

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2017

PRONOUNCED ON : 05.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.97 of 2011

and

M.P.Nos. 1 & 2 of 2011

1.Chitra Bhakthavatsalam
2.Bhakthavatsalam (deceased)
3.Prabu
4.Yogesh

..

Appellants

Vs.

Sithi Fareetha

..

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.04.2010 passed by the Additional District Judge, II Fast Track Court at Chennai dismissing A.S.No.604 of 2008, confirming the judgment and decree order dated 16.07.2008 passed by the V Assistant City Civil Court at Chennai allowing the suit filed by the respondent in O.S.No.6598 of 2005 and to set aside the same.

For Appellants : Mr.R.Mohan

For Respondent : Mr.A.N.F.Mohammed Iqbal

JUDGMENT

Challenge in this second appeal is made by the defendants against the judgment and decree dated 30.04.2010 passed in A.S.No.604 of 2008 on the file of the Additional District Judge, II Fast Track Court, Chennai, confirming the judgment and decree dated 16.07.2008 passed in O.S.No.6598 of 2005 on the file of the V Assistant City Civil Court, Chennai.

2. The suit has been laid by the plaintiff for declaration and Mandatory injunction.

3. Pursuant to the agreement of sale entered into between the plaintiff and the first defendant in respect of the suit property on 19.10.2002 and also, pursuant to the power of attorney deed executed by the plaintiff in favour of the second defendant, the husband of the first defendant, on 18.10.2002, which had been registered as document No. 1243/2002 on the file of the Sub-Registrar of assurance, Anna Nagar, alleging that the defendants have not come forward to complete the sale transaction by performing their part of the contract, the plaintiff has laid the suit seeking for declaration that

the agreement of sale dated 19.10.2002 expiring on 20.03.2003 is null and void and not binding on the plaintiff and for a mandatory injunction, directing the first defendant to return the title deeds of the suit property registered as document No.1202 of 1993 dated 21.01.1993 on the file of the Sub-Registrar of Assurance, Ambattur to the plaintiff.

4. Inasmuch as the suit property is situated at Mogappair Village, stating that the defendants are carrying on business within the local limit of the jurisdiction of the City Civil Court, according to the plaintiff, inasmuch as the reliefs sought for could be obtained through the personal obedience of the defendants, invoking the proviso to Section 16 of the Code of Civil Procedure, the suit had been laid by the plaintiff in the City Civil Court, Chennai.

5. The defendants, on entering appearance, inter alia, have resisted the suit instituted by the plaintiff contending that the City Civil Court, Chennai has no jurisdiction to entertain the suit, inasmuch as the suit property is situated at Mogappair Village, Ambattur Taluk, Thiruvallur District and further, stating that the first defendant is also not residing within the territorial jurisdiction of the City Civil Court,

Chennai. According to the defendants, the City Civil Court, Chennai, has no territorial jurisdiction to try the suit and therefore, according to the defendants, the plaintiff is not entitled to invoke the proviso to Section 16 of the Civil Procedure Code for laying the suit in the City Civil Court, Chennai.

6. After the evidence had been adduced by the respective parties, on an appreciation of the same, both the Courts have held that the City Civil Court has jurisdiction to try the suit laid by the plaintiff as per the proviso to Section 16 of the Civil Procedure Code and further, held that the plaintiff is entitled to obtain the reliefs sought for in the suit and accordingly, decreed the suit in favour of the plaintiff. Aggrieved over the same, the defendants have preferred this second appeal.

7. In this second appeal, the only point that has been canvassed by the counsel for the defendants is that the City Civil Court, Chennai has no jurisdiction to try the suit as admittedly the suit property is situated at Mogappair Village, Ambattur Taluk, Thiruvallur District and also the defendants are not residing within the territorial jurisdiction of the City Civil Court, Chennai. As adverted to earlier, the above

defence put forth by the defendants has been negated by the Courts below.

8. The proviso to Section 16 of the Civil Procedure Code reads as follows:

"provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court, within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

9. A perusal of the same would go to show where the reliefs sought for by the plaintiff could be entirely obtained by the personal obedience of the defendant, the plaintiff would be entitled to institute the suit within the local limits of the jurisdiction of the court where the property is situated or in the Court, within the local limits of whose

jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

10. As seen above, the reliefs sought for by the plaintiff in the present case could be wholly obtained by the personal obedience of the defendants as the plaintiff has sought only the declaration that the agreement of sale deed dated 19.10.2002 is null and void and not binding on the plaintiff and for the mandatory injunction, directing the first defendant to return the title deeds of the suit property.

11. In the plaint, the plaintiff has averred that the defendants are carrying on business at Door No.AD-3, 2nd Avenue, Anna Nagar, Chennai - 40. The same has not been specifically controverted by the defendants in the written statement. As rightly found by the courts below in the sale agreement, the copy of which has been marked as Ex.A6, there is no specific reference as to where the said agreement had been executed between the parties. However, inasmuch as the defendants have not controverted the case of the plaintiff that the defendants are carrying on business at Anna Nagar, which falls within the territorial jurisdiction of the City Civil Court, Chennai, it could be seen that considering the reliefs sought for by the plaintiff in the suit

which could be entirely obtained by the personal obedience of the defendants, the courts below have rightly found that the City Civil Court has jurisdiction to try the suit, in view of the proviso appended to Section 16 of the Civil Procedure Code.

12. The findings of the Courts below that the City Civil Court has jurisdiction to entertain the suit laid by the plaintiff as per the proviso appended to Section 16 of the Civil Procedure Code is not shown to be erroneous in law and in such view of the matter, it could be seen that the above point put forth by the defendants' counsel in the second appeal for invoking the jurisdiction of the High Court under Section 100 of the Civil Procedure Code cannot be sustained.

At the end, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

05.01.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The Additional District Judge,
II Fast Track Court,
Chennai.
2. The V Assistant City Civil Court,
Chennai.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.97 of 2011
and
M.P.Nos. 1 & 2 of 2011

05.01.2017