

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1031 of 2015
and
M.P.No.1 of 2015

Ravi

... Appellant/Plaintiff

Vs.

Appadurai Gounder

... Respondent/Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 28.11.2014 made in A.S.No.37/2013 on the file of the learned Subordinate Judge, Vellore in confirming the judgment and decree dated 08.08.2012 made in O.S.No.890 of 2004 on the file of the learned Additional District Munsif, Vellore.

For Appellant : Mr.A.Gouthaman

JUDGEMENT

The plaintiff in O.S.No.890 of 2004 on the file of the learned Additional District Munsif, Vellore is the appellant herein. The respondent is the defendant in the suit. The said suit was filed for specific performance of contract of sale agreement dated 16.09.1998. The suit was dismissed by the trial Court by decree and judgment dated 08.08.2012. Challenging the same, the plaintiff filed an appeal in A.S.No.37/2013 on the file of the learned Subordinate Judge, Vellore. By decree and judgment dated 28.11.2014, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellant 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 I have also perused the records carefully.

3.The case of the plaintiff is that the suit property belongs to the defendant. The defendant entered into a sale agreement with the plaintiff on 16.09.1998 by which, the

defendant agreed to sell the suit property to the plaintiff for valuable consideration of Rs.66,000/-. A sum of Rs.27,000/- was paid as advance at the time of sale agreement itself and the balance sale consideration was Rs.39,000/-. It is mentioned in the sale agreement that on or before 16.12.1998, the balance sale consideration should be paid and the sale should be completed. But, according to the plaintiff, the time so stated in the sale agreement is not the essence of contract. It is further stated by the plaintiff that on 11.02.2000 the balance of sale consideration of Rs.39,000/- was paid by him to the defendant and in acknowledgment of the same, they made endorsement in the backside of the sale agreement itself. Thereafter, the defendant did not come forward to perform his part of contract as per the sale agreement dated 16.09.1998. Therefore, the plaintiff filed the said suit for specific performance.

4.The defendant admitted the sale agreement dated 16.09.1998 and payment of Rs.27,000/- as advance made by the plaintiff to him. But, the defendant has disputed the payment of balance sale consideration of Rs.39,000/- which, according to the plaintiff was paid on 11.02.2000. It is also stated by the defendant that the time is essence of contract. The defendant has further contended that on compulsion and by force, the defendant was taken to the Police Station and the endorsement on the backside of the sale agreement was obtained by the plaintiff. Thus, according to the defendant, the plaintiff is not entitled for the relief as prayed for.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, the plaintiff was examined as P.W.1 and one Mr.Ramalingam, who is the attester of the sale agreement was examined as P.W.2. The sale agreement dated 16.09.1998 was marked as Ex.A.1. On the side of the defendant, he himself was examined as D.W.1 and no document was marked on his side. P.W.2 has stated that on 16.12.1998, a sum of Rs.39,000/- was paid by the plaintiff to the defendant.

6.Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

7.In this second appeal, the learned counsel for the appellant would submit that even assuming that the time is the essence of contract, in this case, the suit was filed before the expiry of three years from the date of execution of the sale agreement. It is further submitted by the learned counsel for the appellant that payment of balance sale consideration of

Rs.39,000/- was made by the plaintiff on 11.02.2000 and the same has been categorically spoken by P.Ws.1 and 2 during evidence. Thus, according to the learned counsel, the Courts below ought to have decreed the suit as prayed for.

