

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-10-2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 865 of 2015

and

M.P. No. 1 of 2015

P.V. Gurappa

...Appellant/Defendant

Vs.

P. Pillappa

...Respondent/Plaintiff

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 09.03.2015 passed in A.S. No. 14 of 2014 on the file of the Subordinate Judge, Hosur, confirming the judgment and decree dated 31.01.2014 passed by the District Munsif - cum - Judicial Magistrate No. I, Hosur, in O.S. No. 248 of 2005.

For Appellant : Mr. S.N.J. Hariharan
for Mr. V. Nicholas

JUDGMENT

The defendant in a suit for specific performance has challenged the decree passed in favour of the plaintiff.

2. The suit has been laid based on the agreement dated 08.9.2003 entered into between the plaintiff and the defendant. The defendant had purchased the property on 14.8.1995. As per the agreement, the total sale consideration agreed was Rs. 90,000/- and the advance of Rs. 80,000/- was paid on the date of agreement and for the payment of balance of sale consideration and for execution of the sale deed, eleven months time was agreed. The plaintiff also had paid an additional sum of Rs. 5000/- on 01.8.2004. It was also acknowledged by the defendant.

3. Assailing the contentions of the plaintiff, the defendant denied the execution of the sale agreement as his signatures were obtained in blank papers in a loan transaction. The defendant also had entered into agreement with one Santhamma on 05.8.2003 under Ex. B.5.

4. The only contention of the defendant / appellant is that having parted with 90% of the sale consideration, the plaintiff had purchased time of 11 months over the balance payment of the amount dues, would go to show that it was only a loan transaction and not an agreement to sell. However, it is not denied that even on the subsequent date to the agreement of sale, the appellant had received a sum of Rs.5000/-. It is the specific case of the plaintiff that only the defendant had been evading the execution of sale deed.

5. The Courts below had concurrently held that the sale agreement was not created for the purpose of the suit as alleged by the defendant but it was created with consensus arrived at. As the signature was admitted by the defendant, the exercise of sending it to the expert was not done. The plaintiff and the defendant are also closely related. If really, the sale agreement was a created document, the defendant would not have endorsed the receipt of Rs.5000/- on 01.8.2004. In fact, the plaintiff had specifically stated that he was ready to pay the balance of Rs.10,000/- also and only at the instance of the defendant, who had wanted to harvest the standing crops and the remaining trees in the suit property, the said time was granted. Therefore, it is clear that even the question of readiness and willingness and the wherewithal of the plaintiff were also considered by the Courts below.

6. The suit is also filed within the period of limitation. The plaintiff having established that he was ready and willing throughout the period fixed for execution of the sale deed, is entitled for the decree. Since the defendant could not establish that the agreement was not intended to be acted upon, the Courts below have rightly decreed the suit in favour of the plaintiff and the concurrent finding based on merits, does not warrant any interference.

In the result, the appeal fails and the same is dismissed confirming the concurrent finding of the Courts below. However, in the circumstances of the case, there shall be no

order as to cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gri

To

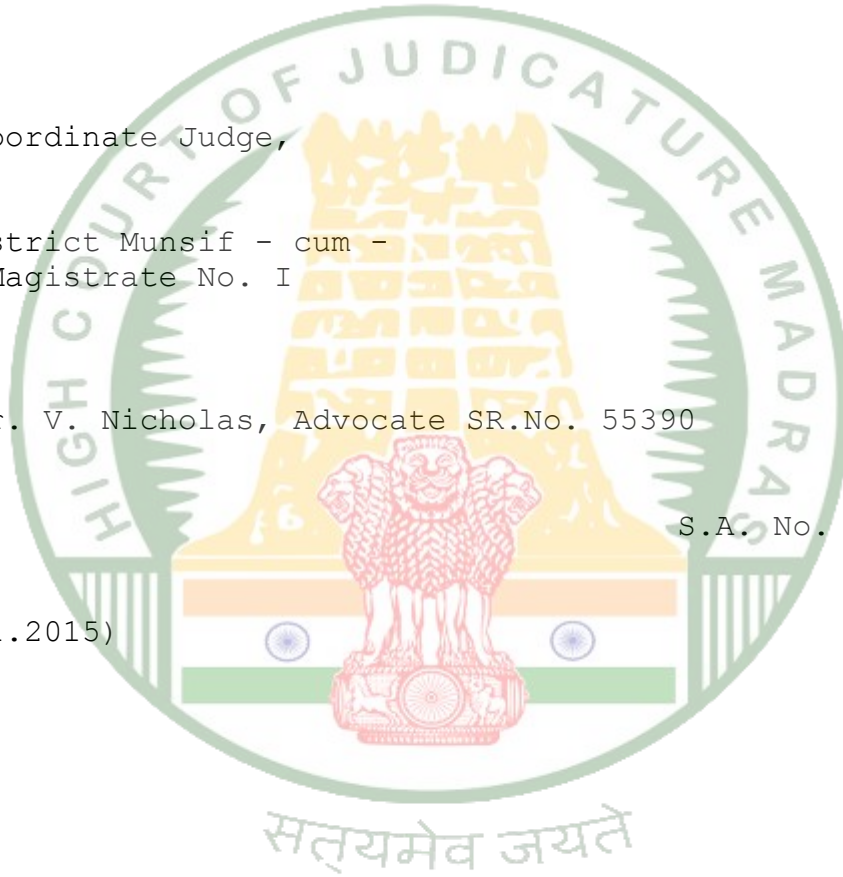
1. The Subordinate Judge,
Hosur.

2. The District Munsif - cum -
Judicial Magistrate No. I
Hosur.

1 CC to Mr. V. Nicholas, Advocate SR.No. 55390

S.A. No. 865 of 2015

KSJ (CO)
PSI (03.11.2015)



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