

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.436 of 2009

and

M.P.No.1 of 2009

1. Jayakantham
2. Venkatesan(died)
3. Babu
4. Kumar
5. Sivaraman
6. Madurambikai ... Appellants/Defendants
(Appellants 1, 3 to 6 records as LR's of
the deceased 2nd Appellant
Memo dated 09.06.2010 (U.S.SR.No.2921)
vide order Court dated 04.06.2015 made
in M.P.No.1 of 2009 in S.A.No.436 of 2009)

Vs.

Abaykumar ...Respondent/Plaintiff

Prayer:- Appeal under Section 100 of the Civil Procedure Code,
against the judgment and decree dated 26.08.2008 passed in
A.S.No.33 of 2007 on the file of the Principal District Court,
Villupuram in confirming the judgment and decree dated 05.01.2007
passed in O.S.No.19 of 2003 on the file of the Subordinate Court,
Kallakurichi.

For Appellant : Mr.K.Venkatasubban for
K.Sarvabhauman Associates

For Respondent : Mr.S.Ramesh Kumar

J U D G M E N T

The second appeal is filed by the defendants challenging the
concurrent finding of the courts below in a suit for specific
performance in O.S.No.19 of 2003 on the file of Subordinate Court,
Kallakurichi.

2.1 The Plaintiff has made his claim on Ex.A1 dated 02.06.1999
wherein an agreement was entered into between the plaintiff and the
defendants with respect to the suit property. As per the said
document, the total consideration was fixed as Rs.1,60,000/- and a
sum of Rs.60,000/- was paid as an advance on the date of execution

of the agreement. The time fixed for the completion of the agreement was three years.

2.2 As the defendants were not coming forward to perform their part of the contract, the plaintiff has issued a notice dated 07.05.2002 in Ex.A2, for which, a reply dated 14.05.2002 was also given by the appellants in Ex.A9. The defendants had contended that Ex.A1 was never intended to be acted upon and it was only executed as the security for a loan transaction. It was further contended that the plaintiff was not aware of the purchase of the property and that he was never ready and willing to purchase the same.

3. Before the Trial Court, the father of the plaintiff was examined as P.W.1 and one of the attesters to the document in Ex.A1 was examined as P.W.2 and Exs A1 to A10 were marked. The second defendant was examined himself as D.W.1 and another attester to the document in Ex.A1 was examined as D.W.2 and Exs B.1 to B3 were marked.

4. The Trial Court, after considering both the oral and documentary evidence had decreed the suit.

5. Aggrieved over the decretal of the suit, the defendants preferred first appeal before the Principal District Court, Villupuram in A.S.No.33 of 2007 and the same was dismissed. Hence, this second appeal has been filed by the defendants.

6. This Court heard the submissions of the learned counsel for both the parties and also perused the material records placed.

7. At the time of admission, the following substantial question of law was formulated as hereunder:

Whether in the absence of a plea regarding readiness and willingness to complete the sale the Courts below were correct in law in decreeing the suit overlooking the axiomatic principle of law envisaged under Section 16(c) of Specific Relief Act?"

8. The counsel for the appellant contended that the Trial Court had not framed issues regarding the readiness and willingness of the plaintiff for performing the contract which is the cardinal principle that has to be gone into under Section 16(c) of Specific Relief Act. The Trial Court had elaborately discussed on the readiness and willingness of the plaintiff and arrived at a conclusion that the plaintiff was always ready and willing to perform his contract. So far as the Ex.A1 is concerned, as the defendants had admitted the execution, the validity of the same need not be gone into in this appeal. Accordingly, both the courts below have held that Ex.A1 was true and genuine and executed

by the plaintiff for the terms agreed upon therein.

9. The contention of the defendants is that Exhibit.A1 was executed only for the purpose of security for the loan transaction. The findings of the Court below on this aspect is in the negative. The defendants further contended that the plaintiff was a financier involved in money lending business. Therefore, Exhibit.A1 was executed for the money borrowed by them. But there is no recital to that effect in Ex.A1. A bare look at Ex.A1 goes to prove that it is only an agreement of sale. There is no mention about the money transaction as averred by the defendants. As the execution of the document Ex.A1 was proved and the readiness and willingness of the plaintiff was established, the trial court had decreed the suit. On appeal by the defendants, the Lower Appellate Court has also confirmed the same.

