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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.38 of 2015

S.Periyasamy .. Appellant /Plaintiff

- Vs -

D.Rajasekar .. Respondent/Defendant

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 28.04.2014, made in A.S.No.384 of 2013 on the file of the learned VII Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 26.02.2013, made in O.S.No.1512 of 2012 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.B.Ramesh Babu

J U D G M E N T

The plaintiff in O.S.No.1512 of 2012 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondent is the sole defendant in the suit. The said suit has been filed seeking the following relief:

"(a) granting Mandatory Injunction Directing the defendant to perform the agreement dated 23.04.2010 and consequently Directing the defendant to handover the possession of a shop measuring 350 sq.ft. in the suit property in the ground floor. (sic)

(b) granting permanent injunction restraining the defendant or any person claiming right, interest and title under him from alienating or leasing out the suit property."

2. The Trial Court by decree and judgment dated 26.02.2013, dismissed the suit. As against the same, the appellant field an appeal before the learned VII Additional Judge, City Civil Court, Chennai and the lower Appellate Court by decree and judgment dated 28.04.2014 confirmed the decree and judgment of the Trial Court. Aggrieved over the same, the appellant is before this Court with this second appeal.



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

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4. The case of the plaintiff is that the suit property admittedly belongs to the defendant. There was a shop in the said suit property and the plaintiff was a tenant. The defendant wanted to construct a new building on the suit property for which he wanted the plaintiff to vacate the shop and handover vacant possession. At that time, a compromise was reached between the parties which resulted in a written agreement dated 23.04.2010. As per the said agreement, the plaintiff agreed to vacate and handover the suit property to the defendant and the defendant in turn had agreed to construct a building and again deliver possession of a shop in the newly constructed building in the ground floor to the plaintiff by way of tenancy. Accordingly, the plaintiff vacated the old building and handed over vacant possession to the defendant. The defendant has also constructed a building in the suit property. But, the defendant declined to handover possession of the shop in the ground floor to the plaintiff as per the terms of the agreement. With these allegations the plaintiff has filed the present suit seeking the relief as extracted herein above.

5. The case of the defendant is that it is true that the plaintiff was in possession of the building originally as a tenant. But on the request made by the defendant, the plaintiff vacated the shop and handed over vacant possession to the defendant. The defendant has constructed a building but never he agreed to let out a shop to the plaintiff on rental basis. The agreement dated 23.04.2010, as projected by the plaintiff is false and the same has not been executed by the defendant. At the time when the plaintiff handed over the property to the defendant, as an evidence, he got the signature of the defendant in few papers and now the same has been pressed into service by the plaintiff. Thus, according to the defendant, the agreement dated 23.04.2010 was not at all executed by him and therefore according to him, the suit is liable to be dismissed.

6. Based on the above pleadings, the trial Court framed appropriate issues and on the side of the plaintiff two witnesses were examined and Ex.A1 viz., the agreement has been marked. On the side of the defendant he was examined as D.W.1 and no document was marked. Having considered all the above, the trial Court dismissed the suit and the same was confirmed by the lower appellate Court. Aggrieved over the same, the appellant is before this Court with this second appeal.

7. In this second appeal, the learned counsel appearing for the appellant by referring to the grounds of appeal would submit that the Courts below were not right in holding that the agreement dated 23.04.2010 is not genuine. The learned counsel would further



submit that the findings of the Courts below that the suit as framed by valuing the suit at Rs.1,000/- and paying the Court fee under Section 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is not maintainable. According to him, the view of the Courts below that the suit for specific performance should have been filed is not correct.

8. I have considered the above submissions.

9. The question whether the agreement dated 23.04.2010, is genuine or not is essentially a question of fact. The Courts below, after analyzing the oral as well as the documentary evidence, has held that the said agreement is not true. The lower appellate Court has referred to the affidavit of D.W.2 and the discrepancies in respect of the person who purchased the stamp papers and other circumstances relating to the execution of the said agreement has held that Ex.A1 agreement is not true. In this conclusion arrived at by the Courts below, I do not find any infirmity. As I have already pointed out, it is essentially a question of fact and there is no question of law involved in this respect.

10. Now turning to the maintainability of the suit, admittedly, the suit has been filed for mandatory injunction and valued under Section 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. According to the Courts below, the suit should have been filed for specific performance by valuing the suit under Section 42 (c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Regarding this conclusion arrived at by the Courts below, the learned counsel appearing for the appellant would submit that it makes no difference if the suit is valued either under Section 27 (c) or Section 42(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. This argument of the learned counsel appearing for the appellant does not persuade me. The suit for mandatory injunction and a suit for specific performance based on an agreement are totally different and consideration are also different. A decree for specific performance is a discretionary relief and even assuming that the agreement is true, Court may decline to grant a decree for specific performance and the Court may direct to refund all the amount already paid under the agreement. In a suit for specific performance, the question whether time is the essence of the contract and whether the suit is barred by limitation from the the date of refusal or expiry of the time fixed in the agreement are all matters for consideration. In a suit for mandatory injunction the considerations are totally different. A suit for specific performance is specifically governed by the Specific Relief Act, as well as the Courts Fees Act and therefore a suit for mandatory injunction is not the proper suit to be filed. On this score, the Courts below were right in dismissing the suit. At any rate, in my considered opinion, there is no question of law much less a substantial question of law involved warranting admission of this second appeal.



11. In the result, the second appeal fails and the same is accordingly dismissed. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The VII Additional Judge,
City Civil Court, Chennai.
2. The XIV Assistant Judge,
City Civil Court, Chennai.
3. The Head Clerk,
V.R. Section,
High Court, Madras.

S.A.No.38 of 2015

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