

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2015

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THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1066 of 2015

D.Thangaraj

.. Appellant/ Plaintiff

vs.

1.R.Umapathi

2.R.Janarthanan

3.R.Shanthakumar

4.Dhanalakshmi

... Respondents/ Defendants

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 19.08.2015 passed in A.S.No.28 of 2013 on the file of the learned Subordinate Judge, Thirupathur, Vellore District and reversing the judgment and decree dated 16.08.2013 passed in O.S.No.238 of 2008 on the file of the learned Additional District Munsif, Thirupathur, Vellore District.

For Appellant : Mr.S.Kothandaraman

For Respondents : No Appearance

JUDGMENT

The plaintiff in O.S.No.238 of 2008 on the file of the learned Additional District Munsif, Thirupathur, Vellore District, is the appellant herein. The respondents herein are the defendants in the suit. The said suit was filed for specific performance of a contract of sale. The trial Court by decree and judgment dated 16.08.2013, decreed the suit as prayed for. As against the same, the defendants filed an appeal in A.S.No.28 of 2013 on the file of the learned Subordinate Judge, Thirupathur, Vellore District. By decree and judgment dated 19.08.2015, the First Appellate Court allowed the appeal, set aside the decree and judgment of the trial Court and instead, decreed the suit directing the defendants to pay a sum of Rs.25,000/- with interest @ 12% per annum from 24.01.2008 till the date of realisation to the plaintiff. Challenging the same, the plaintiff is before this Court with this second appeal.

<https://hcservices.ecourts.gov.in/hcservices/> This second appeal has come up today for admission. I have heard the learned counsel for the appellant. There is no representation for the respondents though, the respondents have

appeared through the learned counsel on caveat. I have also perused the records carefully.

3.The case of the appellant/plaintiff in brief is as follows:-

The suit property was owned by the defendants 1 to 3. The fourth defendant is the wife of the first defendant. The defendants 1 to 3 entered into a sale agreement with the plaintiff on 24.01.2008 thereby agreeing to sell the suit property to the plaintiff for a valuable consideration of Rs.30,000/-. On the same day, the plaintiff paid a sum of Rs.25,000/- to the defendants 1 to 3 towards advance and the balance of sale consideration was Rs.5,000/-. Incorporating the terms and conditions of the agreement, a registered sale agreement was executed on the same day. It is the further case of the plaintiff that he was all along ready and willing to perform his part of contract. But, the defendants 1 to 3 did not come forward to perform their part of contract despite, demand made by the plaintiff. While so, on 10.04.2008, the defendants issued a notice to the plaintiff disputing the sale agreement and further, claiming that the defendants 1 to 3 never intended to sell the suit property to the plaintiff at all. It was further stated that they only wanted to borrow money from the plaintiff to the tune of Rs.25,000/-. The plaintiff paid only a sum of Rs.19,500/- but, did not pay the balance of Rs.5,500/-. It was also contended that the plaintiff being a practicing Advocate took the defendants 1 to 3 to the Registrar's Office, made a representation that the deed under execution was only a mortgage deed, made the defendants 1 to 3 to sign the said document and accordingly, this document was executed and the same was registered. According to the defendants 1 to 3, later on, when they obtained Encumbrance Certificate, they came to know that the document so executed on 24.01.2008 has been titled as a sale agreement whereas, they never intended to sell the suit property at all to the plaintiff. Therefore, according to the defendants 1 to 3, the sale agreement dated 24.01.2008 is not true and the same is not enforceable in law. Thereafter, the plaintiff filed the present suit for specific performance.

4.In the mean while, the defendants 1 to 3 and their mother Mrs.Parvathy sold the suit property to the fourth defendant for a sum of Rs.1,45,000/-. The defendants disputed the claim of the plaintiff that Ex.A.1 is a sale agreement and that the defendants 1 to 3 intended to sell the suit property to the plaintiff. They also disputed that they received only Rs.25,000/- from the plaintiff, as it is claimed by the plaintiff.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, three witnesses were examined and on the side of the defendants, three witnesses were examined. On the side of the plaintiff, five documents were exhibited and on the side of the defendants, eight documents were exhibited.

6. Having considered all the above, the trial Court decreed the suit which was reversed by the First Appellate Court. The First Appellate Court granted decree directing the defendants 1 to 3 to pay a sum of Rs.25,000/- with interest to the plaintiff. Aggrieved over the same, the appellant/plaintiff is before this Court with this second appeal.

7. In this second appeal, the learned counsel for the appellant would submit that as per Section 92 of the Indian Evidence Act, the First Appellate Court ought not to have relied on the evidence let in by the defendants contrary to the terms and conditions of Ex.A.1 - sale agreement. He would further submit that the First Appellate Court has failed to appreciate the oral as well as documentary evidence in their proper perspectives. The learned counsel would further submit that the plaintiff has proved that there was consensus added between the parties, by which, the defendants 1 to 3 agreed to sell the suit property to the plaintiff.

