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S.A.No.123 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.123 of 2024
and
C.M.P.No.3853 of 2024

A.Kannan

... Appellant

Vs.

S.Maheswari

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 20.07.2023 in A.S.No.24 of 2016 on the file of the II Additional District Judge, Salem, reversing the judgment and decree dated 16.12.2015 in O.S.No.443 of 2011 on the file of the Principal Subordinate Court, Salem.

For appellant : Mr.Charles Kamalesh M.Appaji

For respondent : Mr.J.Ramakrishnan

JUDGMENT

The plaintiff in the suit for specific performance has filed this



second appeal, challenging the judgment and decree dated 20.07.2023 passed by the learned II Additional District Judge, Salem, in and by which, the learned Judge has set aside the decree granted by the learned Principal Subordinate Judge, Salem, in O.S.No.443 of 2011.

2. The facts which have given rise to this second appeal are set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit for specific performance to direct the defendant to execute a sale deed after receiving the balance sale consideration of Rs.50,000/- and to deliver to him possession of the said property. The plaintiff would submit that the suit property belongs to the defendant who had agreed to sell the property for a sale consideration of Rs.2,50,000/-. After negotiation, the parties had entered into a sale agreement dated 03.07.2011 in the presence of witnesses. On the very same day, the defendant had received a sum of



Rs.2,00,000/- as advance. The remaining Rs.50,000/- was to be paid within a period of 90 days from the date of the agreement.

2.2. The plaintiff would submit that he has been ready and willing to perform his part of contract, but, the defendant had not come forward to perform her part of contract. Therefore, the plaintiff has come forward with the suit in question.

2.3. The defendant had filed a written statement *inter alia* denying the allegations contained in the plaint. She had denied the very agreement and denied knowledge about the plaintiff. The defendant would submit that there has been dispute between her and her husband and it is her husband, who, with ulterior motives, created a document in her name by forging her signatures and had taken the help of the plaintiff to file the present suit. She had further denied the very signature in the agreement of sale. That apart, she would submit that she had not received any consideration.



2.4. Further, it is the contention of the defendant that the property was worth about Rs.7,00,000/- even in the year 2011 and there was no necessity for the defendant to sell the property for a low price. It is categorically stated that she had offered this property as a security for a loan borrowed by her husband and with a view to grab the property, her husband created this document. She, therefore, sought for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the following issues.

“(i) Whether the agreement of sale dated 03.07.2011 is true and genuine and binding upon the plaintiff?”

“(ii) Whether the plaintiff is always ready and willing to perform his part of contract?”

“(iii) Whether the plaintiff is entitled to the relief of specific performance of contract?”

“(iv) To what relief?”



4. The plaintiff had examined himself as P.W.1 and one Palaniappan as P.W.2 who is stated to be the attesor of Ex.A1 – sale deed and marked Exs.A1 to A4 on their side. The defendant had examined herself as D.W.1 and marked Exs.B1 to B4.

5. On considering the oral and documentary evidence, the Trial Court has decreed the suit as prayed for.

LOWER APPELLATE COURT:

6. Aggrieved by the said judgment and decree, the defendant had filed an appeal in A.S.No.24 of 2016 on the file of the II Additional District Court, Salem. The learned Judge, by his judgment and decree dated 20.07.2023, allowed the appeal and set aside the judgment and decree of the Trial Court.

7. Challenging the same, the plaintiff is before this Court. The matter was listed today for admission and the defendant has entered caveat in the above appeal and is represented by her counsel.



8. Heard the learned counsel for the appellant and respondent perused the materials available on record.

DISCUSSION:

9. The defendant had clearly and categorically submitted that she has no knowledge about the plaintiff and that she has neither executed an agreement of sale nor received any sale consideration. The judgments of the Courts below would indicate that the plaintiff had requested the defendant to provide the admitted signature of the defendant for comparing with the disputed signature, but ,he could not obtain the admitted signature from the defendant.

10. Pending the appeal, the plaintiff had also filed a petition under Section 45 of the Indian Evidence Act, 1872, to compare the admitted signature of the defendant with the disputed signature in Ex.A1 sale agreement. Ultimately, this petition was not pressed by the plaintiff since photocopies of the account opening form of Canara Bank



could not be taken for comparison.

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11. The plaintiff, as P.W.1, had contended that the agreement of sale was prepared at the house of his friend, viz., Palaniappan. However, P.W.2 who is stated to be the attesor, during his cross-examination, would submit that the defendant and her husband had come together and they had already prepared the sale agreement and only brought it for signature.

12. Further, P.W.1 has admitted that he had not seen the defendant before the execution of Ex.A1. It is rather strange, since she is the owner of the suit property, which the plaintiff seeks to purchase. He would also submit that he was not aware that the defendant and her husband were separated and that the defendant was living in Rasipuram away from her husband. The address in the agreement of sale is the address of the defendant's husband where the defendant was no longer residing and the legal notice as well as the suit notice has been returned with an endorsement "no such addressee".



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13. That apart, the plaintiff has also not proved the readiness and willingness, when according to him, only a sum of Rs.50,000/- was payable. In fact, even before the filing of the suit, the plaintiff has not taken any steps to verify the correct address of the defendant. Since the suit for specific performance being a discretionary one, the plaintiff has to come to the Court with clean hands and there should not be any suppression of facts. Further, yet another factor which is loaded against the plaintiff is the fact that he has not examined Palaniappan in whose house the agreement of sale is purported to have been executed.

Accordingly, this second appeal stands dismissed as it does not make out any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
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To

1. The Principal Sub Judge, Salem.

2. The II Additional District Judge, Salem.

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3.The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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