

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2017

PRONOUNCED ON : 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.241 of 2014

&

M.P.No.1 of 2014

Murugesan

....Appellant/Plaintiff

Vs.

1.K.Sampoornam

2.M.Chitra

...Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 31.10.2013 made in A.S.No.38 of 2013 and Cross Appeal No.38 of 2013 on the file of the I Additional Subordinate Court, Erode, confirming the Judgment and Decree dated 21.09.2012 made in O.S.No.401 of 2007 on the file of the Principal District Munsif Court, Erode.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.P.Immanuel Prakasam

JUDGMENT

Challenge in this Second Appeal is made by the plaintiff against the Judgment and decree dated 31.10.2013 made in A.S.No.38 of 2013 and Cross Appeal No.38 of 2013 on the file of the I Additional Subordinate Court, Erode, confirming the Judgment and Decree dated 21.09.2012 made in O.S.No.401 of 2007 on the file of the Principal District Munsif Court, Erode.

2.The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal:

(i)Whether the lower appellate court is justified in law in dismissing the suit as barred by limitation when the suit for specific performance came to be filed within three years from the date fixed under the suit agreement being

the last date for performance of the contract between the parties?

(ii) Whether the lower appellate court is justified in law in dismissing the suit by holding that the limitation period commences from the date of the denial by the owner of the property and not from the last date fixed for its performance?

3. The suit has been laid by the plaintiff for specific performance or in the alternative for the refund of the advance amount with interest.

4. The specific performance relief is sought for by the plaintiff on the basis of the Sale Agreement dated 05.03.2003, said to have been executed in respect of the suit property between the plaintiff and one Kaliappan, since deceased. The first defendant is the wife of the deceased Kaliappan. The defendants have resisted the suit laid by the plaintiff on various grounds, principally on the ground that the Sale Agreement dated 05.03.2003 is not a genuine document and no such agreement of sale had been entered into between the plaintiff and the deceased Kaliappan on 05.03.2003 as stated by the plaintiff. In such view of the matter, it is for the plaintiff at the foremost to establish that the sale agreement dated 05.03.2003 is a valid agreement entered into between him and the deceased Kaliappan in respect of the suit property.

5. Other than the sale agreement marked as Ex.A1, no other document has been produced on the side of the plaintiff. It is admitted that Kaliappan had died on 15.03.2004. Inasmuch as the defence has been taken that the sale agreement Ex.A1 is not a valid document, it appears that some steps have been taken by the plaintiff to examine the signature found in the sale agreement through an expert. However, the steps so taken by the plaintiff did not yield any result as the document of a contemporaneous nature containing the signature of Kaliappan as that of Ex.A1 could not be secured. Therefore, the step taken by the plaintiff as regards the above aspect in I.A.No.991 of 2011 is found to be ultimately closed.

6. The plaintiff has examined the attestors to the sale agreement Ex.A1 as PW2 & 3 in support of his case. It is admitted that PW2 & 3 are very close and thick friends of the plaintiff. In fact, PW2 has deposed that he knew the plaintiff for more than 15 years and that PW3 is also his friend. Now according to PW2, the deceased Kaliappan had signed in four stamp papers with reference to the suit sale agreement Ex.A1. However, the position is otherwise. Further, PW2 has also not stated anything about where the stamp papers had been

purchased, who had typed the same etc. That apart, PW2 has also testified that the case facts had been apprised to him only by the plaintiff. It could therefore be seen, as rightly found by the first appellate court, that PW2's evidence is no way helpful to hold that Kaliappan had executed the sale agreement and on the other hand when the evidence of PW2 is found to be contradictory to the nature of the document, Ex.A1 itself, it could be seen that as rightly found by the first appellate court, no safe reliance could be placed on the testimony of PW2. Similarly, the other attester examined as PW3 has also admitted that the case information had been furnished to him only by the plaintiff. He has also deposed that he does not know where the sale agreement had been prepared and according to him the sale agreement was made ready by Kaliappan when he went there and does not know where it had been typed etc. It could therefore be seen that even PW3's evidence is far from satisfactory as he is not able to throw a clear picture as to under what circumstances Ex.A1 had come to be executed between the plaintiff and Kaliappan.

