

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14 - 07- 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 347 of 2014

and

M.P. No. 1 of 2014

Dhanasamy .. Appellant/Plaintiff

vs.

Munusamy (died) ..Defendant

1. Sangunthala

2. Sivakumar

3. Suryamurthy

4. Shanthi

5. Kalavathy ... Respondents/Appellants

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 23.07.2013 made in A.S. No. 38 of 2010 on the file of the Subordinate Judge, Ponneri, reversing the judgment and decree dated 21.10.2008 made in O.S. No. 202 of 2004 on the file of the District Munsif, Ponneri.

For Appellant : Mr. S. Muthudurai

For Respondents : Mr. P.V. Muralidhar

JUDGMENT

The plaintiff, who got a decree before the trial Court, viz., District Munsif, Ponneri, by judgment and decree dated 21.10.2008 in O.S. No. 202 of 2004, which was set aside by the lower Appellate Court, viz., Subordinate Judge, Ponneri, in A.S. No. 38 of 2010 vide judgment and decree dated 23.07.2013, has projected the instant Second Appeal.

2. The suit property is an extent of 67 Cents in S. No. 101 in Devampattu Village, Ponneri. The case of the plaintiff is that the defendant, who was the owner of the property, agreed to sell the same to him for a sum of Rs. 57,000/- and on 01.6.1996, put him in possession of the same. As the defendant was evading the execution of the sale deed, the suit has been filed for specific performance.

3. The suit was resisted by the defendant contending that the plaintiff was known to him as he had been supplying paddy to the plaintiff's Rice Mill. On that score, there were many transactions between him and the plaintiff. While so, the defendant borrowed a sum of Rs.50,000/- from the plaintiff for which he had obtained his signature in two blank stamp papers. It is averred by the defendant that though he had discharged the said loan, the plaintiff had been evading return of the said blank stamp papers containing his signatures and hence, there was a misunderstanding between him and the plaintiff which was capitalised by him by filling in the blank stamp papers styled as an agreement of sale. According to the defendant, he had no intention to sell his property nor did he have any necessity for the same and hence, he prayed for dismissal of the suit.

4. Before the trial Court, the plaintiff examined himself as P.W.1 and marked Ex. A.1. To nullify the case of the plaintiff, the defendant, who examined himself as D.W.1, also examined one Arumugam as D.W.2 but no document was marked.

5. The trial Court, after adduction of evidence by both the parties, considering the materials available thereon, came to the conclusion that the plaintiff is entitled to specific performance of the agreement of sale and accordingly, decreed the suit. On appeal by the defendant, the Lower Appellate Court reversed the decree on the finding that the execution of document has not been proved and allowed the appeal. Feeling aggrieved, the plaintiff has come up with the present Appeal.

6. Meanwhile, it is seen that the sole defendant died and hence, the legal representatives were brought on record by the First Appellate Court to contest the case and they are arrayed as respondents before this Court.

7. Heard Mr. S. Muthudurai, learned counsel appearing for the appellant / plaintiff and Mr. P.V. Muralidhar, learned counsel for the respondents / legal heirs of the sole defendant and perused the records.

8. The only question that has to be decided in this appeal is whether the suit has to be decreed when it is contended that the suit is barred by limitation.

9. The plaintiff as P.W.1 has deposed that he got the acquaintance of the defendant as the supplier of paddy. According to the plaintiff, the agreement was executed on 01.6.1998 for sale of the suit property, for consideration of Rs.57,000/-, which was paid

even on the date of the alleged agreement. The plaintiff has further stated that he did not remember who wrote the said agreement. He has also stated that he did not see the parent documents of the property and also not verified the encumbrances on the same besides stating that the possession was given to him.

10. Per contra, the above statements were categorically denied by the defendant alleging that there was no such agreement intended to be executed by him. Even presuming that the agreement is true, as the suit was filed only on 16.6.2004, the suit was barred by limitation. During the course of cross-examination, the plaintiff, while admitting that he has been cultivating the land after taking possession of the same, deposed that the kist has been paid only by the defendant. If really the possession has been with the plaintiff and he has been tilling the soil, then there is no necessity for the defendant to pay the kist. The plaintiff has not produced any document to show his possession from the date of agreement till the date of the suit. The plaintiff has also not agreed to demand the parent documents relating to the suit property. Even as per Ex. A.1, the plaintiff claims to have paid the entire sale consideration to the defendant and the alleged agreement was entered into in 1998. No prudent man would wait for more than six years having parted with the entire sale consideration without getting the sale executed in his favour.

11. Insofar as the case of the defendant is concerned, though it is stated that Ex. A.1 was executed only for the purpose of security for the loan taken, as there was three existing transactions between the plaintiff and the defendant, there is no evidence produced by the defendant for the discharge of the said loan.

12. Though time is not the essence of contract insofar as the immovable property is concerned, as laid down by the Hon'ble Supreme Court, when there is a specific time agreed by the parties in the agreement, unless the same is extended by the consensus of the parties based on performance of certain acts, the parties are bound by the time prescribed in the deed.

13. In this regard, learned counsel appearing for the appellant relied on the decision of the Hon'ble Apex Court in Balasaheb Dayandeo Naik (Dead) through LRs. and others v. Appasaheb Dattatraya Pawar [2008 (1) CTC 530] more particularly, referred to paragraph 10 wherein it has been observed as follows:-

"It is clear that in the case of sale of immoveable property, there is no presumption as to time being the essence of the contract. Even where the parties have expressly provided that

time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract. For instance, if the contract was to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week, the work undertaken remains unfinished on the expiry of the time provided in the contract, such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. In the case on hand, though the parties agreed that the sale deed is to be executed within six months, in the last paragraph they made it clear that in the event of failure to execute the sale deed, the earnest money will be forfeited. In such circumstances, the above-mentioned clauses in the last three paragraphs of the agreement of sale would render ineffective the specific provision relating to the time being the essence of contract."

14. The above said case may not be applicable to the facts of the present case as the agreement Ex. A.1 does not specify any time for execution of the sale deed. However, considering the fact that the relief of specific performance is an equitable remedy and the plaintiff, who claimed to have paid the entire sale consideration even on the date of agreement of sale, ought to have moved the Court within the period of limitation prescribed under Article 54 of the Limitation Act, this Court is of the view that no question of law arises for consideration. Further more, admittedly, there is no evidence produced by the plaintiff for having demanded the defendant to execute the sale deed pursuant to the agreement. In such circumstances, having not established the necessary facts required for granting the equitable relief of specific performance and when especially the defendant has established that it is only a security for the loan borrowed from the plaintiff, the decree for specific performance cannot be granted and this Court finds no perversity in the judgment and decree of the Lower Appellate Court, the final fact finding authority, dismissing the suit.

For the foregoing reasons, the Second Appeal fails and the same stands dismissed confirming the judgment and decree of the Lower Appellate Court. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

gri
To

1. The Subordinate Judge,
Ponneri
2. The District Munsif
Ponneri

copy to:
The Section Officer
V.R. Section
High Court
Madras

+2 ccs to Mr.M.Jayapal Rajan, Advocate sr.35389
+1 cc to Mr.P.V.Murlidhar, Advocate sr.35943

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