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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.416 of 2013

R.Panneerselvam

.. Appellant

vs.

1.Dharuman

2.Angammal

3.Vasantha

4.Poonkodi

5.Jayanthi

..Respondents

Second Appeal filed under Section 100 of CPC against the judgment and decree of the learned Subordinate Judge of Harur dated 20.09.2012 in A.S.No.22 of 2012 confirming the judgment and decree of the learned District Munsif of Harur dated 25.11.2011 in O.S No.343 of 2006.

For Appellant : Ms.S.Mathumitha
Mr.V.Nicholas & Mr.Karthikeyan

For Respondents : Ms.Zeenath Begum for R1
No appearance for R2 to R5



ORDER

WEB COPY The present second appeal arises out of a judgment and decree of the Court of Subordinate Judge at Harur in A.S.No.22 of 2012 dated 20.09.2012 in confirming the judgment and decree of the Court of District Munsif at Harur in O.S.No.343 of 2006 dated 25.11.2011.

2. O.S.No.343 of 2006 is a suit for specific performance of an agreement for sale dated 28.10.2005. The case of the plaintiff is that his son, Dharuman, 1st defendant had agreed to sell the suit schedule mentioned property for a sum of Rs.60,000/-. To that effect they entered into an agreement for sale on 28.10.2005 and the same was registered. On the basis of this agreement, a sum of Rs.50,000/- was paid as advance leaving a balance of Rs.10,000/-. It was agreed that the balance amount will be paid and the sale deed will be registered. The time period granted under the agreement was one year.

3. According to the plaintiff, he approached the vendors to alienate the property on several occasions but they were evading the same. Being left with no other option, he issued a telegram to the vendors on 23.10.2006 and called upon them to be present for registration before the Sub-Registrar, Harur on 26.10.2006. Despite this notice and demand, as the defendants did not execute the sale deed, being left with no other



option, he filed a suit for specific performance of an agreement for sale.

The suit was taken on file as O.S.No.343 of 2006. Just before the presentation of the plaint, Annamalai, the second defendant passed away and therefore, his legal heirs, namely his wife and three daughters were impleaded as Defendants 2 to 5.

4. On entering appearance, the defendants took a stand that the suit is a false one. They further stated that Annamalai and Dharuman never entered into an agreement for the property, which is an ancestral one for the purpose its alienation. The plaintiff had lent a sum of Rs.25,000/- to the first defendant and Annamalai and as a security thereof, this agreement had been entered into. In fine, it was denied that the agreement under Ex.A1 is an agreement of sale but the plea being, that was one of a loan transaction.

5. On the basis of these pleadings, the learned trial Judge framed the following issues:

“1.வாதி கோரும் பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

2. வாதிக்கு பிரதிவாதியும் அவரது தகப்பனாரும்
விற்பதாக ஒப்பி ஒரு விற்கிரய ஒப்பந்த பத்திரம்
28,10,2005ம் தேதியில் ஏற்படுத்தி கொடுத்தார்கள் என்பது
சரியா?



3. பிரதிவாதியும் அவரது தந்தையும் வாதயிடம் 2002ல் கடனுறுதிச்சீட்டின் அடிப்படையில் பெற்ற கடனுக்குப் பாதுகாப்பாக கொடுக்கப்பட்ட ஆவணங்களை மோசடியாக ஒப்பந்த பத்திரம் ஏற்படுத்தியுள்ளார் என்பது சரியா?

4. தரப்பினருக்கு கிடைக்கக்கூடிய பிற பரிகாரம் ஏதேனும் உள்ளதா? “

6. On the aspect of the loan transaction, the learned trial Judge came to the conclusion that Section 92 of the Evidence Act, 1872 bars the party from pleading that a sale agreement is not one for the purpose of security for a loan. However, the learned trial Judge went on to hold that since the daughters have a share in the property, as it is an ancestral property by virtue of the amendment to Section 6 of the Hindu Succession Act and the daughters not being a party to the agreement, the suit has to fail.

