

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.533 of 2015 and M.P.No.1 of 2015

Kumaradevar ... Appellant/Appellant/
Plaintiffs

-Vs-

Kaliaperumal ... Respondent/Respondent/
Defendant

SECOND APPEAL filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the Subordinate Judge, Chidambaram dated 12.11.2014 passed in A.S.No.21 of 2014 confirming the judgment and decree of the learned Judicial Magistrate-cum-District Munsif, Parangipettai dated 24.09.2013 passed in O.S.No.58 of 2009.

For Appellant : Mr.R.Gururaj

For Respondent : ...

J U D G M E N T

The plaintiff in O.S.No.58 of 2009 on the file of the learned District Munsif-cum-Judicial Magistrate, Parangipettai is the appellant herein. The respondent is the defendant in the suit. The appellant/plaintiff filed the said suit for specific performance. The trial court by decree and judgment dated 24.09.2013 dismissed the suit. As against the same, the appellant herein filed an appeal in A.S.No.21 of 2014 on the file of the learned Subordinate Judge, Chidambaram. The lower appellate court by decree and judgment dated 12.11.2014 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 before me 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 appellant/plaintiff in brief is as follows:

The suit property, admittedly, belongs to the respondent/defendant. The plaintiff entered into a sale agreement with the defendant on 14.03.2005 by which the defendant agreed to sell the suit property to the plaintiff for a total sale consideration of Rs.35,750/-. The plaintiff paid a sum of Rs.10,500/- as advance on 14.03.2005 itself. Incorporating the terms and conditions of the said agreement, a deed of sale agreement (unregistered) was executed on the same day by the defendant in favour of the plaintiff. Subsequently, towards the sale consideration, a sum of Rs.10,000/- was paid by the plaintiff to the defendant on 24.07.2006. Thus, the balance of sale consideration to be paid by the plaintiff is only Rs.15,250/-. According to the plaintiff, he was all along ready and willing to pay the balance sale consideration and to get the sale completed in his favour. But the defendant was not ready and willing to perform his part of contract and the defendant was evasive. The plaintiff, therefore, issued a notice to the defendant on 07.10.2009, calling upon the defendant to perform his part of contract, but the defendant did not respond. Therefore, he filed the present suit for specific performance.

4. The defendant disputed the claim made by the plaintiff. According to him, he had entered into a bogyam arrangement with one Murugesan of Alamelu Mangapuram Village. When Murugesan demanded the repayment of bogyam amount, the defendant was not in a position to repay the same. However, Murugesan was in need of money. Therefore, he himself arranged the plaintiff as creditor. Accordingly, the defendant borrowed money from the plaintiff. The plaintiff paid Rs.10,000/- directly to Murugesan and paid Rs.500/- to the defendant. Thus, the total amount payable was only Rs.10,500/-. For advancing the said loan money to the defendant, the plaintiff insisted the defendant to execute a document under the name and style of a sale agreement. It was only as per the said insistence, the sale agreement in question was executed. It is the further specific case of the defendant that the defendant never agreed to sell the suit property to the plaintiff and there was no such consenses arrived at between the parties. The said deed was executed only as a security for the loan as it was demanded by the plaintiff. Thus, according to the defendant, the sale agreement is not enforceable in law.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiff, two witnesses have been examined and as many as 3 documents have been exhibited. On the side of the defendant, 4 witnesses have been examined and as many as 3 documents have

been exhibited. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellant would submit that the courts below have failed to appreciate that as per the bar contained in Section 92 of the Indian Evidence Act, the defendant is barred from leading any evidence against the terms of the sale agreement which was admittedly executed by the defendant. The learned Counsel would further submit that the courts below have not properly appreciated the evidence that the defendant executed the sale agreement only with full consent and with an intention to sell the suit property to the plaintiff. The learned Counsel for the appellant would also submit that the courts below have failed to appreciate that there is enormous evidence to prove that the plaintiff was all along ready and willing to perform his part of contract, but the defendant was evasive. The learned Counsel would also submit that the lower appellate court has granted a decree for refund of advance money which means that the sale agreement is true. Thus, according to the learned Counsel for the appellant, the courts below were not right in dismissing the suit.

7. I have considered the above submissions.

8. At the outset, I should say that in this Second Appeal, I do not find any question of law much less a substantial question of law warranting admission of this Second Appeal. The questions as to whether there was consenses arrived at between the parties and whether the defendant really intended to sell the suit property to the plaintiff are pure questions on facts in which there is no question of law at all involved. The courts below, on appreciating the oral and documentary evidence, have come to the conclusion that the defendant had no intention to sell the suit property to the plaintiff at all. Therefore, the alleged sale agreement is not enforceable in law. In this finding, I do not find any perversity at all. There is enough oral evidence as well as documentary evidence to prove that the sale agreement in this case was obtained by the plaintiff only as a security for the loan extended by him to the defendant. In the said finding of the courts below, I do not find any perversity warranting interference.

