

Second Appeal Nos.58 & 95 of 2015**S.NAGAMUTHU,J**

S.A.No.58 of 2015 has been filed against the judgement and decree dated 07.12.2013 made in A.S.No.7 of 2012 on the file of the learned Additional District Judge, Coimbatore. S.A.No.95 of 2015 has been filed against the judgement and decree dated 07.12.2013 made in A.S.No.117 of 2011 on the file of the learned 5th Additional District & Sessions Judge, Coimbatore.

2.These second appeals arise out of one single suit in O.S.No.67 of 2007 on the file of the learned Subordinate Judge, Pollachi. I have heard the learned counsel for the appellants and I have also perused the records carefully.

3.The appellant in both the second appeals are the defendants 1 and 2 in the suit. The first respondent in both the second appeals is the plaintiff in the suit. The said suit was filed for specific performance and for other reliefs. According to the plaintiff, the first defendant who is the owner of the suit property had entered into sale agreement which is evidenced by an unregistered sale agreement dated 07.12.2006. The first defendant denies his

signatures made in the disputed document and he also denies the very execution of the said document.

4. But, the learned Senior Counsel appearing for the appellants would submit that in order to prove the execution of the document, the plaintiff has examined one of the Attesters of the document and though, there are lot of discrepancies in the said evidence of the Attester, according to the learned Senior Counsel, the Courts below have simply accepted the evidence of the Attester so as to hold that the alleged sale agreement was really executed by the first defendant. The learned Senior Counsel would further point out that since the signature found in the disputed document itself was denied by the first defendant, the burden is upon the plaintiff to prove the same by forwarding the said document for comparison by an Expert. This has not been done. The learned Senior Counsel would further point out that the request made by the first defendant for comparison of the disputed signatures with the admitted signature of him was also denied by the Courts below for want of contemporaneous document having the admitted signatures of the first defendant.

5. The learned Senior Counsel would further submit that even there were some documents containing the admitted signatures of the first defendant which were marked in evidence during trial. The Courts below have not even cared to use the power under Section 73 of the Indian Evidence Act, to compare the disputed signatures with that of the admitted signatures of first defendant. The learned Senior Counsel would further point out that the second defendant is the bona fide purchaser of the suit property without notice of the alleged earlier forged sale agreement.

6. I have considered the above submissions.

7. I find that the appellants have made out a case for admission on the following substantial questions of law:-

"(i) Whether the Courts below were right in holding that the sale agreement stands proved only by placing reliance on the evidence of the Attester?;

(ii) Whether the Courts below were right in holding that the signatures found on the sale agreement should have been made only by the first

defendant without even exercising the power of the Court under Section 73 of the Indian Evidence Act to compare the disputed signatures with that of the admitted signatures of the first defendant ?;

(iii) Whether the Courts below were right in shouldering the first defendant with the burden to disprove Ex.A.e which was not accepted by him whereas according to the learned counsel, under Section 101 of the Indian Evidence Act, the burden is upon the plaintiff to prove the execution of Ex.A.2 ? and

(iv) Whether the second defendant is the bonafide purchaser of the suit property for valuable consideration without noticing Ex.A.2 ?. "

Notice.

Jbm

23.02.2015

S.NAGAMUTHU,J

jbm

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