

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

S.A.Nos.1109 & 1110 of 2015 and
M.P.Nos.1 of 2015 in
S.A.Nos.1109 & 1110 of 2015

A.C.Ganesan Appellant in both S.As/Plaintiff

Vs.

1.M.Bagyalakshmi
2.M.Sankara Narayanan
3.B.Gnanavalli

.... Respondents in S.A.No.1109/2015/
Defendants 2, 3,1.

1.B.Gnanavalli
2.M.Bagyalakshmi
3.M.Sankara Narayanan

... Respondents in S.A.1110/2015/
Defendants 1 to 3

Prayer in S.A.No.1109 of 2015:- This second appeal has been filed under Section 100 C.P.C., against the decree and common judgment passed in A.S.No.60 of 2012 dated 30.03.2015 by the learned I Additional District Judge, Salem reversing the decree and judgment passed by the learned I Additional Subordinate Judge, Salem in O.S.No.561 of 2000 dated 20.12.2010.

Prayer in S.A.No.1110 of 2015:- This second appeal has been filed under Section 100 C.P.C., against the decree and common judgment passed in Cross Appeal No.81 of 2014 in A.S.No.60 of 2012 dated 30.03.2015 by the learned I Additional District Judge, Salem reversing the decree and judgment passed by the learned I Additional Subordinate Judge, Salem in O.S.No.561 of 2000 dated 20.12.2010.

In S.A.No.1109 of 2015:-

For Appellant : Mr.S.Jayakumar
For RR1 & 2 : Mr.R.Asokan

In S.A.No.1110 of 2015:-

For Appellant : Mr.S.Jayakumar
For RR2 & 3 : Mr.R.Asokan

COMMON JUDGMENT

The plaintiff in O.S.No.561 of 2000 on the file of the learned I Additional Subordinate Judge, Salem is the appellant herein. The respondents are the defendants in the suit. Originally, the said suit was filed against the first defendant/first respondent alone. Subsequently, the defendants 2 and 3 were impleaded as parties to the suit. The said suit was filed by the appellant herein against the first defendant for specific performance of a contract of sale dated 23.04.1998. The trial Court decreed the suit as prayed for by decree and judgment dated 20.12.2010. As against the same, the defendants 2 and 3 filed an appeal in A.S.No.60 of 2012 and the first defendant filed a Cross Appeal No.81 of 2014. The learned I Additional District Judge, Salem by a common judgment dated 30.03.2015 allowed both the appeals and set aside the decree and judgment of the trial Court and dismissed the suit. As against the same, the plaintiff is before this Court with these two second appeals.

2.These second appeals have come up today for admission. I have heard the learned counsel for the plaintiff/appellant and the learned counsel for the defendants 2 and 3 in the suit, who has entered appearance on caveat and I have also perused the records carefully. The first defendant has not made appearance, as notice has not been ordered by this Court.

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

The suit property absolutely belongs to the first defendant Mrs.B.Gnanavalli. Mrs.B.Gnanavalli entered into a sale agreement with the plaintiff on 23.04.1998 thereby agreeing to sell the suit property for a total sale consideration of Rs.3,00,000/-. On the date of sale agreement itself, a sum of Rs.1,00,000/- was paid by the plaintiff to the first defendant as advance. Thus, the balance of sale consideration was Rs.2,00,000/-. It was agreed upon between the parties that the plaintiff should pay balance of Rs.2,00,000/- within a period of six months and the first defendant should receive the same and execute the sale deed in favour of the plaintiff. Incorporating these terms and conditions, a deed of sale agreement was executed and the same was registered on the same day (vide Ex.A.1). According to the plaintiff, he was all along ready and willing to perform his part of contract but, the first defendant did not come forward to perform her part of contract. Therefore, according to the plaintiff, he has filed the present suit for specific performance.

4. On appearance before the trial Court, the first defendant filed a written statement wherein, she has stated that the alleged sale agreement was not true and the same was never intended to be performed. It was further claimed that the brothers of the first defendant had fallen in huge arrears of Rs.7,50,000/- to the plaintiff and only as a security for the said amount, the present sale agreement was created by the plaintiff. The first defendant further contended that she has got no absolute title and she has got only a share in the suit property. She has further submitted that she never intended to sell the suit property at all to the plaintiff for a paltry sum of Rs.3,00,000/- whereas, the suit property is worth several lakhs.