8.I have considered the above submissions carefully. At the outset, I should say that there is no question of law much less a substantial question of law at all involved in the second appeal warranting admission. Further, I do not find any perversity in the judgments of the Courts below. As I have already pointed out, the defendant has admitted the execution of the sale agreement and the payment of Rs.27,000/- made by the plaintiff as advance on the date of sale agreement itself. But, he has not admitted that the balance sale consideration of Rs.39,000/- was paid on 11.02.2000. Thus, whether the said balance of sale consideration of Rs.39,000/- was paid on 11.02.2000 was put into issue. The Courts below have pointed out that the plaintiff himself has admitted during cross examination that no amount was paid on 11.02.2000 as balance sale consideration to the defendant. The Courts below have further pointed out that P.W.2 has stated that the balance of sale consideration of Rs.39,000/- was paid by the plaintiff to the defendant on 16.12.1998 and on that date itself, the endorsement was obtained. These contradictions have been well appreciated by the Courts below to come to the conclusion that the plaintiff has not come forward with the clean hands and the plaintiff himself has admitted that the balance sale consideration of Rs.39,000/- was not paid on 11.02.2000. On appreciating these facts only, the Courts below have dismissed the suit as well as the First Appeal as the plaintiff has not come forward with clean hands and the plaintiff has come forward with the false case that the balance of sale consideration was paid on 11.02.2000. In this finding, I do not find any infirmity at all.

9.At any rate, as has been pointed out by this Court, there is no question of law much less a substantial question of law at all involved in this second appeal so as to admit the same.

10.In the result, the second appeal fails and accordingly the same is dismissed and the decree and judgment of the First Appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

To

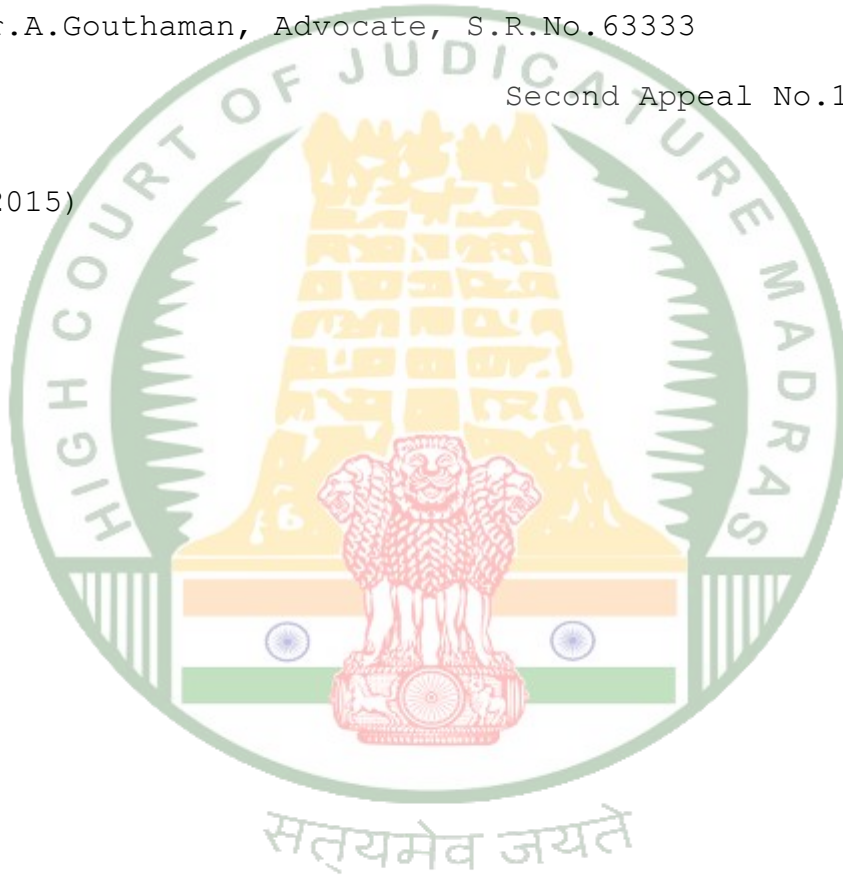
1.The Subordinate Judge,
Vellore.

2.The Additional District Munsif,
Vellore.

+lcc to Mr.A.Gouthaman, Advocate, S.R.No.63333

Second Appeal No.1031 of 2015

MSM(CO)
CA(15/12/2015)



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