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S.A.No.327 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.327 of 2012

D.Utthama Singh

...Appellant

Vs

P.N.Ayyaswami

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.9 of 2009 dated 21.09.2011, on the file of the Court of Additional District Sessions, Fast Track Judge No.I, Coimbatore, confirming the judgment and decree passed in O.S. No.36 of 2000 dated 23.02.2007 on the file of the III Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.M.Himavanth

For Respondent : No appearance

J U D G M E N T

Second Appeal has been filed against the judgment and decree passed in A.S.No.9 of 2009, dated 21.09.2011, on the file of the Additional District Sessions Court, Fast Track Judge No.I, Coimbatore, in confirming the judgment and decree passed in O.S.No.36 of 2000 dated 23.02.2007, on the file of the III Additional Subordinate Judge, Coimbatore.



S.A.No.327 of 2012

WEB COPY

2.The case of the plaintiff, in brief, is that the plaintiff entered into a sale agreement dated 25.09.1997, with regard to the plaint schedule property with the defendant. The sale consideration was fixed as Rs.3,20,000/- and an advance amount of Rs.3,00,000/- was paid to the defendant. The defendant had not executed the sale deed, therefore, the plaintiff had filed a suit for specific performance against the defendant.

3.The defendant contested the suit, filed a written statement and denied the allegations contained in the plaint. It is stated that the plaintiff had created a false agreement against the defendant and the defendant did not enter into any agreement with the plaintiff and thus, pleaded to dismiss the suit.

4.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:

1. Whether the sale agreement dated 25.09.1997 is genuine? Is it true that on the basis of the same, the plaintiff



WEB COPY



S.A.No.327 of 2012

***paid an advance sum of Rs.3,00,000/-
to the defendant?***

***2. Whether the plaintiff is entitled to the
relief of specific performance in
respect of the suit property from the
defendant?***

***3. To what other reliefs, the plaintiff is
entitled to?***

5. Before the Trial Court, in support of the plaintiff's case, PWs 1 & 2 were examined and 4 documents were marked as Ex.A.1 to Ex.A.4. On the side of the defendant, DWs 1 & 2 were examined and 6 documents were marked as Ex.B.1 to Ex.B.6.

6. After trial, the Trial Court found that the alleged sale agreement dated 25.09.1997 is not a sale agreement. It was executed in pursuance of a chit transaction between the plaintiff and the defendant. There is no intention to sell the property and no advance amount was received by the defendant and finally, dismissed the suit. Aggrieved by the same,



S.A.No.327 of 2012

plaintiff filed an appeal in A.S.No.36 of 2000, on the file of the Additional District Sessions Court, Fast Track Judge No.I, Coimbatore.

7.The First Appellate Court, after considering the entire materials and evidence on record found that the findings of the Trial Court are correct and also held that the sale agreement is not a true one and the advance amount Rs.3,00,000/-was not received and that there is a chit transaction between the parties. Further, considering Exs.B1 & B2, the First Appellate Court held that the defendant had paid 5 instalments as per Ex.B1 chit passbook and paid 6 instalments as per Ex.B2 and the defendant has not paid the balance amount. The defendant has also admitted in his evidence to repay the balance chit amount. Based on this, the First Appellate Court confirmed the judgment of the Trial Court and dismissed the appeal filed by the plaintiff. Aggrieved by the same, this second appeal has been filed.

8.Heard the learned counsel for the appellant with regard to the substantial questions of law.



S.A.No.327 of 2012

WEB COPY

9. On perusal of the records, it is found that the alleged sale agreement dated 25.09.1997 is not a sale agreement executed with an intention of the defendant's property. It was executed in pursuance of the chit transaction between the plaintiff and defendant. Further, based on the records and evidence, it was found that the alleged advance amount of Rs.3,00,000/- toward the sale consideration was not paid by the plaintiff to the defendant and in pursuance of Ex.B1 & Ex.B2, he repaid the instalments of the chit amount and the balance was only two instalment. The defendant is also ready to repay the balance chit amount.

10. In these circumstances, there cannot be any doubt whatsoever that consideration of irrelevant fact and non consideration of relevant fact would give rise to a substantial question of law. Further, it does not meet out the parameters laid down by the Hon'ble Supreme Court in the following decisions:

(i) AIR 2008 SC 379 – *Moses Wilson Vs.*

Kasturiba.

(ii) AIR 2008 SC 956 – *AbdulRaheem Vs.*

Karnataka Electricity Board.



WEB COPY



S.A.No.327 of 2012

(iii) AIR 2008 SC 1749 – Kashmir Singh Vs.

Harnam Singh and another.

11.The Courts below had decided the case based upon the evidence and documents submitted by the parties. There are no perverse findings, no mis-consideration of evidence and no substantial questions of law are involved in this case. There are no merits in this case and the second appeal fails.

12.Accordingly, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are also closed.

21.06.2024

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

1.The Additional District Sessions,
Fast Track Judge No.I, Coimbatore.

2.The III Additional Subordinate Judge,
Coimbatore.



WEB COPY



S.A.No.327 of 2012

V.SIVAGNANAM, J.

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S.A.No.327 of 2012

21.06.2024