

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

Second Appeal No. 570 of 2017

and

C.M.P. No. 14235 of 2017

Ambedkar (died)

1. Revathi
2. Balamurugan ... Appellants/Plaintiff

vs.

Kannaiya Naidu (died)
Santhammal ... Respondent/Defendant

PRAYER : This Second Appeal is filed under Section 100 C.P.C., against the Judgment and decree of the learned Subordinate Judge, Ponneri passed in A.S. No.10 of 2008 dated 24.04.2007, thereby dismissing the appeal suit and confirming the judgment and decree of the learned District Munsif, Ponneri passed in O.S. No. 36 of 1998 dated 18.11.2004.

For Appellant ... Mr. D. Bharatha chakravarthy
for M/s. Sai Bharath and Ilan

J U D G M E N T

This Second Appeal arises out of the Judgment and decree dated 25.02.2013 made in A.S.No.24 of 2009 on the file of Additional District Court, Krishnagiri, confirming the Judgment and Decree dated 05.01.2000 made in O.S.No.206 of 1996 on the file of the Sub Court, Hosur.

2. Brief facts of the case is as follows :-

Originally the appellants' father filed the suit in O.S. No. 36 of 1998 for specific performance, directing the defendant to execute and register the sale deed pertaining to the suit property. Pending suit, the defendant Kannaiya Naidu died and his legal representative 2nd defendant proceeded with the case. According to the appellants, on 06.01.1975, the plaintiff entered into an oral agreement with the defendant, regarding purchase of the suit property for a sale consideration

of Rs.12,000/- and paid an advance of Rs.1016/-. On that date, the possession of the suit property was also delivered to the plaintiff. Subsequently, the plaintiff paid a sum of Rs.2000/- on 30.03.1975 and Rs.5000/- on 24.06.1976. A balance of Rs.4000/- has to be paid as per the agreement. The plaintiff was ready and willing to perform his part of contract but the defendant was evading execution of document under one pretext or other. After about 20 years, on 23.09.1996, the defendant issued notice to the plaintiff calling upon him to pay the arrears of rent, against which the plaintiff sent his reply notice on 07.10.1996. The 2nd defendant filed RCOP before the Rent Control Authorities and the plaintiffs filed the suit for the above said relief. According to the plaintiffs, the defendant obtained the signatures of the plaintiff and has manipulated those papers for creating false lease agreement and other documents against the plaintiffs. Therefore, the plaintiff filed the above suit for specific performance.

3. The 2nd defendant filed the written statement against all the averments made in the plaint. The alleged sale agreement and payment of advance amounts is strongly denied by the 2nd defendant. According to the defendant, the plaintiff is only a tenant from the year 1972. He has been paying a monthly rent of Rs.75/- and was periodically increased to Rs.250/- per month. Subsequently on 01.01.1982, a lease agreement was executed in favour of the defendant. The plaintiff willfully defaulted in payment of rent from 01.08.1995 to 31.08.1996. Therefore, there was an arrears of rent to a tune of Rs.3,250/-, payable by the plaintiff. Despite the demand made by the defendant, the plaintiff did not respond, instead had filed the suit and hence the suit is liable to be dismissed.

4. The following are the recast issues, by the trial court :

- 1) Whether the first defendant entered into an oral agreement for sale of the suit property with the plaintiff on 06.01.1975 ?
- 2) Whether the plaintiff is entitled to specifically enforce the agreement.
- 3) To what relief is the plaintiff entitled.

Before the trial court, the plaintiff examined himself as P.W.1, along with three other independent witnesses and marked Exs.A1 to A31. On the side of the defendants, the 2nd defendant examined herself as D.W.1 and marked documents Exh.B1 to B6. The trial court after considering the oral and documentary evidences, came to a conclusion that the plaintiffs/ appellants have not proved their case that there was an oral sale agreement entered between the parties. On the contrary, it is proved by the defendant/ respondent that there was a tenancy agreement between the appellants and the respondent. Hence, the suit was dismissed. Challenging the said judgment and decree, the

appellants filed an appeal suit in A.S. No. 10 of 2008 before the Sub Court, Ponneri.

