



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.16 of 2024

K.Selvam

... Appellant

Vs.

1.K.Thangavelu

2.R.Velusamy

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the Judgement and Decree dated 12.09.2017 made in AS No.74 of 2013 on the file of the III Additional District and Sessions Judge , Coimbatore confirming the Judgement and Decree dated 21.06.2013 made in OS No.287 of 2008 on the file of the I Additional Subordinate Court, Coimbatore.

For Appellant : M/s.A.Esakkiappan



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JUDGEMENT

The 2nd defendant has challenged the judgement and decree passed in A.S.No.74 of 2013 by the III Additional District and Sessions Judge, Coimbatore in and by which the learned Judge has reversed the judgement and decree passed by the I Additional Sub Judge, Coimbatore in O.S.No.287 of 2008.

2. The facts giving rise to the above Second Appeal are herein below set out briefly and the parties are referred to in the same ranking as before the Trial Court.

3. The suit O.S.No.287 of 2008 was filed by the plaintiff for specific performance of an agreement of sale dated 30.07.2007 and for a permanent injunction.

4. It is the case of the plaintiff that the 1st defendant on 30.07.2007 had entered into an agreement of sale with the plaintiff



with in intent to sell his property, namely, the suit schedule property for a total sale consideration of Rs.3,50,000/-. A sum of Rs.25,000/- was paid as advance and the stipulated time for performing the contract was 3 months. The plaintiff would submit that he was always ready and willing to perform his part of the agreement.

5. Thereafter, for discharging certain amounts due towards the loan borrowed by him which was the subject matter of suit O.S.No.665 of 2006 pending against him on the file of the III Additional Sub Judge, Coimbatore, the defendant had sought for a further sum of Rs.2,00,000/-. The said sum was paid by the plaintiff to the 1st defendant on 25.10.2007 and the same was adjusted towards part sale consideration. An acknowledgement to this effect was made on the reverse of the original agreement of sale. Thereafter, the 1st defendant had discharged the loan due under the above-referred suit and had obtained the original sale deed from the Court and the same was handed over to the plaintiff on 11.01.2008. On the very same day, the



plaintiff had paid a further sum of Rs.10,000/- as promised and to that effect an endorsement was made on the reverse of the original sale deed. Thus, as on 11.01.2008, the plaintiff had paid a total sum of Rs.2,35,000/- out of the sale consideration of Rs.3,50,000/- and a sum of Rs.1,15,000/- remained to be paid.

6. The plaintiff would submit that the 1st defendant had promised to execute the sale deed in his favour after the receipt of the balance sale consideration of Rs.1,15,000/-. Believing the same, the plaintiff was ready with the balance sale consideration of Rs.1,15,000/- on 13.03.2008. However, contrary to the assurance, the 1st defendant had not come forward to execute the sale deed. This constrained the plaintiff to issue a legal notice dated 03.04.2008 calling upon the 1st defendant to execute the sale deed as the per the sale agreement. However, the 1st defendant had sent a reply dated 16.04.2008 containing false allegations. The plaintiff had also come to learn that the 1st defendant had settled the suit property upon the 2nd defendant,



his brother under a settlement deed dated 16.04.2008. Therefore, the plaintiff had come forward with the suit in question.

7. The 1st defendant had filed a written statement inter alia denying the execution of the agreement of sale. The 1st defendant would submit that he had borrowed a sum of Rs.1,00,000/- from the plaintiff to discharge the loan to one M.P.Subramaniam and to settle the suit amount in O.S.No.665 of 2006.

8. It is the case of the 1st defendant that while giving the above loan the plaintiff had obtained his signature on a blank stamp paper and green sheets which has now been used to fabricate the agreement of sale. The 1st defendant had denied the receipt of the further sum of money as set out in the plaint. The 1st defendant would also submit that he had settled the property in favour of the 2nd defendant much prior to the filing of the suit and it is the 2nd defendant who is in possession and enjoyment of the suit property.



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9. The 1st defendant would further submit that the guideline value of the property is over a sum of Rs.8,00,000/- and by no stretch of imagination would he have agreed to sell the property for a mere sum of Rs.3,50,000/-. Thereafter, an additional written statement came to be filed by the 1st defendant inter alia reiterating the contents of the earlier written statement.

10. The 2nd defendant had filed a written statement stating that no agreement of sale had been executed in favour of the plaintiff and that the plaintiff had made use of the blank stamp paper and green sheet that had been signed by the defendant to create the agreement of sale.

11. The Trial Court had framed the following issues:-

*1. Whether the sale agreement dated 30.07.2007
is true and valid?*



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2. Whether the endorsement made in the sale agreement is alone true and valid?

3. Whether the Settlement deed dated 16.04.2008 is fraudulent and invalid?

4. Whether the plaintiff is entitled to the suit claims?

5. To what relief?

12. On the side of the plaintiff, three witnesses were examined and Ex.A.1 to A.15 were marked. On the side of the defendants, three witnesses were examined and Ex.B.1 to B.10 were marked.

13. The learned Trial Judge on considering the evidence on record had decreed the suit for specific performance and injunction.

14. Challenging the same, the 1st defendant had filed A.S.No.74 of 2013 on the file of the District Court, Coimbatore. The Lower



Appellate Court by judgement and decree dated 12.09.2017 was pleased to dismiss the appeal. Aggrieved by the same, the 2nd defendant who had not challenged the judgement and decree in O.S.No.287 of 2008 has filed the above Second Appeal.

15. Heard the counsel for the appellant.

16. The 1st defendant had taken a stand that he had signed blank stamp paper and blank sheet which had been misused by the plaintiff to create the agreement of sale as well as the endorsements. The plaintiff has discharged the onus of proving the same by examining P.W.2 and P.W.3 who had proved the execution of the agreement of sale and the endorsements by the 1st defendant. Further, the Trial Court has considered the deposition of the 1st defendant as D.W.1 wherein he had denied the signatures affixed by him not only in the agreement of sale but also in the vakalat and written statement filed in the suit. Therefore, it appears that the 1st defendant is in the habit of denying the



signatures put up by him. In the instant case, the 1st defendant has not denied the signature but has only stated that he has signed blank stamp papers which have been subsequently filled up by the plaintiff to create the agreement of sale. The plaintiff has discharged his onus of proving that the signatures were affixed on completed documents by examining P.W.2 and P.W.3.

17. The conduct of the 1st defendant is further evident from the fact that he had after receiving the legal notice from the plaintiff rushed to execute the settlement deed in favour of the 2nd defendant. The plaintiff has not only proved the execution but has also proved the readiness and willingness as is evidenced by the judgement and decree of the Courts below who have considered the evidence in great detail and I see no reasons to differ with this finding. That apart, the 2nd defendant has not chosen to challenge the judgement and decree of the Trial Court in O.S.No.287 of 2008 and without challenging the said judgement and decree has now come forward to challenge the



judgement and decree passed by the Lower Appellate Court in

A.S.No.74 of 2013 and for the aforesaid reasons I see no merits in the

Second Appeal and the same is dismissed. No costs.

11.01.2024

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

1. The III Additional District and Sessions Judge, Coimbatore.
2. The I Additional Subordinate Court, Coimbatore.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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