

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.860 of 2011

E. Habibur Rahman

.. Appellant/Appellant/Defendant

Vs

T.Murugan

.. Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 25.11.2009 passed in A.S.No.39 of 2007 on the file of the Principal District Judge, Puducherry, against the judgment and decree dated 07.12.2006 made in O.S.No.449 of 1999 on the file of the Principal Sub Judge, Puducherry.

For Appellant

.. Mrs.G.Sumithra

For Respondent

.. M/s.R.Gandhi,
Senior Counsel
for Mr.R.G.Narendhiran

J U D G M E N T

The unsuccessful defendant before both the Courts below, is the appellant herein. The suit in O.S.No.449 of 1999 was filed by the respondent herein for specific performance seeking a direction to the defendant to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration of Rs.90,000/-.

2. According to the appellant/defendant, he offered to sell the schedule mentioned property belonging to him in favour of the respondent/plaintiff and the plaintiff also accepted to purchase the said land and accordingly, an agreement was entered into between the appellant/defendant and the respondent/plaintiff on 17.01.1999, fixing the sale consideration as Rs.4,90,000/-. It is alleged that the appellant/defendant is said to have received a sum of Rs.4,00,000/- as part of sale consideration and agreed to execute the Sale Deed within four months from the date of the agreement after receiving the balance sale consideration of

Rs.90,000/- . According to the respondent/plaintiff, though he was ready and willing to pay the balance sale consideration, the appellant/defendant did not come forward to execute the Sale Deed in favour of the respondent/plaintiff, thereby trying to evade the transaction.

3. Hence, the respondent/plaintiff issued a legal notice to the appellant/defendant calling upon him to execute the Sale Deed. Since the appellant/defendant failed to come forward to execute the Sale Deed, the respondent/plaintiff was constrained to file the Suit for specific performance in O.S.No.449 of 1999 before the Principal Sub Judge, Pondicherry, contending that even though he was ready and willing to pay the balance sale consideration of Rs.90,000/-, the appellant/defendant was not willing to perform his part of the contract, thereby committed breach of the sale agreement.

4. The appellant/defendant took a stand that the claim of the respondent/plaintiff for specific performance is not maintainable, since the value of the suit property is worth about Rs.10 lakhs to Rs.12 lakhs. It is his further contention that the respondent/plaintiff's elder brother viz. T.Kaliyaperumal and the respondent/plaintiff were jointly running an Oil Mill and since the said Kaliyaperumal is known to him for the past 25 years, the defendant borrowed a sum of Rs.4,00,000/- from the said Kaliyaperumal in several instalments between June 1994 and December 1996 for stabilizing his business and he had paid interest at the rate of Rs.2,500/- per month for Rs.1,00,000/- and that due to downfall in business, he was unable to pay the interest. Therefore, it is the allegation of the appellant/defendant that the said Kaliyaperumal obtained his signature in blank stamp papers from him as security for repayment of the loan and the signed blank papers have been used by the respondent/plaintiff to take over the suit property.

5. Before the Trial Court, the plaintiff was examined as P.W.1 and Exs.A1 to A6 were marked on his behalf. On the side of the defendant, the defendant was examined as D.W.1 and one Mansur Husain was examined as D.W.2, but no documents were marked.

6. The Trial Court, on a consideration of the oral and documentary evidence, by judgment dated 07.12.2006, decreed the suit in favour of the plaintiff holding that he is entitled to the relief of Specific Performance of contract and directed the defendant to execute the Sale Deed within two months from the date of the judgment after receiving the balance sale consideration from the plaintiff.

7. Challenging the said judgment, the defendant filed A.S.No.39 of 2007 before the Principal District Judge, Puducherry and the First Appellate Court, after going through the entire pleadings and material evidence, confirmed the judgment and decree of the Trial Court, by a judgment dated 25.11.2009.

8. Having lost before both the Courts below, the defendant is before this Court by way of the present Second Appeal. This Court, while admitting the Second Appeal on 15.07.2011, framed the following substantial question of law in this Second Appeal:

''Whether the Courts below are right in holding that the agreement of sale was proved in the manner known to law?

9. Heard the learned counsel for the appellant/defendant and the learned Senior Counsel appearing for the respondent/plaintiff and perused the materials available on record.

10. It is the contention of the learned counsel for the appellant/defendant that the Courts below erred in holding that non-examination of either the attestors or the scribe of Ex.A1 would not throw seeds of suspicion regarding the genuineness of the said document and that they further erred in not drawing adverse inference against the plaintiff for non-examination of the attestors to Ex.A-1. Learned counsel for the appellant/defendant requested this Court to go through the original Ex.A1 and independently come to a conclusion as to whether it is genuine or not.

11. While so, learned Senior Counsel appearing for the respondent/plaintiff submitted that the respondent/plaintiff is always ready and willing to perform his part of the contract and that the Trial Court and the First Appellate Court have rightly held in favour of the plaintiff.

12. Though it is not mandatory to look into the factual aspects of the document, as the same has been considered both by the Trial Court as well as the First Appellate Court, for the satisfaction of not only the appellant herein, it cannot be said that the document has been created for the purpose of the alleged loan transaction. Even though the appellant/defendant has taken a stand that blank stamp papers have been handed over to the respondent/plaintiff with his signatures, the Courts below by well considered judgments, have come to the conclusion that the sale agreement has been duly entered into between the appellant/defendant and the respondent/plaintiff.

13. Even though the factual aspects have been drawn to the attention of this Court by the appellant herein, Section 100 C.P.C. is very clear that unless and otherwise a substantial question of law is involved, this Court cannot interfere with the factual matrix of the matter. The concurrent findings of the Courts below do not warrant any interference by this Court under Section 100 C.P.C. Hence, the judgment and decree of the Trial Court as well as the First Appellate are liable to be confirmed and they are accordingly confirmed.

14. Both the Courts below have held that the Agreement of Sale Deed has been proved, as the plaintiff has established the readiness and willingness to perform his part of the contract. Accordingly, the substantial question of law is answered in favour of the plaintiff.

In fine, the Second Appeal stands dismissed, confirming the judgment and decree of both the Courts below. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To :

1. The Principal District Judge,
Pondicherry.

2. The Principal Sub Judge,
Pondicherry.

+1cc to Mr.R.G. Narendhiran, Advocate, S.R.No.16394

+1cc to Mr.M. Sudhakar, Advocate, S.R.No.16414

VSN(CO)

EU 13.4.17

S.A.No.860 of 2011