

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

S.A.No.932 of 2015

and M.P.No.1 of 2015

and C.M.P.No.67 of 2017

K.Raju

.. Appellant/Appellant/Plaintiff

Vs.

1.K.Vasanthavathi

2.V.Pushpa

3.R.Renuka

4.R.Ganga Rathinam

5.G.Jeyanthi

.. Respondents/Respondents/  
Defendants 3-7

Second Appeal is filed under Section 100 C.P.C., against the judgment and decree of the VI Additional City Civil Court, Chennai dated 21.11.2014 in A.S.No.353 of 2011 confirming the judgment and decree of the XII Assistant Judge, City Civil Court, Chennai dated 22.12.2010 in O.S.No.4530 of 2004.

For Appellants : Mr.P.Jagadeesan  
For respondents : no appearance

J U D G M E N T

The unsuccessful plaintiff in the suit for specific performance is the appellant, seeking to reverse the findings rendered by the Courts below has filed the above second appeal.

2.At the time of admission on 14.10.2015, the following substantial questions of law have been framed.

a)Whether the Lower Courts right in holding that the suit is barred by limitation?

b)Whether the Lower Courts right in refusing to grant the relief of specific performance of the suit agreement Ex.B1 merely because the market value of the suit property is more than the sale consideration mentioned in Ex.B1?

c)Whether or not the plaintiff proved the due execution of Ex.B1 the suit sale agreement in the manner known to law?

Thereafter, the appellant filed an application in C.M.P.No.67 of 2017 seeking to raise the following additional substantial questions of law:

a) Whether or not the appellant has proved that he was always ready and willing to prove his part of contract?

b) Whether or not the findings of the Lower Court that the appellant is not ready and willing to perform his contract are erroneous, based on mere presumptions and amounts to perverse in law?

3.The suit property, even according to the plaintiff, certainly belongs to the respondents. It forms part of the 'A' Schedule property with a specific extent of 4656 sq.ft. The suit property was purchased by the appellant from the Power Holder one Santhosham, who got the Sale Deed executed under Ex.A1 dated 01.04.1996. Based upon the aforesaid Power Deed, Ex.B1 Agreement for Sale has been executed on 09.06.1996.

4.A perusal of Ex.B1 Agreement of Sale would show that only a small portion of the Sale Consideration was paid. However, it was agreed between the Power Holder and the plaintiff that a further sum of Rs.50,000/- will be paid to him as and when he requires. Remaining amount will have to be paid after the pending Civil Suit is disposed of favourably. The plaintiff is stated to have paid some more amounts - Rs.17,500/-, Rs.15,000/-, Rs.19,000/- and Rs.16,000/- on various dates and subsequently, a further sum of Rs.31,000/-. Thereafter, the suit has been laid in the year 2003 seeking for the relief of specific performance.

5.The Courts below have declined to exercise discretion in favour of the plaintiff on the ground that the valuation as mentioned in the Agreement for Sale even on that day appears to be very low. The Power Agent has entered into an Agreement against the interest of the land owners. No amount has been paid in favour of the owners. The defendants, by Ex.A13 notice dated 24.10.2000 cancelled the Power Deed and thereafter, the Power of Attorney holder himself died in the year 2001. Thus, both on the ground of limitation as well as non-compliance of Section 16 of the Specific Relief Act, the suit was dismissed.

6.Mr.P.Jagadeesan, learned counsel appearing for the appellant submits that in view of of the subsequent amounts paid, time limit has to be reckoned from receipt. The suit initiated already against the alleged encroacher was still pending at the time of filing of the present suit. The finding

rendered by the Courts below based upon which the suit was rejected cannot be sustained in the eye of law. It is further submitted that the additional substantial questions of law raised may be considered and in any case, the prayer for alternative relief shall be granted.

