

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

A.S.No.228 of 2009

K.Palaniappan ... Appellant/Plaintiff
Vs.
1.Thangammal
2.Manivannan
3.Malathi ... Respondents/Defendants

First Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 07.07.2008 made in O.S.No.407 of 2006 on the file of the Additional District and Sessions Judge (Fast Track Court No.2), Coimbatore.

For Appellant : Mrs.A.L.Gandhimathi

For Respondents : Mr.C.R.Prasanan

J U D G M E N T

The above appeal arises against the judgment and decree passed in O.S.No.407 of 2006 on the file of the Additional District and Sessions Court, (Fast Track Court No.2), Coimbatore.

2.The plaintiff is the appellant and the respondents were the defendants in the suit. The plaintiff filed the suit in O.S.No.407 of 2006 for specific performance.

3.The brief case of the plaintiff is as follows:

According to the plaintiff, in the year 1996, the defendants agreed to sell the suit property by plotting out into various house sites to the plaintiff. The layout was formed at the expenses of the plaintiff and the same was named as "Palaniappa Nagar". After forming the layout, the plaintiff and the defendants executed an Agreement of Sale in respect of the entire land measuring 1.20 acres. The Sale Consideration was fixed at Rs.5,00,000/- per acre and the Sale Agreement was executed on 19.07.1997 and a sum of Rs.70,000/- was received as an advance on the same day. Subsequently, the defendants received a sum of Rs.30,000/- on 10.10.1997, a sum of Rs.50,000/- on 05.10.2000 and a further sum of Rs.50,000/- on 27.06.2002. Originally, the Agreement was entered into between the plaintiff and Perumal Gounder. After the execution of the

Agreement, since Perumal Gounder had died, the suit has been filed as against the legal representatives of the deceased Perumal Gounder. Since the defendants failed to execute the Sale Deed, the present suit has been filed by the plaintiff for specific performance.

4.The brief case of the defendants is as follows:

According to the defendants, the Suit Agreement is dated 19.07.1997 and the last payment of Rs.50,000/- was made by the plaintiff on 07.06.2001. Further, the defendants contended that the plaintiff had fabricated the endorsement made on 07.06.2001 by correcting the date as 27.06.2002. That apart, the defendants also contended that the plaintiff had inserted one sentence in the endorsement made in the Agreement by stating that the period for concluding the sale is extended till 27.06.2004. According to the defendants, the suit is barred by limitation. The endorsement alleged to have been made on 27.06.2002 is a fabricated one and the actual date of payment was only on 07.06.2001. In these circumstances, the defendants prayed for dismissal of the suit.

5.Before the trial Court, on the side of the plaintiff, P.W.1 was examined and 13 documents, Exs.A1 to A13 were marked and on the side of the defendants, 2nd defendant was examined as D.W.1 and 12 documents, Exs.B1 to B12 were marked.

6.The trial Court, taking into consideration the oral and documentary evidences, dismissed the suit. Aggrieved over the same, the plaintiff has filed the above Appeal.

7.Mrs.A.L.Gandhimathi, learned counsel appearing for the appellant submitted that since in the endorsement made in Ex.A1 Agreement dated 27.06.2002 it has been stated that the sale will be completed on or before 27.06.2004, the suit filed by the plaintiff on 23.08.2006 is within time.

8.Mr.C.R.Prasanan, learned counsel appearing for the respondents submitted that even assuming that the endorsement was made on 27.06.2002, since the suit was filed by the plaintiff only on 23.08.2006, the suit is barred by limitation. Further, the learned counsel submitted that the interpolation made by the plaintiff is evident from seeing the endorsement made in Ex.A1 Agreement.

9.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, the following points arise for consideration in this Appeal:

- a) Whether the endorsement dated 27.06.2002 is a fabricated endorsement made by the plaintiff?
- b) Whether the suit is barred by limitation?
- c)

10. It is not in dispute that Ex.A1 Agreement was executed on 19.07.1997. The Sale Consideration was fixed at Rs.5,00,000/- per acre and the suit property was measuring an extent of 1.20 acres. On the date of execution of Sale Agreement, a sum of Rs.70,000/- was paid as advance. Subsequently, on 10.10.1997, a sum of Rs.30,000/- was paid, on 05.10.2000, a further sum of Rs.50,000/- was paid and on 07.06.2001, another sum of Rs.50,000/- was paid to the defendants. It is the case of the defendants that the date mentioned in Ex.A1 Agreement as 07.06.2001 was corrected as 27.06.2002 by the plaintiff. It is not in dispute that the suit was filed on 23.08.2006.

11. On a perusal of the endorsement made in Ex.A1, it could be seen that the date and year has been corrected. If any correction is made in the endorsement made in Ex.A1 that can only help the plaintiff and not the defendants. That part, the interpolation and the inclusion of one sentence in the said endorsement was also taken into consideration by the trial Court. On a perusal of the endorsement in Ex.A1 Agreement, it is also clear that the inclusion is made in a different ink. A perusal of Ex.A1 Agreement would clearly establish that the same has been manipulated by the plaintiff to suit his convenience. Even assuming that the Agreement was executed on 27.06.2002, since the suit was filed only on 23.08.2006, it is clearly barred by limitation under Article 54 of the Limitation Act. The trial Court also rightly gave a finding that the endorsement dated 27.06.2002 made in Ex.A1 Agreement is a manipulated endorsement. In these circumstances, the trial Court has rightly found that the endorsement made in Ex.A1 Agreement is not true and genuine.

12. So far as limitation is concerned, the suit filed on 23.08.2006 by the plaintiff is clearly barred by limitation under Article 54 of the Limitation Act. In these circumstances, the trial Court has rightly dismissed the suit for specific performance.

13.I do not find any reason to interfere with the judgment and decree of the trial Court. The Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge
(Fast Track Court No.2),
Coimbatore.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.R.Prasanan, Advocate Sr.45688

A.S.No.228 of 2009

pur[co]
srg 01/09/2016

सत्यमेव जयते

WEB COPY