

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.685 of 2017
and C.M.P.No.17630 of 2017

P.K.Palanisamy ... Appellant/Plaintiff

Versus

1. S.Arumugam
2. P.Manimozhi
3. M.Gandhimathi
4. N.Selvaraj ... Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 16.09.2009 made in A.S.No.66 of 2006 on the file of the I Additional District Judge, Coimbatore in confirming the Judgement and Decree dated 07.10.2005 made in O.S.No.636 of 2004 on the file of the III Additional Subordinate Judge, Coimbatore .

For Appellant : Mr.N.Damodaran

For Respondents 1 to 3: Mr.N.E.A.Dinesh

J U D G M E N T

The plaintiff, who has lost before the Courts below, has filed the above appeal against the judgment and decree in a suit for specific performance.

2. The defendants 1 to 3 and one Arivazhagan executed a sale agreement dated 22.05.2001 as per Ex.A1 in favour of the plaintiff for sale of the suit property. The total sale consideration was fixed at Rs.2,92,000/- and a sum of Rs.50,000/- was paid as an advance on the same day. A further sum of Rs.40,000/- was paid on 09.01.2002 and an endorsement was also made in the sale agreement. As per the sale agreement, six months time was prescribed for concluding the contract. According to the plaintiff, he was always ready and willing to perform his part of contract, but, the defendants were evading the same. Hence, the plaintiff had issued a notice to the defendants on 16.12.2003 and thereafter filed the suit.

3. Denying the facts leading to the cause of auction for the suit, the defendants had filed the written statement contending that there were several notices sent by the defendants as per Exs.B1 and B2 dated 27.06.2002 and 24.10.2002 respectively. Despite notice, the plaintiff was never ready and willing to perform his contract. Hence, the defendant had sold the suit property to the fourth defendant on 15.12.2003. Knowing that the property has been sold, the plaintiff had issued the suit notice subsequent to the sale. Hence, they prayed for dismissal of the suit.

4. Based on the above pleadings and on considering the oral and documentary evidence, the trial Court had dismissed the suit. On appeal by the plaintiff in A.S.No.66 of 2006, the judgment and decree of the trial Court was confirmed by dismissing the appeal. Aggrieved by the same, the above second appeal has been filed by the plaintiff.

5. Heard the learned counsel for the appellant and the learned counsel for respondents 1 to 3 and perused the materials available on record.

6. The Courts below have concurrently found that after Ex.A-2 endorsement, the plaintiff was never ready and willing to pay the balance sale consideration at any point of time in spite of the notices from the defendants under Exs.B1 and B2. Though time was not the essence of the contract for immovable property, the Courts below have held that the plaintiff was never ready and willing to perform his part of contract by paying the balance of the sale consideration. A perusal of Ex.A3-legal notice would indicate that the same was issued by the plaintiff knowing about the sale in favour of the fourth defendant. When the plaintiff is found to be not ready and willing to perform his part of contract, the relief of specific performance, being an equitable relief, cannot be granted especially when the plaintiff has not come to the Court with clean hands. As the plaintiff has not established his readiness and willingness to perform his part of the contract, the Courts below have rightly dismissed the suit. However, the first appellate Court has ordered for refund of the advance amount to the plaintiff, as an alternative relief. Therefore, the plaintiff cannot have any grievance over the same. As the Courts below have concurrently non suited the plaintiff, in the absence of any question of law, much less, substantial question of law arising for consideration in the above said facts, there is no necessity to interfere with the findings rendered by the first appellate Court.

7. Accordingly, the Second appeal is dismissed, confirming the judgment and decree of the first appellate Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

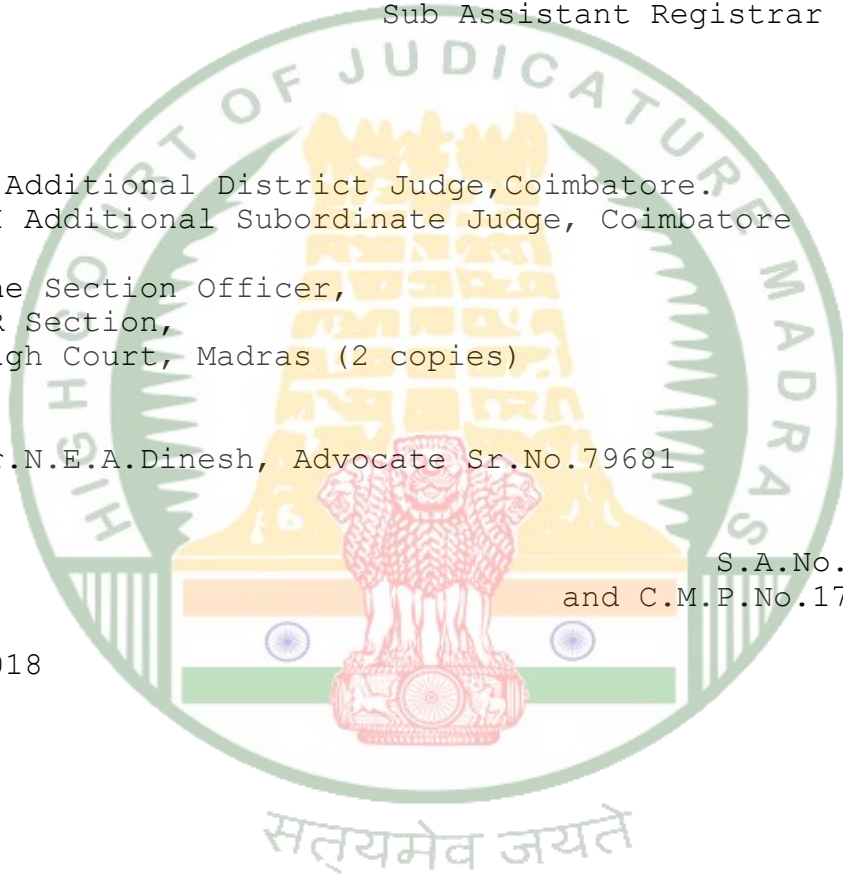
1. The I Additional District Judge, Coimbatore.
2. The III Additional Subordinate Judge, Coimbatore

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VR Section,
High Court, Madras (2 copies)

+1cc to Mr.N.E.A.Dinesh, Advocate Sr.No.79681

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RT (CO)
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