

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.289 of 2018
and C.M.P.Nos.7598 and 7599 of 2018

Raghavan

... Appellant/Defendant

vs.

Vellaiammal

... Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 05.10.2017 made in A.S.No.21 of 2009 on the file of the Sub Court, Kallakurichi, confirming the judgment and decree dated 18.07.2006 made in O.S.No.38 of 2005 on the file of the Principal District Munsif, Kallakurichi.

For Appellant : Mr.A.V.B.Krishnakanth

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 05.10.2017 made in A.S.No.21 of 2009 on the file of the Sub Court, Kallakurichi, confirming the judgment and decree dated 18.07.2006 made in O.S.No.38 of 2005 on the file of the Principal District Munsif, Kallakurichi.

2.The appellant is defendant and respondent is the plaintiff in O.S.No.38 of 2005 on the file of the Principal District Munsif, Kallakurichi. The respondent filed the said suit for specific performance of agreement of sale dated 21.05.2004. The said suit was decreed and First Appeal, A.S.No.21 of 2009 filed by the appellant on the file of Sub Court, Kallakurichi was dismissed. Against the said concurrent findings of the Courts below, the appellant has come out with the present Second Appeal.

3.According to the respondent, she and appellant entered into an agreement of sale on 21.05.2004, whereby the appellant agreed to sell the suit property for a total sale consideration

of Rs.50,000/-. The respondent paid a sum of Rs.42,000/- on the date of agreement as advance. The time for completion of transaction was fixed as six months, within which time the appellant has to receive the balance sale consideration of Rs.8,000/- and execute the sale deed in favour of the respondent. The respondent even before expiry of time, approached the appellant, requesting him to receive the balance sale consideration and execute the sale deed in her favour. The appellant refused to receive the sale consideration and was evading to fulfil his part of contract. The respondent issued notice dated 09.11.2004. The appellant received the said notice and did not send any reply. The respondent was always ready and willing to perform her part of contract. The appellant was evading to fulfil his part of the contract hence the respondent has filed the suit.

4.The appellant filed the written statement and denied the execution of the agreement of sale dated 21.05.2004 and also denied receipt of Rs.42,000/- as advance. He further stated that he did not receive any amount from the respondent and agreement of sale dated 21.05.2004 is fabricated by the respondent due to her enmity with the appellant during village panchayat. The suit property belongs to one Chinnammal and she is cultivating the suit property and paying necessary kist to the authority. The suit is barred for non joinder of Chinnammal who is a necessary party. After receipt of notice dated 09.11.2004, the appellant approached the respondent through some of the village common men. The respondent informed them that by mistake she has given notice. In view of the same, the appellant did not send any reply. The respondent has not deposited balance sale consideration of Rs.8,000/- and she is not entitled for the relief sought for and prayed for dismissal of the suit.

5.Based on the pleadings, the learned Trial Judge framed five issues. Subsequently, the learned Trial Judge deleted first four issues and recasted with two issues.

6.Before the Trial Court, the respondent examined herself as P.W.1 and examined one Ganesan, Attestor as P.W.2 and marked four documents as Exs.A1 to A4. The appellant examined himself as D.W.1 and he did not mark any document. The learned Trial Judge considering the oral and documentary evidence, decreed the suit, directing the appellant to execute the sale deed in favour of the respondent after receipt of balance sale consideration of Rs.8,000/- from the Court deposit and granted two months time to the appellant to execute the sale deed.

7. Against the said judgment and decree dated 18.07.2006 made in O.S.No.38 of 2005, the appellant filed A.S.No.21 of 2009 before the Sub Court, Kallakurichi. In the said appeal, the appellant filed two I.A.Nos.129 of 2015 and 99 of 2017 for marking the documents mentioned therein as exhibits on behalf of the appellant. The learned First Appellate Judge considered the said applications as well as the First Appeal together. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge considering the materials on record, the judgment of the Trial Court, averments in the affidavit filed in support of the two I.A.Nos.129 of 2015 and 99 of 2017 and counter affidavit filed therein, dismissed the appeal and also two applications filed by the appellant.

8. Against the judgment and decree dated 05.10.2017 made in A.S.No.21 of 2009, the present Second Appeal is filed by the appellant.

9. The learned counsel for the appellant contended that the Courts below have not properly considered the materials on record and evidence let in by the parties. P.W.2 is husband of respondent and his evidence is invalid. The Courts below failed to see that respondent did not examine other two witnesses and scribe to the alleged sale agreement. The documents sought to be marked in the appeal are necessary to decide the issue and those documents were not available with the appellant during trial. The description of the property in the agreement of sale is not correct and clear and it is vague. The suit property is undivided joint family property and share of the appellant is not ascertained. The appellant subsequently filed O.S.No.113 of 2013 for partition in respect of the suit property and other property before the District Munsif Court, Kallakurichi. When the suit was decreed directing the appellant to execute the sale deed, E.P.No.62 of 2009 in O.S.No.38 of 2005 filed by the respondent for delivery and possession of the suit property is not maintainable.

