



S.A.No.623 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.623 of 2012

and

M.P.No.1 of 2012

1. Periasamy Pillai (Died)
2. Jothi
3. Dhanam
4. Ramamoorthy
5. Murugesan

... Appellants

(Appellants 2 to 5 were brought on record as LR's of deceased sole appellant vide order dated 30.06.2017 in M.P.No.3 of 2014 in S.A.No.623 of 2012)

Vs.

1. Sasikumar
2. Radhamani
3. Pappathi Ammal (Died)
4. Nirmala

... Respondents

(3rd Respondent died, her LR's already on record as respondents 1, 2 & 4 as per memo ordered vide order dated 21.06.2017 in S.A.No.623 of 2012)



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Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Additional District Judge (Fast Track Court No.3), Kallakurichi made in A.S.No.106 of 2004 dated 23.08.2011 confirming the judgment and decree of the learned Subordinate Judge, Kallakurichi made in O.S.No.72 of 1998 dated 26.12.2002.

For Appellants : Mr.P.Dinesh Kumar

For Respondents 1 & 2 : Mr.R,Nalliyappan

For Respondent 4 : No appearance

JUDGMENT

The plaintiff before the trial Court is the first appellant herein. After the demise of the first appellant, his legal heirs were impleaded as appellants 2 to 5. During trial, the first defendant died and his legal heirs were impleaded as defendants 2 to 5. Defendants 2 to 5 are the respondents herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the trial Court.

3. The brief facts, which lead to decide this Second Appeal, are as



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follows :-

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3.1. There was a registered mortgage between the plaintiff and the first defendant. By virtue of mortgage deeds/Exs.A1 & A2 dated 27.12.1994 and 11.04.1996 a sum of Rs.25,000/- and Rs.10,000/- respectively was borrowed. It is also the case of the plaintiff that apart from these two borrowals, the first defendant had also borrowed a sum of Rs.75,000/- from the plaintiff through Promissory Note/Ex.A4 dated 12.08.1996. It is the further case of the plaintiff that, the total outstanding in respect of these borrowals along with interest is Rs.1,33,000/-. The plaintiff further submits that he had sent a legal notice to the first defendant calling upon him to repay the said amount vide legal notice/Ex.A7 dated 11.12.1997.

3.2. According to the plaintiff, on receipt of the said notice, the first defendant came forward to sell the property for a sale consideration of Rs.1,75,000/-. In pursuance of the same executed a sale agreement/Ex.A1 on 25.12.1997. Therefore, after adjusting the sum of Rs.1,33,000/- being the loan due between the plaintiff and the first defendant, the plaintiff has paid an additional sum of Rs.27,000/- towards an advance. Thus, according to the plaintiff, total sum of



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Rs.1,60,000/- has been paid to the plaintiff. The remaining sale consideration to be payable is Rs.15,000/- and six months period was determined as period of performance.

3.3. Even prior to the completion of the said six months period, the plaintiff has issued notice/Ex.A6 on 25.05.1998 calling upon the first defendant to execute the sale deed. Since the first defendant has not come forward to execute the sale deed, the plaintiff has filed a suit for specific performance within the specified time namely 08.06.1998.

3.4. It is the submission of the plaintiff that the trial Court as well as the first appellate Court, without going into the evidence and also without considering the plaintiff's due compliance with the time limit, have wrongly dismissed the suit.

4. It is also the contention of the learned counsel for the appellants/plaintiff that in the absence of the independent evidence on the part of the defendants so as to disprove Ex.A1 & Ex.A4, more particularly when the signature in Ex.A4 was admitted by the defendants, the first appellate Court ought to have upheld the plaintiff's claim.

5. The learned counsel further submits that it was the defendant



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who had voluntarily come forward to execute the sale agreement on receipt of the notice calling upon them to repay the amount, therefore, the defense of forgery cannot be relied and it is also the contention of the learned counsel for the appellants that the evidence has not been given due importance and has been ignored by both the Courts below. Therefore, it is the contention of the learned counsel for the appellants that the findings recorded by both the Courts below are in contrary to the evidence. Therefore, contended that the same is perverse and is liable to be interfered with by this Court. Hence, he prayed to allow the second appeal.

6. However, the learned counsel for the respondents vehemently submits that the sale agreement dated 25.02.1997 is a product of forgery, and the plaintiff did not prove the sale agreement. It is also the contention of the learned counsel for the respondents that, the very fabrication could be established from the date of purchase of the stamp paper and that the way in which Ex.A4/sale agreement has been prepared in a clumsy manner.

7. The learned counsel for the respondents would submit that the



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plaintiff has not approached the Court with clean hands. Therefore, it is the contention of the learned counsel for the respondents that the findings of fact recorded by both Courts below are based upon the evidence, therefore, while exercising the jurisdiction under Section 100 of the Civil Procedure Code, this Court could not interfere with such a well-merited finding, unless there is perversity over the same. Hence he prayed for dismissal of the second appeal.

8. This Court has given its anxious consideration to the submissions made by both sides.

9. The sum and substance of the arguments of the learned counsel for the respondents is that Ex.A1/sale agreement is true and binding. Therefore there is a duty cast upon this Court to find out the veracity of Ex.A1 agreement, whether the same is a fabricated one or not. In this regard, both the Courts below have found that, though the sale agreement was executed on 25.12.1997, the stamp paper in which Ex.A1/agreement engrossed was purchased on 13.12.1995. Therefore found that, had there been any spontaneity in entering into an agreement, there would not have



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been any occasion for the plaintiff to purchase the stamp paper during 1995.

10. Apart from that both the Courts below have also found that there is a contradiction in the evidence of the plaintiff. It is the case of the plaintiff that the defendants have handed over the possession to the plaintiff while executing the Sale agreement. However, during cross examination, the plaintiff has admitted that the possession was not at all with him. The yet another material aspect which has been dealt with by both the Courts below is the way in which the sale agreement was typed in the stamp paper purchased on 13.12.1995. It is the finding of the trial Court that the clumsy nature of typing would only project the fabrication of said document.

11. According to this Court, the above findings are well-merited and based upon the evidence, and from such finding of fact recorded by both the Courts below, this Court could not find any perversity and the same are based on evidences and materials. Therefore, this Court is of the firm view that there is no ground to interfere with the well-merited



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concurrent finding of both the Courts below and also this Court could not find any substantial question of law in this matter.

12. In the result, this Second Appeal is dismissed, by confirming the judgments of both the Courts below. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Additional District Judge (Fast Track Court No.3),
Kallakurichi.
2. The Subordinate Judge, Kallakurichi
3. The Section Officer,
V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.

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