

S.Ramasamy Vs. Lakshmi

S.Ramasamy Vs. Lakshmi

SooperKanoon Citation : sooperkanoon.com/964366

Court : Chennai

Decided On : Feb-26-2013

Judge : G.Rajasuria

Appellant : S.Ramasamy

Respondent : Lakshmi

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

26. 02.2013 Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA
S.A.No.124 of 2012 S.Ramasamy .. Appellant Vs. Lakshmi .. Respondent This second appeal is filed against the judgement and decree dated 11.2.2011 passed by the Sub Court, Namakkal, in A.S.No.54 of 2008 confirming the judgement and decree dated 7.1.2008 passed by the Paramathi District Munsif cum Judicial Magistrate, Paramathi, in O.S.No.9 of 2005(O.S.No.545 of 1999 Sub Court, Namakkal). For Appellant : Mr.P.Tamilavel For Respondents : Mr.T.Murugamanickam JUDGMENT This second appeal is focussed by the plaintiff, inveighing the judgement and decree dated 11.2.2011 passed by the Sub Court, Namakkal, in A.S.No.54 of 2008 confirming the judgement and decree dated 7.1.2008 passed by the Paramathi District Munsif cum Judicial Magistrate, Paramathi, in O.S.No.9 of 2005(O.S.No.545 of 1999 Sub Court, Namakkal) , which is one for specific performance.

2. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

3. A summation and summarisation of the germane facts absolutely necessary for the disposal of this second appeal would run thus: (i)The appellant herein, as plaintiff, filed the suit for specific performance of an agreement to Sell-Ex.A1. (ii)The defendant resisted the suit on the main ground that the suit agreement to sell is a forged and fabricated one and it emerged out of rank forgery. (iii)Whereupon issues were framed. Up went the trial, during which, the plaintiff examined himself as P.W.1 along with P.Ws.2 to 5 and Exs.A1 to A7 were marked on the plaintiff's side. On the defendant's side, the defendant examined herself as D.W.1 and marked Ex.B1. Ex.C1 was marked as Court document. (iv)Ultimately, the trial Court dismissed the suit, as against which, the appeal was filed for nothing but to be dismissed by the first appellate Court, confirming the judgement and decree of the trial Court. 4.Challenging and impugning the judgements and decrees of both the Courts below, this second appeal is filed by the plaintiff on various grounds and also suggesting the following substantial questions of law: "A)Whether the courts below are justified in over-looking the evidence of P.W.2 to P.W.4 who categorically states that the witnesses to Ex.A1 were brought by the respondent and all have signed the document and in such circumstances are they right in concluding that the sale agreement is a created document? B)Are the courts below correct in coming to a conclusion that the signature in Ex.A1 did not tally, based on an expert opinion, more particularly when originals were not sent to comparison before the expert but only a photo of the document? C)Are the courts justified in misapplying the discretion and rejecting specific performance, more particularly when the evidence on record shows that the appellant was always ready and willing to perform the contract?" 5.At the initial hearing itself, both sides' counsel in unison would bring to the attention of this Court one important fact involved in this case that the trial Court, while forwarding through the advocate Commissioner, the relevant records to the finger print expert to compare the disputed left thumb impression of the defendant-Lakshmi with that of her sample left thumb impression taken before the Court under Section 73 of the Indian Evidence Act, committed an error; so to say, instead of sending the disputed left thumb impression of the defendant-Lakshmi in the fourth sheet of Ex.A1-the

agreement to sell, the trial Court sent the left thumb impression of the plaintiff-Ramasamy as the disputed left thumb impression. 6. Even though the trial Court adverted to the said fact, it has not proceeded further in reissuing the warrant to the Commissioner, so as to take the proper disputed left thumb impression of the defendant in Ex.A1, to the expert for comparing it with the sample left thumb impression of the defendant obtained before the Court under Section 73 of the Act. 7. The first appellate Court, adding fuel to the fire, simply went tangent in observing that it was a mistake in the expert's report in describing the impugned document as pro-note, instead of the agreement to sell. 8. That said mis-description of Ex.A1-the agreement to sell as pro-note by the expert is not at all germane for adjudication. But the crux of the point lies here. The trial Court, after coming to know of the fact that the left thumb impression of Ramasamy-the plaintiff found above the disputed left thumb impression of the defendant-Lakshmi in Ex.A1, was mistakenly sent to the expert for comparison with the admitted left thumb impression of the defendant-Lakshmi, should have rectified the mistake by once again directing the Advocate Commissioner to do the needful, but that was not done so. As such, it is glaringly and pellucidly clear that perhaps both the Courts below might have proceeded to decide the lis having in the back of their mind the fact as though the expert's opinion was against the plaintiff. 9. Hence, I would like to formulate the following substantial question of law: Whether both the Courts below were justified in deciding the lis, without properly sending the actual disputed left thumb impression of the defendant-Lakshmi in Ex.A1 to the handwriting expert for comparing it with her admitted left thumb impression? 10. The learned counsel for the respondent/defendant would submit that instead of remanding the matter back to the Court below, this Court itself can very well seek for such opinion from the expert and decide the appeal. 11. Whereas, the learned counsel for the appellant/plaintiff, would appropriately and appositely submit that no doubt, if there is a mere mistake then even in second appeal that could be rectified. However, both the Courts below, in view of the fact that the expert's opinion was not in favour of the plaintiff, had developed a prejudicial approach and as a sequela gave various findings as against the plaintiff. 12. The argument of the learned counsel for the plaintiff cannot simply be thrown away and in the meantime, as correctly suggested by the learned counsel for the defendant, at this

stage, in the event of remanding the matter to the first appellate Court for doing the needful, this Court need not give any opinion on the other factual findings rendered by the Courts below. 13.As such, by way of striking a balance between the two, I would like to set aside the judgement and decree of the first appellate Court and remit the matter back to the first appellate Court with the following direction: The first appellate Court, namely, Sub Court, Namakkal, shall appoint an Advocate Commissioner with the mission to: (i) take the disputed left thumb impression of the defendant-Lakshmi, which is found in Sheet No.4 of Ex.A1-the agreement to sell, beneath the left thumb impression of Ramasamy-the plaintiff, along with the sample left thumb impression of the defendant-Lakshmi taken by the trial Court, to the Forensic expert personally in a sealed cover; (b) and produce the same before the Forensic Expert; (c) leave it in his custody under his acknowledgement for as many days as the Forensic Expert may require for comparison; (d) collect the record from the Forensic Expert on the day as may be fixed by him; (e) bring it back and lodge it with the Court. The Forensic Expert is directed to complete the examination of the records in any event, within 48 hours after the depositing of the same by the Advocate Commissioner with him." After getting such report of the expert and giving due opportunity to both sides to file objection, if any, and if necessary after examining the expert and hearing both sides, the first appellate Court shall render a reasoned judgement.

14. Both sides shall appeal before the first appellate Court on 18.3.2013. The first appellate Court shall do well to see that the matter is disposed of within two weeks from the date of receipt of report from the expert. 15.The second appeal is disposed of accordingly. No costs. Msk Note to Office: Send backs the records immediately to the Sub Court, Namakkal To 1. The Sub Court, Namakkal 2. The Paramathi District Munsif cum Judicial Magistrate Paramathi

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com