

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.45 of 2018

Kaliyaperumal

.. Appellant/Appellant/Plaintiff

Vs.

Senthilvel

.. Respondent/Respondent/Defendant

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 11.10.2013 made in A.S.No.129 of 2012 on the file of the Principal District and Sessions Court, Ariyalur, confirming the judgement and decree dated 30.11.2010 made in O.S.No.215 of 2006 on the file of the District Munsif Court, Jayankondam.

For Appellant : Mr.P.Ayyasamy

J U D G E M E N T

The unsuccessful plaintiff in a suit for specific performance is the appellant.

2. Admitting the ownership of the defendant, the plaintiff claimed to have entered into an agreement of sale on 20.01.2003 fixing the sale consideration at Rs.20,800/- and paid an advance of Rs.10,000/- agreeing to pay the balance sale consideration within one year from the date of agreement. Despite the plaintiff expressed his readiness and willingness to pay the balance of the sale consideration and complete his part of performance of the contract, the defendant had been evading. Hence, after issuing a legal notice dated 20.01.2004, the suit had been filed.

3. Resisting the suit, the defendant had categorically put the plaintiff to strict proof of the allegations made in the plaint. Admittedly, the defendant had received a sum of Rs.10,000/- as hand loan from the plaintiff and in lieu of security, the sale agreement was entered into between the plaintiff and the defendant. As the said agreement was executed only as a security for the loan, the same is incapable of being specifically performed. The defendant also had offered to repay the loan borrowed, but the plaintiff refused to receive the same

and was insisting on the execution of the sale deed. It is the further case of the defendant that on 15.02.2000, the defendant along with his son Kaliyamoorthy had sold the property to one Jaganathan, son of Saminathan and from the said date, the purchaser has been in possession. Despite knowing the said fact, the plaintiff with an ulterior motive, to grab the property, has filed the suit. The suit property jointly belongs to the defendant and his son and the same is incapable of being executed. The defendant prayed for dismissal of the suit.

4. Before the Trial Court, the plaintiff examined P.Ws.1 to 3 and marked Exs.A.1 to A.6 and the defendant examined D.Ws.1 to 3 and marked Exs.B.1 and B.2.

5. On the above said facts and after considering the documents and the oral evidence, the Courts below have non-suited the plaintiff of the equitable relief claimed.

6. The only point that arises for consideration is whether the plaintiff is entitled to the relief of specific performance, based on Ex.A.1-Agreement ?

7. Besides examining himself as P.W.1, the plaintiff examined P.Ws.2 and 3. The appellate court has specifically found that P.W.1 during his examination could not even recall the names of the attestors and was referring to the notes made on his hand, which was later confirmed by the ministerial staff, on examining the witness in the presence of the Presiding Officer. The Lower Appellate Court has also drawn adverse inference based on the said incident that the plaintiff is capable of going to any level to prove his case.

8. So far as the title of the defendant with respect to the suit property is concerned, the agreement is only with the defendant as the owner of the property, whereas, the very same agreement at page No.2 categorically says that "... the necessary legal heirs should be made to toe to their line and execute the sale deed in favour of the buyer....". From the above, it is clear that when the plaintiff was aware of the fact that more than one person was the owner of the property, he had entered into an agreement only with the defendant. The said aspect had been confirmed by P.W.1, in his cross-examination, wherein, he has categorically admitted the ownership of the defendant and his son Kaliyamoorthy. Learned counsel appearing for the appellant/plaintiff contended that if the defendant had title to only half share of the property, the plaintiff would be entitled to at least the said half share in the same. It is also brought to the knowledge of the Court that the said Kaliyamoorthy is a mentally challenged person and incapable of dealing with the property on his own. In such circumstances, the

execution of Ex.A.1 agreement with an intention to sell the property by the defendant may not be true.

9. The Courts below have also found that the plaintiff was not even aware of the correct postal address or place of residence of the defendant.

