

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2015

Coram

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SA.No.973 of 2015
and MP.No.1 of 2015

T.Shanthi ... Appellant/Appellant/Plaintiff

Vs.

Rajendran .. Respondent/Respondent/defendant

Prayer : This Second Appeal is filed under Section 100 CPC against the judgment and decree dated 29.10.2015 made in AS.No.11 of 2014 on the file of Principal District Judge, Namakkal confirming the judgment and decree dated 06.12.2013 made in OS.No.15 of 2013 on the file of the Subordinate Judge, Rasipuram.

For plaintiff : M/s.P.T.Asha for
Sarvabhauman Associates.

JUDGMENT

The defendant who suffered decree for specific performance has filed the present second appeal.

2.The suit was filed by the plaintiff based on Ex.A1 sale agreement dated 11.12.2003 which is a registered document. On the day of agreement sum of Rs.3,70,000/- was paid as advance out of the agreed sale consideration of Rs.4,00,000/-. On the same day, the agreement was registered, agreeing to pay the balance of Rs.30,000/- within a period of one year. Though, the plaintiff was ready and willing to perform his part of the contract. The defendant was evading the same, hence, the plaintiff had issued legal notice on 02.12.2004. In pursuant to which the defendant also put the plaintiff in possession of the property. From the date of taking possession of the property i.e., on 05.01.2004, the plaintiff has been in enjoyment of the suit properties by cultivating the same. The plaintiff also claims to have installed electric motor pump set in the suit property and paying electricity bills.

3.The appellant/defendant contested the suit claims contending that the sale agreement was never intended to be acted upon as it was executed only for a loan transaction. On

the above facts, the Courts below considered the documents and evidence available decreed the suit. The plaintiff also had paid the balance of sale consideration before the Court.

4. Admittedly, the sale agreement is a registered one having been duly executed by the defendant and there is no denial of the execution of the said agreement. To substantiate further the defendant also had put the plaintiff in possession of the suit property, in pursuant to the suit notice dated 02.12.2004. Therefore, the possession of the plaintiff was also admitted by the defendant. The only contention by the defendant is that the plaintiff was not ready and willing to perform his part of the contract. However, the conduct of the plaintiff shows that he had been ready and willing to perform his part of the contract and that he had already parted with more than 80% of the sale consideration on the date of agreement.

5. Once the agreement is held to be true and valid, it is enforceable in law. While so, the appellant claims that it is only an loan transaction. The burden is on her to prove the same. To substantiate her contention about the loan transaction, the defendant had not examined any independent witness except her own son who had deposed as DW2 in the witness box. Even DW2 admits that there is nothing to substantiate that the agreement was entered into for loan transaction. In fact, the perusal of Ex.A1 shows that there is no such recital that the agreement was executed for loan transaction. Under such circumstances, the defendant having admitted the execution of the sale agreement and failed to establish the fact that it was for the loan transaction is duty bound to perform her part of the contract by executing the sale deed. On the same reasoning, the Courts below have decreed the suit.

6. In view of the above said reasonings, there is no reason to interfere with the concurrent findings of the Courts below. Hence, there is no question of law much less substantial questions of law arise from the above facts.

7. In the result, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

tsh

-s/d-

Assistant Registrar (CS-IV)

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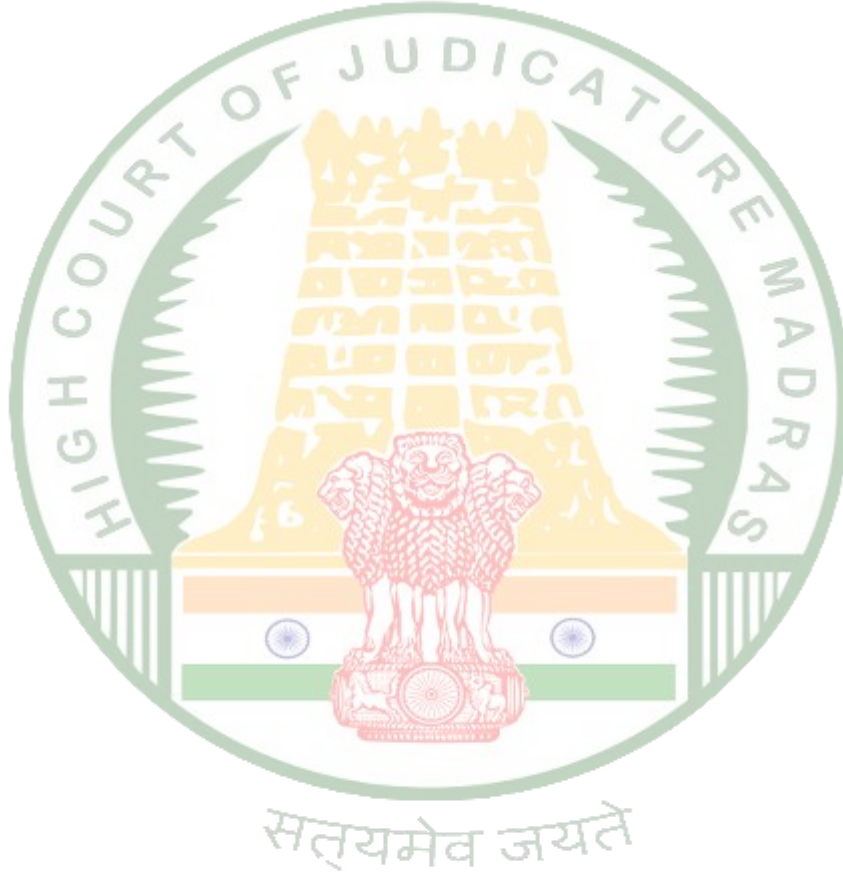
1. The Subordinate Judge, Rasipuram.

2. The Principal District Judge, Namakkal.

+ 1 cc to M/s.Sarvabhman Associates, Advocate SR 59324

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SA.No.973 of 2015.



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