

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.809 of 2015

and

M.P.No.1 of 2015

Thangamani

.... Appellant/Appellant/
2nd Defendant

Vs.

R.Radha

.... Respondent/Respondent/
Plaintiff

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 25.02.2015 made in A.S.No.29 of 2014 on the file of the Principal District Judge, Namakkal, confirming the judgment and decree dated 30.04.2014 made in O.S.No.33 of 2002 on the file of Subordinate Court, Namakkal.

For Appellant : Mr.Mukunth
for M/s.Sarvabhauman Associates

J U D G M E N T

The Second Appeal is filed by the second defendant, namely, the legal heir of the deceased first defendant, who had lost the suit filed by the plaintiff before the Courts below.

2. The suit is based on a registered agreement of sale dated 02.02.2000, whereby, the deceased first defendant, second defendant and her mother Muthulakshmi agreed to sell the suit property in favour of the plaintiff for a sum of Rs.2,10,000/- and on the same day, a sum of Rs.2,00,000/- was received as sale consideration. The balance sale consideration of Rs.10,000/- was to be paid within one year and to get the sale executed by the defendants. As the deceased first defendant was not ready and willing to perform his part of contract, the plaintiff issued a legal notice and filed the suit for specific performance.

3. The defendants contested the suit, stating that it is only a loan transaction and there was no intention to sell the property to the plaintiff. Hence, they prayed for dismissal of the suit.

4. The Courts below decreed the suit on the following grounds:-
The execution of Ex.A1 is admitted by both the parties.

i. Out of the sale consideration of Rs.2,10,000/-, a sum of Rs.2,00,000/- was received by the defendants and only a meager sum of Rs.10,000/- was outstanding.

ii. The defendant though contended that it was a money-dealing and that the plaintiff was a money lender, the defendants had failed to prove the same and hence, the said contention was rejected by the Courts below.

iii. As the initial burden on the plaintiff to prove the agreement, was discharged and she had also proved her readiness and willingness in performing her part of contract, the burden shifted on the defendants. The defendants failed to discharge the onus shifted on them. Even in Ex.A.1, there was no mention about the loan transaction as alleged by the defendants and the Courts have come to the conclusion that it was only an agreement of sale.

5. For the above reasons, the Courts below have concurrently accepted the facts of the plaintiff and decreed the suit. There is no reason to interfere with the concurrent findings of the Courts below in the absence of any substantial question of law arising out of said facts.

6. In the result, the Second Appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, Connected Miscellaneous Petitions are closed.

srn

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Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

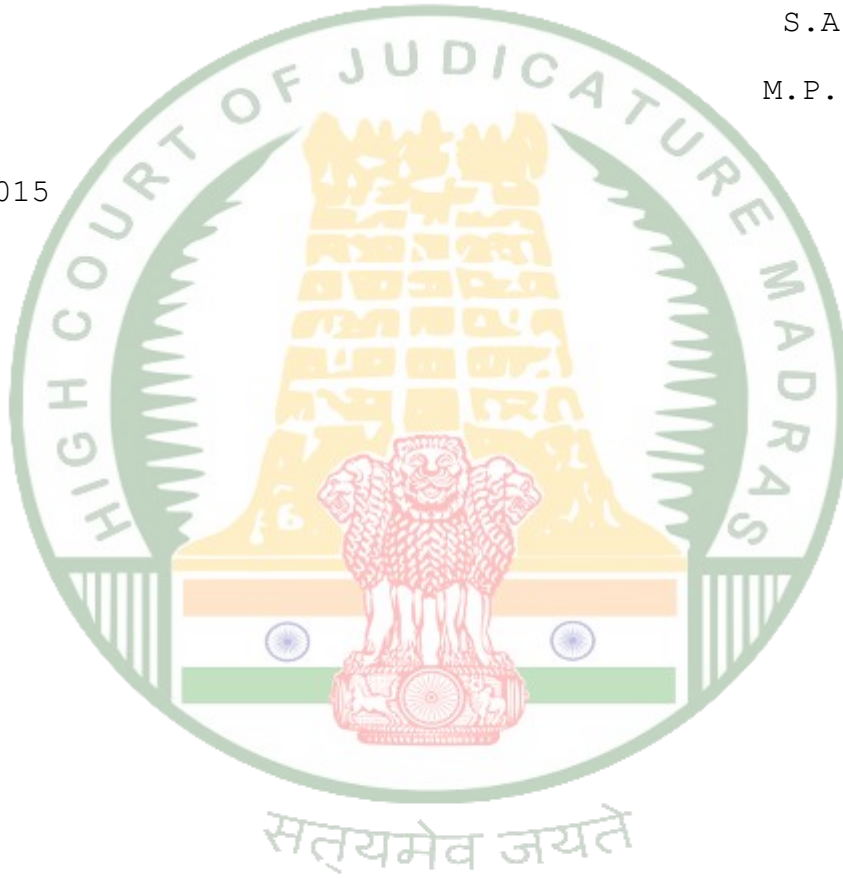
To

1. The Principal District Judge,
Namakkal
2. The Subordinate Judge,
Namakkal.

+1 C.C. TO MR.Sarvabhavuman Associates, Advocate in SR.NO.47111

S.A.No.809 of 2015
and
M.P. No. 1 of 2015

ALA(CO)
sd : 16/10/2015



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