



S.A.(MD).No.241 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.07.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.241 of 2021
and C.M.P.(MD).Nos.3376 of 2021 and 9676 of 2023

1.M.Dhamayandhi
2.M.Rajkumar
3.M.Prabhu
4.J.Senthil Kumar ... Appellants/Respondents/Defendants

Vs.

Abdul Jabbar ... Respondent/Appellant/Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree of the learned VI Additional District Judge, Madurai, made in A.S.No.29 of 2016, dated 27.04.2019 in reversing the Judgment and Decree of the learned Principal Sub Judge, Madurai, made in O.S.No.1101 of 2012, dated 28.04.2016.

For Appellants : Mr.K.K.Senthil

For Respondent : Mr.J.Barathan



S.A.(MD).No.241 of 2021

JUDGMENT

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This appeal has been filed against the Judgment and Decree of the learned VI Additional District Judge, Madurai, made in A.S.No.29 of 2016, dated 27.04.2019 in reversing the Judgment and Decree of the learned Principal Sub Judge, Madurai, made in O.S.No.1101 of 2012, dated 28.04.2016.

2.The facts in brief:

The suit property originally belongs to one Manickam, who is the husband of the first defendant and father of defendants 2 and 3. In respect of the suit property, there was oral sale agreement between Manickam and the plaintiff on 24.02.2011. On that day itself a sum of Rs.50,000/- was paid as advance amount. It was reduced into writing on 17.03.2011. On that date he received Rs.1,50,000/- towards for consideration. As per the Sale agreement Rs.2,650/- was fixed per square feet. The total square feet is 285 square feet. The time for execution of the sale was fixed as one year. The balance sale consideration was Rs. 5,55,250/-. Manickam promised to shift his shop to some other place within the time and hand over the possession. In the meantime,



S.A.(MD).No.241 of 2021

unexpectedly, he died.

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3.After the death of Manickam, the plaintiff insisting upon the defendant herein to execute the sale deed. They promised to execute the sale deed after the 30th day ceremony is over. Apart from that the second and third defendants are working somewhere else. So they are not in position to come immediately. So there is a delay. Having waited for some time, the plaintiff issued notice on 24.11.2011 demanding execution of the sale deed by receiving balance sale consideration. In the meantime, it is brought to the notice of the plaintiff that the defendants 1 to 3 executed power of attorney in favour of the fourth defendant in respect of the suit property. He sent reply notice containing the false averments. They also filed objection to the Sub Registrar not to entertain any deed in respect of the suit property. So the suit is laid for specific performance or recovery of possession and for costs.

4.The defendants filed written statement refuting all the allegations. They denied the oral agreement as well as the written agreement mentioned in the plaint.



S.A.(MD).No.241 of 2021

WEB COPY

5.The further averments are that Manickam was running welding workshop called Ratna Welding Works. He purchased the property measuring about 651 square feet. A portion of the property measured about 325.5 square feet was sold to one Gnanasoundari to discharge loan amounts. But, however, Manickam continued holding the property. As contended while Gnanasoundari tried to dispossess Manickam, he filed a suit in O.S.No.314 of 2023 before Additional District Munsif Court, Madurai Town. Gnanasoundari also filed R.C.O.P.No277 of 2003, which was dismissed. Against which R.C.A.No.82 of 2006 was filed. That was also dismissed.

6.But Manickam continued as tenant under Gnanasoundari. Taking advantage of the trouble between Manickam and Gnanasoundari, the plaintiff purchased the property from the Gnanasoundari and after that he tried to dispossess Manickam. Over which, police complaint was given.

7.On 24.06.2008, there was issue between Gnanasoundari and Manickam over a wall measuring about 4 ½ inch. Manickam agreed to



S.A.(MD).No.241 of 2021

receive Rs.2,00,000/- for vacating the portion belongs to Gnanasoundari and for removing the machinaries. On that date, he received Rs.50,000/-.

Balance amount is Rs.1,50,000/-. Manickam agreed to deduct Rs.25,000/- payable to another shop owner. It was reduced into writing on 24.06.2008. On 22.07.2008, Manickam received Rs.1,00,000/-. Later he received balance Rs.25,000/- and handed over the key to the plaintiff.

8.On 26.07.2008 an agreement was reached between the plaintiff and Manickam over the wall. In the meantime, on 14.01.2012 Manickam died. After the death of Manickam, the property measuring about 325.5 square feet devolved upon his legal heirs. But, closed the welding workshop. They made arrangement to sell the property. So they executed power deed in favour of the fourth defendant. The fourth defendant entered into sale agreement with one Bahrudeen. They received Rs.4,00,000/- as advance. So in the above said circumstances, as mentioned above, they denied the oral agreement and sale agreement between Manickam and plaintiff. Sale agreement is denied as fake document. Other pleadings in the plaint are denied as false and motivated.



