

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.799 of 2016
and
CMP No.15077 of 2016

Neelakandan

..Appellant/Appellant/
Plaintiff

vs.

1.Pandiyan
2.Chandrasekaran
3.Kamaraj

..Respondents/Respondents/
Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned III Additional District and Sessions Judge, Cuddalore, Vridhachalam dated 11.03.2014 in A.S.No.67 of 2011 by confirming the judgment and decree passed by the learned Subordinate Judge, Neyveli dated 10.02.2011 in O.S.No.82 of 2008.

For Appellant : Mr.V.Logesh
for Mr.N.Ramesh

For Respondents 1 & 3 : M/s.M.Sudha
for Mr.C.Munusamy

J U D G M E N T
सत्यमेव जयते

The appellant is the plaintiff in a suit for specific performance.

2.The case of the plaintiff is as follows:

The suit properties belonged to the first defendant who decided to sell the same to the plaintiff for a sum of Rs.1,50,000/-. Accordingly, an agreement under Ex.A1 was executed on 10.08.2007 and a sum of Rs.1,00,000/- was paid by the plaintiff as advance. For payment of balance sale consideration of Rs.50,000/-, two years time was agreed upon between the parties. Though the plaintiff was ready to pay the balance sale consideration, the first defendant refused to

execute the sale deed after receiving such balance amount. On 08.05.2008, the plaintiff issued a legal notice. Even thereafter, the first defendant did not execute the sale deed.

3.The case of the first defendant adopted by the second defendant is as follows:

The first defendant has not executed any sale agreement on 10.08.2007 and on the other hand, it is a forged and concocted document prepared by the plaintiff. The signature in the sale agreement is not that of the first defendant. The first defendant sold items 5 and 6 of the suit properties to the third defendant under registered sale deed. So also, items 1, 2 and 4 of the suit properties were sold to the second defendant by the first defendant.

4.The case of the third defendant is that he has purchased property in respect of items 5 and 6 from the first defendant and he is in possession and enjoyment of the same from the date of such purchase.

5.Both the courts below after considering the rival pleadings of the parties and the evidence let in by them found that the suit pronote is not genuine and that the plaintiff has not proved the same in a manner known to law. It has also been pointed out that there was some correction made in the suit agreement with respect to the Survey Number of the suit properties as well as the description of the boundary of the same. It is further pointed out by the courts below that the scribe of Ex.A1 viz., P.W.3 has specifically admitted that he typed Ex.A1 only after the plaintiff, first defendant and witnesses signed the papers. Therefore, the courts below pointed out that when the first defendant denied the execution of Ex.A1 and claimed to be a forged one, the plaintiff has not taken any steps to examine the signature of Ex.A1 through an expert. Even with regard to the question of readiness and willingness, both the courts below pointed out that the conduct of the plaintiff did not show that he was ready and willing to perform his part of the contract as he himself as PW1, during his cross-examination, categorically admitted that at the time of execution of Ex.A1, he has no means to pay the balance sale consideration and also to pay the stamp fee. Further, the lower Appellate Court pointed out that there was no pleading as required under section 16(3) of the Specific Relief Act indicating the readiness and willingness of the plaintiff. Therefore, by pointing out all these vital aspects, both the courts dismissed the suit.

6. Now, the present appeal is filed before this court challenging the concurrent findings rendered by the courts below.

7. Upon hearing the learned counsel for the appellant and perusing the concurrent decisions made by the courts below, as has been discussed supra, this court finds no ground to interfere with such concurrent findings especially, when no substantial question of law arises for consideration before this court out of such findings rendered on factual aspects of the matter supported by the material evidence to arrive at such conclusion. When that being the position and in the absence of existence of any substantial question of law, I do not think that this court can interfere with such concurrent finding. Accordingly, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vri

To

- 1.The III Additional District and Sessions Judge,
Cuddalore, Vridhachalam.
- 2.The Subordinate Judge, Neyveli.

+1cc to Mr.N. Ramesh, Advocate, S.R.No.56972
+1cc to Mr.C. Munusamy, Advocate, S.R.No.57035

Second Appeal No.799 of 2016

GR(CO)
EU 17.11.16

WEB COPY