7. Aggrieved by the judgment and decree, a regular appeal was preferred before the learned Subordinate Judge at Harur. The learned Subordinate Judge confirmed the judgment and decree against which the present second appeal has been presented before this Court.



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8. On 10.04.2013, notice regarding admission was ordered by this Court. Ms.Zeenath Begum entered appearance on behalf of the first respondent.

9. I heard Ms.Mathumitha for the appellant and Ms.Zeenath Begum for the respondents.

10. Ms.Mathumitha submitted that the following substantial questions of law arise for consideration in the present second appeal:

“a) When the trial Court has given a finding that the plaintiff has established the execution of the registered suit agreement by the first defendant and his father Annamalai and the defendants having failed to challenge the said finding by way of a cross objection whether the lower appellate court is correct in reversing the said finding in this regard?

b) When the evidence of the defendants themselves establish that all the daughters of Annamalai were married long before 1989 and consequently they could not be considered as co-parcenors entitled to a share in the suit property and as such the trial Court is not correct in holding that the suit agreement without the daughters of Annamalai in respect of the joint family property is not valid in law and having reversed the said finding in this regard whether the lower appellate court is correct in dismissing the suit on the ground that the suit agreement relates to a loan transaction?”



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11. The learned counsel for appellant would plead that the daughters having been married prior to 1989, they are not entitled to a share by virtue of Tamil Nadu amendment to Section 29A of the Hindu Succession Act. According to her, since the daughters did not have a share, they cannot make a claim in the ancestral property. This plea begs the issue because under the Tamil Nadu Amendment to Section 29A of the Act, the requirement was that the daughter should be an unmarried one. However, after the Parliament has amended Section 6 of the Hindu Succession Act, there is no necessity for the daughter to be unmarried for making a claim in the ancestral property.

12. Being a suit for specific performance, I need not labour too much on this point. Suffice to say that apart from Ex.A1, the sale deed and Ex.A2, the telegram, no other document had been filed by the plaintiff to prove that he was ready and willing to get the sale agreement converted into a sale deed. Readiness and willingness is one of the fundamental principles which should guide the Court for granting the relief of specific performance. Failure to show readiness and willingness would lead to a personal bar for grant of said relief under Section 16(c) of the Specific Relief Act.



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13. Going through the evidence that has been led before trial Court, I am not able to convince myself that the plaintiff had been ready and willing for the purpose of converting the sale agreement into a sale deed. That high hurdle not having been cleared, the relief of specific performance necessarily has to fail.

14. However it is the admitted case of both the parties that the agreement is a registered one and under the agreement both parties have agreed that a sum of Rs.50,000/- was paid by the plaintiff to the defendants. Therefore, while rejecting the relief of specific performance, I am inclined to grant the relief of return of advance amount of Rs.50,000/- which shall carry interest at the rate of 6% from 28.10.2005 till the date of repayment. It is also made clear that till this amount is repaid, there shall be a charge over the suit schedule mentioned property.

15. In fine, the substantial questions of law 1 and 2 that have been framed by the appellant /plaintiff are answered against the appellant and in favour of the respondents.



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16. The second appeal is partly allowed, the judgment and decree of the Subordinate Judge at Harur dated 20.09.2012 in A.S.No.22 of 2012 confirming the judgment and decree of the learned District Munsif at Harur dated 25.11.2011 in O.S No.343 of 2006 dismissing the suit for specific performance is confirmed. There shall be a decree for refund of advance amount of Rs.50,000/- together with simple interest at the rate of 6% p.a from 28.10.2005 till the date of repayment and a charge is created over the schedule mentioned property. The judgment and decree of the Courts below are accordingly modified. There shall be no order as to costs.

06.03.2024

Index:Yes/No

Neutral Citation:Yes/No

gpa

To

1. The Subordinate Judge
Harur
2. The District Munsif
Harur
3. The Section Officer, V.R.Section,
High Court, Madras.



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V. LAKSHMINARAYANAN, J.

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