

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.653 of 2015

and

M.P.No.1 of 2015

Mariammal

...Appellant/Plaintiff/Appellant
Vs.

1.Tenal@Thenmozhi

2.Janani

3.Minor Naveen

Rep.by his natural guardian

Thenal@Thenmozhi

4.P.P.Thangavelu

... Respondents/Defendant/Respondent

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 02.03.2015 made in A.S.No.56 of 2014 on the file of the learned Sub-Court, Bhavani, confirming the Judgment and decree dated 27.02.2014 made in O.S.No.124/2012 on the file of the learned Principal District Munsif Court, Bhavani.

For Appellant : Mr.N.Manokaran

J U D G M E N T
सत्यमेव जयते

The plaintiff, who had suffered an unanimous decision of the Courts below, is the appellant in a suit for specific performance directing the defendants to execute a sale deed based on judgment dated 30.08.2010 or in the alternative directing the defendants to pay the plaintiff a sum of Rs.57,412.50/- with interest.

2.The suit property originally belonged to one P.V.Kandasamy and he had executed a power of attorney in favour of one Rajathi on 14.06.2006 empowering the power of attorney to sell the suit property.

3. Based on the same, the said power of attorney had executed a sale agreement on 28.09.2007. However, the said power of attorney was cancelled on 05.09.2008 and on the same day, the said agreement to sell was also cancelled. A new power of attorney was executed in

favour of the fourth defendant on 05.09.2008 under Ex.A2. The fourth defendant on the strength of the power of attorney executed an agreement of sale in favour of his wife, who is the plaintiff.

4.As per the agreement, the suit property was agreed to be sold for Rs.60,000/- (Rupees Sixty thousand only) and on the same day Rs.50,000/- (Rupees Fifty thousand only) was received as advance and the time fixed for execution of the sale was two years.

5.For the reasons best known to the parties, the said agreement Ex.A8 dated 08.09.2008 was cancelled by the parties on 30.08.2010 as per Ex.A9. On the date of cancellation, another agreement was executed between the parties on the same terms and conditions as that of Exhibit A8. The only change was that the time was fixed as three years. Based on the said agreement, the plaintiff had issued legal notice on 06.04.2012 under Ex. A4 and filed the suit for specific performance or on the alternative for return of advance amount.

6. The Trial Court, after elaborate consideration of facts and evidences, dismissed the relief of specific performance and decreed the suit for the alternative relief of payment of Rs.57,412.50/- with interest at 9% per annum on Rs.50,000/-.

7.Not satisfied with the said judgment, the plaintiff had preferred the appeal in A.S.No.56 of 2014 before the Sub-Court, Bhavani. The Lower Appellate court found that PW2 is the brother of the fourth defendant, who is the husband of the plaintiff. The attesor was brother of the original owner of the property. Hence, the Appellate Court held that PW2 was interested in the case of the plaintiff and DW2 was interested in the case of the defendants and refused to give weightage to third party evidence.

8.So far as the relief of specific performance is concerned, the same being the equitable relief, the plaintiff has to come to court with clean hands. In the case on hand, there is no explanation from the plaintiff as to why the first agreement to sale was cancelled. Though, she had paid almost 90% of the sale amount and waited for two years, the plaintiff allowed the first sale deed to be cancelled and the fresh agreement was allowed to be created extending the time by three years which is unnatural and unbelievable. No person who had parted with 90% of the sale consideration would agree for postponing the execution of the sale deed. In this case, the time extension is not by endorsement on the sale agreement, but cancelling the same and executing an agreement afresh. The only reason assigned for cancellation of the earlier sale deed is that it was not convenient for the parties to execute the sale deed. It is not specifically mentioned as to why the parties decided to cancel the sale agreement. While cancelling the earlier sale agreement, the parties have entered into a new agreement and agreeing for time period of three years.

9.From the above facts, it is clear that the plaintiff had successfully gained five years time to pay only Rs.10,000/- (Rupees

Ten thousand only) being the balance sale consideration. There is no convincing reason coming out from the appellant/plaintiff for the delay on her part.

10.Further, it is also found by the courts below that the entire sale consideration for the property is paid to the original owner P.V.Kandasamy by the power agent. Therefore, now what is payable by the plaintiff is only due to the power of attorney, the fourth defendant who is none other than the husband of the plaintiff. This would also amplify the doubt, as to why, the plaintiff had delayed in getting the sale executed in her favour, having parted with the entire amount.

11.Considering all the facts and circumstances, the courts below concluded that the plaintiff is not entitled to the relief of specific performance and granted only the alternative relief of return of advance amount.

12.In view of the forgoing reasons, this court feels no acceptable and convincing reasons to interfere with the judgment of the courts below in dismissing the relief of specific performance and no question of law arises for consideration.

13.Hence, the Second Appeal is dismissed confirming the judgments and decrees of the courts below. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Sub-court, Bhavani
2. The Principal District Munsif Court, Bhavani
3. The Section Officer, V.R. Section, High Court, Madras.

+1 cc to Mr.N.Manokaran, Advocate, sr.44259

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