5. The defendants 2 and 3 got themselves impleaded in the suit, though, they were not parties to the sale agreement. According to the defendants 2 and 3, the suit property was a joint family property, and there was an oral partition between the family members, in which, the suit property was allotted to one Mr. Manikavasagam who is the brother of the first defendant. There is yet another suit filed for declaration of title by the third defendant and the same is pending.

6. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, he himself was examined as P.W.1 and as many as five documents viz., Exs.A.1 to A.5 were exhibited. Ex.A.1 is the sale deed dated 23.04.1998; Ex.A.2 is a copy of the legal notice dated 06.01.2000; Ex.A.3 is the acknowledgment card; Ex.A.4 is the Reply notice dated 09.01.2000 and Ex.A.5 is the Bank Account Statement of the plaintiff. On the side of the defendants, the second defendant was examined as D.W.1 and documents Exs.D.1 to D.3 were exhibited. Ex.D.1 is the rental agreement deed, by which, the plaintiff was inducted into possession as tenant; Ex.D.2 is the addition made in Ex.A.1 and Ex.D.3 is the letter of undertaking given by the plaintiff in favour of the first defendant dated 23.04.1998.

7. Having considered all the above, the trial Court decreed the suit which was reversed by the First Appellate Court. That is how the plaintiff/appellant is before this Court with this second appeal.

8. It needs to be mentioned that after Ex.D.3, letter of undertaking was marked in evidence, the plaintiff filed an Interlocutory Application before the trial Court to amend the suit, so as to make an alternative plea for a decree of Rs.7,50,000/- which is issued under Ex.D.3. The said Interlocutory Application was allowed and the plaint was accordingly amended. However, the trial Court did not grant the decree for Rs.7,50,000/- since, the trial Court decreed the suit

for specific performance. Since, there was no appeal filed by the plaintiff in respect of the denial of Rs.7,50,000/-, the First Appellate Court declared that the suit was dismissed and the decree and judgment passed by the trial Court was set aside.

9. In this second appeal, the learned counsel for the appellant would submit that the First Appellate Court has not appreciated Ex.A.1 which is a registered deed of sale agreement which contains the terms and conditions of the agreement between the parties. The learned counsel for the appellant would further submit that there is enormous evidence to show that the plaintiff is ready and willing to perform his part of contract and the first defendant did not come forward to perform her part of contract, the First Appellate Court failed to grant the decree for specific performance. The learned counsel would further submit that atleast, the decree for payment of Rs.7,50,000/- which is due under Ex.D.3 should have been granted by the First Appellate Court, as an alternative relief.

10. But, the learned counsel appearing for the defendants 2 and 3 would vehemently oppose this second appeal. According to him, the First Appellate Court negatived the claim for Rs.7,50,000/- on the ground that it was barred by limitation. He would further submit that Ex.D.3 would go to show that Ex.A.1 was not intended to be a sale agreement and it was never intended to be performed.

11. I have considered the above submissions.

12. At the outset, I should say that there is no question of law much less a substantial question of law at all involved in this second appeal so as to admit the same. So far as the factual findings of the First Appellate Court are concerned, I do not find any perversity. Admittedly, Ex.A.1 is the registered document. There is no denial of the execution of the said document by the first defendant. The question is whether such an admission made would automatically go to raise a legal presumption that it was intended to be performed. In my considered view, whether the agreement Ex.A.1 was intended to be treated as sale agreement and whether the consensus ad-idem between the parties to perform the contract, are all questions of facts which cannot be gone into by this Court. In this case, though, Ex.A.1 is a registered agreement, in my considered view, it is still the burden of the plaintiff to prove that the parties have really intended to complete the sale so as to be performed by both parties. Here, in this case, Ex.D.3 was simultaneously executed by the plaintiff in faovur of the first defendant as a letter of undertaking on the same day of sale agreement dated 23.04.1998. The execution of Ex.D.3 document has not been disputed at all by the plaintiff. A simple reading of the said document would go to show that the plaintiff has

admitted that the first defendant's brothers had fallen in huge arrears to the tune of Rs.7,50,000/- towards principal and interest to be paid to them to the plaintiff. It is also mentioned in the said document that the suit property herein is worth Rs.13,00,000/-. It is also been mentioned in the very same document that, as a security, for the above said loan amount, Ex.A.1 was obtained by the plaintiff from the first defendant. It is further stated in the said document that, in the event, Rs.6,50,000/- is paid within six months, Ex.A.1 shall be cancelled. It is also stated that a sum of Rs.1,00,000/- shall be paid subsequently. Thus, Ex.D.3 would go to show that no amount was paid on 23.04.1998 under Ex.A.1 to the first defendant and the statement that a sum of Rs.1,00,000/- was actually paid on 23.04.1998 is not true. The above narration of facts contained in Ex.D.3 would clearly go to prove that the first defendant has not executed Ex.A.1 as a sale agreement so as to be performed. It is common knowledge that a property worth Rs.13,00,000/- would not have been agreed to be sold for a paltry sum of Rs.3,00,000/- by the first defendant to the plaintiff.