9. So far as the contention of the learned Counsel for the appellant that as per Section 92 of the Evidence Act, the defendant is barred from leading any evidence against the terms of the contract is concerned, I should say that proviso 1 and 2 to Section 92 of the Act permit the defendant to lead any evidence to prove that he had no intention at all to sell the

suit property to the plaintiff. Therefore, this argument also does not persuade me.

10. The learned Counsel for the appellant would nextly contend that the courts below have failed to appreciate that the defendant has not proved the loan transaction upon which the defendant relies on.

11. In my considered view, this is again a question of fact. The courts below have concluded in favour of the defendant in which I do not find any perversity warranting interference.

12. Now turning to the argument of the learned Counsel for the appellant that the lower appellant court has granted a decree for refund of the advance amount and therefore, it should be concluded that the lower appellate court has impliedly conceded that the sale agreement is true, though the learned Counsel initially raised this as an argument, during the course of argument, he withdrew the said argument and he submitted to the Court that no adjudication need be made on this ground because this ground is withdrawn by him across the Bar.

13. In view of the foregoing discussion, I find that there is no substantial question of law and also there is no perversity in the concurrent findings of the courts below warranting admission of the Second Appeal. I do not find any merit at all involved in the Second Appeal. Therefore, the Second Appeal is liable to be dismissed.

14. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellant court is confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-

Assistant Registrar (CSVII)

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Sub-Assistant Registrar

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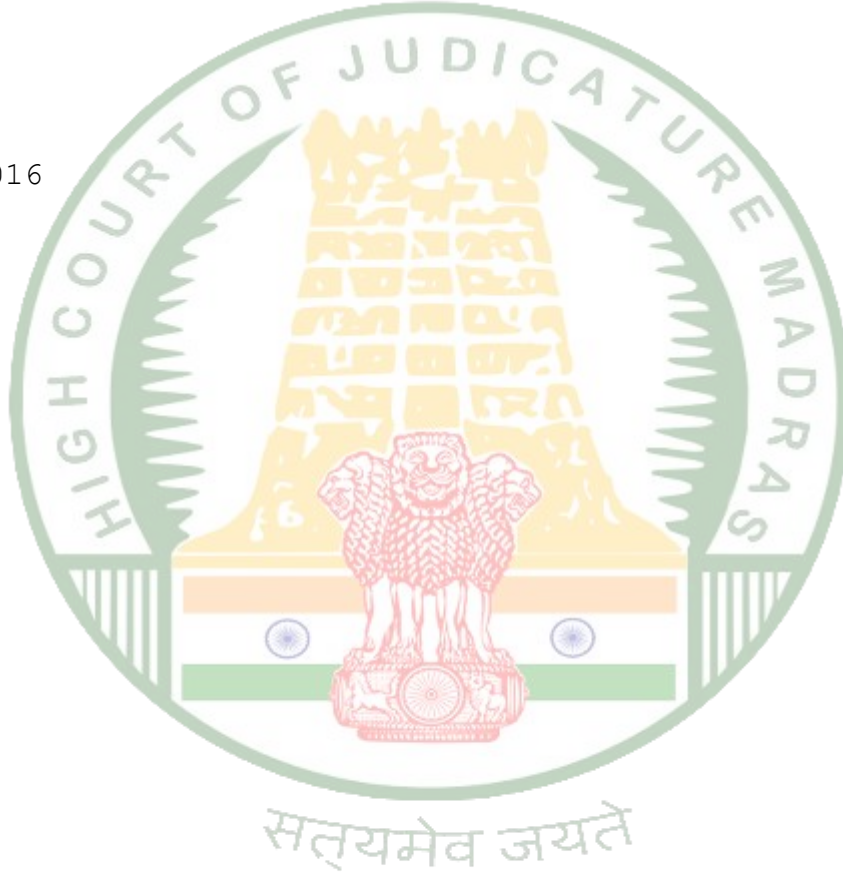
1.The Judicial Magistrate-cum-District Munsif, Parangipettai.

2. The Subordinate Judge, Chidambaram.

+1 cc to Mr.R.Gururaj Advocate sr.67402

S.A.No.533 OF 2015
& M.P. No. 1 of 2015

gj (co)
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