

IN THE HIGH COURT OF JUDICATURE AT MADRAS

09.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

S.A.No.158 of 2016

and

CMP No.3262 of 2016

J.Selvaraj

.. Appellant/Defendant
Versus

S.Uma

.. Respondent/Plaintiff

Prayer: Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 19.01.2016 and made in A.S.No.1 of 2015 on the file of the Principal District Judge, Tiruvarur confirming the judgment and decree dated 25.11.2014 and made in O.S.No.61 of 2012 on the file of the Subordinate Court, Tiruvarur.

For Appellant : Mr.B.Ramamoorthy
For Respondent : Mr.S.Sounthar

JUDGMENT

The defendant, who suffered a decree before the Courts below, is the appellant herein. At the time of admission, the following substantial question of law has been framed :

"Whether an agreement of sale in which proposed vendor alone signed and proposed purchaser failed to sign even if it was attested by witnesses could be maintained in law since there was no consensus-ad-item?"

2. An agreement of sale has been entered under Ex.A1 dated 13.05.1997, which stipulates a period of six months for execution of the sale deed. The plaintiff has paid a sale consideration of Rs.3,30,000/-. After the sale consideration, the defendant has received a sum of Rs.80,000/- on the date of sale agreement i.e. 26.09.2010 and Rs.51,000/- on 04.11.2010 and a further sum of Rs.1,50,000/- on 03.07.2011. As the defendant has not come forward to perform his part of agreement, legal notice was issued under Ex.A2 dated 14.07.2012. Despite the receipt of said notice, no reply was given by the defendant and hence the present suit was filed seeking the relief of specific performance.

3. The learned counsel appearing for the appellant / defendant submitted that the plaintiff has not signed the agreement Ex.A1, and therefore, the Judgement and decree given by the Courts below require interference. A further submission is being made that readiness and willingness has not been proved by the plaintiff.

4. The learned counsel appearing for the respondent / plaintiff submitted that Ex.A1 has been acted upon and the plea of non-significance of the said document has been made only during the arguments before the trial Court. The readiness and willingness on the part of the plaintiff has been proved to the satisfaction of the Court. Hence, no interference is required.

5. A perusal of Ex.A1 shows that it has been acted upon by the parties. This can be seen from the payments made on various dates by the plaintiff in favour of the defendant. The findings of the Court, that the payments made and received would nullify the contention raised on behalf of the appellant both in terms of Ex.A1, being a mere offer and the time being the essence of the contract. Law does not mandate an agreement holder to sign. It merely mandates the vendor to sign the agreement. Furthermore, the defendant, who had received the amounts and failed to give any reply to the notice, cannot question Ex.A1 nor contend the time being the essence of the contract. The payments have been received by the defendant after the time mentioned under Ex.A1. Readiness and willingness has been found to be satisfied by the Courts below. What is required is to prove the readiness and willingness and therefore a technical approach is not required as the Courts are to satisfy themselves from the relevant materials available.

6. As correctly found by the Courts below, the plaintiff has paid substantial amount of money and what remains to be paid is Rs.49,000/- only. Perhaps that is the reason that the appellant has not chosen to reply the notice issued by the plaintiff. Hence, this Court does not find any substantial question of law involved in this appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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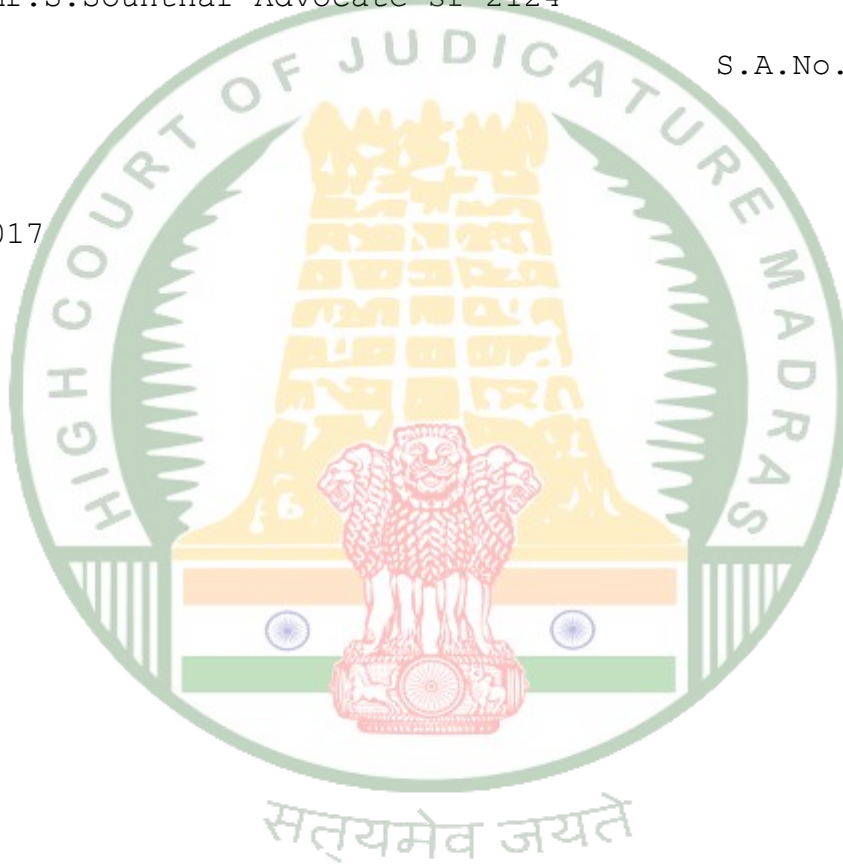
To

1. The Principal District Judge,
Tiruvarur.
2. The Subordinate Judge, Subordinate Court,
Tiruvarur.

+1 cc to Mr.B.Ramamoorthy Advocate sr 2535
+1 cc to Mr.S.Sounthar Advocate sr 2124

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