

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.518 of 2012

1. Venkoba Rao
2. Sakkubai
3. Madheswaran
4. Balaji
5. Sasikumar
6. Vijayakumari

..Appellants/Appellants/
Defendants

-vs-

M.Parvathi

..Respondent/Respondents/
Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the Decree and Judgment passed dated 23.12.2011 in A.S.No.18 of 2010 on the file of the Principal District Judge, Krishnagiri confirming the judgment and Decree dated 17.07.2009 in O.S.No.55 of 2005 on the file of the Additional Special Judge (Additional Subordinate Judge), Krishnagiri, on the following among other.

For Appellants : Mr.D.Shivakumaran
For Respondent : Mrs.A.Poornima
for M/s.T.Panchatsaram

J U D G M E N T

The appellants are the defendants in a suit for specific performance. The respondent as the plaintiff sought the relief against the appellants/defendants based on an agreement of sale dated 20.03.2002 executed by the defendants.

2. The case of the plaintiff is that the sale consideration was fixed as Rs.1,50,000/- and the first defendant received an advance amount of Rs.1 Lakh on the date of executing the agreement itself. It is contended that for paying the balance amount of Rs.50,000/-, three years time limit was fixed and even though the plaintiff was ready and willing to perform his part of the contract by approaching the defendants and demanding them to receive the balance sale consideration and execute the sale deed, they refused to do so. Therefore, the plaintiff has come forward with the suit for specific performance.

3. The defendants contested the said suit. Their case is that the suit agreement was executed not with an intention to alienate the suit property, but it came into existence as a result of loan transaction between the parties, as a security. They also contended that even assuming the agreement is a genuine transaction between the parties, the plaintiff was not ready and willing to perform her part of the contract and she was not having sufficient money to purchase the suit property.

4. The plaintiff, in support of her case, examined herself as PW.1. Another person by name Nagaraj was examined as PW.2. She marked Exs.A1 to Ex.A4. The first defendant examined himself as DW1 and no document was marked on their side.

5. The trial Court, on considering the facts and circumstances, decreed the suit thereby directing the plaintiff to pay the balance sum of Rs.50,000/- and directing the defendants to execute the sale deed on receipt of such balance amount. Aggrieved against the said judgment and decree of the trial Court, the defendants preferred an appeal before the lower Appellate Court in A.S.No.18 of 2010. The lower Appellate Court concurred with the findings rendered by the trial Court and dismissed the appeal. Being aggrieved by the concurrent findings rendered, the present Second Appeal is filed before this Court by the defendants.

6. While admitting the second appeal, this Court framed the following questions of law.

"1. Whether the Courts below have not properly appreciated the defence plea of the defendants that Ex.A1 - Agreement was only a loan document and not an agreement for sale?

2. Whether the Courts below have rendered a perverse finding regarding the readiness and willingness on the part of the plaintiff to perform her obligations under the agreement?

3. Whether the Courts below have not properly exercised the discretion in granting the relief of specific performance?"

7. Heard the learned counsel appearing for the appellants / defendants and the learned counsel appearing for the respondent/plaintiff and perused the materials placed before this Court.

8. The plaintiff seeks the relief of specific performance based on the agreement of sale dated 20.03.2002. It is not in dispute that the defendants have signed the agreement. However, their case is that it is not intended for the sale of the suit property and on the other hand, it is an outcome of the loan

transaction. Therefore, it is the case of the defendants that they received a sum of Rs.1 Lakh from the plaintiff as a loan and for securing such payment, the suit agreement was executed. Even though the said contention is raised by the defendants, it is seen that the defendants have not proved such contention before the Court below by adducing any material evidence except examining the first defendant as the DW1. Needless to say that the evidence of the first defendant being an interest testimony, cannot be taken as the conclusive proof of the contentions of the defendants that the transaction was a loan transaction and for that purpose, the suit agreement was executed. On the other hand, the plaintiff has examined P.W.2, the attesting witness of Ex.A1 suit agreement. Hence, the suit agreement has been rightly found by both the Courts as genuine transaction.

