

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.02.2015
CORAM
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI
S.A.No.1108 of 2003

- 1.Sakubai Ammal (Deceased)
- 2.Vijaya
- 3.Santhi

Appellants 2 and 3 brought on record
as LRs of the deceased sole appellant
vide order of Court dated 22.01.2015
made in C.M.P.Nos.551 and 552/2014 .. Appellants/Defendants.

-Vs-

A.Asokan .. Respondent/Plaintiff

Second Appeal filed under section 100 of C.P.C against the decree and judgment passed on 28.01.2003 in A.s.No.1 of 2002 on the file of the Sub-Court, Ranipet, Vellore District, confirming the decree and judgment passed in O.S.No.356 of 1995 on 05.10.2001 on the file of District Munsif Court, Sholingur.

For Appellants : Mr.S.Balasubramanian

For Respondent : Mr.G.Poonkundran

JUDGMENT

The defendant in the suit, who is the appellant before the lower appellate Court, is the appellant in the second appeal. The present second appeal has been filed against the concurrent judgments of the Courts below passed in favour of the plaintiff in his suit for specific performance of Ex.A1, sale agreement dated 29.07.1985.

2. The case of the plaintiff is that the defendant entered into sale agreement with the plaintiff for sale of his property for Rs.25,000/- and received advance of Rs.5,000/- and the parties have agreed to get the sale deed executed after receiving the balance sale consideration out of Rs.25,000/- on or before 31.12.1985. It is the further case of the plaintiff that he has always been ready and willing to perform his part of the contract and the plaintiff with balance sale consideration, approached the defendant for getting the sale executed and the defendant evaded to do so inspite of repeated oral demand and legal notice issued by the plaintiff. The defendant though admitted the signature in the document and receipt of a sum of Rs.5,000/- but denied the nature of the transaction. According to the defendant, the transaction entered into between the parties is not one that of sale agreement but was only mortgage and the plaintiff advanced a sum of Rs.5,000/- to the defendant against the

property belonging to the defendant and the defendant had no intention of selling her property to any one. The trial Court, on the basis of the respective pleadings, framed necessary issues regarding the genuine nature of sale agreement and regarding the readiness and willingness of the plaintiff to perform his part of the contract.

3. Both the parties in support of their respective contentions adduced oral and documentary evidence. The plaintiff and his witness are examined as P.W.1 and P.W.2. The defendant is examined as D.W.1. The plaintiff also produced six documents as Exs.A1 to A6.

4. The trial Court after duly analysing the oral and documentary evidence adduced before the same, accepted the plaintiff's case regarding the truth and valid execution of Ex.A1 sale agreement by the defendant and regarding the conduct of the plaintiff in approaching the defendant with balance sale consideration and in demanding her to execute the sale deed as agreed between the parties and disbelieved the version of the defendant and arrived at a definite conclusion that Ex.A1 is true and valid and the defendant has always been ready and willing to perform his part of the contract. The trial Court found so after duly considering the conduct of the respective parties from the date of sale agreement till the date of institution of the suit. The lower appellate court also after due appreciation of entire evidence and the discussion held by the trial Court was inclined to accept the finding of the trial Court and confirmed the judgment and decree of the trial Court. Hence, the second appeal before this Court by the defendant. The second appeal is admitted on the following question of law:

"1. Whether the findings of the Courts below that Ex.A-1 sale agreement is true and binding on the appellant is legally sustainable inasmuch as the appellant being old lady has denied the execution of sale agreement?

2. Whether the judgment and decree of the Courts below are legally sustainable inasmuch as they have failed to note that the respondent has not pleaded and proved his readiness and willingness to complete the transaction?

5. During the pendency of the appeal, the defendant died and her LRs are impleaded as appellants 2 and 3. The perusal of the judgment and decree of the Courts below would go to show that the findings rendered by the Courts below are based on facts and rendered after due appreciation of evidence adduced before the trial Court. The learned counsel for the appellants is unable to make out any ground much less valid legal ground to interfere with such factual findings of the Courts below regarding the valid execution of Ex.A1, sale agreement and the readiness and willingness of the defendant in

performing his part of the contract by paying the balance sale consideration for getting the sale deed executed by the defendant. Both the Courts below after duly considering the genuineness of the claim made by the respective parties and the conduct of the parties rightly rejected the defense raised on the side of the deceased defendant and such finding warrants no interference. Both the substantial questions of law are accordingly answered in favour of the plaintiff.

6. In the result, the second appeal is dismissed. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Ranipet, Vellore District.
2. The District Munsif Court,
Sholingur.

Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Mr.S.Balasubramanian, Advocate SR 9580

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