

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

S.A.No.110 of 2016
and
C.M.P.No.2538 of 2016

V.Saroja (Died)

1. V.Saravanan
2. V.Thamizhaselvi ... Appellants/LRs of Sole
Defendants

Vs.

T.Manimegalai ... Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree in A.S.No.24 of 2008 dated 28.02.2011 passed by the Principal District Judge at Vellore by confirming the judgment and decree in O.S.No.179 of 2001 dated 12.2.2007 passed by the Subordinate Judge at Gudiyatham, Vellore District.

For Appellants : Mr.R.Ganesh Babu
for Mr.E.Ramesh

For Respondent : Mr.T.Dhanyakumar

J U D G M E N T

This matter is listed before me at the adjourned admission stage after issuing notice to the other side.

2. The defendants who lost before both the Courts below in a suit for specific performance of an agreement of sale are the appellants.

3. Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials placed before this Court.

4. The case of the plaintiff who is the respondent herein is that the original defendant, namely one V.Saroja was the owner of the property in dispute and she entered into a sale agreement with the plaintiff on 25.11.1999 agreeing to sell the property for a sum of Rs.2,00,000/- and received a sum of Rs.50,000/- as advance from the plaintiff with a condition to pay the balance amount of Rs.1,50,000/- within a period of three years and get the sale deed executed. It is the further case of the plaintiff that even though she was ready and willing to perform her part of the contract within the time stipulated by making several demands, the defendant refused to execute the sale deed by receiving the balance consideration. Therefore, the plaintiff, after issuing notice to the defendant on 06.11.2001, filed the suit for specific performance of the agreement of sale.

5. The suit was contested by the defendant. The case of the defendant is that the suit agreement was not intended to be a sale agreement and on the other hand, it is a fabricated one. It is the further case of the defendant that she and her husband borrowed a sum of Rs.28,000/- from the husband of the plaintiff and for such payment, they demanded to execute a mortgage deed in respect of the suit property as a security and consequently, they obtained the signatures of the defendant in blank papers. Thus, it is contended by the defendant that believing such representation of the plaintiff and her husband, she signed in the document without knowing the nature of the same. Therefore, the defendant denied her liability to execute the sale deed.

6. The plaintiff examined herself as P.W.1 and one Anandan as P.W.2, who is the scribe of the suit agreement. She has also marked Exs.A1 to A3 in support of her claim. The defendant, except examining herself as D.W.1 has not examined any independent witness nor marked any documents in support of her contention.

7. The trial Court, after considering all the facts and circumstances, the pleadings of the respective parties and also the evidence let in by them, decreed the suit by directing the defendant to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration of Rs.1,50,000/-. Challenging the judgment and decree of the trial Court, the defendant filed the Appeal before the First Appellate Court. During the pendency of the first appeal, the defendant died and the present appellants were brought on record as the legal heirs of the defendant/appellant before the lower appellate Court. The lower appellate Court, after considering the merits of the matter in detail, dismissed the appeal by judgment and decree dated 28.02.2011.

8. It is seen that the present Second Appeal was not filed by the appellants immediately after the judgment and decree passed by the lower Appellate Court. On the other hand, there was a delay of 1325 days in filing this appeal which, of course, was condoned by this Court later. However, in the meantime, the plaintiff who succeeded before both the Courts below, filed E.P.No.44 of 2007 for executing the decree. Consequent upon the order passed in the said E.P., a sale deed was executed on 09.07.2014 by the Court. It is further seen that pursuant to such execution of the sale deed, the plaintiff filed E.A.No.96/2014 for delivery of possession and the said E.A. is still pending. Therefore, it is evident that only after filing such E.A. for delivery of possession, the appellants have chosen to file the present appeal, with such enormous delay. Needless to say that once the delay is condoned, this Court is to find out as to whether there is any substantial question of law arising for consideration to entertain this appeal.

