



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.71 of 2015 and

M.P.No.1 of 2015

1.S.Saraswathi
2.S.Ramesh
3.S.Rajesh

.. Appellants/ Plaintiffs

-Vs-

K.D.Ramachandra Mudaliar

.. Respondent/ Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned Subordinate Judge, Vellore in A.S.No.24 of 2013 dated 01.09.2014 in reversing the judgement and decree passed in O.S.No.331 of 2007 on 11.12.2012 by learned District Munsif, Vellore.

For Appellant : Mr.N.P.Kumar

J U D G M E N T

The plaintiffs in O.S.No.331 of 2007 on the file of the learned District Munsif, Vellore are the appellants herein. Originally, the said suit was filed by one Mr.K.V.Sankara Mudaliar. During the pendency of the suit, Mr.K.V.Sankara Mudaliar, the sole plaintiff died and therefore, the appellants herein were impleaded as the legal representatives of the deceased Mr.K.V.Sankara Mudaliar. The respondent herein is the sole defendant in the suit. The said suit was filed for specific performance of contract. The learned District Munsif by decree and judgement dated 11.12.2012 decreed the suit. As against the same, the defendant filed an appeal in A.S.No.24 of 2013 on the file of the learned Subordinate Judge, Vellore. The First Appellate Court by decree and judgement dated 01.09.2014, allowed the appeal and set aside the decree and judgement of the trial Court. Aggrieved over the same, the appellants are before this Court with this second appeal.

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



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3.The case of the plaintiff is that the suit properties absolutely belong to the defendant. The defendant entered into a sale agreement with Mr.K.V.Sankara Mudaliar/plaintiff to sell the property for a sum of Rs.23,000/-. The said oral agreement was entered into on 16.04.1992. A sum of Rs.1,000/- was also paid by Mr.K.V.Sankara Mudaliar as advance to the defendant. But, the said oral evidence was not evidenced by any other document. There was no receipt even issued for receipt of Rs.1,000/-.

4.Thereafter, it is the case of the plaintiff that a written agreement was executed on 07.04.1994 by the defendant. At that time, Mr.K.V.Sankara Mudaliar paid a sum of Rs.21,800/- towards sale consideration as agreed earlier including Rs.1,000/- which was paid already on 16.04.1992. Thus, a total sum of Rs.22,800/- had been paid. The balance was Rs.200/-. From 16.04.1992 onwards, Mr.K.V.Sankara Mudaliar/the plaintiff was in possession till his demise and after him, the present appellants who are the legal representatives of him have been in possession and enjoyment of the suit property. It is further alleged that the Mr.K.V.Sankara Mudaliar and the appellants herein were all along ready and willing to perform their part of contract and to get the sale completed in their favour. But, the defendant avoided to perform his part of contract. Finally, during the month of April 2007, at the intervention of the elders, the defendant agreed to execute a sale deed in favour of the appellants herein. Believing the same, Mr.K.V.Sankara Mudaliar, purchased stamp papers for Rs.5,200/- and after that, the defendant declined to execute the sale deed. A legal notice was therefore issued by Mr.K.V.Sankara Mudaliar demanding the defendant to complete the sale. Though the said notice was received by the defendant on 09.05.2007, there was no reply. Immediately, Mr.K.V.Sankara Mudaliar filed the present suit.

5.The defendant in his written statement, denied the above stated oral agreement. It is the specific case that he never agreed to sell the suit property to Mr.K.V.Sankara Mudaliar. It is also his case that he did not receive any amount from Mr.K.V.Sankara Mudaliar towards sale consideration for the suit property. It is also stated that the alleged sale agreement dated 07.04.1994 is a forgery one and the same was created by Mr.K.V.Sankara Mudaliar for the purpose of case. It is further contended that possession was never given to the appellants herein and the appellants herein are not in possession of the suit property as on the date of filing of the suit. It is also his case that he has been in possession and enjoyment of the suit property continuously. He would further submit that assuming that the sale agreement dated 07.04.1994 is genuine, the present suit is barred by limitation, because, the suit was filed after 15 years of the said sale agreement. At any rate, according to the defendant, the plaintiff is not entitled for decree of specific performance.