8. The learned counsel for the appellant/plaintiff would further submit that the finding of the First Appellate Court that Mrs.Parvathy had undivided share in the suit property, though is a true statement, that is extraneous for the present case. According to the learned counsel, under Ex.A.1, the plaintiff is not entitled to get the suit property in respect of the undivided share of the defendants 1 to 3. Thus, According to the learned counsel, at any rate, the First Appellate Court was not right in reversing the decree and judgment of the trial Court.

9. In this second appeal, one Mr.PA.Sudesh Kumar, learned counsel has entered appearance as caveator on behalf of the respondents 1 to 3. But, today, he has not made appearance. Therefore, I could not hear him. I have considered the above submissions of the learned counsel for the appellant.

10. At the outset, I should say that, in this second appeal, I do not find any substantial question of law warranting admission of the same. The question whether Ex.A.1 is true and the same is enforceable in law or not, is essentially a question of fact. The First Appellate Court has given cogent reasons to hold that Ex.A.1 cannot be enforced and the same is not true.

11. First of all, the First Appellate Court has taken into account that the suit property was bequeathed by its original owner in favour of the defendants 1 to 3 and their mother Mrs.Parvathy. But, Mrs.Parvathy is not a party to the sale agreement. It is neither the case of the plaintiff that there was partition of the property between Mrs.Parvathy and the defendants 1 to 3. When Mrs.Parvathy has a share in the suit property, it is not known as to how the plaintiff could get the title for the entire property to be transferred in his name in execution of a sale deed, in pursuance of the alleged sale agreement. The First Appellate Court has pointed out that the appellant cannot be stated to be an ignorant man of law, on facts. Admittedly, he is a practicing Advocate and he has admitted in his evidence that he knew very well that the suit

property was bequeathed by its original owner in favour of Mrs.Parvathy and the defendants 1 to 3. When that be so, it is not explained by the plaintiff as to why he did not join Mrs.Parvathy also in the alleged sale agreement. The plaintiff has further stated that negotiation for the sale agreement was going on for few months. Had it been true, certainly, Mrs.Parvathy would have been taken into confidence and she would have also been added as the party to the sale agreement. This creates initial doubt in the transaction.

12.The First Appellate Court has further pointed out that P.W.2, a witness who was examined to speak about the sale agreement has admitted during cross examination that on the crucial day, the defendants 1 to 3 had approached the plaintiff only to borrow some amount to meet out the expenditure to celebrate pongal festival. He has further admitted that the plaintiff told the defendants that he would borrow money from somebody and give the same to them. This admission of P.W.2 would go contrary to the evidence of P.W.1, whereas, P.W.1 has stated that the negotiation was going on for about two to three months. The First Appellate Court has given much weightage to the evidence of P.W.2 wherein, he has stated that the defendants approached the plaintiff only for borrowal of money to meet the pongal festival expenditure.

13.Yet another reason stated by the First Appellate Court is that, the market value of the property must be more than 1,45,000/- as on 25.04.2008, but, the suit property was sold by the defendants 1 to 3 and Mrs.Parvathy in favour of the fourth defendant for a sum of Rs.1,45,000/-. Rs.1,45,000/- according to the First Appellate Court, is the guide line value of the property. The First Appellate Court has further stated that when the guideline value itself is Rs.1,45,000/-, the market value of the property should have been more. The defendants have taken the plea that the property would fetch several lakhs and therefore, they would not have agreed to sell the suit property for a paltry sum of Rs.25,000/-. This has been accepted by the First Appellate Court, for sound reasons, in which, I do not find any infirmity.

14.The contention of the learned counsel that the defendants 1 to 3 have barred from let in evidence against the terms of Ex.A.1, deserves only to be rejected, for the simple reason that, as per proviso 1 and 2 of Section 92 of the Indian Evidence Act, such evidence could be led in to dispute the very transaction itself.

15.Above all, the relief of specific performance is a discretionary relief. Ofcourse, the Courts of law cannot decline to grant the decree of specific relief in an arbitrary manner. In this case, since, Ex.A.1 is shrouded with lots of doubts, the First Appellate Court, has rightly declined to grant the relief of specific performance in favour of the plaintiff. I do not find any infirmity in the same.

16.The First Appellate Court has directed the defendants 1 to 3 to pay Rs.25,000/- with interest @ 12 % per annum to the

plaintiff. Regarding the correctness of the said direction issued by the First Appellate Court, I do not want to go into because, the same has not been challenged in this appeal. If any challenge is made in respect of the decree, by the respondents herein, it can be separately dealt with. In nutshell, I find that there is no infirmity in the well considered judgment of the First Appellate Court. Further, there is no substantial question of law at all involved in this second appeal warranting admission.

17. In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

jbm

To

1.The Subordinate Judge,
Thirupathur,
Vellore District.

2.The Additional District Munsif,
Thirupathur,
Vellore District.

1 cc to Mr.Pa.Sudesh Kumar, Advocate, Sr. 67705

1 cc to Mr.S. Kothandaraman, Advocate, Sr. 67551

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S.A.No.1066 of 2015

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