

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.822 of 2010

and

M.P.Nos.1 of 2010 & 1 of 2011

A.K.Dhanalakshmi

... Appellant/Plaintiff

Versus

S. Kousalya

... Respondent/Defendant

Prayer: This Appeal Suit has been filed under Section 96 of the Code of Civil Procedure and under Order 41-A Rules 1 and 2 of the Civil Procedure Code to set aside the Judgment and Decree dated 19.02.2010 in O.S.No.117 of 2008 on the file of the Learned Additional District Judge and Fast Track Court No.IV, Coimbatore at Tirupur.

For Appellant : Mr.S.Dhayaleswaran.

For Respondent : Mr.V.Nicholas.

JUDGMENT

This appeal is filed as against the dismissal of the suit filed by the appellant for specific performance.

2. For the sake of convenience, the parties are arrayed as per the ranking before the trial court.

3. The brief facts of the appeal is as follows.

a. The defendant has agreed to sell the property in favour of the appellant for Rs.7,00,000/-. He had executed an agreement dated 11.07.2007 and received a total sum of Rs.4,00,000/- as advance. The plaintiff was always ready and willing to pay the remaining balance consideration and the defendant is evading to perform his part of the contract, hence the suit.

b.The defendant, denying the agreement for sale, stated that the agreement is a fabricated one. The defendant has mortgaged the property for a sum of Rs.80,000/- and redeemed the same on 19.05.2004. At the time of advancing the loan, several blank signatures were obtained and therefore, it is stated that the

agreement is fabricated. Hence, prayed for dismissal of the suit.

4. On the basis of the above pleadings, the trial Court has framed the following issues :-

i) Whether the suit agreement for sale was executed by the defendant and whether she received an advance of Rs.3,20,000/- on 11.07.2007?

ii) Whether the plaintiff is entitled to the relief of specific performance of agreement for sale on payment of balance consideration of Rs.3,00,000/-?

iii) To what relief is the plaintiff entitled?

5. On the side of the plaintiff, three witnesses were examined namely PW1 to PW3 and Exs.A1 to A10 were marked. On the side of the defendant, DW1 to DW3 were examined and Exs.B1 and B2 were marked. On the basis of the materials and evidence available, the trial Court dismissed the suit for specific performance and also declined to grant an alternate relief. As against the judgment and decree passed by the trial court, the present appeal is filed

6. During arguments, the learned learned counsel appearing for both sides fairly conceded that there was a money transaction and now the respondent has agreed to receive a sum of Rs.3,00,000/- in full quit and the appellant is also prepared to pay the same, however, prays some time for making the payment.

7. In this regard, the appellant is also present before this Court. A memo has been filed, today signed by both the learned counsel for payment of Rs.3,00,000/- said to have been received by the appellant. Since the parties themselves have agreed and reached an amicable settlement and confines only to return of advance amount, this Court, taking into consideration of the settlement reached by the parties, is now inclined to grant a decree for a sum of Rs.3,00,000/- in favour of the plaintiff as against the appellant. The respondent shall pay the sum of Rs.3,00,000/- without any interest in full quit to the appellant herein i.e., the plaintiff in the original suit. The time for payment shall be three months from today.

8. With the above observation this appeal is disposed of and the decree shall be drawn for a sum of Rs.3,00,000/- alone. The same shall be paid within three months from the date of today, failing which Rs.3,00,000/- shall carry a simple Interest of 6%

per annum after three months till the date of realisation. No costs. Consequently, connected Miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

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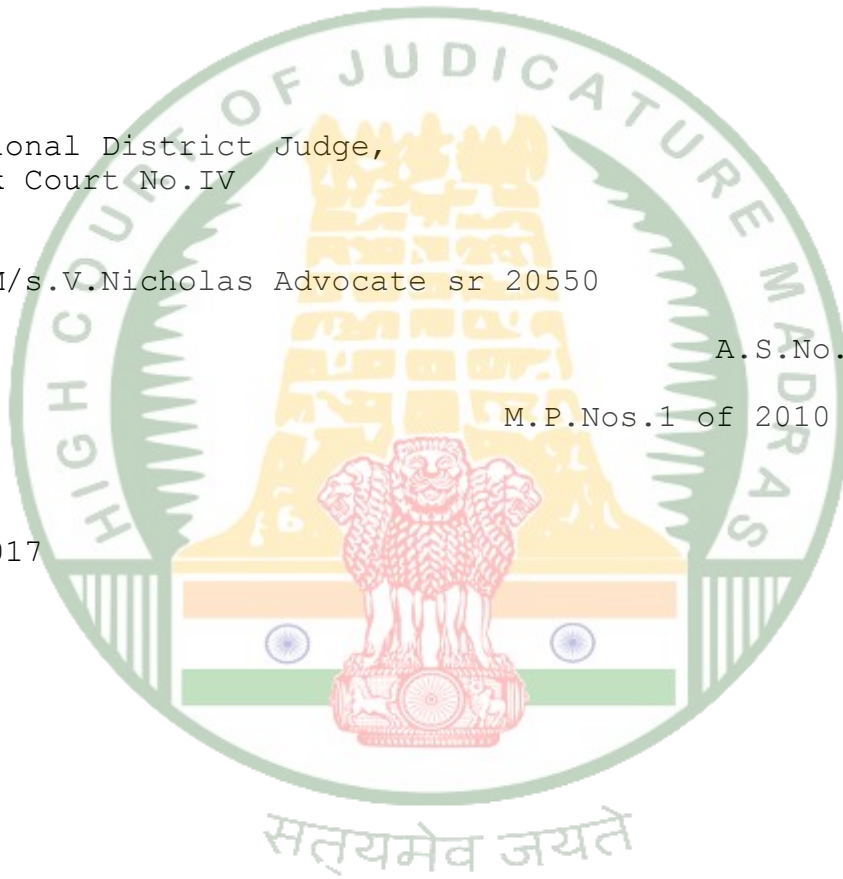
To
The Additional District Judge,
Fast Track Court No.IV
Tiruppur

+1 cc to M/s.V.Nicholas Advocate sr 20550

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