

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.320 of 2018

B.M.Dhanalakshmi

.. Appellant/Appellant/
Defendant

K.Raman

Vs.

.. Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 07.12.2017 made in A.S.No.1 of 2015 on the file of the District Court, Nagapattinam, confirming the judgment and decree dated 31.10.2014 made in O.S.No.39 of 2012 on the file of the Principal Sub Court, Mayiladuthurai.

For Appellant : Mr.D.Paariventhan

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 07.12.2017 made in A.S.No.1 of 2015 on the file of the District Court, Nagapattinam, confirming the judgment and decree dated 31.10.2014 made in O.S.No.39 of 2012 on the file of the Principal Sub Court, Mayiladuthurai.

2.The appellant is defendant and respondent is plaintiff in O.S.No.39 of 2012 on the file of the Principal Sub Court, Mayiladuthurai. The respondent filed the said suit for specific performance of agreement of sale dated 01.10.2010, failing which, the Court to execute the sale deed in his favour or in alternate, direct the appellant to pay a sum of Rs.1,00,000/- together with interest at the rate of 12% per annum from the date of receipt of the said amount. According to the respondent, the appellant and respondent entered into an agreement of sale dated 01.10.2010 for sale of the suit property belonging to the appellant for a total sale consideration of Rs.1,05,000/-. The respondent paid a sum of Rs.90,000/- as advance on the same day. The balance amount of Rs.15,000/- is to be paid within 3 months by the respondent to get the sale deed executed in his favour. The appellant, on 17.12.2010, within 2 ½ months of the agreement of sale received further sum of Rs.10,000/- for her urgent expenses and made an endorsement in the agreement of sale. The respondent offered to pay the balance sale consideration of Rs.5,000/- and called upon the appellant to execute the sale

deed. The appellant informed the mediators that a lesser amount was fixed for sale consideration and demanded more amount than what was agreed upon. The appellant is not entitled to receive more amount after agreement of sale.

3.The respondent filed caveat in C.O.P.No.8 of 2012 on 05.01.2012 on the file of the District Munsif Court, Mayiladuthurai. After the said caveat petition, the appellant sent notice dated 11.01.2012 admitting the agreement of sale, receipt of Rs.1,00,000/- as advance and balance amount payable is only Rs.5,000/-. In the said notice, the appellant canceled the agreement of sale on the ground that the respondent did not pay the balance amount within the time limit and returned the sum of Rs.1,00,000/- by cheque to the respondent. The respondent sent a reply dated 12.01.2012 and returned the cheque sent by the appellant and informed that he is ready to complete his part of contract and demanded execution of sale deed. The appellant failed to receive the balance sale consideration, even though the respondent was ready and willing to perform his part of contract, as the appellant wanted more money for execution of sale deed. In such circumstances, the respondent filed the said suit for the above stated relief.

4.The appellant filed written statement denying all the averments made in the plaint. The appellant has admitted execution of agreement of sale, sale consideration of Rs.1,05,000/-, receipt of a sum of Rs.90,000/- on the date of agreement of sale and Rs.10,000/- on 17.12.2010. She further stated that as per the agreement of sale, transaction has to be completed within three months and the time is essence of contract. In spite of several requests made by the appellant to the respondent to pay the balance sale consideration, the respondent did not pay and postponed the execution of sale for the reasons best known to him. The appellant sent notice dated 11.01.2012 through her advocate canceling the agreement of sale dated 01.10.2010 enclosing demand draft for Rs.1,00,000/-. The respondent received the notice and sent reply to the appellant with false and frivolous allegations. The appellant did not agree to measure the property mentioned in the agreement of sale. There is no such averments made in the agreement of sale and only to drag on the proceedings, the respondent has made such averments.

5.Based on the pleadings, the learned Trial Judge framed necessary issues. Before the learned Trial Judge, the respondent examined himself as P.W.1 and one Balasundaram as P.W.2 and marked four documents as Exs.A1 to A4. The appellant examined herself as D.W.1 and one Muppuranathan as D.W.2. No document was marked on behalf of the appellant.

