

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :25.10.2017

DELIVERED ON:30.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE A.SELVAM

and

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Appeal Suit No.262 of 2011

and M.P.No.1 of 2011

1.U.N.Krishnamurthy [deceased]

2.H.N.Sharmila

3.Lakshmi Subramanya

4.K.Shathis

5.K.Nandini

[Appellants 2 to 5 brought on record as legal heirs of the deceased sole appellant vide order of this Court dated 17.07.2017 in C.M.P.No.11074/2017 in A.S.No.262/2011]

... Appellants/Defendant

Vs

A.M.Krishnamurthy

... Respondent/Plaintiff

Appeal suit filed under Section 96 of CPC against the judgment and decree, dated 30.11.2010, passed in O.S.No.30 of 2005, by the Principal District Judge, Krishnagiri.

For Appellants : Mr.K.R.Vijayakumar
for Mrs.Uma Vijayakumar

For Respondent : Mr.V.Raghavachari

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM,J.]

This Appeal Suit has been directed against the judgment and decree, dated 30.11.2010, passed in Original Suit No.30 of 2005, by the Principal District Court, Krishnagiri.

2.The respondent herein, as plaintiff, has instituted Original Suit No.30 of 2005 on the file of the trial Court, praying to pass a decree of specific performance in pursuance of an oral agreement, wherein, the deceased appellant has been shown as sole defendant.

3.The material averments made in the plaint are that the suit property is the absolute property of the defendant and he approached the plaintiff for selling the same and under the said circumstances, an oral sale agreement has come into existence between the plaintiff and defendant during November 2002, in the presence of persons namely, N.Anjappa, S.A.Muralidharan and M.Murali Reddy. In order to confirm the oral sale agreement, on 11.11.2002, the defendant has executed a letter in favour of the plaintiff. The sale consideration has been fixed at Rs.15,10,000/-. The plaintiff has advanced an amount of Rs.10,001/-. It is agreed to register the Sale Deed on or before 15.03.2003. Despite of repeated demands made by the plaintiff, the defendant has not come forward to execute a Sale Deed in favour of the plaintiff and due to that, a legal notice dated 13.02.2003 has been issued and after receipt of the same, a false reply has been given on 10.03.2003. The plaintiff is always ready and willing to perform his part of the contract. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4.In the written statement filed on the side of the defendant, it is averred that the defendant has not approached the plaintiff for selling the suit property during November 2002. One Anjappa has approached the defendant and suggested that the defendant would get good price, if the suit property is sold and under the said circumstances, he obtained a letter from the defendant. It is false to aver that an oral sale agreement has been confirmed, by virtue of the letter dated 11.11.2002. The defendant has given suitable reply to the notice for the notice issued by the plaintiff. Therefore, there is no merit in the suit and the same deserves to be dismissed.

5.On the basis of the rival pleadings raised on either side, the trial Court, has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the defendants, as appellants.

6.During pendency of the appeal, the sole appellant/defendant has passed away and his legal heirs were impleaded as appellants.

7.The crux of the case of the plaintiff is that the suit property is the absolute property of the defendant. During November 2002, he approached the plaintiff for selling the suit property in his favour. On 11.11.2002, the defendant has executed a letter, whereby, confirmed the oral sale agreement. The total sale consideration has been fixed at Rs.15,10,000/- and on the date of execution of the letter dated 11.11.2002, the defendant has received Rs.10,001/-. Despite of repeated

demands made by the plaintiff, the defendant has refused to execute a Sale Deed and therefore, a legal notice has been issued and after receipt of the same, the defendant has given a false reply notice. Under such circumstances, the present Suit has been instituted.

8.The defence put forth on the side of the defendant is that he has not approached the plaintiff for selling the suit property. One Anjappa has approached the defendant and told him that he would get good price, if the suit property is sold. Under the said circumstances, he obtained a letter from him and no oral sale agreement has come into existence between the plaintiff and defendant and further, the defendant has given a suitable reply notice to the plaintiff and therefore, the present suit deserves to be dismissed.

9.On the basis of the rival evidence available on record, the trial Court, has decreed the suit as prayed for.

10.The learned counsel appearing for the appellants/defendants has raised the following points so as to set aside the judgment and decree passed by the trial Court :

- i. No oral sale agreement has come into existence between the plaintiff and defendant.
- ii. The letter dated 11.11.2002 has not confirmed the oral sale agreement and the same is nothing, but a proposal to sell the suit property.
- iii. The suit property is a joint family property and therefore, the defendant is not having absolute right to sell the same in favour of the plaintiff.
- iv. The plaintiff has not shown his readiness and willingness to perform his part of the contract.

11.The learned counsel appearing for the respondent/plaintiff has sparingly contended to the effect that in the instant case, the defendant has been examined as D.W.1. During the course of cross-examination, he has candidly admitted the entire case of the plaintiff and further, from inception of oral sale agreement, the plaintiff has shown his readiness and willingness to perform his part of the contract. The trial Court, after considering the overall evidence available on record, has rightly decreed the suit as prayed for and therefore, the judgment and decree passed by the trial Court need not to be interfered with.

