

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.09.2018

CORAM

The Honourable Ms.Justice P.T.ASHA

Second Appeal.No.849 of 1999

C.M.P.No.8701 of 1999

C.M.P.No.14887 of 2002

V.Balan @ Balasubramaniam

Prop: Sri Murugan Corporation,
Coimbatore.

... Appellant/Plaintiff

Vs.

1. Tmt.A.D.Ramasamy

2. R.S.Rajan ... Respondents/Defendents

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 15.12.1998 in A.S.No.209 of 1997 on the file of the Court of Principal District Judge, Coimbatore, confirming the judgment and decree dated 04.08.1997 in O.S.No.1179 of 1990 on the file of the 2nd Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.A.Muthukumar

For R1 : Notice Dispensed with

For R2 : Died steps taken vide
C.M.P.No.14887 of 2002

J U D G M E N T

The above Second Appeal is filed challenging the concurrent judgment and decree passed in O.S.No.1179 of 1990 on the file of the Learned II Additional Subordinate Judge, Coimbatore and confirmed by the Learned Principal District Judge, Coimbatore in A.S.No.209 of 1997.

2. The plaintiff is the appellant before this Court. The facts in brief are as follows:

The appellant herein had filed a suit O.S.No.1179 of 1990 for a specific performance of an oral agreement entered into on 26.01.1978 and for a consequential injunction restraining the respondents herein from interfering with his peaceful possession and enjoyment of suit property. It was the case of the appellant that he

had been inducted as a tenant in respect of the suit property wherein he has been doing business for several years. The premises originally belonged to the father of the first respondent and after his father demises, she had succeeded to his interest. The appellant had approached the first respondent herein with an offer to purchase the suit property and an oral agreement of sale was entered into on 26.01.1978, where under the first respondent has agreed to convey the property to the appellant and an advance of Rs.101/- was paid to the first respondent. The appellant had been ready and willing to perform his part of the contract and to his shock he came to learn that the first respondent had surreptitiously sold the suit property to the second respondent on 30.08.1978. The appellant had initially filed a suit O.S.543 of 1983 for specific performance of the agreement of sale against the respondents herein for specific performance of the agreement. However in the said, plaint since he had not pleaded his readiness and willingness the appellant had filed I.A.No.846 of 1984 to amend the pleadings. This application was dismissed and the matter was taken up on revision by the appellant before this Court in C.R.P.No.2625 of 1988 and the same was dismissed on 13.03.1989.

3. Thereafter, the appellant had preferred the Special Leave Application which was also dismissed. Thereafter, the appellant had filed an application I.A.No.6 of 1989 to withdraw O.S.No.543 of 1983 with a liberty to file a fresh suit for the same cause of action. The application was once again dismissed by the trial Court and in the revision filed in C.R.P.No.2181 of 1989, this Court was pleased to grant the request and thereafter the appellant had filed the suit which is the subject matter of the present Second Appeal.

4. The second respondent who had purchased the property from the first respondent had filed a written statement inter alia contending that the second respondent had purchased the property in the year 1978 and therefore the suit filed is barred by limitation. He had denied the oral agreement entered into between the appellant and the first respondent. The second respondent would contend that he is a bonafide purchaser for value and therefore the sale cannot be set aside. He would also contend that the appellant was never ready and willing to proceed further with the agreement and it was on account of this reluctance that the property was sold to him.

5. The parties went to trial on five major issues out of which two issues were whether the oral agreement was true and whether the suit was to be decreed for specific performance. The trial Court returned the findings, that the appellant had not proved his readiness and willingness and also that the second respondent is a bonafide purchaser for value. The suit O.S.No.1179 of 1990 was dismissed. Challenging the judgement and decree in the appellant had

filed A.S.No.209 of 1997 on the file of the Learned Principal District Judge, Coimbatore.

6. The learned Principal District Judge, Coimbatore, had accepted the plea of an oral agreement relying upon the Ex.B.2 which was a reply sent by the first respondent to the appellant herein.

7. However, the Learned Principal District Judge, Coimbatore, went on to dismiss the suit on the ground that the same was hopelessly barred by limitation. The learned Judge had observed that even in the earlier suit O.S.543 of 1983, the appellant had contended that he had come to know about the sale in favour of the second defendant on 02.01.1980. The earlier suit O.S.No.543 of 1983 was itself filed only on 06.12.1983 which was way beyond the period of limitation and therefore the learned Judge went on to hold that suit O.S.No.1179 of 1990 is barred by limitation.

8. Challenging this judgment and decree, the appellant is before this Court. When the matter was admitted on 18.06.1999, the following substantial question of law has been framed by this Court.

"Whether the suit claimed is barred by limitation."

9. A perusal of the judgment of the learned Principal District Judge, Coimbatore, would indicate that in the earlier suit O.S.No.543 of 1983, the appellant in paragraph 6 therein has stated that he had come to know that the second respondent had purchased the property on 02.01.1980 and even then the earlier suit was filed only on 06.12.1983 after the period of three years. Therefore, on his own pleadings, that too in a prior proceeding, the appellant has clearly established that the suit is hopelessly barred by limitation. It is also seen that the 2nd respondent had purchased the property in the year 1978 itself. Therefore, the substantial question of law is answered against the appellant.

10. In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Principal District Judge, Coimbatore.

2. The II Additional Subordinate Judge, Coimbatore.

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S.A.No.849 of 1999

ASK(02/11/2018)