S.A.(MD).No.241 of 2021

WEB COPY

9. On the basis of the pleadings, the trial Court formulated the following issues.

1. Whether the plaintiff is entitled for the relief of Specific Performance?
2. To what other reliefs?

10. On the side of the plaintiff two witnesses were examined. On the side of the defendant three witnesses were examined. 8 documents were filed on the side of the plaintiff and 10 on the side of the defendant.

11. At the time of conclusion the trial process, suit was dismissed without any cost. Against which, appeal was filed by the plaintiff before the VI Additional District Judge, Madurai in A.S.No.29 of 2016. The appellate Court reversed the finding of the trial Court believing the genuineness of the sale agreement under Ex.A1, finding that the plaintiff was ready and willing to perform his part of contract, Suit was decreed as prayed for with costs.



S.A.(MD).No.241 of 2021

12. Against which this second appeal is preferred by the defendants.

13. At the time of admission the following substantial question of law was framed.

1. Whether the appellate Court was right in reversing the judgment and decree of the trial Court on surmises and conjunctures without there being any direct evidence of the contract of sale?
2. Whether the lower appellate court was right in placing the burden of proving the negative on the defendants?

14. It is admitted that the suit property belongs to one Manickam, who is the husband of the first defendant, father of the defendants 2 and 3. In the written statement the entire motive was stated, which is not relevant for reconsideration here. But that facts were set out in the written statement to inform the court about the enmity that exists between the erstwhile owner Gnanasoundari and Manickam. Taking advantage of the trouble between Gnanasoundari and Manickam, the plaintiff himself stated that they purchased a portion of original extend



S.A.(MD).No.241 of 2021

measuring about 325.5 square feet. Total extend was 651 square feet.

The property purchased by Gnanasoundari lies on the east. The present subject matter of the property lies on the west measuring about the 285 square feet as mentioned in the plaint.

15.Now the defendants denies and suspected the sale agreement under Ex.A1, which is the duty of the plaintiff to prove that it was entered into as the mentioned in the document, between himself and Manickam, the sale consideration, etc. facts.

16.As mentioned above, it is a judgment of reversal. For dismissing the suit, the trial Court has relied upon the oral evidence of PW1 as well as the Expert, who was examined as DW3 to conclude that it was not established by the plaintiff to the satisfaction of the court.

17.Per contra the appellate court has recorded finding that the grounds of trial Court for dismissing the suit is not proper believing the evidence of PW2 and rejected the evidence of Expert on the ground that what was compared is not original signature of Manickam operation, but



S.A.(MD).No.241 of 2021

only xerox copy. At the time of admission as mentioned above it is contended by the appellant that there was no direct evidence with regard to Ex.A1. Now we will go to the evidence on record in the aspect, which requires re-appreciation of evidence in the light of reversal judgment. We can keep away the evidence of PW1 for a while and go through the evidence of PW2 the attesting witness to the document.

18.PW2 stated that on 17.03.2011, the sale agreement was entered between the plaintiff and Manickam and he was present in the Manickam's shop at that time. He signed in the document as a witness. During the course of cross examination he has stated that he was invited by Manickam for signing the document. On that date he was doing some civil work in Manickam's shop. But, does not aware the contents of the document and the property particulars. He has also stated that he does not aware of the number of stamp paper etc., facts. By taking other portions during the course of cross examination, the trial Court has recorded a finding that his evidence is not believable. Reading of evidence of PW2, does not indicate that he is not a genuine person. Evidence is more natural cogent and believable also. It is clearly



S.A.(MD).No.241 of 2021

mentioned that on that date he was doing some civil work as a mason in the shop. The plaintiff was also known to him. So also Manickam. He also stated that on eastern portion, Manickam was running the shop. It clearly tallies with that of the pleadings of the plaintiff. As stated above, they sold western portion of the suit property to Gnanasoundari. Later, purchased eastern portion. Manickam shifted the shop. Simply because he does not aware about the other particulars dis- believing his evidence, totally, is not proper. He has also stated that on the date of agreement Rs.1,50,000/- was paid. So we cannot expect the witness to the document to a sale agreement to state every material particulars with regard to the agreement between the parties. Agreement does not require attestation. But for showing the genuineness of the document only now PW2 has signed as witness and also been examined. I find absolutely no reason to discard the evidence of PW2 on that aspect. Therefore, the trial Court was not correct in his findings and appreciation of the trial Court on that aspect is not proper. So it was rightly upset by the appellate Court. The appellate Court has not shifted the burden upon the defendant to disprove the sale agreement. But the proof is available to the plaintiff in the form of PW2. So they have found that Ex.A1 was validly entered between the



S.A.(MD).No.241 of 2021

plaintiff and Manickam.

