



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 22.09.2016

Delivered on: 27.09.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Second Appeal (MD) No.369 of 2016

K.M.Karupannan

... Appellant/Appellant/Plaintiff

-Vs-.

R.Saravanan

... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to allow this Second Appeal setting aside the judgment and decree dated 05.06.2013 made in A.S.No.192 of 2011 on the file of Principal District Court, Trichy confirming the judgment and decree dated 06.06.2011 made in O.S.No.7 of 2007 on the file of Principal Subordinate Court, Trichy.

For Appellant : Mr.M.P.Senthil

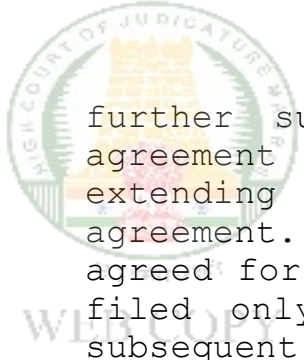
For Respondent : Mr.G.Sridharan

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant in this Second Appeal.

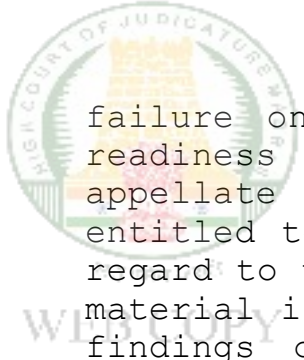
2.The plaintiff / appellant has filed a suit in O.S.No.7 of 2007 on the file of the Principal Sub Court, Tiruchirappalli for specific performance of an agreement of sale dated 04.02.1999 and for consequential relief in respect of the suit property.

3.The case of the plaintiff / appellant is that he entered into an agreement of sale on 04.02.1999 with the defendant / respondent in respect of the suit property for a total consideration of Rs.1,10,000/-. It was the further case of the plaintiff / appellant that on the date of agreement a sum of Rs.50,000/- was paid as an advance and that the balance of Rs.60,000/- was agreed to be paid within a period of one year from the date of agreement. It is also admitted by the plaintiff / appellant that the defendant / respondent is his own brother-in-law, i.e., the brother of his wife. The contention of the plaintiff / appellant in the plaint was that the plaintiff / appellant was ready and willing and that the defendant / respondent was dragging the performance under some pretext or the other. It was the specific case of the plaintiff / appellant that on 03.02.2000, the defendant / respondent, upon receipt of a



further sum of Rs.55,000/-, made an endorsement in the sale agreement making time as not an essence of the agreement and extending the time beyond the period agreed under the original agreement. Though the agreement is dated 04.02.1999 and the date agreed for completion of the sale was only one year, the suit was filed only on 05.01.2007. It is only on the basis of the subsequent endorsement made in the agreement, the plaintiff / appellant filed the suit after a lapse of about seven years. The defendant / respondent though admitted the sale agreement dated 04.02.1999 and the payment of Rs.50,000/- as advance, specifically denied the receipt of a further sum of Rs.55,000/- and the endorsement that was made on 03.02.2000 to extend the time for performance. The defendant / respondent also disputed the alleged extension and described the conduct of the plaintiff / appellant as a fraudulent one. According to the defendant / respondent, the endorsement is a rank forgery. It was the contention of the defendant / respondent that the plaintiff / appellant was never ready and willing to perform his part of contract and that he is not entitled to the equitable relief of specific performance having regard to the circumstances of the case.

4.The trial Court after framing necessary issues found that the endorsement found in the sale agreement dated 03.02.2000 is not proved to be true and valid and that the suit is barred by limitation. Aggrieved by the judgment and decree of the trial Court dismissing the suit, the plaintiff / appellant has preferred the appeal in A.S.No.192 of 2011 on the file of the Principal District Court, Tiruchirappalli. The appellate Court also concurred with the view of the trial Court and dismissed the appeal. The appellate Court has specifically given a finding that the plaintiff / appellant has not proved the endorsement made in the sale agreement extending the time for performance and acknowledging the receipt of a further sum of Rs.55,000/- as alleged by the plaintiff / appellant. Since the defendant / respondent specifically disputed his signature found in the endorsement, the lower appellate Court also has found fault with the plaintiff / appellant for not proving the endorsement by sending the document for getting an expert opinion. Since the plaintiff / appellant has not examined any independent witness to prove the subsequent transactions, the appellate Court has categorically given a finding that the endorsement dated 03.02.2000 was not proved and that the suit for specific performance filed by the plaintiff / appellant in the year 2007 is hopelessly barred by limitation. The appellate Court has also found that the plaintiff / appellant is not entitled to the relief of specific performance having regard to the fact that the plaintiff / appellant has not proved the payment of Rs.55,000/- as per the endorsement and that there is an inordinate delay of more than four years in approaching the Court for the relief of specific performance. Hence, on the ground of laches and the



failure on the part of the plaintiff / appellant to prove his readiness and willingness in terms of the agreement, the lower appellate Court found that the plaintiff / appellant is not entitled to the equitable relief of specific performance. Having regard to the factual findings rendered by the Courts below on the material issues, this Court is not inclined to interfere with the findings of the Courts below in exercise of the power under Section 100 C.P.C. It is not demonstrated before this Court that the findings of the Courts below are either perverse or not supported by any reasons or material. Hence, the Second Appeal is dismissed as no substantial question of law arises for consideration. However, there is no order as to costs.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub Assistant Registrar

SRM

TO

- 1 The Principal District Judge,
Tiruchirappalli.
- 2 The Principal Subordinate Judge,
Tiruchirappalli.

COPY TO:

THE SECTION OFFICER,
V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1cc to Mr.M.P.Senthil Advocate Sr.No. 56504

+1cc to Mr.G.Sridharan Advocate Sr.No. 55883

JAM/15.11.16/SS 2/ 3P-6C

Judgment made in
Second Appeal (MD) No.369 of 2016

27.09.2016