
(2011) 09 MAD CK 0139
In the Madras High Court
Case No : S.A. No. 1071 of 2008

Mr. T. Sowri Rajan

APPELLANT

Vs

Mr. T. Raja Gopalan

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : (2011) 09 MAD CK 0139

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M.S. Subramanian, for the Appellant; Lamech, for the Respondent

Final Decision : Dismissed

Judgement

The Hon'ble Mr. Justice R.S. Ramanathan

1. The unsuccessful plaintiff is the appellant herein. The plaintiff filed the suit for specific performance of an agreement of sale dated 19.8.1981.

2. The case of the appellant/plaintiff was that the appellant/plaintiff and the respondent/defendant are brothers and the appellant/plaintiff had advanced money to his father, who was running a business and the respondent/defendant undertook to pay the amount payable by the father to the appellant/plaintiff. Therefore, it was agreed between the parties that the appellant/plaintiff was entitled to a sum Rs.35,000/- and towards the discharge of that said amount, the respondent/defendant should give the property, which he got under the settlement from his maternal grandfather. Hence, in pursuance of the decision of the Panchayadars, the appellant/plaintiff and the respondent/defendant entered into an agreement dated 19.8.1981 and as per the said agreement, the respondent/defendant agreed to settle the property on the appellant/plaintiff and the appellant/plaintiff also agreed that, he would take the property after the demise of his parents and till such time, the property shall be looked after by the respondent/defendant. The mother died on 18.12.1995 and the father died on 16.9.2001, and immediately, after the death of the father, the appellant/plaintiff

demanded the execution of the document as per the agreement dated 19.8.1981, by issuing a notice and that was replied by the respondent/defendant, denying any such agreement. Therefore, the suit was filed for the relief stated above.

3. The respondent/defendant contested the suit denying the alleged agreement as stated in the plaint.

4. The trial Court held that the appellant/plaintiff did not prove the execution of the agreement dated 19.8.1981, viz., Ex. A4 and admittedly, some of the lands mentioned in the said agreement were sold by the respondent/defendant and the various letters alleged to have been written by the respondent/defendant, did not refer to any agreement as claimed by the appellant/plaintiff and as the appellant/plaintiff failed to prove the execution of the agreement, he is not entitled to the relief prayed for and dismissed the suit.

5. The First Appellate Court also confirmed the judgment and decree of the trial Court and hence, the Second Appeal.

6. Mr.M.S.Subramanian, the Learned Counsel appearing for the appellant submitted that eventhough the respondent denied the execution of the agreement, the same was proved by examining P.W. 3, who has given evidence that the signature of the attesting witness was that of one Krishnamachari, and he was aware of the signature of the attesting witness and reference was made about the agreement in Exs.A1 & A9, and though, in those letters, the agreement was not specifically mentioned, it was admitted by the respondent in Ex. A9, that he has written documents, regarding the suit property and he will not go back from that writing. Therefore, considering the contents of various letters, which were admittedly written by the respondent, the Courts below ought to have held that the agreement was admitted by the respondent and ought to have decreed the suit.

7. Per contra, Mr.Lamech, the Learned Counsel appearing for the respondent submitted that no attempt was made by the appellant to prove the agreement-Ex. A4, either by examining the attesting witness or any person, who are aware of the signature of one of the attesting witness and P.W. 3, who gave evidence about the signature of the attesting witness also admitted that he was not having any documents containing the signature of the attesting witness. Therefore, the evidence of P.W. 3, cannot be believed.

8. The Learned Counsel for the respondent further submitted that P.W. 2, the brother of the parties also did not identify the signature of the respondent/defendant in Ex. A4, and though, he has stated in evidence that he knew about the agreement and in the absence of any identification of the signature of the respondent/defendant in the agreement by him, his evidence cannot be taken in support of the plaintiff's case. Further, P.W. 2, also stated in evidence that he was not aware of Ex. A4, and he was not present, when it was written.

9. The Learned Counsel further submitted that considering all these aspects, both the Courts below rightly held that the appellant/plaintiff failed to prove the execution of the agreement-Ex. A4, and dismissed the suit. He also submitted that admittedly, the some of the properties viz., thekadi lands were sold by the respondent/defendant and if really, the appellant is entitled to claim right over the land, he would not have let the respondent/defendant to sell those properties and that would also prove that the agreement was not true and valid.

10. Heard both sides.

11. In this appeal, we will have to see whether the appellant/plaintiff proved the execution of the agreement-Ex. A4. The agreement was dated 19.8.1981 and the suit was filed in the year 2001, for enforcing the agreement. The reason for not filing the suit immediately was that as per the agreement, the appellant/plaintiff agreed to take possession of the property after the demise of the parents and the father died on 16.9.2001 and therefore, the suit was filed in the year 2001, after the death of the father. The respondent denied the execution of Ex. A4, in his reply notice as well as in the written statement and therefore, it is the duty of the appellant/plaintiff to prove that Ex. A4, was executed by the respondent/defendant. Unfortunately, P.W. 2, brother of the parties did not state in evidence that the signature found in Ex. A4, is that of his brother's signature viz., the signature of the respondent and no attempt was made by the appellant/plaintiff to bring to the knowledge of P.W. 2, about Ex. A4.

12. Further, P.W. 2, has given prevaricating statement regarding Ex. A4. In the chief examination, he has stated that he was aware of the execution of Ex. A4, by the respondent/defendant and the respondent/defendant also had written letters about the same and produced those letters as Exs.A15 to A32. Admittedly, no reference was made in those letters about Ex. A4. Whereas, in the cross-examination, he has admitted that at the time of execution of the agreement-Ex. A4, he was not present and he was not aware of the same. As stated supra, P.W. 2, was not asked to identify the signature found in Ex. A4 and therefore, his evidence will not help the plaintiff's case.

13. Similarly, P.W. 3, has given evidence about the signature of one Krishnamachari, one of the attesting witnesses to Ex. A4. But, he has not produced any letters written by the said Krishnamachari and without producing those letters, he has given evidence that the signature found in Ex. A4, was that of Krishnamachari. Therefore, his evidence was also rightly rejected by the Courts below.

14. Further, some of the properties viz., thekadi lands were sold by the respondent and no objection was raised by the appellant. It was contended by the Learned Counsel for the appellant that in respect of thekadi lands, the sale proceeds were admittedly invested in the name of the mother and wife of the appellant. Therefore, it was not objected by the appellant, as the sale was also as per the settlement. As per the agreement-Ex. A4, the respondent/defendant

agreed to settle those properties in favour of the appellant and the reason for not filing the suit by the appellant was that he agreed to take the property after the death of his parents. If that was the reason for the appellant not to initiate any action against the respondent, it was not known how some of the properties covered under the settlement were allowed to be sold by the respondent/defendant.

15. Considering all these aspects, both the Courts below have rightly held that the appellant/plaintiff failed to prove the execution of Ex. A4, by the respondent and in the absence of any proof of the execution of Ex. A4, by the respondent, the appellant is not entitled to the relief prayed for and rightly dismissed the suit. Hence, I do not any infirmity to interfere with the judgment and decree of the Courts below and no substantial question of law arises for consideration.

16. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. In the circumstances of the case, there shall be no order as to costs.