7.This Court is not inclined to accept the submission made. A perusal of Ex.B1 clearly shows that it is totally one sided. Apart from the fact that the Sale Consideration mentioned is extremely low, as found by the Lower Appellate Court, the said document speaks about the payment of Rs.50,000/- as and when Power of Attorney wants. Subsequently, it speaks about the payment of remaining amount after the disposal of the pending suit. Now, even according to the plaintiff, he has paid more amount than Rs.50,000/- and he has filed the present suit during the pendency of the other one. The finding of the Courts below is that the plaintiff is aware of Ex.A13 notice dated 24.10.2000, by which the defendants have cancelled the Power Deed.

8.For the said finding, reliance has been placed on the caveat filed by the plaintiff. The matter did not rest there. The Power Holder died in the year 2001, therefore, the claim made in the plaint by the plaintiff that he has been asking the defendants to execute the Sale Deed cannot be true as there is absolutely no material to hold that he was ready and willing and that he has been contacting the defendants to execute the Sale Deed. Even there is no material to hold that the plaintiff was ready and willing to perform his part of the contract. The plaintiff has also not issued any legal notice before approaching the Court, which factum was also considered while declining the relief sought for. A factual finding has been rendered on the alleged execution of the Agreement of Sale which cannot be called as perverse. Hence, the prayer for alternative relief also cannot be granted.

9.In these circumstances, this Court does not find any substantial question of law warranting interference. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The VI Additional Judge,  
City Civil Court,  
Chennai.

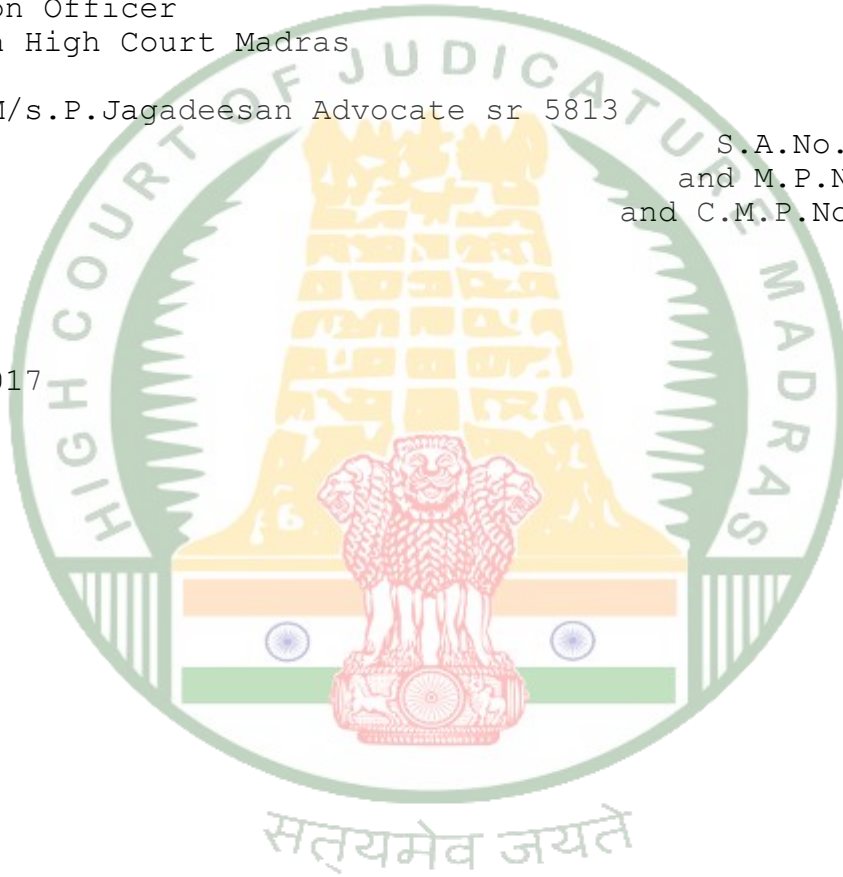
2.The XII Assistant Judge,  
City Civil Court,  
Chennai .

copy to  
The Section Officer  
VR Section High Court Madras

+1 cc to M/s.P.Jagadeesan Advocate sr 5813

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