A1 to A11. On behalf of the respondent, the defendant was examined as DW.1 and her son another attestor to Ex.A1 was examined as DW.2 and six documents were marked as Exs.B1 to B6.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant was entitled to the decree as prayed for and accordingly decreed the suit. Aggrieved by the same, the respondent preferred an appeal in A.S.No.83 of 2014 on the file of the Principal District Judge, Salem. The First Appellate



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Court on re-appreciation of evidence, came to the conclusion that the appellant failed to prove due execution of Ex.A1-sale agreement and the endorsement thereon. Therefore, the first Appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the unsuccessful plaintiff has come up by way of second appeal.

6. The learned counsel appearing for the appellant submits that due execution of Ex.A1-sale agreement and the endorsement thereon were duly proved by the appellant by examining one of the attestors to the sale agreement and hence, the first Appellate Court erred in reversing the well considered finding of the trial Court.

7. In order to prove due execution of Ex.A1, the appellant was examined as PW.1 and one of the attestors to the document was examined as PW.2. The first Appellate Court on appreciation of the evidence of PW.1 who is the interested testimony, held that much weightage could not be attached to the testimony of P.W.1. The first Appellate Court after considering evidence of PW.2 observed that he not even mentioned anything about attestation of the documents by other attestor namely DW.2. In fact, the other attestor was examined as DW.2 by the respondent and he denied his signature in the suit



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sale agreement. When PW.2 was examined, he had not mentioned anything about attestation of the sale agreement by DW.2, he only deposed of his own attestation. The first Appellate Court by pointing out material contradictions in the evidence of PW.2 in his cross examination disbelieved his evidence. The respondent entered the box and denied execution of suit agreement. The other attester to the sale agreement namely DW.2 entered the box and denied his signature. In such circumstances, the appellant/plaintiff should have taken steps to compare the signature of the respondent found in the suit sale agreement with the admitted signatures. However, for the reasons best known to the appellant, he has not taken steps to send the documents for opinion of handwriting expert.

8. In such circumstances, the appellant failed to prove that the suit sale agreement was executed by respondent after receiving the advance amount as claimed by him. Therefore, the first Appellate Court on appreciation of evidence available on record, came to the conclusion that the appellant failed to prove due execution of sale agreement and his entitlement to get back the alleged balance advance amount thereunder. The said factual finding is binding on this Court in the absence of any perversity.



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9. In such circumstances, I do not see any substantial questions of law to entertain the second appeal. Accordingly, the second appeal is dismissed by confirming the findings of the Courts below.

10. In nutshell,

The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.83 of 2014 on the file of the Principal District Judge, Salem, dated 07.12.2015, reversing the judgment and decree in O.S.No.202 of 2010 on the file of the First Additional Subordinate Judge, Salem, dated 19.04.2013 ;

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

03.11.2023

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



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1. The Principal District Judge, Salem.
2. The First Additional Subordinate Judge, Salem.

S.SOUNTHAR, J.
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