7. That apart, even the plaintiff examined as PW1 has admitted that he has not given the full details as to how the sale agreement was brought about between him and Kaliappan in the plaint and the proof affidavit and he has also expressed his ignorance as to where from the stamp papers had been purchased with reference to the sale agreement etc. Though he would claim that the parent document of the suit properties had been entrusted to him, the same is not forthcoming, it could therefore be seen that the first appellate court has rightly disbelieved the evidence of Pw1 to 3 and thereby held that the sale agreement has not been established to be a true and valid document by the plaintiff. No infirmity is attributed to the above findings of the first appellate court.

8. In addition to that it is found that if really an agreement of sale had been entered into between the plaintiff and the deceased Kaliappan, as rightly found by the courts below, some concrete steps would have been taken by the plaintiff to take the sale deed in respect of the suit property from Kaliappan pursuant to Ex.A1. On the other hand, according to the plaintiff, though he had been approaching Kaliappan with reference to the same as Kaliappan was ill placed, he had been postponing the execution and further, he would also admit that he did not issue any notice calling upon Kaliappan to complete the sale transaction. It could therefore be seen that from the alleged execution of the sale agreement i.e., from 05.03.2003 till the death of Kaliappan i.e., 15.03.2004 no effort has been taken by the plaintiff to complete the sale transaction. It could therefore be seen that the present version of the

plaintiff that it is only Kaliappan, who had been postponing the same on some pretext or the other as such, cannot be believed. Now the deceased Kaliappan is survived by his wife, the first defendant. Even after the death of Kaliappan, no effort has been made by the plaintiff to get the sale deed executed through his wife namely the first defendant. With reference to this aspect also the plaintiff would only state that though he had been approaching the first defendant for the same, the first defendant had been postponing the same on some pretext or the other.

9.Despite the same on seeing the conduct of the first defendant, the plaintiff has not chosen to send any notice. On the other hand, the plaintiff has subsequently, laid the suit on 12.06.2007. Therefore, it could be seen that right from 15.03.2004 to 12.06.2007 no effort seems to have been taken by the plaintiff to complete the sale transaction from the first defendant by paying the balance sale consideration of Rs.10000/-. All the above facts would only go to indicate that inasmuch as no sale agreement as such had been entered into between the plaintiff and the deceased Kaliappan, as put forth by the plaintiff in respect of the suit property, it could be seen that till the date of the filing of the suit, the plaintiff has not moved his little finger to get the sale transaction completed.

10.Now according to the plaintiff, he has paid a sum of Rs.60000/- to Kaliappan as part of the sale price of Rs.70000/-. It could therefore be seen the balance consideration is only Rs.10000/-. For the payment of the said sum of Rs.10000/-, according to the plaintiff, the parties have agreed to complete the sale within 3 years. This also appears to be very unnatural and unacceptable. If really an agreement had been entered into between the plaintiff and the deceased Kaliappan and if 90% of the sale consideration had been parted by the plaintiff on the date of the sale agreement, one would have expected to complete the sale transaction within a short period thereafter. No reason as such has been attributed for stipulating the period of three years for completing the sale transaction, particularly, when the balance sale consideration is only Rs.10000/-. All the above factors would only go to show that inasmuch as the sale agreement, as put forth by the defendants, has been fabricated by the plaintiff and not a true document, it could be seen that the plaintiff is unable to place any acceptable and reliable evidence to sustain his case as regards the proof of the validity of the sale agreement Ex.A1, the readiness and willingness on his part to complete the sale

transaction, the unnatural terms contained in the sale agreement etc. No exception could be taken to the findings and conclusions of the first appellate court in disbelieving the plaintiff's case in its entirety.