10. Heard the learned counsel for the appellant and perused the materials available on record.

11. The respondent has filed the suit for specific performance of agreement of sale dated 21.05.2004. To substantiate her claim for the decree of specific performance, she examined herself as P.W.1 and her husband who was one of the attesting witness as P.W.2. She has also marked four documents

as Exs.A1 to A4. The respondent spoke about the averments in the plaint and marked agreement of sale dated 21.05.2005 as Ex.A1. It is pertinent to note that respondent issued Ex.A2, notice dated 09.11.2004, expressing her readiness and willingness to perform her part of the contract and calling upon the appellant to receive the balance sale consideration of Rs.8,000/- and to execute the sale deed. The appellant received the said notice on 16.11.2004 and the same was evidenced by Ex.A3, acknowledgement card. But, the appellant did not send any reply.

11(a).According to the appellant, on receipt of said notice, the respondent approached the appellant through common man of panchayat and respondent informed that Ex.A2, notice dated 09.11.2004 was issued by mistake and therefore, appellant need not send any reply. To substantiate this contention, the appellant did not examine any common man of the panchayat. The appellant has stated that property belonged to Chinnammal, but he did not examine the said Chinnammal or produce any document to show that Chinnammal is owner of the suit property. On the other hand, the respondent has produced Ex.A4, Thoraya patta No.526 which stands in the name of the appellant. The appellant has admitted that somebody from his house would have handed over the said patta to the respondent. The appellant has denied his signature in Ex.A1, agreement of sale. During his cross examination, he denied the signatures in the suit summons, vakalat and written statement filed by him and submitted that it is not his signatures. The Courts below took note of these facts and concluded that evidence of the appellant is not acceptable. In the First Appeal, the appellant has taken a different stand i.e., the suit property and other properties are undivided joint family properties and his sister already filed O.S.No.113 of 2013 for partition. He sought for marking of the documents via two applications, I.A.Nos.129 of 2015 and 99 of 2017.

11(b).The learned Appellate Judge considering all the materials on record and the averments in the affidavit, counter affidavit and two applications, dismissed both the applications and the First Appeal. The learned Trial Judge as well as learned First Appellate Judge have given valid reasons for granting a decree of specific performance to the respondent. There is no error in the reasoning of the Courts below warranting interference by this Court. No question of law much less than the substantial question of law has arisen in this Second Appeal.

12.In the result, this Second Appeal is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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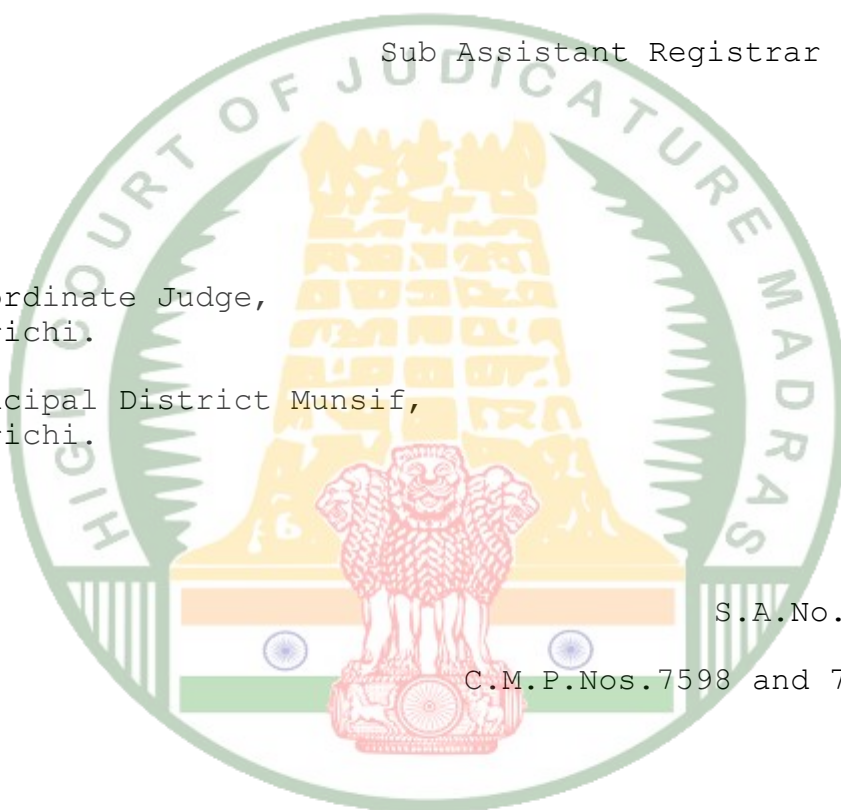
Sub Assistant Registrar

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To

1.The Subordinate Judge,
Kallakurichi.

2.The Principal District Munsif,
Kallakurichi.



S.A.No.289 of 2018
and

C.M.P.Nos.7598 and 7599 of 2018

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