



S.A.(MD)No.67 of 2009

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD) No.67 of 2009

1.Arockia Ammal

2.Savariraj

3.Kuzhanthai Therasu

4.Arokkiyammal

... Appellants

-VS-

1.Thomas

2.Samikannu

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 19.09.2005, passed in A.S.No.23 of 2003 on the file of Principal District Court, Pudukkottai, confirming the judgment and decree, dated 26.07.2002, passed in O.S.No.280 of 1995 on the file of District Munsif Court-cum-Judicial Magistrate Court, Keeranoor.



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For Appellants : Mr.A.Arul Jenifer
for Mr.K.Ilayaraj

For Respondents : Mr.J.Anand Kumar

JUDGMENT

Plaintiff in the suit is the appellant. The suit was for specific performance of the suit sale agreement, dated 03.02.1990. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiff has come by way of this Second Appeal.

2. According to the appellant/plaintiff, he entered into a sale agreement with the defendants on 03.02.1990, agreeing to purchase the suit property for a sale consideration of Rs.8000/-. It was claimed by the plaintiff that as per the terms of agreement, an advance amount of Rs.7350/- was paid by the plaintiff on the date of agreement and the remaining amount of Rs.650/- was agreed to be paid within a period of one year. It was also claimed by the plaintiff that he was ready and willing to perform his part of the contract and approached the defendants to complete the sale transaction, by



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offering to pay the balance amount. However, the defendants evaded the request of the plaintiff. Therefore, the plaintiff issued a legal notice, dated 03.08.1990, and, even thereafter, the defendants failed to accede to the demand made by the plaintiff. Hence, the plaintiff was constrained to file a suit for specific performance of the agreement.

3. The suit was resisted by the defendants by denying the execution of the suit sale agreement. It was the case of the defendants that they borrowed a sum of Rs.2500/- six years prior to the suit from the plaintiff and they paid interest at the rate of 36% per annum. When the exorbitant rate of interest demanded by the plaintiff was questioned, the plaintiff got aggrieved and came up with the present suit. It was the case of the defendant that at the time of borrowal, he signed blank stamp papers and white papers and handed over the same to the plaintiff and those papers could have been utilised to concoct the suit sale agreement.

4. Before the trial Court, the plaintiff was examined as P.W.1. On behalf of the plaintiff, 4 documents were marked as Exs.A-1 to A-4. The first defendant was examined as D.W.1 and one Nallusamy was examined as D.W. 2. On behalf of the defendants, no documentary evidence was let in.



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5. Earlier, the suit was decreed by the trial Court and on appeal filed by the defendants, the first appellate Court set aside the judgment and the decree of the trial Court and remanded the matter back to the file of the trial Court with a direction to the trial Court to afford an opportunity to the plaintiff to examine the persons, who attested Ex.A-1, suit sale agreement, and the scribe of the document, in support of his case.

6. After remand, the plaintiff and the defendants had not let in any evidence and the suit was disposed of, based on the evidence already available on record. The trial Court, on appreciation of the evidence available on record, came to the conclusion that the plaintiff failed to prove due execution of the suit sale agreement and consequently dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.23 of 2003 on the file of Principal District Court, Pudukkottai. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiff has come by way of this Second Appeal.

7. The learned counsel for the appellant submitted that the defendant admitted his signature in the suit sale agreement and, therefore, no further evidence was required to prove due execution of the sale agreement.



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The learned counsel further submitted that after remand, the plaintiff paid batta for examining one of the attestors to the suit sale agreement and in spite of service of witness summons, he failed to appear before the Court and in spite of efforts by the plaintiff, for the reasons beyond his control, he could not examine the attestor and the same cannot be put against the plaintiff.

8. It is seen from the judgments of the Courts below that Ex.A-1 is the sale agreement attested by two persons, namely, Vellayan and Kulandaisamy and the document was prepared by scribe Aramudan. After remand by the first appellate Court, the plaintiff filed batta for taking witness summons to Kulandaisamy alone. In spite of service of witness summons, he failed to appear before the Court. Thereafter, the plaintiff failed to take further coercive steps to compel the attendance of the said witness. Further, the plaintiff had not taken any steps to examine the other attestor to the sale agreement, namely, Vellayan or the scribe of the document Aramudan. In those circumstances, the Courts below rightly came to the conclusion that the plaintiff failed to prove due execution of the suit sale agreement.



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9. It is vehemently contended by the learned counsel for the appellant that the signature of the defendant in the suit sale agreement was admitted in the pleading itself and, therefore, there is no necessity to prove its execution.

10. A perusal of the written statement filed by the defendant would suggest he pleaded that at the time of borrowal of the amount from the plaintiff, the defendant signed certain blank stamp papers and white papers and handed over the same to the plaintiff as a security for the loan transaction and those papers could have been used to create the suit sale agreement. Admission of signature would not amount to admission of execution. When the execution of the suit sale agreement was specifically denied in the written statement, it is incumbent on the plaintiff to prove due execution either by examining the attestors or the scribe of the document, as pointed out by the first appellate Court in the remand order. As mentioned in the order, the plaintiff failed to take any steps to examine another attestor and the scribe of the document. As far as one Kulandaisamy, in respect of whom witness summons was issued, the plaintiff failed to take coercive steps for compelling his attendance. In such circumstances, the Courts below are justified in coming to the conclusion that due execution of the suit sale agreement is not



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proved and hence I do not find any infirmity in the factual findings rendered by the Courts below.

11. The Second Appeal is, accordingly, dismissed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Principal District Judge,
Pudukkottai
- 2.District Munsif-cum-Judicial Magistrate,
Keeranoor.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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