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S.A.No.123 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.123 of 2019
and
C.M.P.No.2499 of 2019

1.Kesavan

2.Maheswari

... Appellant

VS.

Chinnappa

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 26.07.2018 made in A.S.No.201 of 2017 on the file of the Principal District Judge, Vellore confirming the Judgment and Decree dated 11.04.2017 made in O.S.No.244 of 2008 on the file of Subordinate Judge, Vellore.

For Appellants : Mr.Sugumaran R

For Respondent : Mr.K.J.Parthasarathy



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J U D G E M E N T

The unsuccessful defendants in a suit for specific performance are the appellants. The respondent herein filed a suit for specific performance of Sale Agreement and the same was decreed by the Trial Court. The first appeal filed by the appellants was also dismissed. Challenging the concurrent findings against them, the appellants have come up by way of this second appeal.

2. According to the respondent/plaintiff, he entered into Sale Agreement with the appellants for purchase of the property covered by agreement dated 17.04.2008. The total sale consideration agreed was Rs.1,50,000/- and on the date of agreement itself, an advance amount of Rs.1,00,000/- was paid by the respondent to the appellants. As per the terms of agreement, it was agreed that the balance sum of Rs.50,000/- should be paid and sale transaction should be completed within a period of one year. It was also averred by the respondent that subsequently on 14.05.2008, he paid a further sum of Rs.45,000/- to the appellants and got an endorsement on the backside of the Sale Agreement. The respondent was ready and willing to perform his part of the contract. As the appellants failed to come



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forward to perform their part of the contract and hence, a legal notice was issued on 15.10.2008 calling upon the appellants to receive the balance sale consideration amount and execute the sale deed. The appellants evaded to receive the legal notice and hence, the respondent was constrained to file a suit seeking specific performance of Suit Sale Agreement and also for injunction restraining the appellants from alienating the suit property. The respondent also sought for alternative relief of return of advance amount.

3. The appellants herein filed a written statement and raised a plea that Suit Sale Agreement was executed as a security for the amount of Rs.1,00,000/- borrowed by the appellants from the respondent. The appellants herein also denied the receipt of Rs.45,000/- on 14.05.2008 and the alleged endorsement made on the backside of the Suit Sale Agreement. It was also claimed by the appellants that for the pre-suit notice, a suitable reply notice was given by them expressing their willingness to pay the amount borrowed by them. It was further averred that on 16.12.2008, the appellants sent a legal notice along with Demand Draft for a sum of Rs.1,09,200/- to the respondent and the same was returned. On these pleadings, the appellants sought for dismissal of the suit.



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4. Before the Trial Court, the respondent was examined as PW.1. The Scribe of Ex.A1-Suit Sale Agreement was examined as PW.2 and Attestor to the Suit Sale Agreement was examined as PW.3. On behalf of the respondent/plaintiff, 6 documents were marked as Exs.A1 to A6. On behalf of the appellant/defendant, no witnesses were examined and no documents were also marked.

5. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that execution of Suit Sale Agreement was duly proved by the respondent and consequently, the respondent was entitled to relief of specific performance. Aggrieved by the same, the appellants herein preferred an appeal in A.S.No.201 of 2017 on the file of Principal District Court, Vellore. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the same, the appellants are before this Court.

6. The learned counsel appearing for the appellants tried to assail the judgement passed by the Courts below by taking this Court to the evidence of scribe of Ex.A1-Suit Sale Agreement and submitted the same would not



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prove the due execution. The learned counsel further by taking this Court to the evidence of PW.1, submitted that PW.1 admitted about the notice sent by the appellants along with Demand Draft of Rs.1,09,200/- and in these circumstances, the evidence available on record is not sufficient to hold that the execution of Suit Sale Agreement was duly proved by the respondent.

7. Admittedly, the Suit Sale Agreement is a registered document. The appellants herein are trying to challenge the registered document by raising a plea that Suit Sale Agreement was executed as a security for the amount borrowed by the appellants from the respondent. In other words, it is the specific case of the appellants that there was no *consensus ad idem* between the parties to treat the Suit Agreement as a sale agreement and the same was treated only as a security for loan transaction. However, in order to prove the said plea, for the reasons best known to them, the appellants failed to enter into witness box. When appellants failed to enter the box and assert the pleas raised in the written statement, the submission made by the learned counsel for the appellants as if, the Suit Sale Agreement is a security for the loan transaction cannot be accepted.



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8. In order to prove the due execution of Ex.A1, registered Suit Sale Agreement, the respondent herein examined himself as PW.1. He clearly deposed about the payment of advance and payment of further amount under the Suit Sale Agreement and the endorsement thereon. The evidence of PW.1 is supported by the evidence of attestor to the agreement namely PW.3 and scribe of the document namely PW.2. The learned counsel appearing for the appellants submitted that the evidence of PW.2 clearly established that he did not know anything with regard to the nature of transaction between the parties.

9. A perusal of the evidence of PW.2 would suggest that he deposed about the preparation of Suit Sale Agreement and execution of the same. Therefore, the evidence of PW.2 is helpful in proving due execution of Ex.A1-Suit Sale Agreement. The Courts below on appreciation of evidence of PW.1 to PW.3, came to a factual conclusion that due execution of Suit Sale Agreement is proved. In the absence of any contra evidence on the side of the appellants, I do not think the appellants have made out any case to interfere with the said factual findings rendered by the Courts below.



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10. The learned counsel for the appellants submitted that appellants were not given proper opportunity to examine any witnesses. In this regard, an application was filed for reopening the case and the same was not considered by the Courts below in proper perspective. The learned counsel also circulated the application filed by the appellants in this regard. It is seen from the court seal affixed in the said application, the same was filed on 08.06.2017 subsequent to the disposal of the suit.

11. A perusal of A-Diary included in the typed-set of papers filed by the respondent would suggest that evidence of plaintiff was closed on 19.12.2016 and thereafter, the matter was posted before the Courts below on 08.01.2017, 09.01.2017, 10.01.2017, 23.01.2017, 25.01.2017, 06.02.2017, 20.02.2017, 23.02.2017, 27.02.2017, 06.03.2017 and 13.03.2017 and thereafter, as defendants failed to come forward to lead any evidence, the defendant's side evidence was closed on 21.03.2017 and the matter was posed for arguments. On 28.03.2017, the plaintiff side arguments were heard and the matter was adjourned to arguments of defendants side and finally, arguments of both sides were heard on 04.04.2017 and the matter was adjourned to 11.04.2017 for passing



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judgement. The final judgement was pronounced on 11.04.2017.

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12. Therefore, it is clear that the Trial Court granted sufficient opportunity to the appellants herein and inspite of the same, they failed to examine any witnesses. The appellants also submitted their arguments without leading any oral and documentary evidence. In such circumstances, I do not find any substantial question of law arising for consideration in this second appeal to interfere with the factual conclusions reached by the Courts below. Consequently, the second appeal is dismissed.

In Nutshell:-

(i) The Second Appeal is Dismissed.

(ii) Consequently, the connected civil miscellaneous petition is closed.

(iii) In the facts and circumstances of the case, there will be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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To

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1.The Principal District Judge,
Vellore.

2.The Subordinate Judge, Vellore.



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S.SOUNTHAR, J.

dm

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