



S.A.No.1974 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

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1.Pidaran (Died)	... 1 st Appellant/Appellant/ Plaintiff
2.Sivakumar	
3.Vasantha	
4.Tamilselvi	
5.Pandiselvi	... Appellants 2 to 5

[Appellants 2 to 5 – brought on record as LR's of the deceased sole appellant vide order dated 09.10.2020 made in C.M.P.(MD) Nos.10811 to 10813 of 2019 in S.A.No.1974 of 2000]

Vs

1.Udaya Kumar	
2.Chandra Kumar	
3.Thiagarajan	
4.Gopalakrishnan	
5.Radhalakshmi	... Respondents/Respondents/ Defendants



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 23.03.2000 made in A.S.No.33 of 1996 on the file of the II Additional Sub Court, Madurai, confirming the judgment and decree dated 21.08.1995 made in O.S.No.285 of 1993 on the file of the District Munsif's Court, Melur.

For Appellants 2 to 5: Mr.D.Sukumar
for Mr.V.Santhakumaresan

For Respondents : No appearance

J U D G M E N T

1.1. The plaintiff in the suit is the first appellant. He filed the suit for recovery of advance amount paid under sale agreement. The suit was dismissed by the trial Court and the findings of the trial Court were confirmed by the first appellate Court. Hence, the unsuccessful plaintiff has filed this second appeal. Pending second appeal, the first appellant/plaintiff died and appellants 2 to 5 were brought on record as his legal representatives.



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1.2. According to the first appellant/plaintiff, he entered into a sale agreement on 28.05.1990 with respondents 1 to 4 for purchase of the agreement mentioned property for a sale consideration of Rs.40,000/-. The 5th respondent herein signed the sale agreement on behalf of the 4th respondent, who was minor at that point of time. On the date of agreement itself, the first appellant paid a sum of Rs.10,000/- towards advance to the respondents. It was agreed that the balance amount shall be paid within four months and the sale transaction shall be completed. It was further averred that though the first appellant was ready and willing to perform his part of the contract, the respondents failed to complete the sale transaction and hence, a pre-suit notice was issued to the respondents. After receiving the same, the respondents came up with a false allegation and hence, the present suit was filed for recovery of the advance amount of Rs.10,000/- together with interest at the rate of 12% per annum.

2. The respondents herein filed a written statement denying the execution of suit sale agreement. They also denied receipt of advance amount under the suit sale agreement. It was the case of the respondents



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that on 28.05.1993 itself, the first appellant got another agreement executed in his favour by the respondents and the signatures of the respondents were obtained in that document without informing the contents. However, the suit sale agreement filed as Ex.A.1 was not the agreement that was obtained by the first appellant on 28.05.1990. It was also pleaded that the first appellant did not pay any advance amount to the respondents even in respect of the other agreement. The readiness and willingness of the first appellant was denied. It was also pleaded by the respondents that the first appellant by compelling the respondents 1 to 4, got a mortgage deed in his favour on 13.08.1990 for a sum of Rs.10,000/- and on the very same date, the other sale agreement obtained by the first appellant was destroyed. On these pleadings, the respondents sought for dismissal of the suit.

3. The trial Court, on consideration of oral and documentary evidences available on record, came to the conclusion that the first appellant failed to prove execution of the suit sale agreement and consequently, held that he was not entitled to any advance amount. Aggrieved by the same, the first appellant filed an appeal in A.S.No.33 of 1996 on the file of the



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II Additional Sub Court, Madurai, and the same was dismissed by the first appellate Court by confirming the findings of the trial Court. Aggrieved by the same, the first plaintiff has filed this second appeal.

4. This Court, at the time of admission, framed the following substantial questions of law:

“(i) Whether in law are not the decree and judgment of the Courts below vitiated in mis-reading Ex.B-1?

(ii) Whether in law have not the Courts below failed to see that the plea of discharge has not been substantiated by the defendants and further there is no recital in Ex.B.1 about the adjustment of the amount?

(iii) Whether in law have not the Courts below overlooked that the execution of Ex.A.1 having been admitted, the onus is on the defendants to prove that they executed some other document? and

(iv) Whether in law have not the Courts below erred in omitting to note that Ex.A.1 and B.1 are two different transactions?”



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5. The learned counsel for appellants 2 to 5 submitted that the respondents herein admitted execution of Ex.A.1 sale agreement and hence, the Courts below ought not to have dismissed the suit on the ground that execution of suit sale agreement was not proved by the first appellant by leading evidence. He further submitted that the respondents failed to lead any evidence to show that advance amount paid by the first appellant was discharged and hence, the Courts below ought to have granted a decree for recovery of advance amount.

6. Though notice was served on the respondents and the counsel name appears in the cause list, there is no representation for them.

7.1. The averment made by the learned counsel for appellants 2 to 5 cannot be accepted for the simple reason that the respondents in their written statement never admitted the execution of suit sale agreement. The suit sale agreement was specifically denied by the respondents. They also denied receipt of advance amount. It is the case of the respondents that on



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the very same date, yet another agreement for sale was obtained by the first appellant without informing the respondents about the contents of the document and the said document is not the suit sale agreement. Therefore, the argument advanced by the learned counsel for appellants 2 to 5 as if the suit sale agreement was admitted by the respondents cannot be accepted.

7.2. A perusal of the pleadings in the case would make it clear that the suit sale agreement was denied by the respondents. Ex.B.1 mortgage deed was relied on by the respondents in support of their plea that yet another sale agreement was executed on the same day and subsequently, the same was destroyed and in lieu of the same, a mortgage deed was executed in favour of the first appellant. Therefore, by no stretch of imagination, it can be said that the respondents admitted the suit sale agreement Ex.A.1. When the execution of suit sale agreement is specifically denied by the respondents in their written statement, it is for the appellants prove the execution of the same by leading acceptable evidence. The first appellant alone was examined as P.W.1.. He has not examined any independent witness to prove due execution of the suit sale agreement. Though the suit



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sale agreement was attested by two persons, the first appellant has not taken any steps to examine those attestors to prove the suit sale agreement. The interested testimony of the first appellant as P.W.1 is not sufficient to prove the execution of suit sale agreement.

7.3. The Courts below by comparing the signatures of the respondents found in Ex.A.1-suit sale agreement with the admitted document Ex.B.1, came to the conclusion that the signatures found in Ex.A.1 suit sale agreement varies with the admitted signatures of the respondents. In such circumstances, in the absence of any acceptable evidence to prove due execution of Ex.A.1 sale agreement, the Courts below have given a factual finding that the first appellant failed to prove due execution of Ex.A.1. Once it is found that Ex.A.1 is not proved, the first appellant/plaintiff is not entitled to recovery of any advance amount allegedly paid under the said agreement. Consequently, both the Courts below correctly came to the conclusion that the first appellant/plaintiff was not entitled to recovery of the advance amount and dismissed the suit.



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8.1. In view of the discussions made above, all the substantial questions of law framed at the time of admission are answered against appellants 2 to 5 and the second appeal is dismissed.

8.2. In nutshell, (i) this Second Appeal is dismissed by confirming the judgments and decrees of the Courts below; and (ii) in the facts and circumstances of the case, there would be no order as to costs.

04.01.2023

(2/2)

Internet: Yes

Index: Yes/No

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To

1. The II Additional Sub Judge,
Madurai.

2. The District Munsif, Melur.

3. The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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