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S.A.No.733 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

S.A.No.733 of 2002

- 1.Thukkaram (Died)
2. Kalavathi
3. Udayakumari
4. Anbuselvi
5. Durai
6. T. Selvam
- 7.T. Babu

..Appellants/plaintiff

Vs.

1. Viswanatha Padayachi (Died)
2. Ilanjiam
3. Jeyadevan
4. Namadevan
5. Jayamala
6. Vatsala

... Respondents/Defendants

(Appellants 2 to 7 brought on record as legal representatives of the deceased sole appellant vide order of this Court dated 11.08.2021 made in C.M.P.Nos.12094, 12092 and 12090 of 2024 in S.A.No.733 of 2002)

(Respondents 3 to 6 brought on record as legal representatives of the deceased R1 and R2 recorded as legal representative of R1 vide order of this Court dated 23.06.2023 made in C.M.P.Nos.12095, 12097 of 2021 in S.A. No.733 of 2002)

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Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code, as against the Judgment and Decree dated 29.01.2002 in A.S.No.122 of 2000 on the file of the learned Principal District Judge, Cuddalore, preferred against the Judgment and Decree dated 09.08.2000 in O.S.No.60 of 1996 on the file of the learned Subordinate Judge, Panruti.

For Appellants : Ms. R. Meenal

For Respondents : Mr.N.R. Rajagopalan

JUDGMENT

This Second Appeal arises against the Judgment and Decree dated 29.01.2002 in A.S.No.122 of 2000 on the file of the learned Principal District Judge, Cuddalore, preferred against the Judgment and Decree, dated 09.08.2000 in O.S. No.60 of 1996 on the file of the learned Subordinate Judge, Panruti.

2.The parties are described in the same array as in the Original Suit.

3.The appellants are the legal heirs of the original plaintiff. Before the Trial Court, the appellant/plaintiff filed a suit for Specific Performance or return of advance amount paid by him.

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4. According to the plaintiff, the 1st defendant offered to sell the suit property for a sum Rs.1,35,000/- and entered into a Sale Agreement on 21.06.1993 with the plaintiff. The plaintiff paid a sum of Rs.1,20,000/- as advance and agreed to pay the balance amount of Rs.15,000/- within a period of eight months. The suit property was also handed over to the plaintiff. Hence, the plaintiff approached the 1st defendant to get the Sale Deed in the 2nd week of January 1994. But, the 1st defendant evaded and stated that he executed a Gift Deed in favour of the 2nd defendant on 09.02.1994. Hence, this suit.

5. According to the defendants, the plaintiff is a money lender with whom he had money transaction for several years. At that time, he used to get signatures in the blank stamp papers. The loan amount was already repaid to the plaintiff. Only a sum of Rs.14,614/- has to be paid on 09.04.1992. In fact, the suit property belongs to the 1st defendant and her daughter along with his two sons and they have already entered into a Sale Agreement with one Sundaramurthy on 29.03.1993. The said Agreement was also filed. Thereafter, he gifted the property to his daughter and the

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alleged Sale Agreement was also fabricated by the plaintiff for the unlawful gain. In support of the same, the 2nd defendant stated that she was not aware of the alleged Agreement. Hence, they prayed for dismissal of the Original Suit.

6.The parties had gone to trial on the issues that were framed by the Trial Court. On the side of the plaintiff, the plaintiff had examined himself as P.W.1 and one Sivashanmugam as PW2. Ex.A1 to Ex.A9 were marked. On the side of the defendants, the 1st defendant had examined himself as D.W.1 and the 2nd defendant as DW3 and one Sampath as D.W.2. Ex.B1 to Ex.B13 were marked.

