

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1026 of 2015

Shakunthala

..Appellant/Plaintiff

Vs.

1. R.Govindan

2. R.Govindasamy Naidu

..Respondents/Defendants

Appeal under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 27.01.2015 made in A.S.No.149 of 2014 on the file of the Sub Court, Arakkonam, confirming the decree and judgment dated 30.01.2014 made in O.S.No.248 of 2004 on the file of the District Munsif Court, Arakkonam.

For Appellant : Mrs.G.Thilakavathi

J U D G M E N T

The plaintiff in O.S.No.248 of 2004 on the file of the learned District Munsif, Arakkonam, is the appellant. The respondents are the defendants in the suit. The said suit was filed for specific performance of a contract of sale dated 22.12.1994 entered into between the first defendant and the plaintiff. The trial Court, by decree and judgment dated 30.01.2014, dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.149 of 2014. By decree and judgment dated 14.9.2014, the learned Subordinate Judge, Arakkonam, dismissed the appeal thereby confirming the decree and judgment of the trial Court. As against the same, the plaintiff is before this Court with this second appeal.

2. This second appeal has come up today for admission. I have heard the learned counsel for the appellant and also perused the records.

3. The case of the respondents in brief, is as follows:

The suit property admittedly belong to the first defendant. The first defendant entered into a sale agreement on 22.12.1994, thereby agreeing to sell the suit property for a total

consideration of Rs.85,000/-. A sum of Rs.5,000/- was paid by the plaintiff to the first defendant as advance when the sale agreement was executed. It was mentioned in the sale agreement that the balance of sale consideration should be paid by the plaintiff on or before 31.5.1995 and the first defendant would execute the sale deed in favour of the plaintiff. According to the plaintiff, though the plaintiff was all along ready and willing to perform her part of contract, the first defendant did not readily come forward to perform his part of contract. It is the further case of the plaintiff that on the date of execution of the sale agreement, the possession of the suit property was also surrendered to the plaintiff. It is further stated that the second defendant, who had been litigating with the plaintiff's family with regard to some other properties, had re-conveyed the suit property in favour of the first defendant, in order to establish possession of the suit property by the first defendant. In those circumstances, present suit came to be filed.

4. The first defendant had admitted the execution of the sale agreement. But, according to the first defendant, the time fixed therein is the essence of contract and therefore, his suit property was sold to the second defendant. The second defendant, in his written statement, has stated that before purchasing the suit property from the first defendant, he ascertained from the first defendant that the plaintiff has expressed her inability to perform her part of contract, in terms of the sale agreement in question. It is only thereafter, according to the second respondent, he purchased the suit property.

5. Based on the above pleadings, the trial Court framed appropriate issues. Before the trial Court, on the side of the plaintiff, two witnesses were examined and nine documents were marked. On the side of the defendants, three witnesses were examined and two documents were marked. Having considered all the above, the trial Court dismissed the suit, which was confirmed by the lower Appellate Court. That is how the appellant/plaintiff is before this Court with this second appeal.

6. In this second appeal, the learned counsel appearing for the appellant would submit that during the pendency of the present suit, the second defendant filed a suit for permanent injunction to restrain the plaintiff from disturbing his possession. According to the learned counsel in that suit, the second defendant contended that by virtue of the sale executed by the first defendant in his favour, he had been in possession and enjoyment of the suit property. The learned counsel would further point out that that suit was dismissed holding that the plaintiff herein was in possession and enjoyment of the suit property. The learned counsel would further submit that so far as the findings of the Courts below that the plaintiff was not ready and willing to perform his part of contract is erroneous.

According to the learned counsel, the Court below ought to have decreed the suit as prayed for.

7. I have considered the above submissions.

8. At the outset, I should say that I do not find any question of law, much less a substantial question of law. The question whether the time prescribed in the sale agreement is the essence of contract and the further question as to whether the plaintiff was all along ready and willing to perform her part of contract are all purely questions of fact which have been adjudicated upon by the Courts below, based on oral as well as documentary evidence. The learned counsel for the appellant is not in a position to point out any perversity in the said findings, on facts. In such view of the matter, so far as the possession is concerned, in the present suit, it is immaterial. Therefore, though it may be true that in the other suit filed by the second defendant, the trial Court declined to grant decree for permanent injunction in favour of the second defendant, that is no ground to reverse the well considered decree and judgment of the trial Court, which was confirmed by the lower Appellate Court. In the present case, at any rate, since I do not find any substantial question of law in the second appeal and since I do not find any perversity in the findings of the Courts below, I find no reason even to admit the second appeal. In other words, I do not find any merit at all in this second appeal. Accordingly, the second appeal fails and the same is dismissed. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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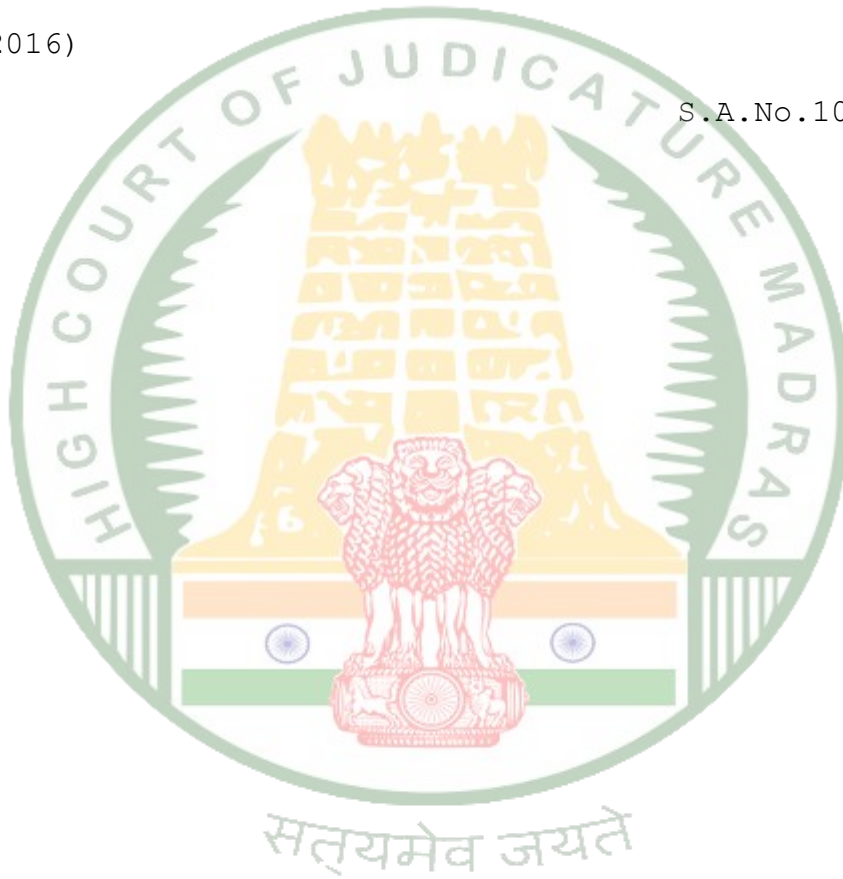
1. The Sub Court, Arakkonam.

2. The District Munsif Court, Arakkonam.

+1cc to M/s. G. Thilakavathi, Advocate, S.R.No.67566

RSI (CO)
EU(10/03/2016)

S.A.No.1026 of 2015.



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