12.The first and second contentions put forth on the side of the appellants/defendant[s] are that no oral sale agreement has come into existence between the plaintiff and defendant and the letter dated 11.11.2002 is nothing, but a proposal and the same is not a confirmation letter.

13.For analysing the first and second points raised on the side of the appellants/defendant[s], the Court has looked into the evidence given by D.W.1. The defendant has been

examined as D.W.1. During the course of cross-examination, he candidly admitted to the effect that all the transactions have become emerged only on the basis of an oral sale agreement. Therefore, the defendant has clearly admitted the case of the plaintiff.

14.The consistent plea put forth on the side of the plaintiffs is that in pursuance of oral sale agreement, the letter dated 11.11.2002 has come into existence and the said letter has been marked as Ex.A1. It is seen from the records that Ex.A1 has been written by the defendant. In fact, this Court has perused Ex.A1, wherein, it has been clearly mentioned that the total sale consideration is Rs.15,00,000/- and on the date of its execution, the defendant has received Rs.10,001/-. Further, in Ex.A1, time has also been fixed for execution of a registered sale deed. Therefore, it is very clear that an oral sale agreement has come into existence between the plaintiff and defendant, for selling the suit property in favour of the plaintiff and for the purpose of confirming the same, Ex.A1 has become emerged. Under the said circumstances, the first and second contentions put forth on the side of the appellants/defendant[s] are of no use.

15.The third contention put forth on the side of the appellants/defendant[s] is that the suit property is a joint family property and the defendant is not having absolute right to sell the same in favour of the plaintiff.

16.At this juncture, the Court has to look into paragraph No.3 of the written statement, wherein, it is stated like thus:

"It is true that the suit property belongs to the defendant through the registered Will, dated 09.05.1984, executed by his father in his favour."

A mere reading of the averments made in the written statement would clearly go to show that the suit property is the absolute property of the defendant and he got the same, through a Will executed by his father. Therefore, the third contention has been put forth against the averments made in the written statement and the same cannot be accepted.

17.The fourth contention put forth on the side of the appellants/defendant[s] is that the plaintiff has not shown his readiness and willingness to perform his part of the contract.

18.The letter dated 11.11.2002 has been marked as Ex.A1. In Ex.A1, period has been fixed for execution of a registered sale deed. The consistent case of the plaintiff is that despite of repeated demands, the defendant has not come forward to execute a sale deed in favour of the plaintiff and therefore, a legal notice has been issued. Ex.A2 is a copy of the legal notice dated 13.02.2003 and the same has also been received by the defendant. After receipt of the same, he has

given a false reply notice dated 10.03.2003. Since on the side of the plaintiff, necessary documentary and oral evidence have been let in, it is easily discernible that the plaintiff has always been ready and willing to perform his part of the contract. Therefore, the fourth contention put forth on the side of the appellants/defendant[s] also goes out without merit.

19.The learned counsel appearing for the appellants/defendants has relied upon the following decisions:

- i. In 1969[2] SCC 539 [Ouseph Varghese Vs. Joseph Aley and Others], wherein, the Hon'ble Supreme Court has held that in a suit for specific performance, purely based on oral sale agreement, the entire burden lies upon the plaintiff.
- ii. In [2016]1 SCC 762 [K.Nanjappa[dead] by legal representatives Vs. R.A.Hameed alias Ameersab [dead] by legal representatives and Another], wherein also, the very same view has been expressed by the Hon'ble Supreme Court.
- iii. In [1990]3 SCC 1 [Mayawanti Vs. Kaushalya Devi], wherein, the Hon'ble Supreme Court has held that if there is any oral sale agreement, the burden heavily lies upon the plaintiff.
- iv. In [1997]3 SCC 1 [K.S.Vidyanadam and Others Vs. and Vairavan], wherein, the Hon'ble Supreme Court has held that if there is any unexplained inordinate delay, relief of specific performance cannot be granted.
- v. In [1964]6 SCR 321 [Balmukand Vs. Kamla Wati and Others], wherein, the Hon'ble Supreme Court has held that if a sale agreement has been made in respect of joint family property, unless it is established that the same is for the benefit of joint family, the other members of joint family need not execute sale deed.

20.It has already been discussed in detail that the suit property is the absolute property of the defendant. From the evidence given by the defendant [D.W.1], the Court can very well come to a conclusion that the entire transaction is based upon an oral sale agreement emerged between the plaintiff and defendant. Further, the plaintiff has shown his readiness and willingness to perform his part of the contract. Therefore, viewing from any angle, the contentions put forth on the side of the appellants/ defendant[s] cannot be accepted.

21.The trial Court, after considering the available evidence on record, has rightly decreed the suit. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/defendant[s] and therefore, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with cost. The judgment and decree passed in Original Suit No.30 of 2005, by the Principal District Court, Krishnagiri are confirmed. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1 The Principal District Court,
Krishnagiri.

2 The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.UmaVijayakumar, Advocate Sr.No.76456

+1cc to M/s.V.Raghavachari, Advocate Sr.No.76331

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