5. The first Appellate Court after formulating necessary points for determination, came to a conclusion that there is no independent witnesses to prove the payments made on various dates, as alleged by the appellants/ plaintiff in Ex.A8 to A17 and A19 to A21, which are letters, invitations and various other communications addressed to the appellants/plaintiffs. As per Ex.A4 Bank Pass Book the appellants/ plaintiff wanted to prove that the advance amount has been withdrawn from his bank account. But, both the courts have held that mere withdrawal of cash from the bank account, will not substantiate the case of the appellants/ plaintiff. Therefore, the said contention was rejected by both the courts below. So far as the other exhibits marked by the appellants/ plaintiff, has also been rejected by the courts below. Taking into consideration the aforesaid oral and documentary evidences, the appellate court has held that the appellants/ plaintiff are only tenant in respect of the suit property and the contention of the appellants/ plaintiff that there was an oral sale agreement between the parties has not been proved or established before the courts below. Therefore, the appeal was rejected by the lower Appellate Court. Challenging the said judgment and decree dated 18.11.2004, this Second Appeal is filed by the appellants/ plaintiff.

6. The learned counsel for the appellants/ plaintiff submitted that the appellants have raised the following substantial questions of law, in their appeal :

1. Whether or not the finding of both the courts below that the appellants are not in possession of the suit property under part performance of an oral sale agreement are perverse ?
2. Whether or not the rejection of the oral sale agreement dated 06.01.1975 by both the Courts below is correct ?
3. Whether or not the finding of both the Courts below that the evidence of PW 2 to 4 and Ex.A1 to A4 cannot be looked into for any purpose is correct in law ?

The appellants/ plaintiff have placed all documentary evidences, namely, Ex.A1 to A4 to prove that the appellants/ plaintiff are in possession of the suit property, on the basis of the oral agreement. Therefore, both the courts have not properly appreciated the documents of the appellants/ plaintiff. Hence, the judgment and decree passed by both the courts below are liable to be set aside.

7. On perusal of the facts of this case, it is seen that the appellants/ plaintiff have filed the suit on the basis of the oral sale agreement entered between the plaintiff's father and the 1st defendant Kannaiya Naidu, on 06.01.1975,

towards purchase of the suit property for a sum of Rs.12,000/-. Pursuant to the oral sale agreement, the appellants/ plaintiff had made part payments on various dates, to the defendants/ respondent to perform the contract of oral sale agreement. There is no time fixed for the execution of the sale deed. Pursuant to the sale agreement, the appellants/ plaintiff were given possession of the suit property. It is seen from the findings of the court below that the appellants/ plaintiff have produced some documents before the trial court, to prove that the appellants/ plaintiff are entitled for the relief in the suit. After considering the said documents, both the courts below have come to the said conclusion. There is no dispute with regard to the possession of the appellants/ plaintiff in the suit property. However, the said possession is on the basis of tenant and landlord relationship. Further, it has been held by both the courts that the appellants/ plaintiff have not established by way of any materials, that there is a sale agreement for having purchased the suit property. Therefore, both the courts have given a concurrent finding that since there is no documentary evidences to prove that the appellants/ plaintiff have purchased the suit property. Therefore, both the courts have held that the contention of the appellants/ plaintiff is rejected and the relief prayed for is negatived.

8. In view of the above facts and merits discussed by the lower Appellate Court, this Court finds that no case is made out, to be interfered with the judgment and decree passed by the courts below. Therefore, there is no error or illegality in the judgment passed by the learned Subordinate Judge, Ponneri in A.S. No.10 of 2008 dated 24.04.2007 confirming the judgment and decree of the learned District Munsif, Ponneri in O.S. No. 36 of 1998 dated 18.11.2004. No question of law is involved in the appeal.

9. Therefore, the Second Appeal fails and the same is dismissed. Consequently, the connected Miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

avr

To

1. The Subordinate Judge, Ponneri

2. The District Munsif, Ponneri.

+1cc to M/s. Sai Bharath and Ilan, Advocate in sr.no.67486

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