9. Therefore, the next question that has to be gone into is with regard to the readiness and willingness of the plaintiff. The plaintiff has sought the relief of specific performance, a discretionary relief. It is true that the agreement was executed by the defendants by receiving a sum of Rs.1 lakh and for payment of balance sum of Rs.50,000/-, three years time was fixed. Needless to say that three years time fixed in the agreement is only the upper time limit. But the fact remains that the plaintiff had approached the defendants only in the month of January 2005. Therefore, it is clear that till such time she has not expressed her readiness and willingness to perform her part of the contract at any time before that. The cross examination of P.W.1 would also disclose that the plaintiff was not having sufficient money even on the date of the agreement itself to purchase the suit property. This vital aspect has not been considered by the Courts below, while granting the relief of specific performance, more particularly, when such relief is only a discretionary one.

10. Therefore, I find that the readiness and willingness having not been pleaded, proved and established before the Courts below, granting the relief of specific performance in favour of the plaintiff is totally unjustified. Considering the facts and circumstances of the case and that the suit property being 1.56 acres of land which is sought to be purchased for Rs.1,50,000/-, this Court is of the view that the defendants are entitled to succeed, more particularly, in the absence of readiness and willingness on the part of the plaintiff. But at the same time, the defendants have to return the advance amount received from the plaintiff with interest. Accordingly, the substantial questions of law Nos. 2 and 3 raised in this appeal are answered in favour of the appellants and substantial question of law No.1 is answered against the appellants. Since, the questions of law in respect of readiness and willingness are answered in favour of the appellants, the Second Appeal is allowed and the judgment and decree of the Courts below are set

aside. The appellants are directed to refund the advance amount of Rs.1 lakh with interest @ 24% per annum to the respondent from the date of filing of the suit till the date of realisation. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

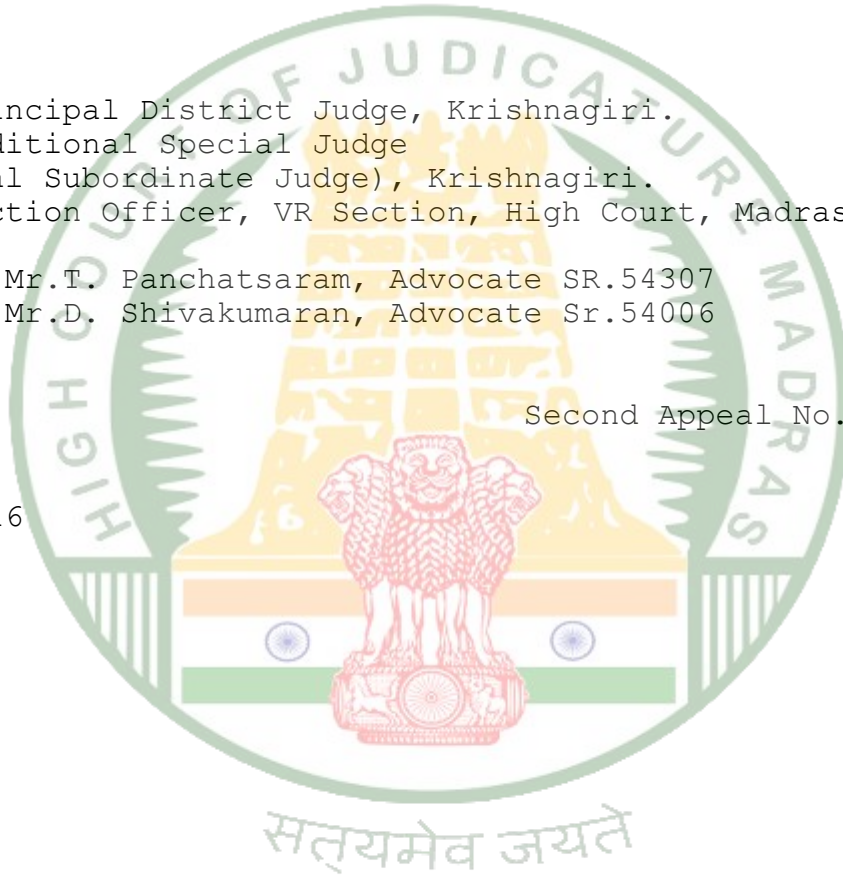
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To

1. The Principal District Judge, Krishnagiri.
2. The Additional Special Judge
(Additional Subordinate Judge), Krishnagiri.
3. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr.T. Panchatsaram, Advocate SR.54307
+ 1 cc to Mr.D. Shivakumaran, Advocate Sr.54006

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