9. Learned counsel for the appellant submitted that when the suit agreement was not intended to be acted upon and on the other hand, it was executed only as a security for the loan, both the Courts below have concurrently erred in decreeing the suit. Even though such an argument is made by the learned counsel on behalf of the appellants, the fact remains that to support such contention, no evidence was let in by the defendant before the trial court. Once the defendant had admitted her signature in the suit agreement, the burden lies on her to disprove the claim of the plaintiff and establish her case that the intention of the parties was otherwise. If no evidence is let in in support of such contention, the Court is left with no other option except to consider the evidence let in by the plaintiff in support of her case and give a finding. The plaintiff, apart from marking Ex.A1 suit agreement, wherein the signature of the defendant is admitted, she examined herself as P.W.1 and also the scribe of Ex.A1 as P.W.2. It is seen that P.W.2 has spoken about the agreement in detail including the payment of advance. When such being the evidence let in by the plaintiff in support of her case, in the absence of any contra evidence let in by the defendant disproving such contention of the plaintiff, the Courts below have rightly decreed the suit as prayed for. It is also an admitted fact that three years time has been granted in the suit agreement and even before the expiry of three years, the plaintiff has chosen to issue the suit notice and also consequently, filed the suit within two years. Therefore, her readiness and willingness is also evident from her conduct and the Courts below have concurrently found all these issues in favour of the plaintiff. When such being the factual findings rendered by both the Courts below and also by considering the fact that subsequent to the decree, the sale deed has been executed on 09.07.2014 itself and the present

appeal was filed much later thereafter, I find no ground to interfere with the concurrent finding rendered by the Courts below as I find no substantial question of law arising for consideration in favour of the appellants. Therefore, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

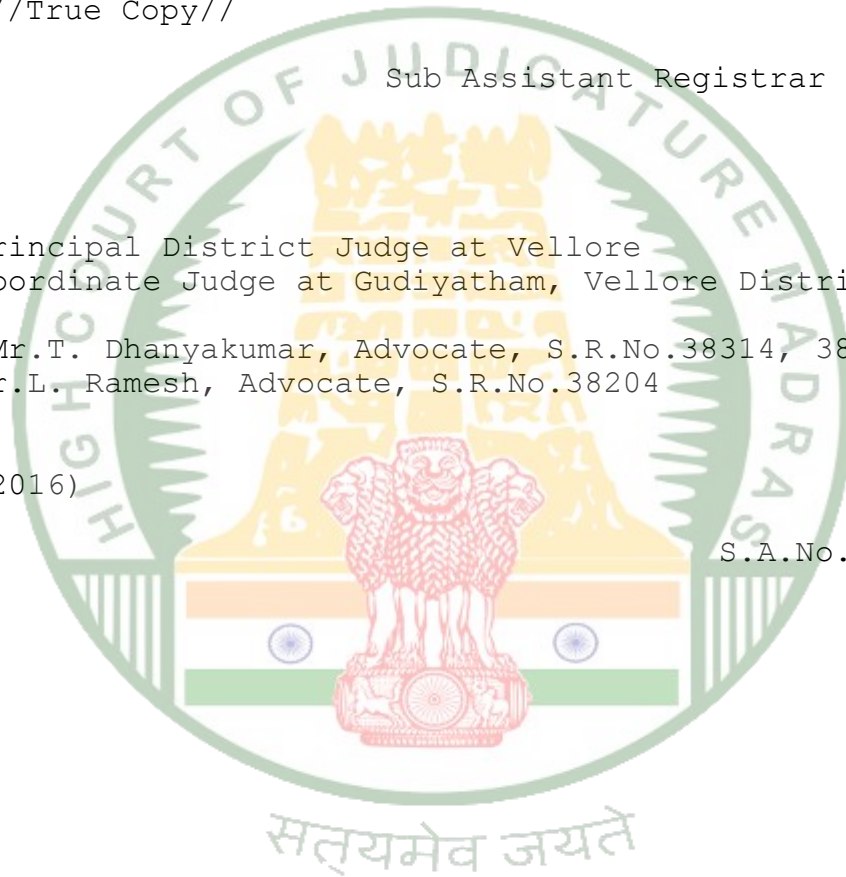
1. The Principal District Judge at Vellore
2. The Subordinate Judge at Gudiyatham, Vellore District.

+2ccs to Mr.T. Dhanyakumar, Advocate, S.R.No.38314, 38024

+1cc to Mr.L. Ramesh, Advocate, S.R.No.38204

NM(CO)
EU(09/08/2016)

S.A.No.110 of 2016



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