



S.A.No.636 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

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

S.A.No.636 of 2023

and

C.M.P.No. 20060 of 2023

1. M.Sella

2. M.Bagiyam

3. M.Rose

4. M.Indira

... Appellants

Vs.

1. G.Raguraman

2. K.Solaiammal

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree dated 12.09.2022 made in A.S. No.29 of 2019 on the file of Additional District Sessions Court (Fast Track), Arni, confirming the Judgement and Decree dated 27.04.2018 made in O.S. No.47 of 2009 on the file of the Sub-Court, Arni, Tiruvannamalai District.



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For Appellants : R.Amardeep
for Tamizh Law Firm

JUDGEMENT

This Second Appeal has been filed against the Judgement and Decree passed by the Additional District Sessions Court (Fast Track), Arni, in A.S.No.29 of 2019 dated 12.09.2022, confirming the Judgment and Decree passed by the Sub-Court, Arni, Tiruvannamalai District, in O.S.No.47 of 2009 dated 27.04.2018.

2. The first respondent herein/plaintiff, filed the Suit seeking the relief of specific performance and permanent injunction. The suit was decreed in favour of the first respondent/plaintiff and the Appeal Suit preferred by defendants 4 to 7 & 9 was dismissed. Aggrieved against the concurrent findings of the Courts below, defendants 5 to 7 and 9 have preferred the present the present Second Appeal.

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



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4. The crux of the plaint averments is as follows:-

4.1. The suit schedule property originally belonged to the first defendant/Munusamy (died). The plaintiff and the first defendant, after mutual discussion and consent, entered into an agreement of sale on 09.03.2009, wherein the first defendant agreed to sell the suit property for a valid consideration of Rs.1,44,300/- to the plaintiff. The plaintiff paid an advance of Rs.16,000/- on the date of agreement in the presence of one Kathavarayan, who is the Son-in-law of the first defendant and one of the attesting witness to the sale agreement. The plaintiff agreed to pay the balance sale consideration of Rs.1,28,300/- within three months from the date of agreement and in turn, the first defendant had to execute the sale deed in favour of the plaintiff.

4.2. Thereafter, the plaintiff was ready and willing to pay the balance sale consideration and demanded the first defendant to execute the sale deed, whereas, the first defendant, under some pretext or other, was evading the same, despite the plaintiff had approached him several times. Thereby, the plaintiff, suspecting that the first defendant was acting with an ulterior motive and planning to violate the sale agreement, had sent a legal



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notice to the first respondent on 19.03.2009 calling upon the first defendant to receive the balance sale consideration and to complete the sale transaction and the same was received and acknowledged by the first defendant on 20.03.2009, whereas, he neither complied with the demand nor sent any reply. Hence, the plaintiff was constrained to file the Suit for specific performance of the sale agreement and injunction and since the plaintiff suspects that the first defendant was taking steps to alienate the suit property to some third parties with a view to defraud the plaintiff, the plaintiff also sought the relief of permanent injunction.

4.3. During the pendency of the suit, the first defendant died on 17.06.2009 and thereby, the plaintiff had impleaded his legal heirs the wife and daughters as defendants 3 to 9 in the suit. A direction to defendants 3 to 9 to receive the balance sale consideration and register the sale deed in favour of the plaintiff was prayed in the Suit.

5. The Second defendant/Sub-Registrar had filed the written statement contending that he is a Government Servant and he has no knowledge about the relationship of the plaintiff and the 1st defendant and



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further, no notice under Section 80(2) CPC was given to him and whatever, the document presented to him, he would register it.

6. The 4th defendant has filed the written statement and it was also adopted by defendants 3 and 5 to 9. The crux of the averments in the written statement is as under :-

6.1. The husband of the 3rd defendant/father of defendants 4 to 9 had not entered into any agreement with the plaintiff and there is no need at all for him to enter into any such agreement. Further, defendants 4 to 9 are working as teachers and since their father was not having a proper eye sight, in order to provide a secured income for their father, they had pooled in money and purchased the property in the name of their father in the year 2002 and their father do not even know about the sale agreement or about the Suit.

6.2. The plaintiff, with the help of a real estate broker had created a fabricated document using the illiteracy of the first defendant and if such an agreement had really been entered, the plaintiff would have discussed with defendants 3 to 9 about the agreement of sale or the Suit after the death of the first defendant. Defendants 3 to 9 came to know about the



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agreement, only when summons was issued to them from the Court, after the death of the first defendant. The said agreement of sale is a fabricated one and will not bind upon the defendants and hence the Suit for specific performance or any other relief is liable to be dismissed.

7. On the above pleadings, the trial Court has framed the following issues :-

1. Whether the defendants are liable to execute the sale deed as per the sale agreement dated 09.03.2009?
2. Whether the 1st defendant had not executed the sale agreement dated 09.03.2009 and it is fabricated one?
3. Whether the plaintiff is entitled for the relief of specific performance as prayed for?
4. To what other relief the plaintiff is entitled?

