



S.A(MD)No.76 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.76 of 2016
and
C.M.P(MD)No.1765 of 2016

R.Sankar @ Kannan

... Appellant/Appellant
/Plaintiff

Vs.

1.Kuttala Konar

2.P.Vellakannu

3.Boominatha Thevar

... Respondents/Respondents
/Defendants

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.24 of 2013, dated 18.11.2013 on the file of the IV Additional District Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.70 of 2009, dated 04.07.2012 on the file of the Sub Court, Valliyoor.

For Appellant : Mr.H.Arumugam

For Respondents : Ms.R.Jaya Revathy

for M/s.Jeyapaul Associates



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JUDGMENT

The unsuccessful plaintiff in a suit for specific performance is the appellant before this Court. The suit as well as the appeal filed by the plaintiff were dismissed. Aggrieved by the concurrent findings against him, the plaintiff is before this Court.

2. According to the appellant, the suit property belonged to first defendant, who executed a power deed in favour of one Paramasivan on 06.03.2009. Subsequently, the appellant entered into a sale agreement with the said Paramasivan on 06.03.2009 for purchase of the agreement mentioned property. The sale consideration was fixed at Rs.1,25,000/- and an advance amount of Rs.25,000/- was paid at the very date of agreement itself. The time limit of one year was stipulated for payment of balance sale consideration and completion of sale transaction. It was further averred by the appellant that the balance sale consideration of Rs.1,00,000/- was paid to Paramasivan power of attorney of the first respondent on 20.03.2009 itself and the first defendant issued a receipt for having received the entire sale consideration to his power agent Paramasivan on 20.03.2009. It was further averred by the appellant that though the entire sale consideration was paid by him on 20.03.2009 itself, the



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execution of sale deed by the first respondent was postponed from time to time in spite of his several request. When the appellant applied for encumbrance certificate regarding agreement mentioned property on 23.06.2009, he came to know that the first respondent sold the agreement mentioned property to the respondents 2 and 3 and hence, the appellant was constrained to file a suit for specific performance.

3.The suit was contested by the first respondent. The first respondent in his written statement denied the execution of power deed and alleged receipt issued by him for having received the entire sale consideration. The receipt of advance amount and entire sale consideration pleaded by the appellant was specifically denied by the first respondent in his written statement. He further averred that the appellant and above said Paramasivan taking advantage of ignorance and illiteracy, misrepresented, as if, document was prepared for settlement of property in favour of his son and obtained his thump impression in various stamp papers and documents. After acquiring knowledge about the illegal acts of appellant and Paramasivan, the power deed created by them was cancelled by the first respondent on 28.03.2000. Thereafter, the suit property was sold to respondents 2 and 3 by separate two



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sale deeds, Ex.A5 and Ex.A6 for valid consideration of Rs.2,50,000/- and Rs.3,00,000/- respectively. On these pleadings, the first respondent sought for dismissal of the suit. The respondents 2 and 3 have filed a separate written statement claiming that they were the *bona-fide* purchaser of the suit and sought for dismissal of the suit.

4.Before the trial Court, the first appellant was examined as PW1. The alleged power agent of the first respondent was examined as PW2. The attesor to Ex.A1 - General Power Deed, allegedly executed by the first respondent and Ex.A3 - Receipt, dated 23.02.2009, allegedly issued by the first respondent was examined as PW3. On behalf of the appellants, nine documents were marked as Ex.A1 to Ex.A9. The first respondent was examined as DW1 and third respondent was examined as DW2. No documents were marked on the side of the respondents.

5.The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the power deed alledgedly executed by the first respondent in favour of Paramasivan and the receipt alledgedly issued by the first respondent in favour of said Paramasivan were



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concocted documents and consequently dismissed the suit. Aggrieved by the same, the appellant filed an appeal in A.S.No.24 of 2013 on the file of the IV Additional District Court, Tirunelveli. The First Appellate Court confirmed the findings of the trial Court and dismissed the first appeal. Aggrieved by the same, the appellant is before this Court.

6.The learned counsel appearing for the appellant mainly submitted that Ex.A1 – Power Deed is the registered document and no oral evidence can be let in contrary to the terms of Ex.A1 and therefore, the Courts below ought not to have disbelieved the due execution of Ex.A1 - Power Deed, in favour of Paramasivan. The learned counsel further submitted that the respondents 2 and 3 had knowledge of the transaction between the appellant and the first respondent and hence, they cannot be termed as *bona-fied* purchasers of the suit property.

7.When an illiterate person affix his thumb impression in a document we cannot readily presume that he subscribed his thumb impression after knowing contents of the same unless positive evidence available on record to come to a conclusion he had knowledge of contents. The Courts below on



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perusal of oral evidence of the appellant, alleged power agent of the first respondent Paramasivan and the alleged attester to Ex.A1 and Ex.A2 came to a factual conclusion that the first respondent is an illiterate person and he only put his thumb impression in Ex.A1 and Ex.A3 and the Courts below also held that there is no acceptable evidence available on record to presume that the first respondent is a literate person and he had put his thumb impression with the knowledge of the contents of Ex.A1 and Ex.A3. The First Appellate Court has also observed that the stamp papers used for preparing Ex.A1-Power Deed, dated 06.03.2009 and Ex.A3-Receipt, allegedly issued by the first respondent, dated 20.03.2009 were purchased on the same day on 06.03.2009 with continuous serial numbers. Therefore, the First Appellate Court had given a factual finding that the case of the first respondent that his thumb impression was obtained by the appellant and his relative Paramasivan on the same day and Ex.A1 and Ex.A3 were concocted is more probable. The said finding on facts by the Court below is based on evidence available on record and no perversity can be attached with regard to the said factual findings.



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8.The Courts below had given a factual finding that Ex.A1 alledgedly executed by the first respondent in favour of Paramasivan was not valid and binding on the first respondent and the sale agreement entered between the appellant and the the said power agent would not bind the first respondent. Therefore, the Courts below rightly came to the conclusion that the appellant is not entitled to specific performance of agreement.

9. In these circumstances,

a) I do not find any substantial question of law and consequently the Second Appeal stands dismissed and the judgment and decree passed by the learned IV Additional District Court, Tirunelveli, dated 18.11.2013 in A.S.No.24 of 2013 stands confirmed;

b) in the facts and circumstances of the case, there would be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
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S.SOUNTHAR, J.

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To

- 1.The IV Additional District Court,
Tirunelveli.
- 2.The Subordinate Court,
Valliyoor.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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