

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.919 of 2015
and
M.P.No.1 of 2015

M.Jafer Ali

Rep. by Power Agent Mr.K.Mahobooob Basha

... Appellant/3rd Defendant

- Vs -

1. K.P.Ammasi

... 1st Respondent/Plaintiff

2. S.Mubharak Ali

3. K.Shain Bhanu

4. The LIC Housing Finance Ltd.,

Rep. by Area Manager,

Devi Chit Funds Complex,

Junction Main Road,

Near Raja Kalyanamandapam,

Five Road, Salem - 4.

... Respondents 2 to 4/
Defendants 1, 2 & 4

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 28.01.2015 made in A.S.No.28 of 2013 on the file of the learned Principal District Judge, Salem confirming the Decree and Judgment dated 21.02.2012, made in O.S.No.519 of 2010 on the file of the learned II Additional Sub Court, Salem.

For Appellant : Mr.N.A.Nissar Ahmed

J U D G M E N T

The third defendant in O.S.No.519 of 2010 on the file of the learned II Additional Sub Judge, Salem is the appellant herein. The first respondent is the plaintiff in the suit and the respondents 2 to 4 are the defendants 1, 2 and 4 in the said suit. The said suit was filed by the plaintiff for specific performance of an agreement of sale dated 23.02.2007 and for permanent injunction to direct the defendants not to alienate or encumber the suit property to third parties. By

decree and judgment dated 21.02.2012, the Trial Court has decreed the suit as prayed for on condition that the plaintiff shall deposit the balance of sale consideration of Rs.2,00,000/- on or before 20.04.2012. As against the same, the appellant herein filed an appeal in A.S.No.28 of 2013 before the learned Principal District Judge, Salem. By decree and judgment dated 28.01.2015, the lower Appellant Court dismissed the appeal thereby confirming the decree and judgment of the Trial Court. As against the said concurrent findings of the Courts below, the appellant has come up with this second appeal.

2. The case of the plaintiff in brief is as follows:

(i) The suit property belongs to the defendants, they agreed to sell the suit property for a total sale consideration of Rs.7,50,000/- to the plaintiff and they entered into a sale agreement on 23.02.2007 and a sum of Rs.3,00,000/- was paid as advance. It was further agreed upon by the defendants that they should clear the loan secured from the L.I.C. Housing Finance Limited and bring the property free of encumbrance for being sold to the plaintiff. Subsequently on 30.06.2007, the defendants received a sum of Rs.50,000/- towards part payment of sale consideration and made an endorsement on the deed of agreement and another sum of Rs.25,000/- was also paid on 05.09.2007. The defendants received yet another sum of Rs.25,000/- on 12.10.2007 and made appropriate endorsement on the back of the deed. As requested by the first defendant, the plaintiff paid a sum of Rs.1,50,000/- for depositing the same into Court and the balance of sale consideration was only Rs.2,00,000/-. Since the defendants did not come forward to execute the sale deed after receiving the balance of sale consideration, the plaintiff filed the suit for specific performance.

(ii) There were also exchange of notices. In the year 2007, the first defendant filed an application in G.O.P.No.135 of 2007 on the file of the learned I Additional District Judge, Salem seeking permission of the Court to sell the property. In the said petition, the first defendant has stated that he was in need of permission to sell the property for a consideration of Rs.2,00,000/-. The I Additional District Judge granted permission. But the defendants have not come forward to execute the sale deed, is his grievance.

(iii) In the written statement filed by the first defendant, the execution of the sale agreement is admitted. The first defendant has further admitted that the G.O.P. was filed seeking permission to sell the property for a sum of Rs.2,00,000/-. It is further stated that a sum of Rs.3,00,000/- was received as advance and subsequently a sum of Rs.50,000/- was received. But the only plea taken is that the agreement for sale is dated 23.02.2007, wherein, the time

for performance was fixed as six months, but no steps were taken within the said period. Further, the order obtained in G.O.P.No.135 of 2007 on the file of the learned First Additional District Judge, Salem is based on false evidence and therefore the same cannot be made use of.

3. Before the trial Court, appropriate issues were framed and in order to prove his case, the plaintiff examined two witnesses on his side and marked eight documents. On the side of the defendants, three witnesses were examined and two documents were marked. Considering all the above, the Trial Court decreed the suit and the same was confirmed by the first Appellate Court.

4. In the second appeal, it is contended that the second defendant has acted against the interest of the appellant and entered into a fraudulent sale agreement giving two different sale considerations. The second defendant is none else than the mother of the appellant / third defendant. According to the appellant, the sale agreement was entered into when he was a minor and therefore the defendants 1 and 2 have no right to enter into any such sale agreement. The Courts below, on facts have come to the conclusion that the sale agreement was enforceable in law as there had been permission obtained from the Court for selling the property of the minor.

5. In this second appeal, according to the appellant, the following are the substantial questions of law viz.,

(a) Whether the Courts below are right in decreeing a suit for specific performance which is a discretionary relief in spite of the fact that the 1st respondent had not approached the Court with clean hands ?

(b) Whether the Courts below erred in not seeing that the 1st respondent is relying upon a sale agreement different from the sale agreement produced before the Guardian OP Court ?

(c) Whether the Courts below erred in not dismissing the suit as the minor's right had been fraudulently dealt with by the respondents for which the appellant cannot be held responsible and liable ?

6. In my considered view, these three questions are only on facts and there is no question of law much less any substantial question of law involved at all. The Courts below have answered all these questions on appreciating the facts. Thus, I do not find any question of law much less a substantial question of law to admit this second appeal.

7. In the result, the second appeal fails and accordingly, the same is dismissed. The decree and judgment of the lower appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Salem.
2. The II Additional Sub Court,
Salem.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.59942

S.A.No.919 of 2015
and
M.P.No.1 of 2015

RSI (CO)
CA(19/02/2016)

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