

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.155 of 2016

and

C.M.P.No.3201 of 2016

G.Shekar ... Appellant/Respondent/Plaintiff

Vs

Mani ... Respondent/Appellant/Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 18.11.2015 passed in A.S.No.17 of 2014 on the file of the Subordinate Judge, Hosur reversing the judgment and decree dated 30.06.2014 made in O.S.No.594 of 2004 on the file of the District Musif, Hosur.

For Appellant ... Mr.V.Raghavachari

For Respondent .. Mr.R.Jayaprakash

JUDGMENT

This second appeal is preferred against the judgment and decree dated 18.11.2015 made in A.S.No.17 of 2014 on the file of the Subordinate Judge, Hosur.

2. The plaintiff is the appellant in whose favour the following substantial questions of law seeking to reverse the judgment and decree of the lower appellate Court in a suit filed for specific performance and alternative relief to return the amount with interest.

a) Whether a party to proceedings can take inconsistent stand to the pleadings?

b) Whether the lower appellate Court can refuse to exercise its discretion contrary to sections 16 and 20 of the Specific Relief Act?

3. The suit has been laid based upon Ex.A.1, which is the agreement stated to have been entered into between the parties for a total consideration of Rs.55,000/-. As per the said agreement, a sum of Rs.50,000/- has been paid as an advance and the remaining amount of Rs.5000/- has to be paid in six years. The lower appellate Court placing reliance upon the evidence of P.W.1 and P.W.2, reversed the judgment and decree of the trial Court. Hence the present appeal has been filed.

6. The learned counsel for the appellant submits that Ex.A.1 being a registered document, the suit ought to have been decreed as prayed for. The lower appellate has reversed the judgment and decree of the trial Court on a plea which has not been raised by the defendant in the written statement.

7. The learned counsel appearing for the respondent submits that in view of the evidence of P.W.1 and 2, the suit was rightly dismissed by the lower appellate Court. The question of alternative relief need not be considered and the plaintiff has not made out a case for it.

8. Coming to the substantial questions of law raised at the time of admission, the lower appellate Court has placed reliance on the evidence of P.Ws.1 and 2 and held that Ex.A.1 is only a money transaction and nothing else. Out of the total consideration of Rs.55,000/-, Rs.50,000/- has been paid. Even P.W.1 says that on the date of Ex.A.1, a part of the amount has been paid and thereafter remaining was paid. Both these witness have explained that the nature of transaction being one of monetary. Ex.A.1 speaks of payment of Rs.50,000/- on the date of its execution and the remaining amount will have to be paid in 6 six years. Thus on the face of it, Ex.A.1 appears to be totally improbable. In such view of the matter, this Court is of the view that the appellant being the plaintiff has failed to prove his case. As a defendant, it is open to a party to take different pleas. Hence, this Court does not find any substantial question of law.

9. Accordingly, this appeal stands dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Hosur.

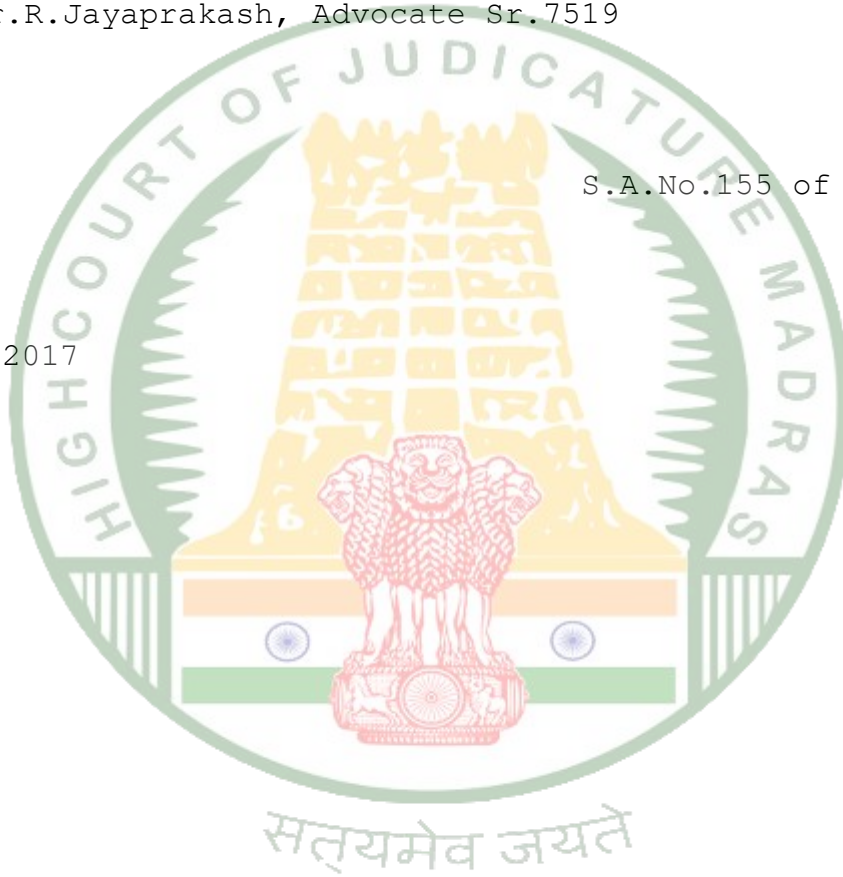
2.The District Munsif
Hosur.

+lcc to Mr.V.Raghavachari, Advocate Sr.7249

+lcc to Mr.R.Jayaprakash, Advocate Sr.7519

S.A.No.155 of 2016

rsy[col]
srg 15/03/2017



WEB COPY