

In the High Court of Judicature at Madras

Dated: 17.06.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mrs. Justice PUSHPA SATHYANARAYANA

Original Side Appeal No. 110 of 2015
and M.P. No.1 of 2015

Mr. Capt. G.N. Venkat Rajaram .. Appellant

vs.

1. P.K. Suseela Rani
2. J.S. Nirmala Kumari
3. J.S. Surya Prakash
4. Swarna Sundari
5. C. Muralidhar

.. Respondents

Prayer: Original Side Appeal filed under Order 36, Rule 11 of Original Side Rules read with Clause 15 of the Letters Patent, to set aside the order and decree dated 01.07.2014 passed by the learned Single Judge, in Application No. 457 of 2014 in C.S. No.890 of 2010 on the file of this Court.

Application praying that this Honourable Court be pleased to direct the respondents/defendants to accept the offer of Rs.2,00,00,000/- (Rupees Two Crores only) as sale consideration of the suit schedule property as claimed by the respondents/defendants and to sell the above suit schedule property in favour of the Applicant/Plaintiff.

For Appellant : Mr. V. Deenadayalan

J U D G M E N T

(Delivered by The Hon'ble The Chief Justice)

The appellant has filed a suit for specific performance qua an alleged oral agreement read with four memorandum of understandings said to have been executed inter se the parties. It is the case of the appellant that he assisted the respondents in various ways to battle an encroacher on the property and now the respondents have settled the matter with the encroacher and want to sell the property to the encroacher.

2. On the other hand, the respondents have disputed the claim of the appellant as plaintiff and even filed an application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. That application was however dismissed, as the learned single Judge opined that the matter required trial.

3. In the defence to the suit, the respondents have also stated that the arrangement with the alleged encroacher was for sale at Rs.1.50 crores. At that stage, apparently the appellant sought to increase his proposed consideration from Rs.75 lakhs to Rs.1.50 crores, but that was not acceptable to the respondents.

4. In the counter filed by the respondents, one of the pleas is that the value of the property would be Rs.2.00 crores. Hinging on the sole point, the appellant moved the learned single Judge contending that the property should be sold to the appellant for Rs.2.00 crores, which he was willing to pay. Learned single Judge dismissed the application by the impugned order dated 01.07.2014 on the ground that this would amount to really a decree and there is no ground for passing such a decree when the matter is disputed. It is this order which is sought to be assailed in the present appeal.

5. We have heard the learned counsel for the appellant and find that the appeal is completely misconceived. Merely because the owner of a property states that the current value of the property is Rs.2.00 crores cannot be a ground for the appellant to secure specific performance through a Court decree, as it does not meet any of the parameters under Order XII Rule 6 of the Code, where alone a decree could have been passed. Learned counsel for the appellant pleaded that the parties are old and willing to resolve the dispute. The Court is not standing in the way of resolution of their dispute, but under the garb of settlement, the appellant cannot obtain a decree through Court process merely on the statement of the respondents that the current value of the property may be higher. The respondents are not willing to sell the property to the appellant as per the pleadings at any specified cost.

6. We would have imposed costs for this frivolous appeal, but for the fact that the respondents are not represented before us.

7. The appeal accordingly stands dismissed. No costs. Consequently, M.P. No.1 of 2015 is also dismissed.

Sd/-

Asst.Registrar (CS II)

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Sub Asst. Registrar

ATR

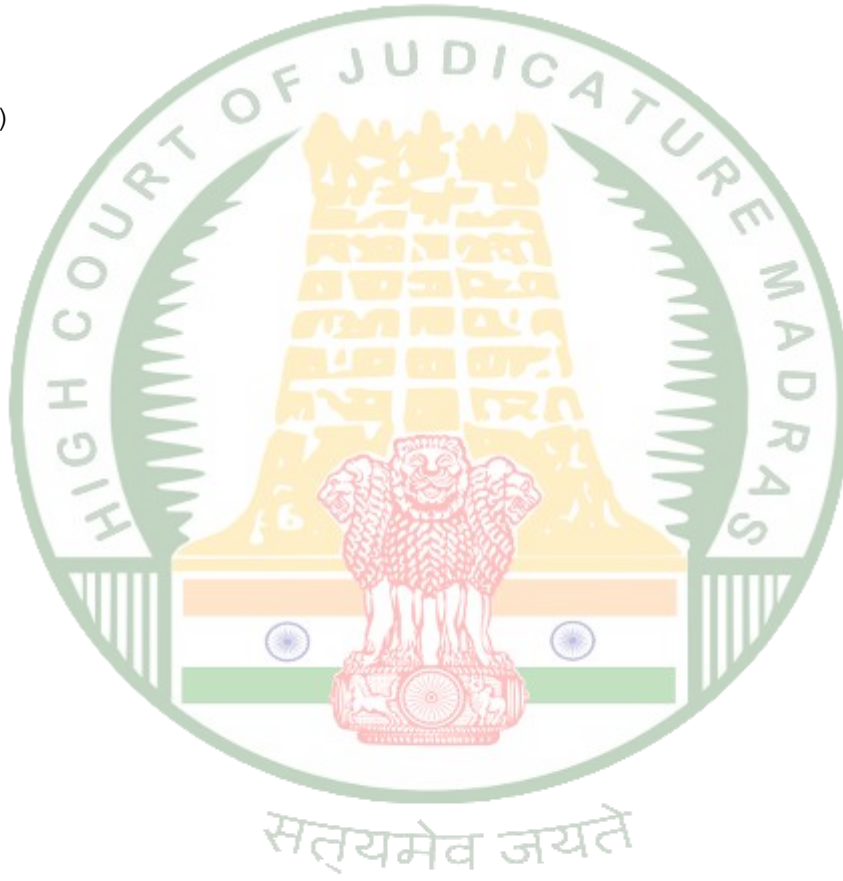
To

The Sub Assitant Registrar
Original Side
High Court, Madras

1 cc to M/s.V. Deenadayalan, Advocte, sr. 29596

O.S.A. No.110 of 2015

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