



S.A.No.506 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V. SIVAGNANAM

S.A.No.506 of 2012
and MP.No.1 of 2012

Rajendran

... Appellant

Vs

Chinnasamy

...Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in AS.No.39 of 2009 dated 19.01.2012 on the file of the Sub Court, Tirupattur confirming the judgment and decree in OS.No.417 of 2004 dated 14.09.2009 on the file of the District Munsif, Tirupattur.

For Appellant : M/s.V.Srimathi

For Respondent : M/s.P.Veena



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J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the judgment of the Courts below and the materials available on record.

2. The case of the plaintiff/appellant is that the defendant agreed to sell the suit property for the sale consideration of Rs.45,000/- on 21.06.2001 and on the same day, the plaintiff paid a sum of Rs.40,000/- towards advance of the sale consideration. The defendant agreed to receive the balance amount of Rs.5,000/- from the plaintiff on or before 20.03.2002 and agreed to execute the sale deed at the expenses of the plaintiff. The agreement of sale in respect of the suit property has been executed between the plaintiff and the defendant on 21.06.2001 containing the aforesaid terms and conditions with other clauses. The plaintiff is ready and willing to perform his part of the contract as per the agreement dated 21.06.2001 in favour of the plaintiff on or before 20.03.2002. The plaintiff has approached the defendant on several occasions, the defendant is postponing to perform his part of the contract without any valid reasons. Thereafter, the



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plaintiff issued legal notice to the defendant on 20.02.2002 through his counsel expressing his willingness and readiness to perform his part of the contract on 06.03.2002 and request him to appear before the Sub Registrar Office, Natrampalli for execution of the sale deed in respect of the suit property. The defendant received the legal notice on 25.02.2002 and issued reply on 27.02.2002 through his counsel with false allegations. The defendant also failed to execute the sale deed on 06.03.2002, the plaintiff failed to execute the sale deed, the plaintiff would be put to great loss and hardship which cannot be compensated in terms of money. Hence, the plaintiff filed the suit for Specific Performance.

3. The defendant filed his written statement wherein it is stated that the defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.45,000/- on 21.06.2001 and denied the statement that he had received a sum of Rs.40,000/- towards advance from the plaintiff and agreed to receive the balance of Rs.5,000/- on or before 20.03.2002. The plaintiff failed to disclose the conditions stipulated in the sale agreement dated 21.06.2001 and the agreement is sham and nominal and it is only a



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bogus agreement manipulated for the purpose of filing vexatious suit against the defendant and there is no necessity for the defendant to sell his property. When the defendant has not executed any agreement of sale, the demand to execute the sale deed does not arise on or before 20.03.2002 after receiving the balance of sale price of Rs.5,000/-. The statement of the plaintiff that he demanded several times to execute the sale deed, but it is equally false to state that this defendant is postponing to execute the sale deed is purely a myth and an imaginary one. The plaintiff has no means to pay an advance amount of Rs.40,000/- and he is employed as a security in the State Bank at Guindy. For the past three years, there is a dispute between the plaintiff and the defendant, when there is no agreement between the plaintiff and the defendant the question of executing the deed to the plaintiff before the Sub Registrar, Natrampalli also does not arise. The plaintiff has also filed a suit in OS.No.11 of 2002 before the District Munsif, Thirupattur and the same is pending. There is a criminal complaint lodged by the defendant against the plaintiff for threatening and for murder attempt. The worth of the property is more than three lakhs and the plaintiff had earlier obtained signature in blank papers for the purpose of transferring



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patta in the name of the defendant and now the same has been misused for filing the present suit.

4. Before the trial Court, the plaintiff examined three witnesses and marked four documents and the plaintiff himself as PW1 and attesting witnesses as PW2 and PW3. The defendant has not marked any documents and examined three witnesses and examined himself as DW1. After considering all the oral and documentary evidences, the trial Court comes to the conclusion that the signature in the Ex.A1 sale agreement dated 21.06.2001 was not proved and rejected the claim of the plaintiff.

5. Aggrieved by the said order, the plaintiff filed an appeal in AS.No.39 of 2009 before the Sub Court, Thirupathur, Vellore District. The first appellate Court by its judgment and decree dated 14.09.2009 confirmed the findings rendered by the trial Court and dismissed the appeal and hold that the signature found in the alleged sale agreement was not proved by the plaintiff. As against the said judgment and decree, the appellant is before this Court.



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6. The appellant filed the suit for specific performance to execute the sale agreement dated 21.06.2001 entered into between the plaintiff and the defendant. At the time of executing the sale agreement for a sum of Rs.45,000/- the plaintiff received a sum of Rs.40,000/- and the defendant to pay balance sum of Rs.5,000/- and to execute the sale deed on or before 20.03.2002.

7. The learned counsel for the appellant contended that the defendant admitted the signature in paragraph 5 of the written statement and also during cross examination. The trial Court as well as the first appellate Court failed to consider this admission and held that the sale agreement was not proved, which is against the evidence on record and being perverse the substantial questions of law has to be framed in this second appeal.

8. On perusal of the oral and documentary evidences and the observations of the trial Court and the first appellate Court alleging that the signature in the sale agreement in Ex.A1 is not proved by the plaintiff. Further, on perusal of the written statement in paragraph 5, it is noticed that



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the defendant has not admitted his signature in the alleged sale agreement dated 21.06.2001, besides on reading the cross examination of the defendant it is also noticed that he did not admitted his signature in the Ex.A1/sale agreement. Further, the first appellate Court in its judgment paragraph 12 and on seeing the Ex.A1 sale agreement dated 21.06.2001 it is observed that the alleged attesting witnesses DW2 and DW3 evidences are not consistent to prove that the alleged sale agreement dated 21.06.2001/Ex.A1. Further, it is observed that the alleged sale agreement was typed and given long gap for putting signature and the signature has been put up in the sale agreement. Based upon the evidences on record, the trial Court as well as the first appellate Court have come to the conclusion that the alleged sale agreement dated 21.06.2001/Ex.A1 is not proved.

9. In this case, 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, the learned counsel for the appellants does not meet out the parameter laid down by the Hon'ble Supreme Court in the following decisions:-



1. AIR 2008 SC 379 – Moses Wilson v. Kasturiba.
2. AIR 2008 SC 956 – Abdul Raheem v. Karnataka Electricity Board.
3. AIR 2008 SC 1749 – Kashmir Singh v. Harnam Singh and another.

10. Further, on perusal of the records and the judgments of the trial Court and the first appellate Court, I find, the findings recorded by the trial Court as well as by the first appellate Court are not perverse and the view being based on evidences on record and no another view is possible. There is no substantial questions of law arisen to be decided in this appeal.

11. In the result, second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.06.2024.

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

To

1. The Sub Court, Tirupattur
2. The District Munsif, Tirupattur



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V. SIVAGNANAM, J.

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