6.The learned Trial Judge considering the pleadings, oral and documentary evidence and evidence of the appellant as D.W.1, decreed the suit granting decree of specific

performance directing the respondent to pay balance sale consideration of Rs.5,000/- and another sum of Rs.5,000/- towards value of the trees, to the appellant within one month and directing the appellant to receive the same and execute the sale deed in favour of the respondent.

7. Against the said judgment and decree dated 31.10.2014 made in O.S.No.39 of 2012, the appellant filed A.S.No.1 of 2015. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge considering the materials on record and judgment of the trial Court, dismissed the First Appeal confirming the judgment of the Trial Court.

8. Against the said judgment and decree dated 07.12.2017 made in A.S.No.1 of 2015, confirming the judgment and decree dated 31.10.2014 made in O.S.No.39 of 2012, the appellant has come out with the present Second Appeal.

9. The learned counsel for the appellant contended that the learned First Appellate Judge failed to appreciate the oral and documentary evidence adduced before the Trial Court. The learned First Appellate Judge failed to consider the evidentiary value of the endorsement dated 17.12.2010 and demand draft issued by Indian Bank. The Courts below failed to see that the respondent, who has come with falsehood is not entitled to any relief in the Court of law. The agreement of sale dated 01.10.2010 is an unregistered document and respondent cannot plead that he was put in possession of the suit property. The Courts below failed to see that there are two agreements of sale; one with regard to land and another one relating to trees and partially enforcing the right of the specific performance is against the principles of natural justice.

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

11. It is an admitted fact that the appellant and respondent entered into an agreement of sale dated 01.10.2010, whereby the appellant agreed to sell the suit property for a total sale consideration of Rs.1,05,000/-, receiving a sum of Rs.90,000/- as advance on the same day and another sum of Rs.10,000/- on 17.12.2010. The respondent has filed the said suit for specific performance of the agreement of sale or in alternate, refund of sum of Rs.1,00,000/- together with interest. According to the respondent, he was always ready and willing to pay the balance sale consideration of Rs.5,000/- and get the sale deed executed in his favour. He also approached the appellant through Panchayat President and appellant has informed him that sale consideration fixed is very low and she requires more money to complete the sale agreement. Subsequently, in the evidence, the appellant as D.W1 deposed that she will not execute the sale deed, even if

the respondent pays more money. In the evidence, issue of payment of amount being the value of trees in the suit property was raised and evidence was let in that suit transaction was not completed, as the respondent failed to pay a sum of Rs.20,000/- being the value of the trees standing in the suit property.

12. According to the appellant, after agreement of sale dated 01.10.2010, an oral agreement was entered into between the appellant and respondent that the respondent must pay a sum of Rs.20,000/- being the value of the trees in the suit property. The appellant has not produced any document to show that she demanded payment of Rs.20,000/- for the value of trees and also Rs.5,000/- being the balance sale consideration. She issued notice only on 11.01.2012 through her advocate canceling the agreement of sale and returning the sum of Rs.1,00,000/- received by her as advance. The failure on the part of the appellant to demand the sum of Rs.20,000/- and balance sale consideration of Rs.5,000/- before 11.01.2012 and failure to deny that she demanded more money, when she was contacted by the Panchayat president and evidence as D.W.1 that she will not execute the sale deed, even if the respondent pays more money, clearly shows that the appellant has only committed breach of agreement of sale. The respondent has proved his readiness and willingness to pay the balance sale consideration and get the sale deed executed in his favour.

13. The Courts below have considered all the above facts for decreeing the suit and dismissing the appeal granting relief of specific performance to the respondent. There is no error of law warranting interference by this Court with the judgment and decree of the Courts below. No question of law much less than the substantial question of law has been raised in this Second Appeal.

14. In the result, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

LPP/kj

To

1.The District Judge, Nagapattinam.

2.The Principal Sub Judge, Mayiladuthurai.

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VGII (CO)
EU (24/07/2018)



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