



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 20.09.2017

Coram

The HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

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S.A(MD)No.419 of 2017

Tamilarasi .. Appellant/Appellant/Plaintiff

Vs.

1.R.Jeyalakshmi .. 1st Respondent/1st Respondent/
1st Defendant

2.Sanmugavel (died)

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 23.01.2017 passed in A.S.No.41 of 2014 on the file of the Sub Court, Tuticorin, confirming the Judgment and Decree, dated 04.04.2007 passed in O.S.No.136 of 2005 on the file of the Principal District Munsif, Tuticorin.

For Appellant : Mr.S.Kadarkarai

JUDGMENT

The second appeal arises against the Judgment and Decree, dated 23.01.2017 passed in A.S.No.41 of 2014 on the file of the Sub Court, Tuticorin, confirming the Judgment and Decree, dated 04.04.2007 passed in O.S.No.136 of 2005 on the file of the Principal District Munsif, Tuticorin.

2.The plaintiff, having lost before the Courts below, had filed the above Second Appeal, which is being filed for specific performance based on an oral agreement.

3.The case of the plaintiff is that the suit property belonged to the first defendant's mother-Narayani Ammal. From her, the plaintiff had taken the suit property for rent. Originally, the plaintiff was not paying any rent for the suit property. However, later it started with Rs.2/- as rent and it was increased to Rs.25/- in the year 1995. It is stated that the plaintiff had been paying rent to the mother of the first defendant. When the plaintiff took possession of the suit property, there was only a simple concrete wall. After removing it, she had, at her own cost, put up a brick wall and has been maintaining the suit property. It is the



further case of the plaintiff that there was no bathroom and toilet facilities in the suit property and the same was constructed at the cost of the plaintiff and the other tenants of the first defendant. It is stated by the plaintiff that the first defendant's husband had asked the tenants to purchase the suit property in the year 1999 for a sum of Rs.40,000/-. The plaintiff and other tenants refused to co-operate for the same, hence, they were asked to vacate the premises. While so, on 20.10.1999, the plaintiff had issued a legal notice expressing her desire to purchase the suit property for a sum of Rs.40,000/-. However, the first defendant replied stating that she had no intention for selling the same. Thereafter, the plaintiff intimated the first defendant that they would pay a sum of Rs.50,000/- per house. Even, that was not accepted by the defendants. Hence, the suit has been now filed for specific performance.

4.The first defendant resisted the suit stating that the suit property devolved on her from her mother. The plaintiff and other tenants, who are in occupation of the premises, are not paying rents from 01.01.2000. The first defendant has specifically denied the oral agreement alleged in the plaint. As the houses are very old and in a dilapidated condition, he wanted the tenants to vacate the premises and put up a new construction in the same place. The first defendant contended that in the absence of any agreement, the suit is not maintainable for specific performance.

5.On the above pleadings, the Courts below had non-suited the plaintiff finding that there was no oral agreement as alleged in the plaint. The specific finding of the Courts below is that when the plaintiff and other tenants were asked to vacate the premises, they had set up a case of an oral agreement and issued notice to that effect. Exs.A.1 to A.3, which are the notices sent and along with the evidence of P.W.1, it is made clear that whenever there is an attempt to vacate the plaintiff and other tenants, such notices have been sent as if there was an oral agreement for sale. After considering the facts and evidence, the Courts below have concurrently held that there is no such oral agreement as alleged in the plaint. The first defendant never intended to sell the property. The further finding of the Courts below is that the plaintiff in order to avoid from vacating the premises and continued to be in possession of the suit property, has come up with such false allegation. When she is only a tenant, any improvement made in the suit property without the written consent of the landlord, it is only at own risk, she cannot claim any equity. The further allegation of the plaintiff that she had maintained the suit property by her own funds is also disbelieved by the Courts below.

<https://hcservices.ecourts.gov.in/hcservices/>

6.In the light of the above facts and circumstances, there is no question of law arising for consideration in the Second



Appeal under Section 100 C.P.C. Hence, the Second Appeal is dismissed at the admission stage itself. No costs.

Sd/-

Assistant Registrar (AE)

/True copy/

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Sub Assistant Registrar

To

1.The Sub Judge,
Tuticorin.

2.The Principal District Munsif,
Tuticorin.

+1cc to Mr.S.KADARKARAI,Advocate,SR. 80120

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