

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1059 of 2015

C.N.Ramamoorthy

.. Appellant

Vs.

N.S.Mahendran

.. Respondent

Appeal under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 31.12.2009 made in A.S.No.30 of 2009 on the file of the Sub Court, Ranipet, modifying the judgment and decree dated 29.7.2008 made in O.S.No.153 of 2005 on the file of the District Munsif cum Judicial Magistrate No.1 Court, Walajahpet.

For Appellant : Mr.R.Bharanidharan

J U D G M E N T

The plaintiff in O.S.No.153 of 2005 on the file of the learned District Munsif cum Judicial Magistrate Court, Ranipet, Vellore, is the appellant herein. The respondent is the sole defendant in the suit. The said suit was filed for specific performance of contract of sale. The trial Court, by decree and judgment dated 29.7.2008, dismissed the suit. As against the same, the appellant filed an appeal before the learned Subordinate Judge, Ranipet. By decree and judgment dated 31.12.2009, the lower Appellate Court partly allowed the appeal, thereby directing the defendant to refund the advance amount of Rs.85,000/- which was paid by the plaintiff to the defendant. However, the lower Appellate Court declined to grant decree for specific performance. Challenging the same, the plaintiff has come up with the above appeal.

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

3. The case of the plaintiff is that the defendant entered

into a sale agreement on 03.10.2002, thereby agreeing to sell the suit property to the plaintiff for a valuable consideration of Rs.1.00 Lakh. On the date of the sale agreement itself, a sum of Rs.85,000/- was paid by the plaintiff to the defendant. Though thereafter, the plaintiff was all along ready and willing to perform his part of contract, the defendant did not come forward to receive the balance sale consideration and execute the sale deed. Therefore, the present suit was filed.

4. The defendant took a stand that he never intended to sell the property to the plaintiff at all. According to him, he had borrowed a sum of Rs.70,000/- from one N.R.Chandraiah on 25.10.1996. As per the business practice, instead of getting a document pertaining to the loan, a sale agreement was obtained from him. Then, subsequently, Mr.Chandraiah cancelled the same and compelled the defendant to execute a fresh sale agreement in favour of one D.R.Mohan on 21.10.1999 in respect of the suit property. That was executed. When the sale agreement was in force, Mr.D.R.Mohan compelled the defendant to execute yet another sale agreement in favour of the plaintiff. Accordingly, the present sale agreement was executed on 03.10.2002. It was never intended to be enforced.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and as many as five documents were exhibited. On the side of the defendants, one witness was examined and three documents were exhibited. Having considered all the above, the trial Court dismissed the suit, which was partly modified by the lower Appellate Court. That is how the plaintiff is before this Court with this second appeal.

6. In this second appeal, the learned counsel for the appellant would submit that the lower Appellate Court has considered and concluded that the sale agreement is enforceable and that is the reason why the lower Appellate Court has granted a decree for refund of the advance amount paid under the sale agreement. But, the lower Appellate Court has not given any reason as to why they declined to grant decree for specific performance.

7. I have considered the above submissions.

8. The trial Court, on appreciating the evidence, came to the conclusion that the sale agreement was not true. This conclusion was arrived at on the basis of the evidence, both oral as well as documentary, that the defendant had executed two sale agreements on earlier occasions and both were cancelled and the present sale agreement is the third one. According to the

trial Court, the defendant, by his conduct, has proved that he never intended to sell the suit property including the plaintiff. But, the lower Appellate Court having concurred with the said finding has however directed the defendant to pay the amount of Rs.85,000/-, which is the amount said to have been paid under the sale agreement. In my considered view, findings of the lower Appellate Court is in consistent with its own earlier findings that the sale agreement is not true. Any way, since the defendant has not come forward with any appeal challenging the decree of the lower Appellate Court for refund of the alleged advance amount, I do not wish to interfere with the same. But, so far as the prayer for specific performance is concerned, admittedly it is a discretionary relief to be granted by the Court. Here, in this case, both Courts have held that the sale agreement in question was never intended to be enforced and it was only a security for the loan obtained. At any rate, there is a doubt in the genuineness of the document. In view of the same, I am of the considered view that the Courts below were right in rejecting the prayer for specific performance. At any rate, I do not find any substantial question of law involved in this second appeal. Thus, 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(CS II)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Sub Court, Ranipet.
2. The District Munsif cum
Judicial Magistrate No.1 Court
Walajahpet, Vellore.

S.A.No.1059 of 2015.

vsn co
kra 29.01.2016