

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:18.11.2016

PRONOUNCED ON:15.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.258 of 2011

&

MP.No.1 of 2011

Sathyanarayanan ...Plaintiff/Respondent/ Appellant

Vs.

1.Danalakshmi

2.Murugan

...Defendants/Appellant/ Respondents

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 04.10.2010 passed in A.S.No.36 of 2009 on the file of the Additional District Judge(Fast Tract Court-I),Tindivanam reversing the judgment and decree dated 31.10.2008 passed in O.S.No.385 of 2001 on the file of the District Munsiff Court, Tindivanam.

For Appellant : Mr.S.Gajendran

For Respondents : Mr.P.Dinesh Kumar

J U D G M E N T

The plaintiff has preferred this Second Appeal impugning the judgment and decree dated 04.10.2010 passed in AS.No.36 of 2009 on the file of the Additional District Court(Fast Tract Court -I), Tindivanam, reversing the judgment and decree dated 31.10.2008 passed in O.S.No.385 of 2001 on the file of the District Munsif Court,Tindivanam.

2.Suit for specific performance.

3.According to the plaintiff, the defendant agreed to sell the suit property to him and in pursuance of the above said understanding, the parties entered into a Sale Agreement on 02.03.2000 for a sum of Rs.25,000/- towards the sale of the suit property and on the date of the agreement, the plaintiff advanced a sum of Rs.20,000/- to the defendant and for the

payment of the balance of Rs.5000/- a period of 11 months was stipulated from the date of the sale agreement and thereafter even though, the plaintiff was ready and willing to perform his part of contract, in as much as the defendant did not come forward to execute the sale deed, he has been necessitated to lay the suit for specific performance. The defendant has disputed the validity and genuineness of the Sale Agreement dated 02.03.2000 and according to the defendant, the sale agreement has been fabricated and forged by the plaintiff and therefore no relief whatsoever could be granted to the plaintiff, pursuant to the above said sale agreement.

4. In the amended plaint, the date of the sale agreement has been found to be corrected as 02.03.2001. The defendant has challenged the validity of the sale agreement in question. The Sale Agreement has been marked as Ex.A1. It could therefore be seen that the plaintiff has to establish that Ex.A1, Sale Agreement is true, valid and binding upon the defendant. To establish that the plaintiff was having means to pay Rs.20000/- on the date of the sale agreement itself, as rightly argued, no material is forthcoming on the side of the plaintiff. According to the defendant, the plaintiff has no means whatsoever to pay the sale consideration alleged to have been fixed by the parties in respect of the sale in question. According to the defendant, no amount whatsoever has been received from the plaintiff under Ex.A1. In the absence of any evidence to show that the plaintiff had the capacity to pay the advance amount, it could be seen that it is highly doubtful whether at all the plaintiff would have advanced a sum of Rs.20000/- on the date of the sale agreement. On the date of the sale agreement, it is found that the defendant has also executed a Power of Attorney in favour of the plaintiff's father and therefore, it is argued, if really the defendant had any intention to execute the sale agreement in favour of the plaintiff in respect of the suit property, the defendant would not have executed the Power of Attorney Deed in favour of the plaintiff's father in respect of the suit property on the same date. That such a Power of Attorney Deed has been executed on 02.03.2001 could be seen from the recitals found in Ex.B2. Under Ex.B2, the above said Power of Attorney Deed has been cancelled. Therefore, it is highly improbable that the defendant would have executed the sale agreement in favour of the plaintiff on 02.03.2001 as claimed by the plaintiff.

5. Further, it is found that the defendant had purchased the suit property on 14.12.1992 for a sum of Rs.26,000/-. It is stated that the suit property is situated in the center of the town. Therefore, the defendant having purchased the suit property in the year 1992 for a sum of Rs.26000/-, to allege that he had agreed to convey the said property to the plaintiff under Ex.A1, Sale Agreement dated 02.03.2001 for a sum of Rs.

25,000/- is a far fetched theory, which cannot at all be accepted and also believed. Therefore, the above aspect of the matter also throws a great doubt in the genuineness of the Sale Agreement, Ex.A1.

6.Now according to the plaintiff, 11 months time has been granted under the Sale Agreement to pay the balance sale consideration of Rs.5000/- and complete the sale transaction. It is stated that the plaintiff is always ready and willing to perform his part of the contract. If that be so, if the plaintiff is well off and financially sound, immediately after the sale agreement, the plaintiff would have endeavored to pay the balance amount of Rs.5000/- and get the sale transaction completed. However, the plaintiff has not placed any material to hold that he had been always ready and willing to perform his part of the contract. As found earlier, it has been found that the plaintiff has failed to establish his means even to pay the alleged advance amount of Rs.20000/- on the date of the sale agreement. As put forth by the defendant, it could therefore be seen that without any basis whatsoever the plaintiff has pleaded that he has been always ready and willing to perform his part of the contract.

7.In addition, to substantiate the case of the plaintiff, there is no material forthcoming on the side of the plaintiff. The lower Appellate Court has considered all the issues in the right perspective and found that the plaintiff has miserably failed to establish that the sale agreement is a genuine document. Therefore it can be seen that the relief of specific performance being an equitable and discretionary remedy, on the failure of the plaintiff to establish the validity and genuineness of the sale agreement in question and also to establish that he has been always ready and willing to perform his part of the contract and what it is found that the plaintiff's case that the defendant had entered into a sale agreement with the plaintiff for a sum of Rs.25,000/- on 02.03.2001 is highly improbable and unbelievable, the dismissal of the suit by the lower Appellate Court cannot be interfered with. The lower Appellate Court in my considered opinion, has rightly gone into all the aspects of the dispute between the parties in the right manner and accordingly set aside the judgment and decree of the trial Court and allowed the Appeal preferred by the defendant and consequently dismissed the plaintiff's suit.

8.The learned counsel for the respondents relied upon the following authorities reported in 2014(4) CTC 290(Farooque Dadabhoy Vs. Dr. Usha S. Bhat), 2014(4) CTC 330(P.Samiappan and Another Vs. Rukmani(died) and Others), AIR 2004 Madras 390 (Basappa Vs. Basamma), 1994 (1) MLJ 44(Sonnappa Iyer Vs. K.R.Ramuthaiammal and Others) in support of his contentions.

The principles of law out lined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

9.In conclusion, I do not find any substantial question of law is involved in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.The Additional District Judge,
(Fast Tract Court-I),Tindivanam

2.The District Munsif Court,
Tindivanam

Copy to
The Section Officer,
V.R.Section, High Court, Chennai-104.

+1cc to Mr.D. Ravichander, Advocate Sr. 73207

+1cc to Mr.s. Gajendran, Advocate Sr. 73589

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PVS (CO)
VR(18/5/2017)

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