



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:22.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
A.S.(MD) No.160 of 2013 &
M.P.(MD).No.1 of 2013

1.M.Govindarajan
2.G.Mangayarkarasi
3.G.Maniselvam
4.G.Mathivanan
5.Malika
6.Manvizhi
7.Malarvizhi

... Appellants/Defendants 1 to 7

Vs.

1.R.Ganesamoorthy
2.Sebastin

... 1st Respondent/Plaintiff
... 2nd Respondent/8th defendant

PRAYER: Appeal Suit is filed under Section 96 of C.P.C. Against the judgment and decree dated 11.09.2013 made in O.S.No.167 of 2010 on the file of the Principal District Judge, Tiruchirappalli.

For Appellants : Mr.T.Antony Arul Raj
For D.Raj Kumar

For Respondent : Mr.R.Vijayakumar for
For R1 Mr.B.Arun

R2 :Dispense with (memo filed on 03.01.2014)

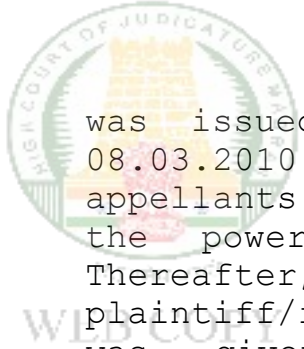
JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH,J]

The appellants are the defendants 1 to 7 and the first respondent/plaintiff filed the suit for specific performance.

2. The case of the plaintiff is as follows:-

A power deed dated 28.11.2007 has been executed by the appellants/defendants 1 to 7 in favour of Defendant No.8, which has been marked as Ex.A1. The appellants are the original owners of the suit property. In pursuant to Ex.A1, which is a registered document, defendant No.8 entered into a sale agreement dated 05.12.2007 which is also a registered document and the same is marked as Ex.A2. The total sale consideration is Rs.42,17,210/-. At the time of execution of the Ex.A2 agreement a sum of Rs.1,00,000/- was paid as advance. Thereafter under Ex.A3 which is a registered document acknowledging the factum of further payment of a sum of Rs.36,17,210/-. As the appellants/defendants 1 to 7 are not ready and willing to perform their part of the contract, a legal notice



was issued by the first respondent/plaintiff under Ex.A4 on 08.03.2010. The 8th defendant being the power agent of the appellants expressed his inability to go through with the sale as the power deed executed under Ex.A1 has been cancelled. Thereafter, Ex.A6/legal notice was issued by the plaintiff/respondent No.1 on 18.08.2010 to the appellants. A reply was given under Ex.A8 by the appellants. The first respondent/plaintiff sent another legal notice under Ex.A9 on 17.09.2010 denying the allegations made under Ex.A8. Ex.A10 is the registered power cancellation deed dated 03.01.2008. Under Ex.B8, the appellants/defendants 1 to 7 during the interregnum of the suit, entered into another sale agreement on 27.05.2011. According to the plaintiff, the 8th defendant stood as witness for the said document.

3. The case of the defendants 1 to 7/appellants is as follows:-

The execution of Ex.A2 is denied. Similarly the appellants have denied EX.A3, receipt showing the payment made in favour of defendant No.8.

4. The defendant No.8 has filed written statement admitting the case of the plaintiff as stated under Ex.5

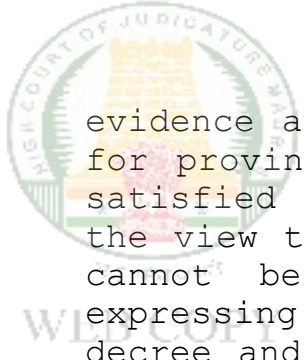
5. Before the Trial court none of the parties let in any oral evidence including the plaintiff and the defendants. 12 documents were marked on the side of the plaintiff as Ex.A1 to Ex.A12 and 11 documents were marked on the side of the defendants as Ex.B1 to Ex.B11. The Trial Court considering the pleadings framed the following issues:

1) Whether the registered agreement dated 05.12.2007 between the plaintiff on the one side and the defendants 1 to 7 represented by the 8th defendant as their General Power of attorney is unenforceable as against the defendants 1 to 7 for reasons set out in the written statement filed by the defendants 1 to 7?

2) To what relief?

6. The suit was decreed based upon Ex.A1, Ex.A2, Ex.A8 and Ex.A10. The Trial Court has also made reliance upon the pleadings made by the 8th defendant with respect to proof of Ex.A3 and Ex.A2. Challenging the judgment and decree rendered by the Trial Court, the present appeal is filed.

7. The learned counsel for the appellants submitted that the plaintiff has not marked the document through the proof affidavit and the plaintiff has not proved readiness and willingness. Though, Ex.A2 stated to have been registered and executed on 05.12.2007, legal notice was issued only on 08.03.2010. Under Ex.A3 a sum of Rs.36,17,210/- is stated to have been received by the defendant No.8. However, the above said amount being huge and



evidence available from both sides. Secondly, parameters required for proving readiness and willingness which is mandatory are not satisfied by adducing sufficient evidence. Therefore, we are of the view that the judgment and decree rendered by the Trial Court cannot be sustained. In such view of the matter, without expressing anything on merits, we deem it fit to set aside the decree and judgment of the Trial Court. Accordingly, the judgment and decree of the Trial Court stands dismissed. The appeal stands allowed and the matter is remitted back to the Trial Court for fresh consideration. The Trial Court shall frame a specific issue with respect to the readiness and willingness on the part of the plaintiff and thereafter proceed to answer it. The parties are at liberty to let in oral evidence in respect of their respective contentions. The Trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this judgment. Parties are directed to appear before the Trial Court on 14.09.2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge, Trichirappalli.

COPY TO:

The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.D.Raj Kumar, Advocate SR.No. 74349

+1cc to M/S.B.Arun, Advocate SR.No. 74117

Judgement made in
A.S.(MD) No.160 of 2013
22.08.2017

jikr

JM/RSK/SAR 2/12.09.2017/4P/5C