13.Having considered all the above facts, the First Appellate Court has set aside the decree and judgment of the trial Court. I do not find any perversity in the said finding. In my considered view, it is a well considered judgment of the First Appellate Court.

14.Coming to the alternative relief of Rs.7,50,000/- is concerned, this claim has been made based on Ex.D.3. Ex.D.3 dated 23.04.1998. But, the trial Court did not grant any decree under this claim. Curiously, the plaintiff did not file any appeal at all against the same. But instead, an argument was advanced before the First Appellate Court seeking a decree for Rs.7,50,000/-. Though, there was no need for the First Appellate Court to go into the said question, the First Appellate Court went into the said question and has held that such claim is barred by limitation.

15.For two reasons, i.e., since, there was no first appeal filed by the appellant against the denial of decree for Rs.7,50,000/- and also on the finding of the First Appellate Court that, the said claim is barred by limitation, I am of the view that the appellant cannot succeed under this claim also. Thus, I do not find any merit at all in this second appeal. The second appeal deserves only to be dismissed.

16.In the result, the second appeals fail and accordingly, they are dismissed and the common decree and judgment passed by the First Appellate Court in Cross Appeal No.81 of 2014 and

A.S.No.60 of 2012 dated 30.03.2015 is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

jbm

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The I Additional District Judge,
Salem.

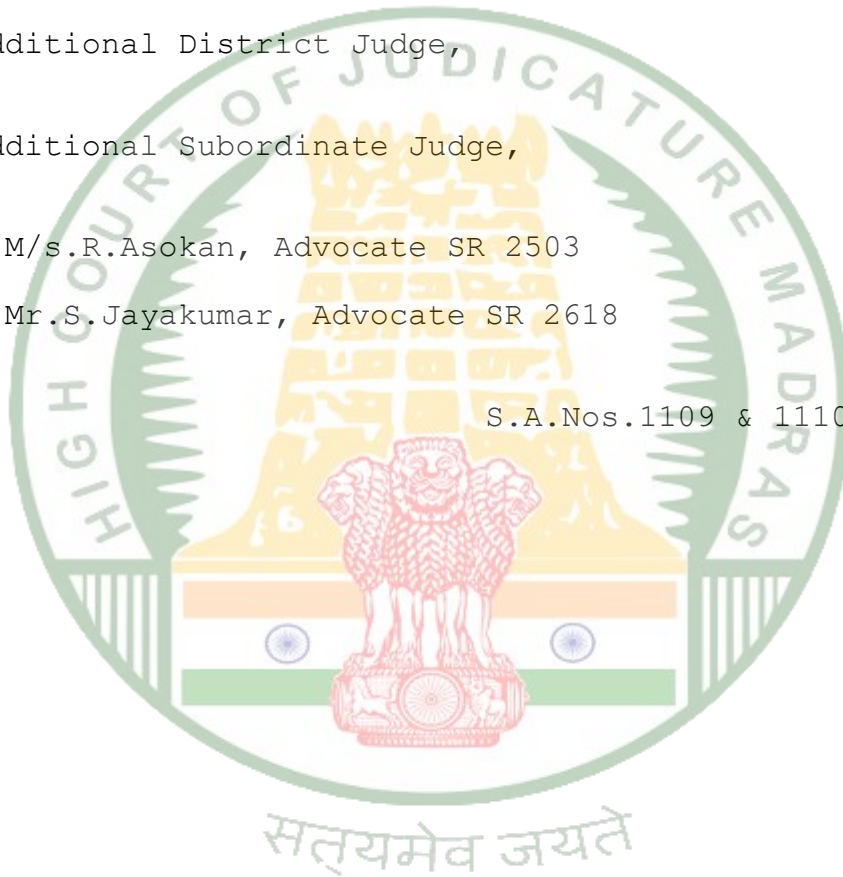
2.The I Additional Subordinate Judge,
Salem.

+ 1 cc to M/s.R.Asokan, Advocate SR 2503

+ 1 cc to Mr.S.Jayakumar, Advocate SR 2618

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