

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.AUTHINATHAN

A.S.No.800 of 2010

1.Ettammal
2.Raja
3.Easwari
4.Sasikala

... Appellants/Lrs of the deceased defendant

Vs

K.Ramasamy ...Respondent/Plaintiff

Appeal preferred against the judgment and decree dated 16.06.2010 made in O.S.No.14 of 2007 on the file of the Additional District Judge, Fast Track Court, Namakkal.

For Appellants ... Mr.T.Dhanyakumar

For Respondent ... Mr.C.Jagadish

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The suit has been laid by the plaintiff for a direction, directing the appellants to pay a sum of Rs.15,90,133/- with cost and future interest at the rate of 24% per annum with consequential creation of statutory charge over the suit property.

2.Under Ex.A1 dated 14.9.1995, an agreement has been entered into between the plaintiff and the original defendant (since deceased). The appellants herein are the legal representatives of the deceased defendant, who executed Ex.A1. As per Ex.A1, the plaintiff has paid a sum of Rs.10 lakhs on two different dates. This amount has been received and acknowledged by the deceased defendant, which factum is not in dispute. Thereafter, there was exchange of notices between the plaintiff and the original defendant under Exs.A2 and A3. A reply notice was given by the plaintiff under Ex.A4, which was also once again replied by the

original defendant under Ex.A6.

3.The plaintiff has laid the suit on the premise that the deceased defendant did not comply with his part of the agreement with reference to the pathway in Survey No.120/1 meant to be used for the land, which is the subject matter of Ex.A1 in Survey No.120/2. It is the contention of the defendants that though there are co-owners in Survey No.120/1, they are ready and willing to execute the agreement. The exchange of legal notices would show that admittedly, there are other co-owners in Survey No.120/1 by names Thangavel, Etiappa Gounder and Manickam. Though P.W.1 has stated that the property situated in Survey No.120/1 has been purchased by the defendants from the co-owners, as found by the trial Court, there is no proof in support of the said statement. Before the Court below, the following issues have been framed:

1.Whether Ex.A1 is with respect to the extent of 2.76 acres approximately?

2.Is the plaintiff ready and willing to have the sale deed executed in his favour?

3.Whether the original defendant is the absolute owner of Survey No.120/1 and thus agreed to create a pathway therein leaving the Survey No.120/2?

4.Whether the original defendant has got right to give pathway?

5.Whether the plaintiff, while not complying with the terms of Ex.A1, is attempting to take the advance amount back?

6.Whether in view of the failure of the plaintiff in executing the sale deed as per ex.a1, the defendant has lost the amount of rs.20 lakhs?

7.Whether the plaintiff is entitled for the relief sought for?

8.If not, what other relief the plaintiff is entitled to?

4.Before the trial Court, three witnesses have been examined on behalf of the plaintiff as P.Ws.1 to 3, two witnesses have been examined as D.Ws.1 and 2 on behalf of the defendants. While 8 documents viz., Exs.A1 to A8 have been marked on behalf of the plaintiff and Exs.B1 to B6 have been marked on behalf of the defendants. The trial Court, while answering all the issues, made substantial reliance upon the evidence of D.W.1. D.W.1 has

admitted Ex.A1, in which, there was a mention about the pathway in Survey No.120/1 leading to Survey No.120/2. He has also accepted that there are co-owners in Survey No.120/1 and therefore, the original defendant is entitled for 1/4 share. However, there is no evidence to back the contention that the shares of the co-owners have been purchased. Even in Ex.A3, it has been accepted by the original defendant about the right of the co-owners, though it was agreed to execute sale deed as per Ex.A1. It is also the evidence of P.W.1 that the sum of Rs.10 lakhs received was used for discharging the family loans.

5.From the above, the trial Court has found that in view of the admission made on behalf of the appellants that Survey No.120/1 belongs to three other persons and the original defendant was entitled only for $\frac{1}{4}$ share, the submission made about the readiness and willingness to execute the sale deed can only be accepted in the teeth of the specific covenants under Ex.A1. Aggrieved against the order of the trial Court, the defendants are before this Court with this appeal.

6.The point for consideration in this appeal is as to whether the appellants are entitled to succeed in the appeal or not?

7.Learned counsel appearing for the appellants submits that as the defendants are ready and willing, the trial Court ought not to have decreed the suit as prayed for. Incidentally, it is submitted that the interest computed at 12% is very high.

7.Learned counsel appearing for the respondent submits that in view of the admissions made coupled with the fact that there is no dispute about the execution of Ex.A1, no interference is required.

8.Execution of Ex.A1 along with its contents is not in dispute. As per Ex.A1, it is agreed between the parties that the pathway to the lands situated in Survey No.120/2 through Survey No.120/1 has to be provided by the original defendant. Thus the appellants cannot be permitted to wriggle out of the covenants made under Ex.A1 executed by the deceased original defendant. The question is not existence of the pathway but to whom the property in Survey No.120/1 belongs to. Even as per the evidence of D.W.1, his father is entitled to only $\frac{1}{4}$ share. When it is his case that there are three other persons, who are the co-owners and from them the defendants have purchased the property, it is for them to establish the same before the Court. As found by the trial Court, there is absolutely no iota of evidence produced to prove that the shares of the co-owners have been purchased with respect to the property situated in Survey No.120/1. As the acceptance of Rs.10 lakhs is admitted coupled with the fact that they have been used for the benefit of the family, we do not

find any error in the judgment and decree rendered by the Courts below. However, we find some force in the submission made by the learned counsel for the appellants with respect to the interest of 12% awarded by the trial Court on the sum of Rs.7 lakhs and Rs.3 lakhs respectively between 14.09.1995 and 13.10.1997 and from 30.10.1995 to 13.10.1997 as the case may be. Thus interest at the rate of 12% per annum stands modified to 9% per annum. In all other respects, the judgment and decree of the trial Court stands confirmed.

9.With the above modification, the appeal is partly allowed.
No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1.The Additional District Judge,
Fast Track Court, Namakkal.

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

+1cc to Mr.C.Jagadish, Advocate sr.6804

+1cc to Mr.T.Dhanyakumar, Advocate sr.6346

A.S.No.800 of 2010

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