



S.A(MD).No.622 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.622 of 2020
and C.M.P(MD)No.6606 of 2020

Rajeshwaran (Died) Appellant/Appellant/Plaintiff
2.R.Lakshmi
3.Pechiyappan ... Legal Heirs of the deceased Appellant

Vs.

Muthammal ... Respondent/Respondent/Defendant

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 24.09.2019 passed in A.S.No.55 of 2018 on the file of the Additional District Sessions Court (Fast Track Court), Tenkasi, confirming the judgment and decree dated 22.02.2018 passed in O.S. No.190 of 2012 on the file of the Additional Sub-Court, Tenkasi.

For Appellants : Mr.H.Arumugam
For Respondent : Mr.P.Vinoth
for Mr.S.Prasanth

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The plaintiff in the suit in O.S.No.190 of 2012 on the file of the Additional Subordinate Court, Tenkasi, is the appellant



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herein. After filing of this Second Appeal, the appellant/plaintiff died. The legal heirs of the deceased appellant have been brought on record.

2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The plaintiff had filed the said suit for specific performance of an agreement of sale. The respondent is the defendant in the suit, who was the owner of the suit schedule property in respect of which, the appellant claims that there is an agreement of sale, in which, the respondent had agreed to sell the suit schedule property to him.

4. However, as seen from the written statement filed by the respondent in the suit, he has pleaded that the alleged agreement of sale is a forged document.

5. The trial court, namely, the Additional Subordinate Court, Tenkasi, based on the pleadings in O.S.No.190 of 2012, framed the issues as to whether the plaintiff is entitled for the relief of specific performance as prayed for in the plaint.



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6.i) Before the trial court, the plaintiff filed three documents, which are marked as Ex.A.1 to Ex.A.3, which included the alleged agreement of sale dated 14.05.2010 allegedly entered into between the plaintiff and the defendant, which was marked as Ex.A.1; Ex.A.2 is the notice sent by the plaintiff to the defendant calling upon the defendant to execute a sale deed in his favour; Ex.A.3 is the returned cover dated 04.08.2012 by which notice dated 30.07.2012 sent by the plaintiff to the defendant has been returned unserved. On the side of the plaintiff, two witnesses were examined namely, the plaintiff himself as P.W.1 and another person by name Babu Nagoormeeran as P.W.2.

6.ii) On the side of the defendant, two documents were filed, which were marked as Ex.B.1 and Ex.B.2. Ex.B.1 is the certified copy of the settlement deed, which was executed by the defendant in favour of his son Kailasam dated 10.11.2010; Ex.B.2 is the sale deed dated 03.09.2012 executed by Kailasam in favour of Syed Sulaiman for the suit schedule property.

7. As seen from the pleadings, oral and documentary evidence, the defendant has categorically pleaded that the alleged sale agreement dated



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14.05.2010 (Ex.A.1) is a forged document. However, the plaintiff claimed that the defendant has received a part sale consideration of Rs.4,00,000/- (Rupees Four Lakhs only) by entering into the agreement of sale (Ex.A.1) but failed to execute a sale deed by receiving the balance sale consideration.

8. The defendant has pleaded in his written statement that he has not received any sale consideration from the plaintiff and he never entered into the sale agreement dated 14.05.2010 (Ex.A.1) with the plaintiff. The defendant is an illiterate person and he is alleged to have affixed her thumb impression in the sale agreement dated 14.05.2010(Ex.A.1).

9. When the defendant has disputed the execution of the sale agreement dated 14.05.2010 (Ex.A.1) in favour of the plaintiff and has categorically claimed that the said agreement is a forged document, the plaintiff ought to have sent the document for expert opinion with regard to the thumb impression of the defendant found therein. Admittedly, the plaintiff has not sent the document for an expert opinion under the provisions of Section 45 of the Indian Evidence Act though the said application filed by the plaintiff was allowed by the trial court.



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10. The learned counsel for the appellant/plaintiff would contend that since the defendant did not co-operate in producing the contemporaneous document containing her thumb impression or did not give her specimen signature proof, the plaintiff was not in a position to implement the order passed under Section 45 of the Indian Evidence Act.

11. However, the plaintiff has not produced any documentary evidence before this Court to prove that the defendant did not co-operate before the trial court for sending the disputed agreement of sale dated 14.05.2010 (Ex.A.1) along with the contemporaneous document in which the thumb impression of the defendant is found for implementation of the order passed under Section 45 of the Indian Evidence Act. The plaintiff has filed only three documents before the trial court namely, the disputed agreement of sale dated 14.05.2010(Ex.A.1) and the notice dated 30.07.2012 sent by him calling upon the defendant to execute the sale deed as per the agreement of sale dated 14.05.2010 (Ex.A.1) and the returned cover dated 04.08.2012 which is marked as Ex.A.3. As seen from the evidence available on record, the plaintiff has not been able to prove that the agreement of sale dated 14.05.2010 (Ex.A.1) is a genuine agreement. When the defendant has categorically pleaded that the agreement of sale dated



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14.05.2010 (Ex.A.1) is a forged document, the initial burden of proof is on the plaintiff as per the provisions of Section 101 of the Indian Evidence Act to prove through oral and documentary evidence that the said agreement of sale (Ex.A.1) is a genuine document.

12. Having failed to obtain an expert opinion by comparing the thumb impression of the defendant as found in Ex.A.1 agreement of sale with the contemporaneous document of the defendant containing her thumb impression, this Court is of the considered view that both the courts below have rightly held that the alleged agreement of sale dated 14.05.2010 (Ex.A.1) is a forged document. Further, this Court is of the considered view that the relief of specific performance is a discretionary relief. The only criteria that has to be seen by this Court is whether the discretion exercised by the courts below were guided by judicial principles or not. When the plaintiff has miserably failed to prove that the agreement of sale dated 14.05.2010 (Ex.A.1) is a valid agreement of sale through oral and documentary evidence and by assistance of an expert opinion, this Court is of the considered view that both the courts below have exercised the discretion properly by refusing to grant the relief of specific performance in favour of the plaintiff.



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13. Both the courts below have also taken into consideration the fact that the subsequent purchaser of the suit schedule property had also filed a suit for declaration to declare that the suit schedule property is absolutely owned by him. The said suit namely O.S.No.19 of 2013 on the file of the very same trial court was decreed in favour of the said subsequent purchaser. The appellant/plaintiff was also a party to the said suit and no appeal was filed aggrieved by the judgment and decree passed in favour of the subsequent purchaser in O.S.No.19 of 2013 and the findings in the said judgment have attained finality. Therefore, the courts below have held that the plaintiff does not have any right to seek for specific performance of the alleged agreement of sale dated 14.05.2010 (Ex.A.1).

14. This Court has given careful consideration to the findings of the courts below. After giving due consideration to the same, this Court finds that there is no substantial question of law involved in this Second Appeal. The substantial questions of law raised by the appellant/plaintiff in the grounds of appeal have already been considered by the courts below only in accordance with law and no further interference is required by this Court under Section 100 C.P.C. There are no debatable issues of fact or law involved for further consideration by this Court under Section 100 C.P.C.



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15. For the foregoing reasons, there is no merit in this Second Appeal.

Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.06.2023

Index : Yes/No
Internet: Yes/No
CM

To

1.The Additional District Sessions Court (Fast Track Court), Tenkasi

2. The Additional Sub-Court, Tenkasi.

3.The Section Officer,

VR Section, Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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