10. However, the defendants in the process of proving Ex.A1, had examined one of the attesters as D.W.2. The said D.W.2 had categorically admitted that the plaintiff's father was doing money lending business and the defendants had borrowed money from the plaintiff's father and executed the sale agreement.

11. The learned counsel for the defendants strenuously contended that it was only a loan transaction and that the value of the property is much more than what is mentioned in Ex.A1. The same was not substantiated by any evidence. Hence, the said contention also fails, though at the time of admission, questioning of readiness and willingness was formulated as question of law. The trial Court as well as the lower Appellate Court had concurrently held in favour of the plaintiff. As such, substantial question of law is answered against the appellants / defendants.

12. In the result, the Second Appeal is dismissed and the judgment and decree dated 26.8.2008 passed in A.S.No.33 of 2007 on the file of the Principal District Court, Villupuram confirming the judgment and decree dated 05.01.2007 passed in O.S.No.19 of 2003 on the file of the Subordinate Court, Kallkurichi are affirmed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

srn

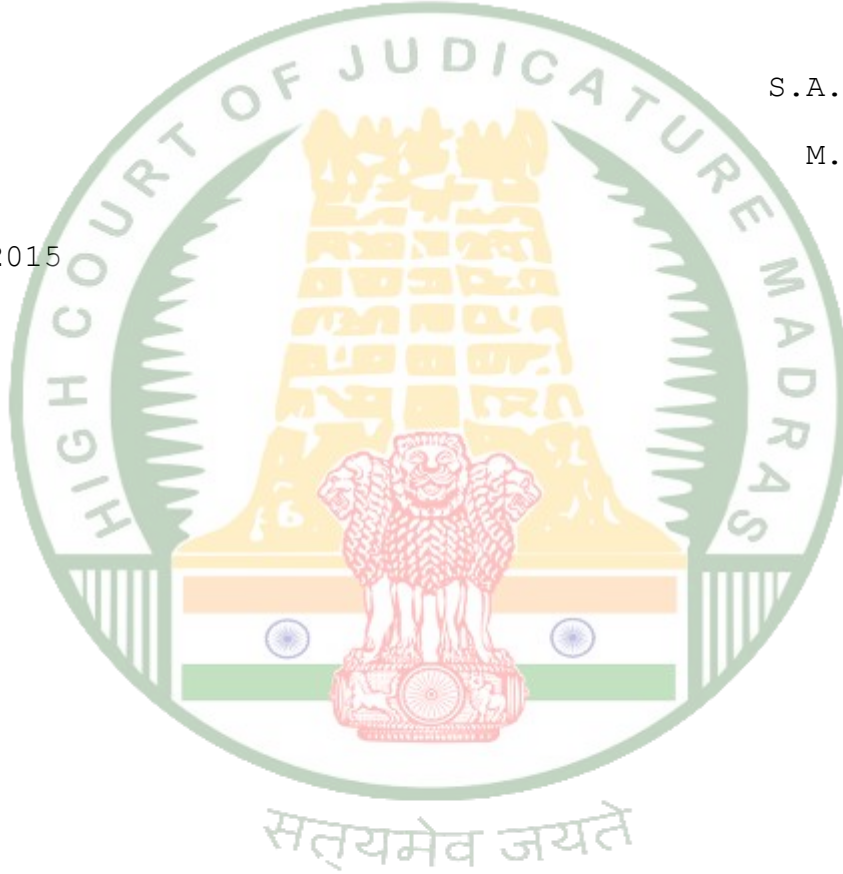
To

1. The Principal District Judge, Villupuram
2. The Subordinate Court, Kallakurichi
3. The Record Keeper,
V.R.Section, High Court, Madras.

1 cc to Mr.Sarvabhauman Associates , Advocate Sr.No.28909

S.A.No.436 of 2009
and
M.P.No.1 of 2009

rsi(co)
pmk.27.7.2015



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