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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.97 of 2015

C.Somasundaram

.. Appellant/Plaintiff

-Vs-

1. C.Periasamy

2. C.Chinnasamy

.. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.53 of 2012 dated 22.04.2013 passed by the II Additional District Judge, Erode, confirming the judgment and decree passed in O.S.No.177 of 2010 dated 30.08.2011 passed by the Subordinate Judge, Sathyamangalam.

For Appellant : Mr.S.Parthasarathy

For Respondents : Mr.I.C.Vasudevan
(Vakalath filed in SR stage)

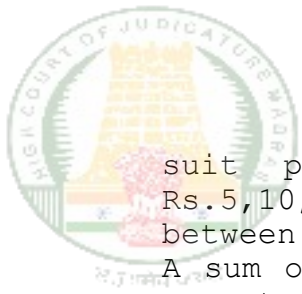
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J U D G M E N T

The plaintiff in O.S.No.177 of 2010 on the file of the learned Subordinate Judge, Sathyamangalam is the appellant herein and the respondents are the defendants in the suit. The said suit was filed for specific performance of contract of sale based on the registered sale agreement dated 23.08.2007. The suit was dismissed by the trial court by decree and judgment dated 30.08.2011. As against the same, the appellant filed an appeal in A.S.No.53 of 2012 on the file of the learned II Additional District Judge, Erode. The same was dismissed by decree and judgment dated 22.04.2013. As against the same, the appellant is before this Court with this Second Appeal.

2. The Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant. The learned Counsel for the respondents is not prepared to argue the matter and I have also perused the records carefully.

3. The case of the plaintiff is that admittedly, the defendants are the absolute owners of the suit property. It is the further case of the plaintiff that the defendants agreed to sell the



suit property to the plaintiff for a sale consideration of Rs.5,10,000/-. In this regard, a sale agreement was entered into between the parties on 23.08.2007 and the same was duly registered. A sum of Rs.4,60,000/- was paid towards advance amount. The balance amount was agreed to be paid within a period of 10 years. Though the plaintiff is all along ready and willing to perform his part of contract, the defendants have not come forward to perform their part of contract. He issued a notice dated 02.02.2010 calling upon the defendants to perform their part of contract. The defendants sent a reply disputing the same. According to the defendants, they never intended to sell the suit property to the plaintiff at all and the sale agreement was executed only as a security and not intended to be as a sale agreement.

4. In the written statement, the defendants stated that their family was in financial constrains. On 08.05.2002, the defendants had borrowed a sum of Rs.1,00,000/- from one Nanjappan. As per the usual practice prevailing in that area, Nanjappan demanded the defendants to execute a sale agreement as though the defendants were agreeable to sell the suit property to him. Accordingly, a sale agreement was registered on 8.05.2002. In the year 2004, when Nanjappan demanded back the money, which was paid as loan, the defendants were not able to immediately gather money. Therefore, they approached one Mr.Paramasivam for loan from whom he borrowed a sum of Rs.2,50,000/- on 27.09.2004 and reimbursed the loan to Nanjappan. Mr.Paramasivam also wanted the defendants to execute a sale agreement as per the usual practice as though the defendants were willing to sell the suit property to Paramasivam. Accordingly, yet another sale agreement was registered on 27.09.2004 after cancelling the sale agreement executed in favour of Nanjappan. In the year 2007, Paramasivam also demanded back the loan amount which the defendants could not immediately repay. Therefore, they approached one Mr.Eswaramoorthy and borrowed a sum of Rs.4,60,000/-. The sale agreement executed in favour of Paramasivam was cancelled after repaying the loan amount. Thereafter, Eswaramoorthy also demanded back the money. Therefore, the defendants approached the plaintiff for a loan of Rs.4,60,000/-. The plaintiff, accordingly lent money to the defendants and as per the usual practice, he demanded the defendants to execute a sale agreement as a security. On that understanding, the sale agreement in question was executed. It was also contended that the defendants never intended to sell the property to the plaintiff and they never agreed to sell the same as per the terms of the above deed. Therefore, according to them, the defendants are not liable to execute any sale deed in favour of the plaintiff.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 3 witnesses were examined and as many as 15 documents have been exhibited. On the side of the defendants, 8 witnesses were examined and as many as 23



documents were exhibited. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court.

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6. In this Second Appeal, the learned Counsel for the appellant would submit that the courts below were not right in dismissing the suit, since there is enormous evidence to prove the intention of the parties to treat the said document only as a sale agreement. The learned Counsel for the appellant would further submit that there is also evidence to show that the plaintiff was all along ready and willing to perform his part of contract, but the defendants only did not come forward to perform their part of contract. Thus, according to the appellant, the courts below ought to have decreed the suit as prayed for.

7. I have considered the above submissions.

8. In my considered opinion, there is no substantial question of law involved in this Second Appeal warranting admission. The only crucial issue involved in this litigation is as to whether the sale agreement in question was really intended to be a sale agreement by which the defendants agreed to sell the suit property to the plaintiff. This is essentially a question of fact. On considering the oral and documentary evidence let in by both sides, two courts below have held that the defendants never intended to sell the suit property. In this, I do not find any perversity or illegality. As a matter of fact, sound reasons have been recorded by the courts below for coming to the said conclusion. The courts below have held that on the earlier 3 occasions, 3 sale deeds were entered into as security for the purpose of loan amount. All those sale agreements and the cancellation deeds have been proved duly by examining the persons concerned also. From these evidences, the courts below have come to the conclusion that it is the practice prevailing, whenever any loan is extended, sale agreement is obtained as a security.

9. In the given case also, the courts below have analysed the oral and documentary evidence and more particularly, on analysing the earlier three sale deeds and cancellation deeds, have rightly come to the conclusion that the defendants would not have intended to sell the suit property to the plaintiff and thus, the sale agreement is not enforceable. Thus, I do not find anything erroneous in the said conclusion arrived at by the courts below. Above all, as I have already pointed out, there is no substantial question of law at all involved in this Second Appeal warranting admission.



10. In the result, the Second Appeal fails and the same is accordingly dismissed.

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-s/d-
Deputy Registrar(J)
Dt:30/3/2015

True Copy

Sub-Assistant Registrar

To

- 1.The Subordinate Judge, Sathyamangalam.
- 2.The II Additional District Judge, Erode.

+ 1 cc to Mr.S.Parthasarathy, Advocate SR 14730

+ 1 cc to Mr.I.C.Vasudevan, Advocate SR 14715

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S.A.No.97 OF 2015