

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23-08-2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.389 of 2016
& CMP No.8710 of 2016

1. R. Shanmugam
2. S. Sujatha ... Appellants/Defendants
Vs
V. Manoharan ...Respondent/Plaintiff

Prayer:- Appeal suit filed under Section 96 of CPC r/w Order 41 Rule 1 of CPC against the judgment and decree, dated 08-12-2015, passed in O.S.No.411 of 2013 by the I Additional District & Sessions Judge, Coimbatore.

For Appellants :Mr. T.V. Krishnakumar for
M/s. K. Sathiyamurthi
and A. Deivasigamani
For Respondents :Mr. C.R. Prasanan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this appeal suit is to the judgment and decree dated 08-12-2015, passed in O.S.No.411 of 2013, by the I Additional District & Sessions Judge, Coimbatore.

2. The respondent herein, as plaintiff, has filed O.S.No.411 of 2013 on the file of the trial court, praying to pass a decree of specific performance in pursuance of the sale agreement dated 23-08-2010 wherein the present appellants have been arrayed as defendants.

3. It is averred in the plaint that the suit property set out herein is the absolute property of both the defendants and they agreed to sell the same for a sum of Rs.23 lakhs (Rupees Twenty three lakhs only) in favour of the plaintiff and in pursuance of the same, an agreement of sale has come into existence on 23-08-2012. On the date of its execution both the defendants have received a sum of Rs.20,00,000/- (Rupees Twenty lakhs only). Further, it has been agreed to pay the remaining sale consideration within a period of eleven months. Even though the plaintiff has endeavored to get a sale deed

registered from the defendants, they evaded in executing the same which culminated in issuance of a legal notice dated 04-07-2013 and after receipt of the same, both the defendants have given a reply notice dated 09-07-2013 wherein it is falsely stated to the effect that both of them after receipt of Rs.10,00,000/- (Rupees Ten lakhs only) have executed a registered mortgage deed in favour of the plaintiff. The plaintiff has always been ready and willing to perform his part of the contract. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendants, it is averred that the suit property is the absolute property of the defendants and they never intended to sell the same in favour of the plaintiff. The defendants have had loan transaction with one Sudhakar and only at his instigation, the defendants have executed a registered mortgage deed in favour of the plaintiff. The defendants have not received anything from the plaintiff in pursuance of the alleged sale agreement dated 23-08-2012. The defendants have not at all executed the same and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the trial court has framed necessary issues and after analyzing both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial court, the present appeal suit has been filed at the instance of the defendants as appellants.

6. Before, contemplating the rival submissions on either side, it would be more useful to look into the averments made in the plaint.

7. It is averred in the plaint that the suit property is the absolute property of the defendants and they agreed to sell the same in favour of the plaintiff and to that extent, the suit sale agreement has come into existence, on 23-08-2012. On the date of its execution, the defendants have executed the sale deed in favour of the plaintiff and received a sum of Rs.20,00,000/- (Rupees Twenty lakhs only) and the remaining balance sale consideration has to be paid within a period of eleven months. Further, it is averred in the plaint that since the defendants have refused to execute a sale deed in favour of the plaintiff, a legal notice has been issued on 04-07-2013 and after receipt of the same, the defendants have issued a reply notice dated 09-07-2013.

8. The specific defence put forth on the side of the defendants is that they have not executed the suit sale agreement dated 23-08-2012. The defendants have had money transaction with one Sudhakar and only at his instigation, both of them have executed a mortgage deed in favour of the

plaintiff and therefore, the plaintiff is not entitled to get the discretionary relief of specific performance.

9. The sale agreement dated 23-08-2012 has been marked as Ex-A1. The legal notice dated 04-07-2013, issued by the plaintiff to the defendants has been marked as Ex-A2 and reply notice dated 09-07-2013, given by the defendants has been marked as Ex-A4.

10. The learned counsel appearing for the appellants/defendants has repeatedly contended that the defendants have not at all executed Ex-A1 and prior to Ex-A1 they have had money transaction with one K. Sudhakar and only at his instigation, both of them have executed a registered mortgage deed in favour of the plaintiff. Under the said circumstances, there is no privity of contract betwixt the plaintiff and defendants and the Trial Court without considering the nature of defence taken on the side of the appellants/defendants has erroneously decreed the suit and therefore, the judgment and decree passed by the Trial Court are liable to be set aside.

11. In order to resile the argument put forth on the side of the appellants/defendants, the learned counsel appearing for the respondent/plaintiff has sparingly contended that before instituting the present suit, Ex-A2 notice has been issued on 04-07-2013 to the defendants and after receipt of the same, they have given a reply notice dated 09-07-2013 wherein it has been simply stated to the effect that after receipt of Rs.10,00,000/- (Rupees Ten lakhs only) the defendants have executed a Registered mortgage deed in favour of the plaintiff. But in the written statement they have given a different story and the Trial Court, after considering the overall evidence available on record has rightly decreed the suit and therefore, the judgment and decree passed by the Trial Court do not warrant interference.

12. As adverted to earlier, the suit sale agreement has been marked as Ex-A1 and the same is nothing but a registered document. In Ex-A1, it has been clinchingly stated that both the defendants have agreed to sell the suit property for a sum of Rs.23,00,000/- (Rupees Twenty three lakhs only) and on the date of its execution they received a sum of Rs.20,00,000/- (Rupees Twenty lakhs only) and the balance of sale consideration has to be paid within a period of eleven months.