10. The above said circumstances, when, collectively looked at, would go to show that the agreement was entered into only as a security for the loan taken by the defendant and it was never intended to be acted upon and there was no intention to sell the property. Even otherwise, the schedule of property attached to the plaint shows that it is an extent of 0.04 cents of land, which is agreed to be sold for a sum of Rs.20,800/-. Even presuming for a moment that the agreement is valid and intended to be acted upon, the plaintiff having entered into an agreement only with the defendant, would have only half share in the suit property. However, it is not known whether only the defendant and his son are the owners or any other sharer has a right over the same.

11. Thus, the cumulative consideration of the material facts available, which were also discussed by the Courts below would go to show that the plaintiff is not entitled for the equitable relief of specific performance, when he has not come to the Court with clean hands. Thus, the judgement of the Courts below does not suffer from any infirmity or anomaly for this Court to interfere with the same, in the absence of any question of law, much less substantial questions of law.

12. The Second Appeal is, accordingly, dismissed and the judgement and decree of the Courts below are confirmed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Court,
Ariyalur.

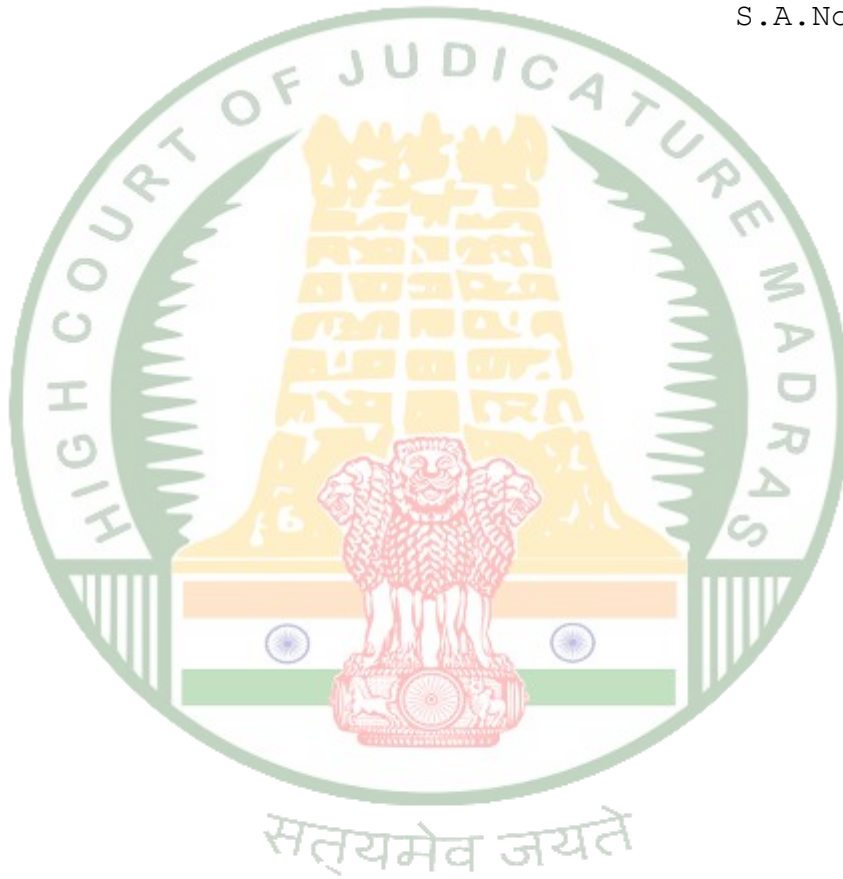
2. The District Munsif Court,
Jayankondam.

3. The Section Officer, VR Section,
High court, Madras(2 copies)

+1cc to Mr.T.Ayyasamy, Advocate SR.no.13948

RSK(CO)
sm:13.3.2018

Judgement in
S.A.No.45 of 2018



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