

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.693 of 2017

R.Chinnathambi ... Appellant
..vs..

P.R.Selvam ... Respondent

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree in A.S.No.13 of 2012 dated 18.07.2013 on the file of Learned Subordinate Judge, Tirupattur reversing the judgment and decree made in O.S.No.130 of 1991 dated 27.07.2010 on the file of Learned District Munsif Court, Tirupattur.

For Appellant : Mr.G.Jeremiah

For Respondent : Mr.T.M.Hariharan

JUDGMENT

The defendant is the appellant. The suit was filed by the Plaintiff for specific performance and the same was dismissed by the trial Court and on appeal, the same was reversed. Aggrieved by the same, the above appeal is preferred.

2. The suit properties and other properties belong to Plaintiff, defendant and one perumal under settlement deed dated 15.04.1970. Thereafter, in a partition, the suit property and some other properties were allotted to the defendant and his brother Perumal. In a subsequent partition in the year 1988 between Perumal and defendant, the suit properties were allotted to the defendant who is in possession of the same. Whiles, on 01.08.1989, an agreement was entered into between defendant and the Plaintiff to sell the same @ 400/- per cent and an advance of Rs.1,000/- was received by the defendant. Despite several remainders and the Plaintiff offering the balance of the amount, the defendant was denying the sale. Hence, the Plaintiff filed a suit for specific performance offering to deposit the balance of sale consideration into the Court.

2. The defendant/appellant denied all the averments in the Plaint and denied the execution of sale agreement and contended that the same was a forged one. Based on the documentary and oral evidence, though the trial Court dismissed the suit and on appeal, it was decreed.

3. The question that arises for consideration is that whether the plaintiff is entitled to the relief of specific performance based on the agreement of sale. It is not in dispute that the suit property belong to the defendant. The Plaintiff has produced Ex.A1- Sale Agreement as per which, the defendant had agreed to sell the suit property @ Rs.400/- per cent and the sum of Rs.1,000/- was received as advance. As per the agreement, the sale has to be completed within two years within which time, the defendant has to survey the land and pay the balance of the amount. The defendant had not taken steps for measuring the property and execute the Sale Deed. Hence, as per Ex.A2 notice was issued by the Plaintiff to the defendant. The defendant/appellant had denied the execution of sale in his reply. It is concurrently found that the property belongs to the defendant and he had been enjoying the same, based on the evidence of D.W.1. Therefore, it is found that the suit properties are exclusive properties of the defendant.

4. So far as Ex.A1 is concerned, a burden is on the Plaintiff to prove the execution of the same, as the defendant/appellant had denied the same. The scribe of Ex.A1 was examined as P.W.2. He has subsequently deposed that both the Plaintiff and the defendant were present at the time of writing the agreement and the said agreement was written based on the Patta. P.W.2 has further deposed that he had seen both the Plaintiff and the defendant signing the document. Though the defendant/appellant had denied the signature of Ex.A1, he had not taken any steps to substantiate his case. Admittedly, Ex.A1 - Sale agreement is not registered. As per the agreement, the defendant ought to have taken steps to measure the property with the help of land surveyor and convey the same to the Plaintiff, within a period of two years. But the defendant had not taken any steps as agreed. The Plaintiff has proved that he is ready and willing to perform his part of contract, by paying the balance of sale consideration. The trial Court, based on the fact that the attestors were not examined, dismissed the suit.

5. Admittedly, both the witness to Ex.A1 are no more and they could not be examined. The defendant/appellant also had not objected to the said fact. Hence, Ex.A1 was held to be a valid document. As Ex.A1 is proved and the Plaintiff had established his readiness and willingness to perform his part of the contract, the Appellate Court had rightly decreed the suit.

6. There is no infirmity in the said Judgment and there is no question of law, arising out of the above said facts. Hence, this Second Appeal is dismissed, confirming the Judgment and decree of the Appellate Court, in A.S.No.13 of 2012 dated 18.07.2013. No costs.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Tirupattur.

2.The District Munsif Court,
Tirupattur.

Copy To

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

+1cc to Mr.Hariharan, Advocate SR.No.80663
+1cc to Mr.G.Jermiah, Advocate SR.No.80201

S.A.No.693 of 2017

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