7.The Trial Court after taking into consideration the oral and documentary evidences of both sides found that as per the evidence of PW1, he is having Bank Account and he also owned Pawn Broker License. He also admitted that he used to give loan for pledging the jewels. Therefore, from the evidence of PW1, the 1st defendant is an illiterate man and he was abused by the plaintiff, who is the money lender



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and the 1st defendant used to borrow money from him. Considering the same, the Trial Court came to a conclusion that there is a money transaction between the plaintiff and the 1st defendant. Further, the Trial Court also considered Ex.A.1 – Sale Deed which was obtained in the name of the plaintiff on different dates and the signatures also found in different inks and there is no evidence that the signature of the attesor and the 1st defendant are one and the same pen. Furthermore, the Trial Court held that there is a possibility of fabricating the alleged signatures contained in the blank papers of the 1st defendant. The Trial Court in respect of readiness and willingness also held that there is no evidence to prove that the plaintiff has expressed his readiness and willingness nor he had money on that date. Further, the Trial Court observed that the alleged signatures in the Agreement was obtained earlier and thereafter, the papers were filled up and the attesor and PW1 are close relatives. Therefore, the alleged Agreement is not true and valid. The plaintiff has also not proved his claim and therefore, he is not entitled for any relief. On appeal, the First Appellate Judge confirmed the findings of the Trial Court and dismissed the Appeal Suit. Pending proceedings, the original plaintiff died



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and his legal representatives have preferred the present Second Appeal. 8.At the time of admission, this Court had framed the following Substantial

Questions of Law:

“(i)Whether in Law the Courts below are right in overlooking that when the 1st respondent had admitted to his signatures in Ex.A.1 – Sale Agreement, the presumption under Section 14 of the Evidence Act would be available to the appellant regarding execution?”

“(ii)Whether in Law the Courts below are right in failing to decree the return of the advance paid to the 1st respondent?”

“(iii)Whether in Law the Courts below are not wrong in basing their Judgments on mere conjectures and prejudices, without a proper appreciation of the facts and evidences?”



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9.The learned counsel for the appellants argued that the Courts below erroneously concluded that Ex.A.1 – Sale Agreement is a fabricated one since the 1st respondent admitted his signatures found in the document. Further, he would submit that the 1st defendant has not produced any evidence to establish that he had loan transaction with the plaintiff. Therefore, he prayed to set aside the findings of the Courts below.

10.*Per contra*, the learned counsel for the respondents would point out that as per Ex.B.1 – Promissory Note of the year 1996 executed in favour of the plaintiff which shows that the defendant had loan transaction with the plaintiff. Besides the plaintiff admitted that he is the pawn broker and he is used to give loan for pledging the jewels. Ex.B.2 to Ex.B.5 have been produced on the side of the defendants and the plaintiff admitted the signatures found in Ex.B.4 which would clearly shows that the loan transaction by the plaintiff is correctly appreciated by the Courts below and the Substantial Questions of Law (i) and (iii) is answered accordingly.



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11.On perusal of the records, it is seen that the plaintiff is the pawn broker and he is used to give loan for pledging jewels. The 1st defendant admitted that he borrowed loan from the plaintiff and he has to pay a sum of Rs.14,614/- to the plaintiff but, the same was not considered by the Courts below. Considering the said submissions made in the Written Statement filed by the 1st defendant that on 09.04.1992, the 1st defendant has to pay a sum of Rs.14,614/- which is a part of the loan amount to the plaintiff. Even assuming that there is a loan transaction between the plaintiff and the 1st defendant, the 1st defendant has to pay the said sum with interest. Therefore, the Substantial Questions of Law (ii) is answered.

Accordingly, this Second Appeal is disposed of. The Lrs of the 1st defendant is directed to deposit a sum of Rs.14,614/- with interest @ 6% per annum from 09.04.1992 to the credit of O.S.No.60 of 1996 on the file of the learned Subordinate Judge, Panruti, within a period of six weeks from the

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date of receipt of a copy of this Judgment. On such deposit, the Lrs of the plaintiff is permitted to withdraw the same by making necessary applications before the Trial Court. There shall be no order as to costs.

04.12.2024

Speaking / Non Speaking order

Neutral Citation : Yes/No

Index :Yes/No

mps

To

1. The Principal District Judge,
Cuddalore.

2. The Subordinate Judge,
Panruti.

3.The Section Officer,
VR Section,
Madras High Court.



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T.V.THAMAILSELVI, J.

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