

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.97 of 2018

1. J.Marry
2. M.J.Nirmala Marry
3. M.J.Kurian ... Appellants /Plaintiffs

Vs

Palani .. Respondent/defendant

PRAYER : The Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 06.01.2010 passed in A.S.No.348 of 2008 on the file of the Fast Track Judge No.II, Additional District Judge, Chennai - 1 confirming the judgment and decree dated 18.12.2007 in O.S.No.723 of 2005 on the file of I Assistant City Civil Judge, Chennai.

For appellants : Mr.P.Rajamanickam

J U D G M E N T

Aggrieved by the concurrent findings of the Courts below, the plaintiffs have filed the above Second Appeal in a suit for specific performance.

2. The case of the plaintiffs is that the suit properties originally belonged to defendant's father Nagaiah Naidu. In the year 1974, the first plaintiff's husband took the lands on lease for an annual rent of Rs.12,000/- and also constructed a weigh bridge. The plaintiffs also claimed to have a pucca construction of buildings in the said properties. As the defendant's father wanted to sell the properties, the first plaintiff's husband, who was already in possession of the properties, as a tenant, offered to buy the same. It is stated that the suit properties were agreed to be sold for Rs.65,000/- and an advance of Rs.25,000/- was paid and the balance of Rs.40,000/- to be paid whenever required by the defendant's father. As the defendant did not come forward to execute the sale deed, the suit had been filed by the plaintiffs.

3. Denying the facts leading to the cause of auction for the suit, the defendant had filed the written statement contending that at no point of time, his father or himself orally agreed to sell the property to the first plaintiff's husband or even leased out the lands as claimed by the plaintiffs. It is also stated by the defendant that in the year 1979, the defendant entered into a rental agreement for a period of 12 months in favour of one M/s.Balaji Traders, which is a partnership firm, for a monthly rent of Rs.1,000/-. The said rental agreement is marked as Ex.B-1. That apart, it is stated that there was a partition as per Ex.B-2 in the year 1972 between the defendant and his father and others, in which, the suit properties are said to have devolved upon the defendant. While so, the plaintiffs cannot claim to have entered into an oral agreement with the father of the defendant, who admittedly, is not the owner of the properties on the date of the agreement.

4. The Courts below have concurrently held that the agreement, based on which, the suit was filed, was an oral one entered into in the year 1992. The plaintiffs are also silent about the date and month of the said oral agreement. The said oral agreement is between the first plaintiff's husband and the defendant's father. It is found by the lower appellate Court that the third plaintiff was born only in the year 1980 and he is not competent to speak about the oral agreement entered into in the year 1982. P.W-2, who has been examined on behalf of the plaintiffs, was an interested witness, who has not spoken about as to how he happened to be present at the time of said oral agreement and what was his role at that point of time. Considering the above aspects, the Courts below have discredited his evidence.

5. Secondly, the defendant has produced Ex.B-2- Partition Deed which had come into effect even before the third plaintiff was born, as per which, the defendant only had a right on the alleged date of oral agreement and the father of the defendant ceased to be the owner of the same. The defendant had also produced Ex.B-1-Lease Agreement entered into with one M/s.Balaji Traders and partners in the year 1974. If at all the plaintiffs are in possession of the property from the year 1972, there would not have been a lease agreement in the year 1974. In fact, the plaintiffs are silent about the said lease agreement. Learned counsel for the appellants could not say as to why the suit was filed in the year 2003, when the agreement, though oral was said to have been entered into in the year 1982. As stated earlier, in the absence of proof of oral agreement and the relief of specific performance, being an equitable relief, the plaintiffs have miserably failed to establish their case. Hence, the Courts below had rightly non-suited the plaintiffs and dismissed the suit and there is no infirmity in the said

judgment and decree of the Courts below to interfere by this Court under Section 100 C.P.C in this Second Appeal.

6. Accordingly, the Second Appeal is dismissed, confirming the judgments and decrees of the Courts below. No costs.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

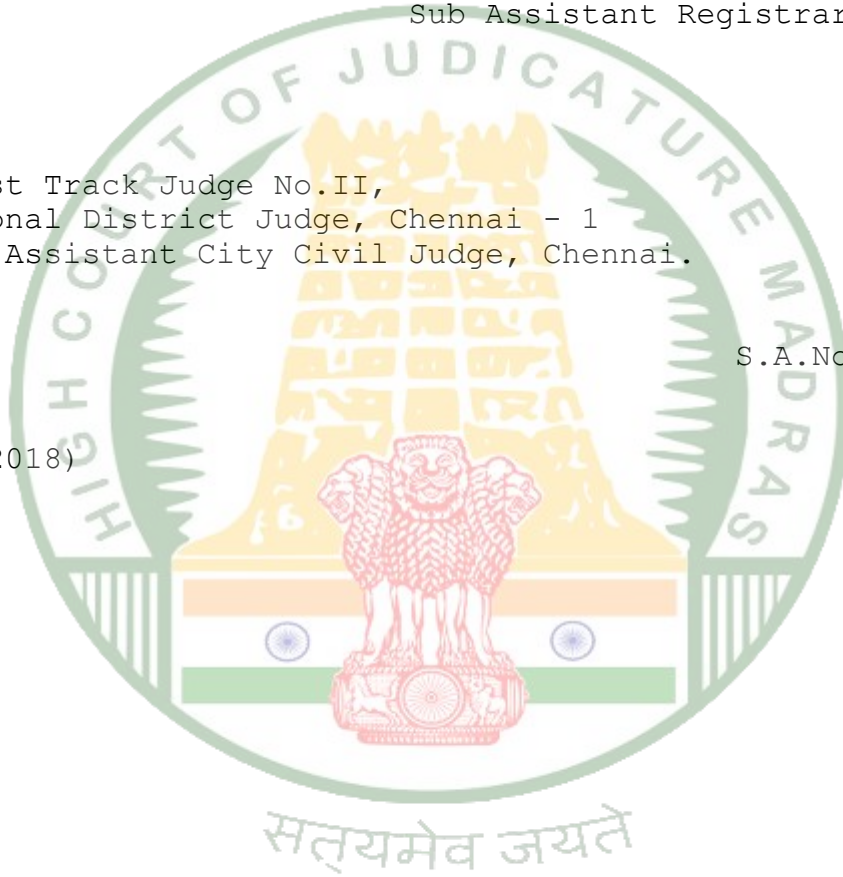
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To

1. The Fast Track Judge No.II,
Additional District Judge, Chennai - 1
2. The I Assistant City Civil Judge, Chennai.

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AK(CO)
TR(07/03/2018)



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