

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.Nos.1752 & 1753 of 1998

S.A.No.1752/1998

Samidurai Udayar ... Appellant/3rd defendant

Vs.

1. Thangarasu Udayar
2. Lakshmi Ammal
3. Dhanarasu

... Respondents/plaintiff/defendants 1 & 2

S.A.No.1753/1998

Samidurai Udayar ... Appellant/plaintiff

Vs.

Thangarasu Udayar

... Respondent/defendant

Common Prayer:

Second Appeals filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Subordinate Judge, Vridhachalam in A.S.Nos.137 & 138 of 1983 respectively dated 28.10.1998 confirming the judgment and decree dated 14.06.1983 passed in O.S.Nos.47 & 288 of 1982 respectively by the learned District Munsiff, Vridhachalam.

For Appellant : Mr.T.Gandhi

For Respondents
in S.A.No.1752/1998 : R1- Mr.A.S.Vijayaraghavan
R2 & R3- Not ready in notice
in S.A.No.1753/98 : Mr.A.S.Vijayaraghavan

COMMON JUDGMENT

The un-successful third defendant in O.S.No.47 of 1982 and plaintiff in O.S.No.288 of 1982, who lost the case before the lower Court as well as the lower Appellate Court, filed the

present second appeals before this Court.

2. The plaintiff filed a suit for specific performance of an agreement to sell certain items of properties against one Lakshmi Ammal, her son Dhanarasu Udayar and Samidurai Udayar-the subsequent purchaser-the present appellant is the third defendant in the above said suit. The said Samidurai Udayar executed a sale deed in respect of the said suit properties on 01.10.1976. Thereafter, he was put in possession in the suit property and possessory mortgage on the same day. On 13.06.1981, the sale agreement was entered into between the plaintiff and the defendants 1 and 2 for sale consideration of Rs.12,000/- accordingly, plaintiff had paid a sum of Rs.5425/- as an advance amount. Since the defendants 1 and 2 have not executed the sale deed thereby the first respondent/plaintiff filed a suit for specific performance against the defendants. The lower Court decreed the suit and the lower Appellate Court confirmed the decree. Aggrieved by the same, third defendant filed Second Appeal before this Court.

3. The learned counsel appearing for the appellant submitted that though the third defendant/ appellant purchased several properties from the defendants 1 and 2, however, some of the properties were not covered under the sale agreement dated 13.06.1981. Hence, the properties which are not mentioned in the sale agreement may be excluded from the decree passed by the Courts below. Admittedly, the suit for specific performance was filed in respect of S.Nos.45/1-2.68 cents, 47 $\frac{3}{4}$ - 1 share, 352/3-0.45 cents, 44/3 - 0.17 cents, 44/7-0.50 cents, 44/17-0.22 cents, 44/13-0.29 cents and 44/15-0.16 cents. The above suit properties covered under the sale agreement dated 13.06.1981. Accordingly, the lower Court decreed the suit in favour of the plaintiff/3rd respondent in the above suit properties. However, the properties situated in S.Nos.352/11, 352/3 and 47/3 are not mentioned in the sale agreement dated 13.06.1981. The first two items of the properties are situated in Mu.Parur village and the other item of property is situated in Me.Mathur Village. When the properties are not mentioned in the sale agreement, the appellant/3rd defendant is entitled to claim the properties.

4. In view of the above, the Second Appeal No.1752 of 1998 is dismissed. The judgment and decree passed by the learned Subordinate Judge, Vridhachalam, in A.S.No.137 of 1983 dated 28.10.21998 is confirmed insofar as the property covered under the sale agreement dated 13.06.1981. No costs. Consequently, the connected miscellaneous petitions are also closed.

5. In view of the decision taken in S.A.No.1752 of 1998, the Second Appeal No.1753 of 1998 filed by the 3rd

defendant in O.S.No.288 of 1982 for redemption of mortgage is also dismissed and the judgement and decree passed by learned Subordinate Judge, Vridhachalam in A.S.No.138 of 1983 dated 28.10.1998 is confirmed.

6. This Court makes it clear that the decree is applicable only in respect of the properties mentioned in the sale agreement dated 13.06.1981 and insofar as the properties which are not mentioned in the sale agreement dated 13.06.1981, the appellant is entitled to claim title over the property.

7. In the result, both the second appeals are dismissed. The judgment and decree passed by the learned Subordinate Judge, Vridhachalam in A.S.Nos.137 and 138 of 1983 respectively, dated 28.10.1998 are confirmed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court,
Vridhachalam.

2.The District Munsiff Court,
Vridhachalam.

3.The Section Officer,
VR Section,
High Court, Madra(2 copies)

+1cc to Mr.A.S.Vijayaraghavan, Advocate sr.no.17633

+1cc to Mr.T.Gandhi, Advocate sr.no.17831

S.A.Nos.1752 & 1753 of 1998

sr(co)
nr 12/06/2018