11. Inasmuch as the first appellate court has rightly held that the plaintiff has failed to establish the validity of the sale agreement, Ex.A1, it is unnecessary to go into the question whether the suit laid by the plaintiff is hit by the law of limitation. However, considering the said issue, in the light of Article 54 of the Limitation Act, 1963, it is found that when the date is fixed for the performance in the sale agreement Ex.A1, the period of three years would run from the expiry of that date. So viewed, it is seen that the first appellate court has erred in law in dismissing the suit laid by the plaintiff also on the ground of limitation. Accordingly, the substantial questions of law formulated are answered in favour of the plaintiff and against the defendants.

12. When the plaintiff has not established that Ex.A1, Sale Agreement is a true and valid document and that pursuant to the same he had parted a sum of Rs.60000/- to Kaliappan as part of the sale consideration, it could be seen that the question of the plaintiff obtaining the refund of the alleged part of the sale consideration does not arise.

13. Accordingly, the first appellate court has rightly found that the trial court has erred in holding that the plaintiff is entitled to the refund of the advance amount with interest. No valid ground has been projected by the plaintiff to interfere with the above findings of the first appellate court.

14. In support of his contention, the learned counsel for the respondents has relied upon the decision reported in 2010 (6) CTC 95 (S. Gananatha Perumal Vs. S.Valliappan). The principles of law adumbrated in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

15. Even though the substantial questions of law formulated are answered in favour of the plaintiff, nevertheless, as adverted above, the other reasonings and conclusions of the first appellate court for rejecting the plaintiff's case including the refund of the advance amount, are found to be just and convincing as they are based upon the proper and correct appreciation of the evidence on record.

In conclusion, the Second Appeal fails and is dismissed.
No costs. Consequently, miscellaneous petition is closed.

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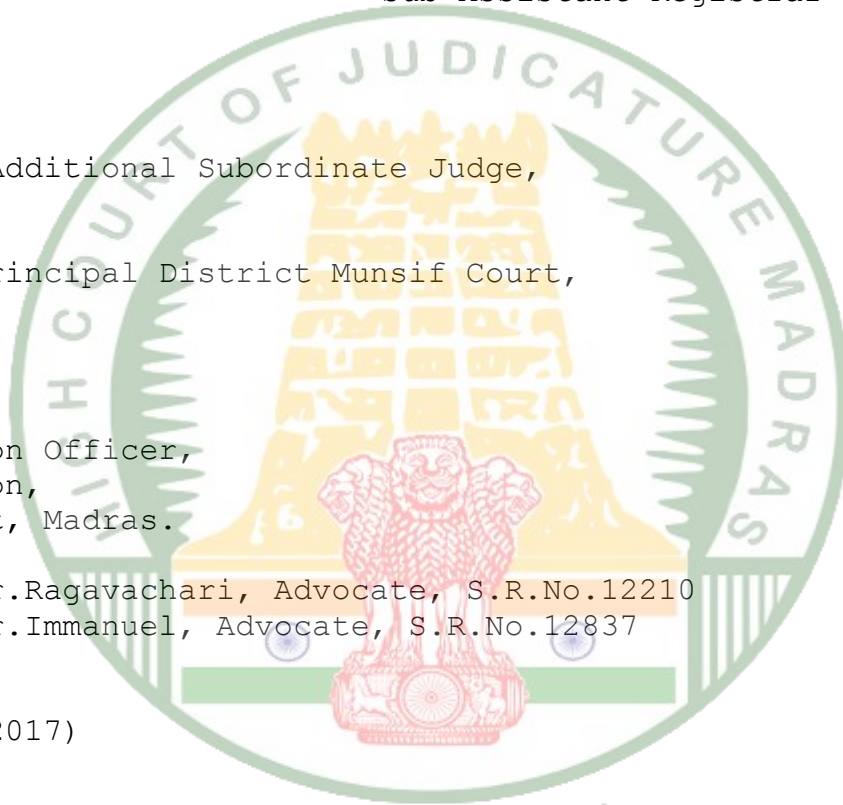
1. The I Additional Subordinate Judge,
Erode
2. The Principal District Munsif Court,
Erode

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+1cc to Mr.Ragavachari, Advocate, S.R.No.12210
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SAI (CO)
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Pre-delivery order in
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