

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.973 of 2014
and
MP No.1 of 2014

Vallimuthu ... Appellant/Appellant/
Defendant

Vs.

A.Periyanayagi ... Respondent/Respondent/
Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Mannargudi dated 19.12.2012 made in A.S.No.54 of 2010 thereby confirming the judgment and decree of the learned District Munsif, Mannargudi dated 24.03.2010 made in O.S.No.110 of 2008.

For Appellant : Mr.K.K.Ramakrishnan
for M/s.P.T.Ramadevi
For Respondent : No Appearance

J U D G M E N T

The defendant is the appellant. The respondent herein filed the suit for recovery of possession and also for damages.

2.The case of the plaintiff is that she is the owner of the property and the defendant entered into an agreement of sale on 01.07.2001 to purchase the suit property and however, failed to perform his part of the contract, even though the time fixed under the agreement got expired on 01.08.2001. Thus, the present suit was filed for possession and for damages.

3.The defendant contested the said suit. It is his contention that though the agreement was entered between the parties on 01.07.2001, the time did not expire on 01.08.2001 as contended by the plaintiff and on the other hand, he was ready and willing to pay the remaining amount in the month of October 2001 itself, which the plaintiff failed to receive and execute the sale deed in his favour. Thus, he contended that without

cancelling the sale agreement, the present suit for recovery of possession cannot be maintained.

4.The trial court considered the rival contention of the parties and the evidence let in by them and partly decreed the suit for recovery of possession and dismissed the suit in so far as the relief seeking for compensation is concerned. The trial court has also found that the plaintiff is not necessary to repay the sale consideration to the defendant.

5.The Appellate Court concurred with the findings rendered by the trial court and dismissed the appeal. Thus, the unsuccessful defendant before both the courts below has filed the present second appeal. After ordering notice to the respondents before admission, the matter is listed before this court today.

6.Heard the learned counsel appearing for the appellant and perused the materials placed before this court. None appears for the respondent.

7.It is not in dispute that the plaintiff is the owner of the property and there was an agreement of sale entered between the parties as early as 01.07.2001. It is also not in dispute that only part sum was paid towards sale consideration by way of advance and however the defendant was allowed to be in possession of the property pending execution of the sale deed. It is an admitted fact that a sale deed was not executed thereafter by paying the balance consideration. Thus, the relationship between the parties remains to be the same as the land owner and the agreement holder.

8.Even though it is contended by the defendant that he was ready and willing to pay the balance sale consideration in the month of October 2001 itself and that the plaintiff was not ready and willing to perform his part of the contract and execute the sale deed, it is evident that no steps have been taken by the defendant to file any suit for specific performance against the plaintiff herein. On the other hand, the plaintiff has come forward with the present suit wherein the defendant has taken the plea that he was ready and willing to perform his part of the contract. I do not think that such contention of the defendant is acceptable. When the agreement fixed some time limit for performing respective obligations of the parties and if one of the party has not performed his respective obligation, the aggrieved party should have taken action as per law, which the defendant has not admittedly taken in this case so far. Therefore, the defendant cannot be permitted to take any such plea in the present suit and resist the relief of possession. Both the courts have rightly considered this appeal and thus, I do not find any substantial question of law arising for

consideration in favour of the appellant/defendant for entertaining the second appeal for hearing of the same on such substantial question of law. Thus, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1.The Sub Court, Mannargudi.

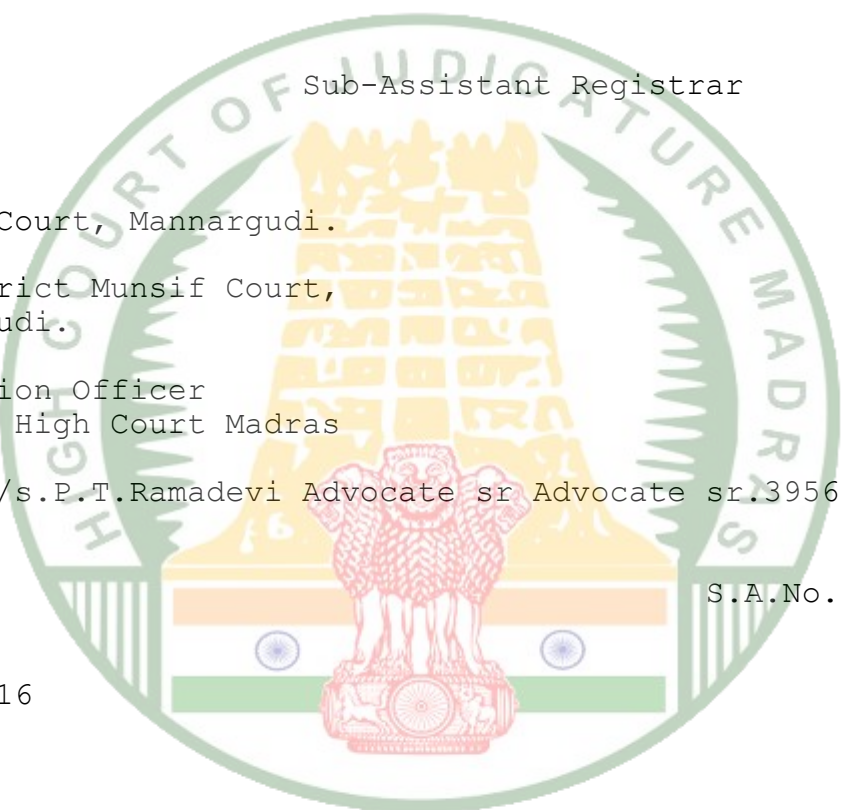
2.The District Munsif Court,
Mannargudi.

3.The Section Officer
VR Section High Court Madras

+1 cc to M/s.P.T.Ramadevi Advocate sr Advocate sr.39569

S.A.No.973 of 2014

aa17/08/2016

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital on a base. The entire emblem is set against a green background with a white border. The text 'HIGH COURT OF JUDICATURE MADRAS' is written in a circle around the emblem. Below the emblem, the motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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