



S.A.(MD)No.440 of 2007

BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 18.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.440 of 2007

M.P.(MD)No.1 of 2011

1.Nazeema Banu

2.Jainulabdeen

... Appellants

Vs

1.Amma Ponnu

2.Tamilselvam

3.Parthipan

4.Anandaraj

5.Selvi Janaki

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.12 of 2006, dated 07.07.2006 on the file of the 1st Additional District Judge, (Incharge), Tirunelveli confirming the judgment and decree dated 07.12.2005 passed in O.S.No. 39 of 2005 on the file of the Principal Sub Judge, Tirunelveli.



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For Appellants : Mr.R.Shankar Ganesh for A1
No Appearance for A2

For Respondents : Mr.R.Manimaran

JUDGMENT

When the matter was taken up for hearing, the learned counsel for the respondents reported “no instructions” and the same is recorded. Heard the arguments of learned counsel for the appellants.

2. The plaintiffs in a suit for specific performance are the appellants. The suit as well as the first appeal filed by the plaintiffs were dismissed. Challenging the concurrent findings, they are before this Court.

3. According to the plaintiffs, the suit property originally belonged to the first defendant, Amma Ponnu and her husband Pannerselvam. They executed a General Power of Attorney in the name of second plaintiff on 24.09.2004 in respect of the suit property. Thereafter, the said Paneerselvam received a sum of Rs.5,00,000/- (Rupees Five Lakhs only) from the plaintiffs on two installments with an understanding that



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he would execute a pucca sale deed in the name of the plaintiffs and issued a receipt to that effect on 23.11.2004. Later on, in his capacity as a power agent of first defendant and her husband, the second plaintiff executed a sale deed in his favour and in favour of first plaintiff, his brother's wife on 01.12.2004. Thereafter, it came to the knowledge of the plaintiffs that the above said Pannerselvam died on 23.12.2004 and hence, they approached the defendants regarding the execution of the document. Though the defendants assured that they were ready to execute the rectification deed, subsequently issued a notice, as if plaintiffs had fraudulently registered a sale deed in their favour. Hence, the above said suit was laid seeking direction to the defendants to execute registered sale deed in favour of the plaintiffs in respect of the suit property and on their failure to do so, the Court shall execute a sale deed in favour of the plaintiffs.

4. The suit was resisted by the defendants by denying the averments contained in the plaint, as if Panneerselvam received a sum of Rs.5,00,000/- (Rupees Five Lakhs only) from the plaintiffs with an understanding to sell the suit property. The receipt allegedly issued by Pannerselvam for having received Rs.5,00,000/- (Rupees Five Lakhs



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only) was denied as a forged document. It was also averred by the defendants that after acquiring knowledge about the death of Panneerselvam, plaintiffs prepared a sale deed with ante-dated stamp papers and presented it for registration on 24.12.2004 and therefore, the plaintiffs were not entitled to the relief prayed for in the suit.

5. Before the trial Court, the second plaintiff was examined as P.W.1 and 2 other witnesses were examined as P.W.2 and P.W.3. On behalf of the plaintiffs, 7 documents were marked as Ex.A1 to Ex.A7. On the side of the defendants, first defendant and fourth defendant were examined as D.W.1 and D.W.2 and two documents were marked as Ex.B1 and Ex.B2.

6. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs failed to prove alleged payment of Rs.5,00,000/- (Rupees Five Lakhs only) to Paneerselvam and the sale deed allegedly executed by the first defendant and her husband Paneerselvam in favour of plaintiffs was concocted document and dismissed the suit. Aggrieved by the said findings, the plaintiffs preferred an appeal in A.S.No.12 of 2006 on the file of I Additional District Court, Tirunelveli. The first Appellate Court



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also affirmed the findings of the trial Court. Hence, challenging the concurrent findings, the plaintiffs are before this Court.

7. The learned counsel appearing for the appellants submitted that the second plaintiff executed a sale deed in his favour and in favour of his sister-in-law by virtue of valid power executed by the first defendant and her husband and therefore, merely because one of the principal died subsequently, the legal representatives of the deceased cannot refuse to complete the sale transaction. The learned counsel further submitted that the plaintiffs proved payment of Rs.5,00,000/- (Rupees Five Lakhs only) as sale consideration to Panneerselvam by producing the receipt issued by him as Ex.A1 and both the Courts below overlooked the same and non-suited the plaintiffs.

8. The receipt allegedly issued by Panneerselvam for having received a sum of Rs.5,00,000/- (Rupees Five Lakhs only) from the plaintiffs was specifically denied by the defendants in the written statement as a forged document. The plaintiffs examined the alleged attestor to the said document and the Courts below, on appreciation of oral evidence of said witnesses, came to a definite conclusion that Ex.A2 was not proved. The Courts below on close scrutiny of P.W.2's evidence



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came to the conclusion that there were material contradictions between his version and the plaint averments with regard to the payment of Rs.5,00,000/- (Rupees Five Lakhs only) to Paneerselvam in two installments and rejected his evidence. The Courts below also compared the alleged signature of Paneerselvam found in Ex.A1 and Ex.A2 and pointed out the contradiction between the signatures found in Ex.A1 and Ex.A2. Thus, the factual conclusion reached by the Courts below that the plaintiffs failed to prove payment of Rs.5,00,000/- (Rupees Five Lakhs only) to said Paneerselvam is based on proper appreciation of evidence available on record and the same cannot be interfered with while exercising jurisdiction under Section 100 of the C.P.C.

9. Even with regard to Ex.A4, sale deed dated 01.12.2004, Courts found that it was executed in an insufficient stamp paper and on the date of presentation of the same for registration, after the death of Paneerselvam, the substantial deficit stamp duty was paid by the plaintiffs and registered. By taking into consideration totality of the circumstances, the Courts below came to the conclusion that Ex.A4 sale deed, dated 01.12.2004 was not a genuine document. Therefore, the said doubtful sale deed, registration of which ran into trouble due to death of



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Paneerselvam, cannot be the basis for filing of a suit for specific performance. When very execution of document during life time of Paneerselvam is doubtful, this Court is not inclined to grant discretionary remedy of specific performance based on the said document. The plaintiffs also failed to prove that proper consideration was passed for execution of sale deed in their favour. Hence, the appellants have not made out any ground to interfere with the final conclusion reached by the Courts below that Ex.A4 document is not a legally acceptable one. Further, there is no explanation on the side of the plaintiffs why they have not obtained sale deed immediately after payment of alleged Rs. 5,00,000/- (Rupees Five Lakhs only).

10. In the circumstances, I do not find anything to interfere with the findings of the facts reached by the Courts below and accordingly, the Second Appeal shall stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
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To

- 1.The I Additional District Judge, (Incharge), Tirunelveli.
- 2.The Principal Sub Judge, Tirunelveli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

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