

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.93 of 2018
and
C.M.P.No.2100 of 2018

S.A.Karuppaiah ... Appellant/Respondent/Plaintiff

Vs

Thangavel Padayachi ... Respondent/Appellant/Defendant

PRAYER : This Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of allowing the appeal suit in A.S.No.06 of 2010 dated 26.10.2016 on the file of the Principal District Judge, Perambalur by reversing the judgment and decree in O.S.No.88 of 2008 dated 26.03.2010 on the file of the Subordinate Judge, Perambalur.

For appellant : Mr.R.Surya Prakash
for Mr.A.Rajesh Kanna

For Respondent: Mr.S.Mohan

J U D G M E N T

Being aggrieved by the decision of the first appellate Court, the plaintiff has come up with the above Second Appeal.

2. The suit is filed by the plaintiff for specific performance based on an agreement of sale dated 30.01.2004. As per the agreement, the sale consideration was fixed at a sum of Rs.1,10,000/- (Rupees One lakh ten thousand only) and on the very same date, a sum of Rs.1,00,000/-(Rupees one lakh only) was paid as sale advance. The balance sale consideration of Rs.10,000/- has to be paid within a period of two years from the date of the Sale Agreement. As the defendant did not come forward to execute the sale deed, a legal notice was passed on 17.04.2006 by the plaintiff and the suit was filed.

3. Denying the reasons set forth for the cause of action in filing the suit, the defendant had specifically contended that there was no necessity for him to sell the suit property to the plaintiff, as the value of the suit property is more than Rs.3 lakhs. The Sale Agreement was executed not with an intention to act upon. It is further contended that it is only for the sake of his brother's sons, the sale agreement was executed.

4. On the above pleadings, oral evidence of P.W.1 to P.W.4 was let in and Ex.A1 to Ex.A6 were marked. On the side of the defendant, D.W.1 was examined and marked Ex.B-1. The trial Court decreed the suit and on appeal filed by the defendant, the appeal was allowed by the lower appellate Court. Aggrieved by the same, the above Second Appeal has been preferred by the plaintiff.

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

6. It is the categorical finding of the Courts below that though the agreement was dated 30.01.2004 and out of Rs.1,10,000/- fixed as sale consideration, Rs.1,00,000/- was paid on the same date, there was no convincing reason given by the plaintiff that he has agreed for two years to get the sale deed executed. No doubt, the time is not the essence of the contract so far as the immovable property is concerned. However, the plaintiff has to establish that he was ready and willing to perform his part of the contract. The plaintiff had also examined one Perumal as P.W.2, who is said to be one of the attestors of Ex.A-1 Sale Agreement. The said P.W.2 has also admitted the execution of the sale agreement by admitting his signature on the same. He has specifically deposed that the said agreement was executed to resolve the family problem in the defendant's family and there was no passing of consideration in the said transaction. As P.W2 had deposed against the plaintiff, the plaintiff had treated him as hostile witness. When once P.W.2 turned hostile, it is open to the plaintiff to establish the execution of the sale agreement by examining the other witnesses. However, he has not done so. The evidence of other witnesses of the plaintiff is also not useful for his case. There is no convincing reason given by the plaintiff as to why he has not chosen to examine any other witness. Hence, the Courts below have found that the plaintiff had not established the due execution of Ex.A1-Sale Agreement in its strict sense. The plaintiff is also unable to identify the suit properties with respect to the extent etc., The plaintiff, who has come to the Court for an equitable relief of specific performance, ought to have come up with clean hands, but the plaintiff has taken all inconsistent pleas. The lower appellate

Court has also come to the conclusion that the agreement was executed not with an intention to sell the suit property, but for some other purpose. The reason for not accepting the sale agreement is that for payment of only Rs.10,000/- out of sale consideration of Rs.1,10,000/- two years time was fixed in the agreement. There is no convincing reason for the same. P.W.2 also had deposed that the purpose of executing the Sale Agreement was, not with an intention to sell the property, but for the purpose of security. Even presuming that the agreement was entered with a real intention to sell the property, the plaintiff ought to have expressed his readiness and willingness to pay the miniscule balance of sale consideration and get the sale executed in his favour. Having failed to discharge the burden passed on to the plaintiff to show that he was true and the sale agreement was intended to be acted upon, the first appellate Court has rightly disbelieved the case of the plaintiff and refused the discretionary relief of specific performance. However, the lower Appellate Court has granted the decree for an alternative relief of return of advance amount.

7. As it is found that the agreement was entered into between the parties as a security, the plaintiff is entitled for return of the said amount with interest, which has been rightly granted by the lower appellate Court. In the absence of any question of law, much less, substantial question of law arising for consideration on the above said facts, there is no necessity to interfere with the findings rendered by the first appellate Court.

8. Accordingly, the Second appeal is dismissed, confirming the judgment and decree of the first appellate Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

srn

To

1.The Principal District Judge,
Perambalur.

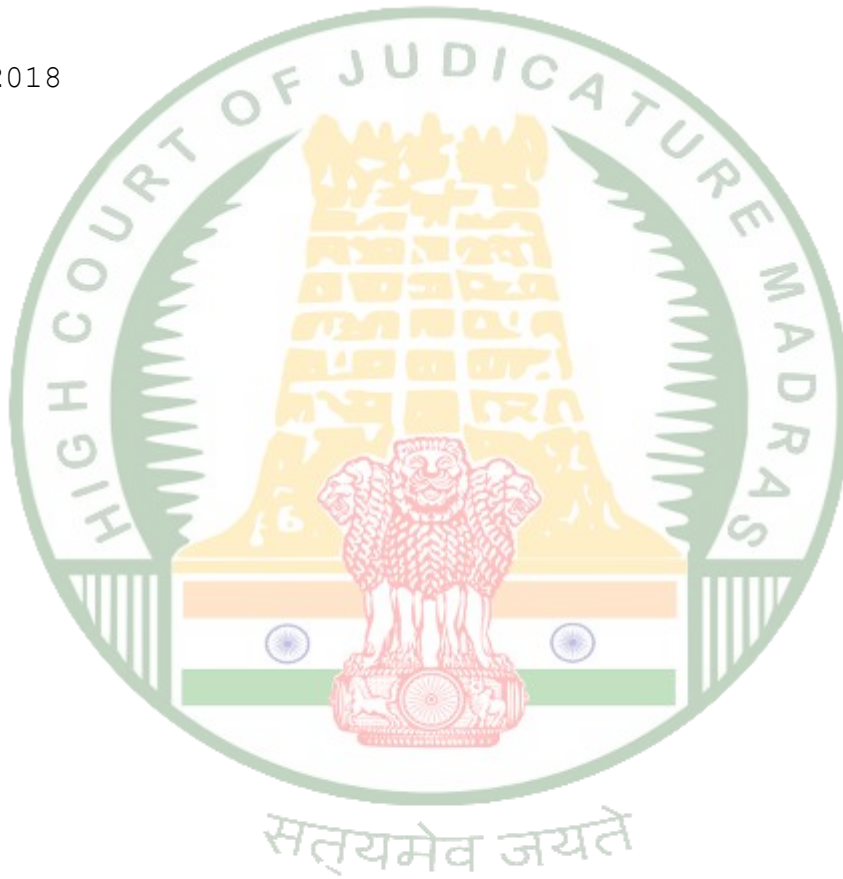
2.The Subordinate Judge,
Perambalur.

+ 1 cc to Mr.A.Rajesh Kanna Advocate,SR.8763

+ 1 cc to Mr.S.Mohan Advocate,SR.9165

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