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19.Next aspect is evidence of DW3 the expert witness. After filing of the suit, the defendant namely the appellant herein filed a police complaint against the plaintiff stating that the disputed Ex.A1 is a forged document. So according to them signature of Manickam was forged one. Simultaneously, investigation was undertaken by the police. Document was subjected to the expert opinion.

20.As mentioned above, the trial Court relied upon the evidence of DW3, to find that Ex.A1 is not a genuine document. But the appellate court has stated that proper examination of the disputed document was not taken by DW3. The documents which was sent to DW3 are not original document. Only the copy of the Ex.A1 was sent to compare with the original admitted signature. Xerox of Ex.A1 was sent for comparison is highly improper. Only the original document must be submitted to the Expert for comparison with the admitted documents or signature as the case may be. But against the settled procedure and proposition, Ex.A1's xerox has been submitted for comparison. So from that manner of



S.A.(MD).No.241 of 2021

comparison the appellate court has correctly recorded the finding that it is not proper. So the evidence of DW3 is of no help to the defendant to prove that Ex.A1 is not a genuine document.

21.Absolutely, there was no reason for the plaintiff to create the document by forging the signature of Manickam. No strong enmity was also suggested to PW1. So the finding recorded by the appellate Court on the genuineness of Ex.A1 requires no interference at all.

22.In the circumstances, the learned counsel for the appellant would submit that there was no proof for passing of the consideration. There was no finding by the appellate court on this aspect. But as mentioned above, PW2 has stated that on the date of sale agreement Rs.1,50,000/- was paid as advance. It was the evidence of PW2 during the course of cross examination. That was the case of the plaintiff also. But, with regard to the payment of Rs.50,000/- on the date of alleged oral agreement dated 22.02.2011, except his evidence no other documents are available. But, in the document itself, it is stated that on 24.02.2011, Manickam received Rs.50,000/-. On the date of Ex.A1 Rs.1,50,000/- was



S.A.(MD).No.241 of 2021

received. Totally Rs.2,00,000/- was received by manickam towards the advance amount for sale consideration. So this shows that Manickam received Rs.2,00,000/- towards the sale consideration which also requires no contra finding.

23.Now the next aspect is whether the plaintiff has proved that he was always ready and willing to perform his part of contract as contemplated under Section 16(c) of the Specific Relief Act. As mentioned in pleadings portion, the date of sale is 24.02.2011. The date of suit was filed on 24.11.2012. The time for agreement is stated as one year. It was mentioned in writing on 17.03.2011. The reason that Manickam has to make arrangements to shift the shop to some other place. So reason for one year period also comes to be genuine and reasonable one, since Manickam was running welding shop in the property. As sold western portion to Gnanasoundary already, no other shop was available to him to readily shifted the same. In the above said background, I find that the document does not suffer any improbable of happenings.



S.A.(MD).No.241 of 2021

24.The plaintiff also produced details showing that the defendants made frequent documents in respect of the suit property. After that he issued notice dated 10.11.2012 expressing his willingness to pay the balance amount and get the sale deed executed. After receiving the reply notice he filed the suit immediately. So there is no delay, lapse or laches on the part of the plaintiff either in taking all possible steps to get the sale deed executed and to file the suit immediately reasonable time.

25.This aspect is found favour with the respondent namely the plaintiff. The defendant says that they executed power deed in favour of the fourth defendant and the fourth defendant may enter into sale agreement with the third party. Now third parties' right is also intervened. But, the third party is not before the court. But in the light of the above said finding, even if the fourth defendant entered into sale agreement with the third party, it may not bind the plaintiff and his interest. So I find that there is no illegality or perversity in the finding of the appellate court in reversing the judgment and decree of the trial Court. So the first substantial question of law is answered that the appellate court was right in reversing the Judgment and decree of the trial Court on valid grounds.



S.A.(MD).No.241 of 2021

WEB COPY

26.The second substantial question of law is answered that the first appellate court has rightly decided the issue for the reason stated above. So the second substantial question of law does not arise. So the appeal fails.

27.Accordingly, this second appeal dismissed with costs. The judgment and decree of the appellate court are confirmed. Consequently, connected miscellaneous petitions are closed.

14.10.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The VI Additional District Judge, Madurai.
- 2.The Principal Subordinate Judge, Madurai.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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S.A.(MD).No.241 of 2021

G.ILANGO VAN,J.

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S.A.(MD).No.241 of 2021

14.10.2024