

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal No.181 of 2016

G.Manokaran

... Appellant/Plaintiff

vs.

K.Thirukumaran

...Respondent/Defendant

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 23.07.2015 passed in A.S.No.8 of 2014 on the file of the Additional District Judge, Dharmapuri, confirming the Judgment and decree dated 19.02.2014 made in O.S.No.136 of 2008 on the file of the Subordinate Judge, Dharmapuri.

For Appellant : Mr.C.Munuswamy

For Respondents : Mr.A.S.Balaji

J U D G M E N T

The plaintiff, who suffered a decree in a suit for specific performance, is the appellant herein, seeks to set aside the same, based upon the following substantial questions of law:-

“(i) Whether the courts below are correct in holding that the agreement marked as Ex.A1 is invalid while it is abundantly proved by way of corroborative oral and documentary evidence?

(ii) Whether the sale deed dated 07.12.2006, which is marked as Ex.A2 and B1 is valid in the eye of law especially when it is executed for the security purpose and the possession of the property was not handed over to the defendant?

(iii) Whether the judgments and decrees of the courts below are sustainable on the facts and

circumstances of this case?

(iv) Whether there is any perversity or illegality in the judgments and decrees of both the courts below?

(v) Whether the judgments of the courts below are vitiated by failure to apply the correct principles of law and consider the entire evidence on record?".

2. The plaintiff and the defendant are the adjacent land owners. According to the plaintiff, he borrowed money from the defendant and for that purpose a sale deed has been executed in his favour. Incidentally, an agreement was also executed to the effect that on the plaintiff repaying the said amount along with interest within the time stipulated therein, the property will be re-conveyed. As the defendant is not willing to comply with his part of Ex.A1, a suit has been laid for specific performance. Ex.A1 is the Agreement and Ex.A2 is the sale deed.

3. The courts below have dismissed the suit on the ground that there are certain discrepancies found in Ex.A1, which has been executed on the same day of Ex.A2. The discrepancies are also available in the evidence of P.Ws. 1 to 3.

4. The learned counsel appearing for the appellant/plaintiff made a reliance upon the evidence of D.W.4. He has stated that the suit property belong to the plaintiff. He has attested Exs.A1 and A2 as a witness. These documents have been returned for the loan obtained from the defendant. As per Ex.A1, the plaintiff has to repay the amount of Rs.1 lakh along with interest with a period of two years. If the plaintiff does not comply with the same, the property will be retained by the defendant. Thus, it is submitted that this evidence has not been analyzed by the courts below.

5. The learned counsel for the respondent/defendant submitted that since the plaintiff has to establish his case and he having not proved it, the courts below have rightly dismissed the suit.

6. Though in a suit for specific performance the plaintiff has to establish his case, the admission made by the parties are relevant facts. D.W.4, as recorded earlier, has made submissions, which touches upon the execution of Ex.A1. The evidence of D.W.4 has never been taken into consideration by the courts below. The Lower Appellate Court being the final court of fact and law, is expected to consider all the materials

available on record.

7. In such view of the matter, this Court is of the view that the substantial question of law No.5 is liable to be answered to a limited extent of reversing the judgment and decree of the Lower Appellate Court alone.

8. Accordingly, the judgment and decree of the Lower Appellate Court is hereby set aside and the matter stands remitted back to the Lower Appellate Court to consider all the materials available on record including the evidence of D.W.4. Such exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment.

In the result, the Second Appeal stands allowed. No costs.

sd/
Assistant Registrar (CCC)

/true copy/

Sub Assistant Registrar

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To

1. The Additional District Judge,
Dharmapuri.
2. The Subordinate Judge,
Dharmapuri.

+1cc to Mr.C.Munuswamy, Advocate SR.No.4449

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Second Appeal No.181 of 2016

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