13. As rightly pointed out on the side of the

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respondent/plaintiff before instituting the present suit, Ex-A2 notice has been issued on 04-07-2013 to the defendants and after receipt of the same, they issued reply notice which has been marked as Ex-A4 wherein it has been clinchingly stated that after receipt of Rs.10,00,000/- (Rupees Ten lakhs only) from the plaintiff they jointly registered a mortgage deed. If really such a mortgage deed has been executed and registered, definitely the defendants would have filed its registration copy. But the same has not been filed and further, as rightly pointed on the side of the respondent/plaintiff, no mention has been made with regard to the role alleged to have been played by the said Sudhakar. If really Ex-A1 has been executed on the instigation of the said Sudhakar, definitely his alleged role would have been mentioned in Ex-A4. Therefore, it is quite clear that an abortive attempt has been made on the side of the appellants/defendants to raise inconsistent plea.

14. As pointed out earlier, Ex-A1 is a registered sale agreement wherein it has been clearly stated that on the date of its execution, both the defendants have received a sum of Rs.20,00,000/- (Rupees Twenty lakhs only) and the balance sale consideration has to be paid within a period of eleven months. Ex-A2 notice has been issued by the respondent/plaintiff to the appellants/defendants on 04-07-2013. Therefore, it goes without saying that the plaintiff has always been ready and willing to perform his part of the contract, as contemplated under Section 16(c) of the Specific Relief Act, 1963.

15. In order to prove due execution of Ex-A1, the plaintiff has been examined as P.W.1 and one of the witnesses by name Nagaraj has been examined as P.W.2. Both of them have consistently stated about the execution of Ex-A1 and also about the receipt of Rs.20,00,000/- (Rupees Twenty lakhs only) on the date of its execution by the defendants. Therefore, it is quite clear that on 23-08-2012, both the defendants have jointly executed Ex-A1 and thereby, agreed to sell the suit property in favour of the plaintiff and further the defence put forth on the side of the appellants/defendants cannot be accepted for the simple reason that they have taken different plea.

16. The Trial Court after considering the available evidence on record has rightly found that the plaintiff is entitled to the discretionary relief of specific performance in pursuance of Ex-A1, sale agreement. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/defendants and altogether, the present appeal suit deserves to be dismissed.

In fine, this appeal suit is dismissed with cost. The judgment and decree dated dated 08-12-2015, passed in O.S.No.411 of 2013, by the I Additional District & Sessions

Judge, Coimbatore are confirmed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

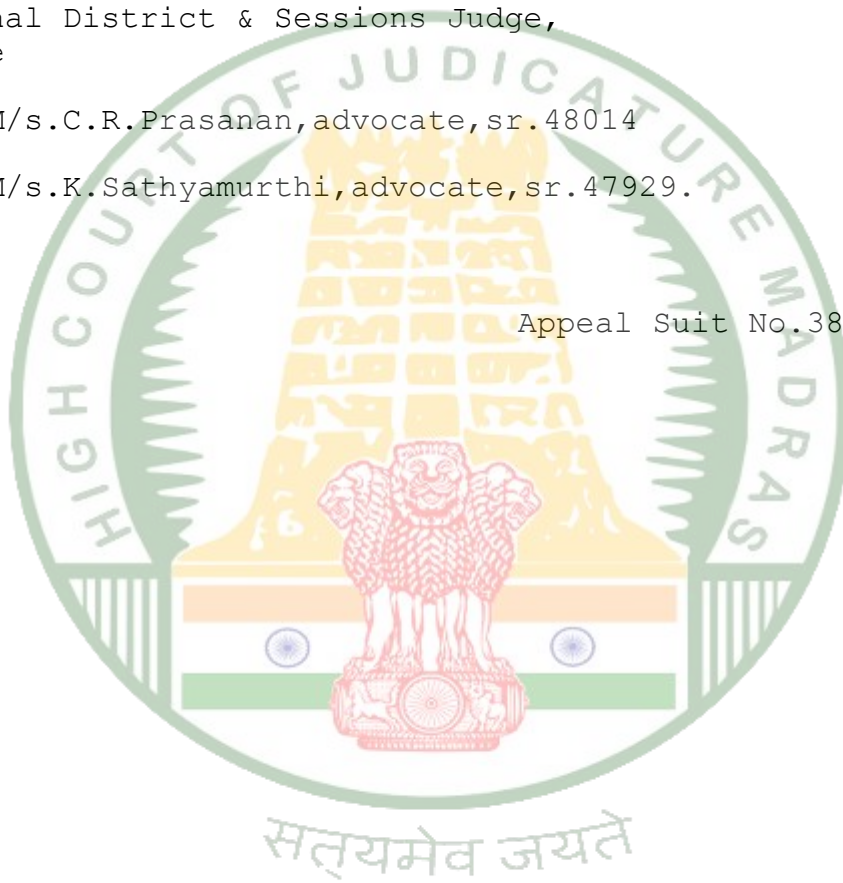
I Additional District & Sessions Judge,
Coimbatore

+1 cc to M/s.C.R.Prasanan,advocate,sr.48014

+1 cc to M/s.K.Sathyamurthi,advocate,sr.47929.

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