



S.A.(MD).No.904 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.(MD).No.904 of 2008

1.H.Asia Begam

2.H.Ajeef

3.K.Saleem

4.M.Kamila Banu

5.J.Fathima Begam

6.M.Jasmin Banu

... Appellants

-Vs-

1.K.Rengasamy

2.R.Neelakandan

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 29.01.2008 in A.S.No.65 of 2006 on the file of the Principal District Court, Pudukottai, by confirming the judgment and decree, dated 21.02.2006 passed in O.S.No.251 of 2004, on the file of the Principal District Munsif Court, Pudukottai.

For Appellants : Mr.P.Ganapathisubramanian

For Respondents : No appearance



S.A.(MD).No.904 of 2008

WEB COPY

J U D G M E N T

The plaintiff Nos.2 to 7, who are the legal heirs of first plaintiff N.K.Haja Moideen, who have lost both before the trial Court as well as the first appellate Court, have preferred this second appeal, challenging the judgments of both the said Courts.

2. The parties are referred to as per their litigative status and ranking indicated before the trial Court.

3. According to the plaintiffs, the suit property belonged to the defendants. The first and second defendants entered into an agreement for sale with the first plaintiff fixing the sale consideration at Rs.95,000/-. An advance amount of Rs.60,000/- was paid to the defendants and the defendants agreed to execute a sale deed in the name of first plaintiff, after receiving the remaining amount of Rs.35,000/-. The sale agreement was executed on 30.03.2001, in the presence of witnesses. The plaintiffs claimed that as per the terms of the agreement, for the past one year, as the first plaintiff was demanding the defendants to execute the sale deed by receiving an amount of Rs.35,000/-, they did not come forward to execute the sale deed. Pre-suit notice was sent by the first plaintiff on 18.11.2003, through her counsel, calling upon the defendants to



S.A.(MD).No.904 of 2008

execute the sale deed in their favour. The defendants having received the legal notice had sent a reply with false allegations. Hence, the suit for specific performance.

4. Whereas the defendants claimed that the first and second defendants have been working under the first plaintiff. In order to file income tax, the first plaintiff obtained their signature in the white paper and in bond paper, thereby the sale agreement was created. The first plaintiff, by misusing their illiteracy tried to purchase their property for a lesser price. When the defendants refused for the same and when they demanded the arrears of salary, the sale agreement was fraudulently created and the suit is filed.

5. Based on the rival pleadings, the trial Court framed the following issues:

- (i) Whether the sale agreement dated 30.03.2001, is genuine and was executed by the defendants?
- (ii) Whether the plaintiff is entitled for the relief of specific performance?
- (iii) To what other relief the plaintiff is entitled?



S.A.(MD).No.904 of 2008

WEB COPY

6. At trial, on the plaintiffs side, the third plaintiff has examined himself as P.W.1 and one of the attestors in the sale agreement Sathiyamoorthy was examined as P.W.2. Exs.A1 to A9 were marked. The suit sale agreement is Ex.A1. On the defendants' side, the second defendant Neelakandan has examined himself as D.W.1. Another son of first defendant Vadamalai R.Ravi was examined as D.W.2. Exs.B1 to B7 were marked.

7. The trial Court after evaluation of evidence and upon hearing both sides arguments concluded that only the defendants have signed in the suit sale agreement and the first plaintiff has not signed in the document. Therefore, it cannot be treated as an agreement and the said document is not enforceable and chose to dismiss the suit.

8. Aggrieved, the legal representatives of the first plaintiff preferred an appeal before the Principal District Court, Pudukottai in A.S.No.65 of 2006. The first appellate Court observed that the defendants have signed in three pages in different inks viz., in the first page with black pen and in the second and third pages with blue pen. It is also further observed that the stamp paper is dated 30.03.2000 and it was ultimately held that the execution of the sale agreement



S.A.(MD).No.904 of 2008

WEB COPY

was not proved by the plaintiffs and the appeal was dismissed by confirming the judgment and decree of the trial Court. Against the said judgments, the plaintiffs have preferred this second appeal.

