



S.A.No. 96 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.96 of 2022
and C.M.P.Nos.2160 of 2022

Jayan (alias) Sri Jayan

... Appellant

Vs.

Jayalakshmi (alies) Lakshmi

...
Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against judgment and decree dated 08.03.2021 passed in A.S.No.18 of 2018 on the file of Additional Sub Ordinate Judge at Ponneri confirming the judgment and decree dated 23.04.2018 passed in O.S.No.206 of 2009 on the file of the District Munsif Judge at Ponneri.

For Appellant : Mr.A.Balasingh Ramanujam

For Respondent : Mr.B.Vignesh
for Mr.E.Prabhu

JUDGMENT



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Heard Mr.A.Balasingh Ramanujam, the learned counsel for the plaintiff and Mr.B.Vignesh, the learned counsel for the defendant.

2. The Second Appeal has been preferred as against the judgment and decree dated 08.03.2021 passed by the learned Additional Sub Ordinate Judge at Ponneri in A.S.No.18 of 2018, confirming the judgment and decree dated 23.04.2018 passed by the learned District Munsif Judge at Ponneri in O.S.No.206 of 2009.

3. The appellant is the defendant. The respondent / plaintiff has filed a suit in O.S.No.206 of 2009 seeking for the relief of specific performance on the basis of a sale agreement dated 13.11.1998. The plaintiff has alleged that on 13.11.1998, a sale agreement was entered into between her and the defendant and the defendant had agreed to sell the suit property for a sum of Rs.7,000/- . On the same day itself the whole of sale consideration has been paid by the plaintiff and the plaintiff was in possession and enjoyment of the said property by constructing a house therein and the house is also subjected to house tax. The original documents were also handed over to the plaintiff. As the entire sale amount has been paid, no time limit has been fixed in the sale agreement for executing the sale deed. In view of the family background



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of the defendant, the plaintiff believed that they would execute the sale deed.

Whenever the plaintiff demanded to execute the sale deed, the defendant was evading on some pretext or other. In due course, the plaintiff came to know that the defendant did not have the intention of executing the sale deed and hence he gave an advocate notice on 04.04.2009 calling upon the plaintiff to execute the sale deed. The defendant did not send any reply notice and did not come forward to executed the sale deed as well. Hence, he has filed the suit O.S.No.206 of 2009 for the relief of specific performance.

4. The defendant contested the suit by pleading that the suit promissory note is not a true one. As the plaintiff and the defendant were close relatives, the plaintiff permitted the defendant to stay in the suit property. The plaintiff's husband convinced the defendant stating that he would make arrangement to get electrical connection to the defendant's company and manage to get signatures in a few papers and got the original documents of the suit property. But the defendant has also borrowed a sum of Rs.10,000/- as loan. The value of the suit property even in the year 1998 is more than Rs.80,000/- and the sale amount of Rs.10,000/- itself would disprove the sale agreement. The defendant did not execute any sale agreement and the plaintiff has filed the suit after twelve years just in order to



grab the property from the defendant. Hence, the suit should be dismissed.

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5. On the basis of the above pleadings the following issues have been framed by the trial Court:

- “i) Whether the plaintiff is entitled to specific performance as prayed for ?*
- ii) To what other relief ?”*

6. During the course of trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and Exs.A1 to A21 have been marked. On the side of the defendant, the defendant was examined as D.W.1 and no documents have been marked. At the conclusion of the trial, the trial Court has decreed the suit and the defendant has been directed to execute the sale deed within a period of three months from the date of judgment. The first appellate Court also confirmed the judgment of the trial Court however on the wrong presumption that the trial Court has dismissed the suit. In fact, the trial Court has given a favourable finding in favour of the plaintiff that in so far as the genuinity of the sale agreement. The conclusion is not clear by giving a specific result that the suit is decreed and in consequent thereof the defendant has to execute the sale deed. However, the decree of the trial Court is clear that the suit is decreed. The first appellate Judge seems to have been on the



presumption that the trial Court has dismissed the suit and confirmed the same. Aggrieved over that the defendant has preferred the present Second Appeal and the same has been admitted on the following Substantial Questions of Law:

“ 1. Whether the finding of the trial Court as well as the appellate court that the validity of any document for agreement of sale is valid in the absence of signature of the witness and address of the witness in the instrument ?

2. Whether the discretionary power given under the Specific Performance Act has been used on judicially by the trial Court as well as the appellate court or not ? ”

7. Before venturing into the Substantial Questions of Law, certain fundamental mistake that has been done by the first appellate Court has to be rectified. As stated already the first appellate court has dealt the first appeal on the wrong presumption that the suit itself has been dismissed and recorded the result as under:

“ ... The trial Court rightly dismissed the suit and this Court has got no necessity for intervention in the lower Court judgment and decree. In the result, this appeal is dismissed.”

8. In reality the trial Court directed the defendant to execute the sale deed, meaning to say that the suit is decreed. The observation made by the



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trial Judge is extracted hereunder:

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“22. ஏற்கனவே எழுவினா 1 க்கு விரிவாக விடைக்காணப்பட்டுள்ள நிலையில், இதர கூடதலான பரிகாரங்கள் எதுவும் வாதிக்கு கிடைக்கத்தக்கதல்ல என்று இந்த எழுவினாவிற்கு விடைக்காணப்படுகிறது.”

9. The misdirection for the first appellate Court is probably due to the fact that the trial Court did not give a full fledged result by stating that the suit has been decreed and then issued directions. Since the first appellate Court did not approach the appeal by understanding the judgment of the trial court that the suit has been decreed, I feel it is appropriate to remit the matter back to the first appellate Court to rightly construe the judgment of the trial Court and then reappraise the first appeal and dispose the same.

10. In the result, the Second Appeal is disposed by setting aside the judgment and decree of the learned Additional Subordinate Judge, Ponneri in A.S.No.18 of 2018 and the same is remitted back to the file of the learned Additional Subordinate Judge, Ponneri in order to hear the appeal afresh by rightly understanding the judgment of the trial Court that the suit has been decreed and then appreciate the materials and arguments and pass orders in accordance with law and dispose the appeal within a period of four weeks



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from the date of receipt of a copy of this order. No costs. Connected

miscellaneous petition is closed.

06.08.2024

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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To:

1. The Additional Sub Ordinate Judge
Ponneri



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R.N.MANJULA, J.

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