



S.A. No.843 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.843 of 2024

L.V.Lalitha

... Appellant

Vs.

A.Venkatesamappa

.. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 23.03.2023 made in A.S.No.26 of 2021 on the file of Addl. District Court, Hosur reversing the judgment and decree dated 25.02.2021 passed in O.S.No.44 of 2007 on the file of Addl. Sub-Court, Hosur.

For Appellant

: Mr.T.Murugamanickam
Senior Advocate for
Ms.Zeenath Begum



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JUDGMENT

Challenging the reversal findings of the courts below rendered in A.S.No. 26 of 2021 by the Addl. District Court, Hosur arising out of trial court findings in O.S.No.44 of 2007 on the file of Addl. Sub-Court, Hosur, this Second Appeal was preferred by the defendant.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the respondent/plaintiff filed a suit against her claiming the relief of specific performance in O.S.No.44 of 2007 directing her to execute the sale deed as per the sale agreement dated 07.05.2006 stating that the suit property absolutely belongs to the defendant by way of purchase and she made an offer to sell the property for a sum of Rs.1,72,000/-. Accordingly, she entered into a sale agreement with the plaintiff and paid an advance amount and to pay balance amount and other terms, the time was fixed one month. However, on 01.06.2006, the



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defendant received another amount of Rs.1 lakh and made endorsement on the back side of the sale agreement and thereafter, several attempts made by the plaintiff, but the defendant refused. Hence, the suit.

4. The defendant totally denied the alleged sale agreement with the plaintiff as well as receipt of advance and contended that the alleged sale agreement is forged one. He would submit that she is a spinster and having no necessity to execute the sale deed, however, the worth of the property is more than Rs.3 lakhs even in the year 2005, but only to grab the property, the alleged agreement came into force. Before the trial court, both parties adduced evidence and at the instance of defendant, the signature in the sale agreement and her admitted signature was sent to forensic lab. On perusal of the finding given by forensic science department, it reveals that the signature in the sale agreement Ex.A1 is found valid, but the signature in the alleged endorsement was significantly differs from the admitted signature. Therefore, signature made in the endorsement has not been signed by the defendant and the forensic report was marked as Ex.C1. Based on that, the trial judge concludes that there is a sale agreement



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entered through Ex.A1 between the parties, but the endorsement on the back side of agreement has not been made by the defendant by receiving another amount of Rs.1,00,000/- as alleged by the plaintiff and also finally held that the plaintiff has not approached with clean hands and forged the signature of the defendant. Therefore, the suit was dismissed. Aggrieved over that, an appeal suit was filed in A.S.No.26 of 2021, wherein the first appellate judge independently analysed the evidence and documents on record, concludes that as per expert opinion, in Ex.A1 sale agreement, signature of defendant was compared and the same was found correct, thereby there was an agreement entered between the plaintiff and defendant. Accordingly, the defendant received a sum of Rs.25,000/- as advance, but however, she has not accepted the alleged endorsement. Therefore, the first appellate judge confirmed the findings with slight modification directing the defendant to pay a sum of Rs.25,000/- with 9% compound interest from the date of agreement i.e. on 07.05.2006 till realisation. Challenging the said reversal findings, the defendant preferred this Second Appeal.



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5. Mr.T.Murugamanickam, learned senior counsel appearing for appellant argues that the plaintiff has not approached the court with clean hands and the same has also been inferred by the courts below and there is no proof that he is always ready and willing to execute the sale deed within a one month period, besides, he has also created a fabricated endorsement, but without considering all these errors on the part of plaintiff, granting compound interest to the refund of advance amount as such is illegal and liable to be set aside.

6. Heard and considered submissions made by learned counsel for appellant and perused the materials available on record.

7. Considering his submissions as well as on perusal of records, it reveals that plaintiff claimed relief of specific performance based upon the alleged sale agreement Ex.A1 said to be entered into between them, but the defendant totally denied the alleged agreement as well as an endorsement made on the back side of the agreement. At her instance, signature in the sale agreement and endorsement along with her admitted signature were sent to forensic lab and as per Ex.C1 Expert opinion, it reveals that the



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signature found in Ex.A1 is one and the same, but the signature found in the alleged endorsement totally differs from the admitted signature of the defendant. Therefore, the courts below rightly held that the alleged endorsement is fabricated one, however, since the signature tallies with the defendant's signature, the sale agreement was treated as valid one. As per the recitals of the agreement, a sum of Rs.25,000/- was received as advance by the defendant, but the alleged endorsement fabricated by the plaintiff, which disentitles his claim for the relief of specific performance as rightly observed by the trial judge. But, the first appellate judge modified the same with the direction to refund the advance amount holding that Ex.A1 sale agreement is valid. Moreover, the first appellate judge awarded compoundable interest and the same was objected by the defendant by preferring this Second Appeal. As rightly pointed out by the appellant's counsel, the conduct of the party is to be taken into whole. Accordingly, he fabricated the endorsement as if the defendant received a sum of Rs.1,00,000/- and signed on the back side of the agreement, but it was declared as fabricated one as per the forensic report. Therefore, the plaintiff used the alleged agreement for unlawful gain, but without considering that,



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she was given compoundable interest as such is erroneous one. Therefore, in respect of awarding interest, this court is inclined to set aside the findings of the first appellate judge on taking into consideration of the conduct of plaintiff. Finally, the defendant is directed to deposit the advance amount of Rs.25,000/- without any interest to the plaintiff into the credit of suit in O.S.No. 44 of 2007 within a period of two months from the date of receipt of copy of this order. With that finding, this Second Appeal is disposed of. In respect of other facts, the findings of the courts below is well-reasoned, which needs no interference. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

Addl. District Judge,
Hosur.



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T.V.THAMILSELVI, J.

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