

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No. 352 of 2015

Vijaya ..Appellant/Appellant/Plaintiff

-Vs-

Rameesa Begum ..Respondent/Respondent/Defendant

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 24.09.2014 passed in A.S.No.4 of 2014 on the file of the Principal District Judge, Cuddalore, confirming the judgment and decree dated 29.10.2013 passed in O.S.No.94 of 2011 on the file of the Principal Subordinate Judge, Cuddalore.

For Appellant : Mr.S.Sabarish
for Mr.S.K.Rakhunathan

For Respondent : Mr.N.Suresh

J U D G M E N T

The appellant is the plaintiff in a suit for specific performance. His case is that the defendant agreed to sell the suit property for a total sale consideration of Rs.9 lakhs and executed an agreement of sale on 04.03.2011 by receiving an advance amount of Rs.7 lakhs. According to the plaintiff six months time was fixed for paying the balance sale consideration of Rs.2 lakhs and even though ,the plaintiff was ready and willing to perform his part of the contract by issuing a notice on 17.05.2011, the defendant did not come forward to execute the sale deed by receiving the balance sale consideration. The defendant contested the suit by denying the execution of suit promissory note and also the receipt of the advance amount. It is also contended by the defendant that the subject matter property was already attached in O.S.No.104/2011 on the file of the Additional Sub Court No.1, Cuddalore, filed by one third party against the defendant and therefore, he has no right to execute such agreement of sale as alleged by the plaintiff. The trial Court, upon considering the rival pleadings of the parties

and the evidence let in by them, though rejected the relief of specific performance, decreed the suit by directing the defendant to repay the advance amount of Rs.7 lakhs with interest. The plaintiff preferred an appeal and the appellate Court, confirmed the findings of the trial Court. Thus, the present Second Appeal is filed before this Court challenging such concurrent findings of the Courts below.

2. Heard the learned counsel for the appellant and perused the materials placed before this Court.

3. Both the Courts below have concurrently found that the subject matter property was already attached in O.S.No.104/2011 on the file of the Additional Sub Court No.1, Cuddalore, and such attachment was already made absolute. Therefore, both the Courts below pointed out that the property which is attached by the Court proceedings for realisation of the decretal amount in another suit, cannot be sought to be conveyed by way of granting a decree for specific performance and therefore, the plaintiff is only entitled to get back the advance amount. It is seen that as against the decree granted by the trial Court confirmed by the appellate Court for refund of the advance amount, the defendant seems to have not filed any appeal and therefore, such decree has become final and conclusive and binding on the defendant.

4. When such being the factual finding rendered by the Courts below, I find no ground to interfere with such concurrent finding, more particularly, I do not find any substantial question of law arises for consideration in this appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

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सत्यमेव जयते

Sub Assistant Registrar

To

1. The Principal District Judge, Cuddalore
 - 2.The Principal Subordinate Judge, Cuddalore.
 - 3.The Section Officer, VR Section, High Court, Madras.
- +1cc to Mr.S.K.Rakhunathan, Advocate Sr.64897

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srg 27/12/2016