9. The learned counsel appearing for the appellants/plaintiffs vehemently contended that the first and second defendants executed the sale agreement on 30.03.2001, by receiving an amount of Rs.60,000/- as an advance and the sale consideration was fixed at Rs.95,000/-. Performance period was fixed as three years and the execution of the sale agreement is duly proved by examining P.Ws.1 and 2.

10. He would further contend that having accepted the terms, the defendants executed the sale agreement agreeing to sell their lands to the first plaintiff for consideration of Rs.95,000/- and with that intention, they executed the document. It is his further arguments that the defendants accepted the offer made by the first plaintiff and then only sale agreement was entered into. Therefore, merely the purchaser has not signed in the sale agreement will not make the sale agreement as invalid.



S.A.(MD).No.904 of 2008

WEB COPY

11. In order to substantiate his argument, he drew the attention of this Court to the judgment of this Court in 2018 (5) MLJ 769 (J.Vincent vs. S.Srinivasan), wherein the sale agreement was signed only by the vendors alone and it was observed that an agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it and it was held that the agreement for sale signed only by the vendor was enforceable by the purchaser.

12. Despite the receipt of notice, the respondents neither appeared nor represented through their counsel.



S.A.(MD).No.904 of 2008

WEB COPY

13. The following substantial question of law arises for consideration:

(i) Whether the trial Court as well as the first appellate Court are right in rejecting Ex.A1 for the reason that the purchaser did not sign in the sale agreement?

14. The third plaintiff has examined himself as P.W.1 and he has spoken about the execution of the sale agreement / Ex.A1 by the defendants. In order to prove the sale agreement as it was denied by the defendants, one of the attestors to the sale agreement Sathiyamoorthy, S/o. Ramasamy was examined as P.W.2. He has spoken about the terms of sale agreement and the execution of sale agreement by the defendants. In fact, the first defendant only had called him for execution of sale agreement. It is pertinent to note that P.W.2 has stated that the original documents were handed over to the first plaintiff by the defendants. P.W.2, one of the attesting witness to Ex.A1 / sale agreement has spoken about the execution of sale agreement in detail.

15. On a thorough perusal of Ex.A1 / sale agreement dated 30.03.2001, it contains one stamp paper and two green sheets. The first stamp paper bears the date 30.03.2000 and name of the first plaintiff. In all the three pages, beneath the typed portions, the first and second defendants have put the



S.A.(MD).No.904 of 2008

signatures. In the first page, black pen is used and in the second and third pages, by using blue pen signatures were put. The performance period is fixed as three years. The total sale consideration is Rs.95,000/- and the first plaintiff's case is that he has paid Rs.60,000/-. The first plaintiff caused to issue legal notice on 18.11.2003 (Ex.A2). When the execution is stoutly denied by the defendants, heavy burden lies upon the first plaintiff to prove the execution of sale agreement. For that, the third plaintiff has examined himself as P.W.1 and one attesting witness has spoken about the execution of Ex.A1.

16. In general, a person would sign in all pages by one pen. But, in the sale agreement, in the first page, signatures have been put by black pen and in the second and third page, blue pen is used and the stamp paper, which is dated 30.03.2000, was used after a year. For these reasons, the first appellate Court has not believed the case of the plaintiffs and dismissed the first appeal. Therefore, for the above said reasons, this Court has no hesitation to hold that Ex.A1 / sale agreement is not a *bona fide* document and hence, the plaintiffs cannot lay a valid claim, based on the said document and the substantial question of law is answered accordingly.



S.A.(MD).No.904 of 2008

WEB COPY

17. Based on the aforesaid discussions, the Second Appeal stands dismissed. The suit in O.S.No.251 of 2004 on the file of Principal District Munsif, Pudukottai stands dismissed. There is no order as to costs.

22.12.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No

akv

To

- 1.The Principal District Court,
Pudukottai.
- 2.The Principal District Munsif Court,
Pudukottai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.904 of 2008

R.KALAIMATHI,J.

akv

S.A.(MD).No.904 of 2008

22.12.2023