

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.771 of 2017

Balamurugan Rep by his
General Power Agent M.Ganapathi .. Appellant/Appellant/Plaintiff

-Vs-
V.Thirunavukkarasu .. Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 C.P.C to set aside the Judgment and Decree in A.S.No.15 of 2012 dated 08.06.2016 on the file of the Principal District Judge, Thiruvarur confirming the judgment and decree passed in O.S.No.35 of 2011 on the file of the Subordinate Judge, Mannargudi dated 25.01.2012.

For Appellant : Ms.M.Meenatchi

For Respondent : Mr.S.Arivazhagan

O R D E R

The plaintiff, who had lost concurrently before the Courts below, has preferred the above Second Appeal in a suit for specific performance.

2. The suit is laid on the strength of Ex.A2- the Sale Agreement dated 04.06.2004, wherein the suit properties were agreed to be sold for a sum of Rs.52,250/- and an advance of Rs.25,000/- was paid on the date of agreement. The defendant was to execute the sale deed on receipt of the entire sale consideration to be paid within a period of three months. Though the plaintiff has claimed that Rs.25,000/- was subsequently paid on 31.08.2009, the trial Court has found that the same is not proved. One Gunasekaran, who deposed as D.W.2, has specifically stated that the acknowledgment found on Ex.A-2 is not true and that the defendant had not received the sum of Rs.25,000/- as alleged. The lower appellate Court had found that the plaintiff has not gone into the box and only the Power of Attorney was examined on his behalf, who had no personal knowledge about the execution of Ex.A-2. It is also found that P.W.2 has wrongly

deposed the date of agreement. Admittedly, the Power of Attorney was not present at the time of execution of Ex.A-2. As execution of Ex.A2 was not proved beyond doubt, the Courts below had concurrently held that the same is not proved. The relief of specific performance being an equitable one, in the absence of proof of Ex.A2, on the basis of which the suit is filed, the Courts below have dismissed the suit. Learned counsel appearing for the appellant insisted that atleast the alternative relief of refund of advance amount ought to have been decreed. As found earlier, when the agreement itself is not proved and further the payment is also disbelieved by the Courts below, the alternative relief sought for by the appellant, is not possible. Hence, the judgment and decree of the lower Appellate Court is correct, which does not warrant any interference in this Second Appeal and the same is confirmed.

3. Accordingly, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Principal District Judge, Thiruvarur
 2. The Subordinate Judge, Mannargudi
 3. The Section Officer, V.R.Section, High Court, Madras.(2copies)
- + 1 cc to Ms.M.Meenatchi Advocate,SR.86778
+1cc to Mr.S.Arivazhagan, Advocate sr.no.87264

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rsk(co)
nr 06/02/2018

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