8. During the trial, on the side of the plaintiff, the plaintiff had examined himself as PW1 and one Ravishankar, Document Writer was examined as PW2 and Ex.A1 to A4 were marked. On the side of the defendants, 4th defendant was examined as DW1 and no document was marked.



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9. On considering the oral and documentary evidence, the trial Court, finding that the plaintiff has proved his case, decreed the suit. Aggrieved against the same, defendants 4 to 7 and 9 preferred the Appeal Suit in A.S.No.29 of 2019, before the Additional District Sessions (Fast Track) Court, Arani.

10. In the Appeal Suit, defendants 4 to 7 and 9 have contended that the trial Court had failed to take into consideration the fact that their father, the 1st defendant was sick and he was not in a sound state of mind to register the document. The burden should have been placed on the plaintiff to prove his case, whereas, the trial Court had wrongly shifted the burden on defendants 4 to 7 and 9. They have also contended that the trial Court failed to note that the agreement was entered into between the plaintiff and the first defendant only on 09.03.2009 and there was no reason for the plaintiff to issue notice on 19.03.2009 itself, within such a short span of time and thereby, the trial Court ought not to have decreed the suit.



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11. The first appellate Court having found that defendants 4 to 7 and 9 have not proved their case that the suit property was purchased by their money and in Exhibit A2 (Sale deed), nothing has been stated that the property was purchased by them and further finding that defendants 4 to 7 and 9 have wrongly given the age of their father and failed to prove his health condition, had dismissed the Appeal Suit, by confirming the judgment and decree passed by the trial Court in O.S. No.47 of 2009 dated 27.04.2018. Aggrieved against the same, the present Second Appeal has been filed.

12. Mr.R.Amardeep, learned counsel for the appellants submitted that both the Courts below erred in shifting burden on the appellants. He further submitted that other than the document (Ex.A1), no witnesses has been examined to prove the sale agreement and thereby, he seeks for admission of the appeal.

13. Heard the learned counsel appearing for the appellants, perused the judgments of the Courts below and also the grounds raised by the appellants.



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14. A perusal of the entire materials including the judgments rendered by the courts below would reveal that it is a clear case of the plaintiff claiming specific performance by relying on the agreement of sale, Ex.A1 and he has proved the execution of the same by adducing oral and documentary evidence and examining the attesting witness also, whereas, it is the case of the contesting defendants, who are the legal representatives of the vendor that the property was actually purchased by using their earning in the name of the first defendant to provide a secured income for him and it is a case of fabrication of document by the plaintiff with the help of a real estate person to defraud the first defendant, who was blind and not in a sound state of mind to enter into any agreement. Apart from such a stand, the contesting defendants have raised many defence to the effect that the alleged agreement of sale is an unregistered one, it was not signed by the plaintiff himself, the plaintiff had issued notice calling for registration of sale deed within a short span of time viz., within ten days of the alleged agreement of sale which gives room for suspicion and a feeble defence that the thumb impression found in the agreement of sale itself is not the one affixed by the vendor Munusamy.



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15. It is seen that the Courts below have dealt with all the defence raised by the appellants/contesting defendants. So far as execution of the document is concerned, it appears that the appellants/contesting defendants have not denied the execution of the document, except taking a stand that the plaintiff, with the aid of one real estate broker, the plaintiff has got the agreement of sale executed. The appellants have also not taken any initiative to prove the blindness of the first defendant and the purchase of the suit property by using their earnings. They have also not cared to substantiate their stand that the thumb impression found in the agreement of sale is not the one affixed by the first defendant by adducing any evidence or by seeking to send the document to an expert for examination of the thumb impression with the admitted ones. The first appellate court also observed that such an issue has been raised by the appellants only in the Appeal Suit. Though the appellants seek to agitate during the Appeal Suit that the agreement of sale is an unregistered one, it appears that no issue was raised by them in that regard during the trial.

16. Further, the appellants sought to contend that the plaintiff himself has not signed in the agreement of sale and thus it is not a valid



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document. Such aspect has been well considered by the first appellate court and it has been observed that the same was not raised by the appellants during the trial, however, the appellate court has analysed the same in the light of the law laid down in various decisions and rightly rejected the defence raised by the appellants.

17. Even with regard to the suspicion raised by the appellants on the aspect of issuance of notice by the plaintiff calling for registration of the sale deed within ten days from the date of agreement of sale also, the same has been appreciated by the first appellate Court in proper perspective and declined to entertain the same.

18. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that there is no illegality or perversity in the findings of the courts below and no substantial question of law is involved to admit this second appeal.

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



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under:-

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"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 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



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Appellate Court."

20. In the light of the above decision, this Court is of the view that no question of law much less substantial question of law arises for consideration and thereby, the Second Appeal fails and the same is dismissed at the admission stage itself, by confirming the concurrent findings rendered by the Courts below. No costs. Consequently, the connected Miscellaneous Petition is also closed.

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The Additional District Sessions Court (Fast Track), Arni.
2. The Sub-Court, Arni, Tiruvannamalai District.
3. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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