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6. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, as many as four witnesses were examined and seven documents were exhibited. On the side of the defendant, one witness was examined and fourteen documents were exhibited. Having considered the above, the trial Court decreed the suit. However, the First Appellate Court reversed the decree and judgement of the trial Court and allowed the appeal. That is how the appellants who are the legal representatives of sole plaintiff Mr.K.V.Sankara Mudaliar, are before this Court with this second appeal.

7. In this second appeal, it is contended that the First Appellate Court was not right in reversing the judgement and decree of the trial Court by holding that the suit is barred by limitation. According to the learned counsel, there was no refusal on the part of the defendant to perform his part of contract until the year 2007. In the year 2007, for the first time, after the purchase of stamp papers by Mr.K.V.Sankara Mudaliar, for execution of the sale deed, the defendant refused to perform his part of contract and thereafter, immediately, the present suit was filed.

8. During the course of trial, according to the learned counsel for the appellants, a statement was made by the defendant to the Sub Inspector of Police, Vellore wherein, the defendant has admitted that Mr.K.V.Sankara Mudaliar has been in possession and enjoyment of the suit property and that, he would not disturb the possession of the plaintiff until the disposal of the suit. The said statement was exhibited as EX.A.7 dated 12.06.2010. Referring to the said document, the learned counsel for the appellants would submit that the possession was handed over to Mr.K.V.Sankara Mudaliar who is the father of the appellants herein as per the oral sale agreement in the year 1992 itself and thus, the First Appellate Court was right in dismissing the suit.

9. I have considered the above submissions.

10. A perusal of the decree and judgement of the First Appellate Court would go to show that the First Appellate Court has held that the suit is barred by limitation. This conclusion cannot be stated to be perverse. During the course of cross examination, P.W.1 (sole plaintiff) has admitted that in the year 1994, when Mr.K.V.Sankara Mudaliar and the appellants herein have demanded the defendant to execute a sale deed by honouring the sale agreement, the defendant declined. It is further admitted during cross examination that the defendant told Mr.K.V.Sankara Mudaliar that since, he was busy with the religious ceremonies on account of the recent marriage of his daughter, the defendant was not in a position to execute the sale deed. It is his further case that during cross examination, even after three months when Mr.K.V.Sankara Mudaliar had demanded the



defendant to perform his part of contract to execute sale agreement, the defendant refused to do so.

11.The learned counsel for the appellants would submit that there is no specific date mentioned in the evidence from which date the period of limitation could be calculated. This argument, in my considered opinion, deserves to be rejected for the simple reason that in the year 1994, when Mr.K.V.Sankara Mudaliar and the appellants herein have demanded the defendant to execute a sale deed by honouring the sale agreement, the defendant declined. The first refusal was in the year 1994. From these facts, it could be culled out that the refusal to perform contract would have been made either in the fag end of the year 1994 or the beginning of the year 1995. Assuming that such denial was made by the defendant at the beginning of the year 1995, suit should have been filed atleast within the year of 1996. But, the present suit came to be filed only in the year 2007. Thus, in my considered opinion, the First Appellate Court was right in holding that the suit is clearly barred by limitation.

12.So far as the other issues are concerned, I do not want to go into that because, the conclusions arrived at the First Appellate Court are on facts. But, the learned counsel for the appellants would submit that Ex.A.7 would go to show that the appellants herein are in possession of the suit property. Ex.A.7 on the face of it shows that, it was the statement made by the defendant to the Sub Inspector of Police that he shall not disturb the possession of the sole plaintiff till the disposal of the suit pending before the trial Court. However, the said Sub-Inspector of Police has not been examined before the trial Court. Therefore, the said submission has also denied by the defendant. Therefore, the same is rejected for want of proper proof. Thus, the First Appellate Court has rightly dismissed the suit.

13.Having said so, I should say that the learned counsel for the appellants is not in a position to raise even a single question of law much less a substantial question of law warranting admission of the second appeal. Further, the conclusions arrived at by the First Appellate Court were on facts. Absolutely, there is no perversity. The findings are based on sound reasons. Thus, I do not find any merit at all in the second appeal.



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

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Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

jbm

To

1. The Subordinate Judge,
Vellore.

2. The District Munsif Court,
Vellore.

1 cc to Mr. N.P. Kumar, Advocate sr. 8896

S.A.No.71 of 2015

TEJ (CO)
kk 9/3