

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.643 of 2018
and
C.M.P.No.19956 of 2018

M.Ekambaram ...Appellant/Plaintiff

Versus

1.Murugesan
2.Kamalammal
3.Dakshinamoorthy
4.Jeeva
5.Umapathy
6.Chinnammal
7.Raja
8.Vimal Kumar
9.Iranchand Kayar
10.Mukeshkumar Kattari
11.Vinaykumar Kattari
12.Sivareddiyar
13.Srinivasan

...Respondents/Defendant

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree dated 14.03.2018 made in A.S.No.40 of 2014 on the file of the learned I Additional District Judge, Thiruvallur, Thiruvallur District confirming the Judgment and Decree dated 30.09.2011 made in O.S.No.40 of 2004 on the file of the learned Subordinate Judge, Thiruvallur, Thiruvallur District.

For Appellant : Mr. T. P. Sekar

J U D G M E N T

The plaintiff in a suit for specific performance and for consequential injunction is the appellant herein. The Suit in O.S.No.40 of 2004 on the file of the learned Subordinate Judge, Thiruvallur came to be dismissed vide Judgment and Decree dated 30.09.2011 and challenging the Judgment and Decree, the

Plaintiff had filed A.S.No.40 of 2014 on the file of the learned I Additional District Court, Thiruvallur, which was also dismissed by the Lower Appellate Court vide Judgment and Decree dated 14.3.2018, confirming the Judgment and Decree of the Trial Court.

2. The parties are referred to in the same array as in the suit.

The facts in brief are as follows:

- The plaintiff would contend that he had extended financial assistance to his brother Durairaj and sons for cultivating the lands in Periyapalayam Village at Rallapadi Village.
- Durairaj died on 14.03.2003 and the plaintiff had also in the mean while, had retired from service and the plaintiff family had purchased lands adjacent to the suit property and laid PVC pipelines for irrigating the land.
- The suit property measuring an extent of 12.50 acre belonged to the defendants 1 and 2. In the year 1989 the plaintiff had requested the permission of the 1st and 2nd defendants for laying PVC pipelines across their lands.
- They refused permission ; but however offered to sell the lands to the plaintiff. Accordingly, an oral agreement of sale was entered into and the sale consideration was fixed at Rs.4,20,000/-.
- The plaintiff had informed the defendants that he will not be in a position to pay the sale consideration in one lump-sum and had requested for installment payments on various dates. The plaintiff had paid over a sum of Rs.3,44,500/- leaving just a balance of Rs.75,500/-.
- The defendants demanded the plaintiff to pay the balance sale consideration on or before 01.01.1992 failing which they had stated that the balance amount would attract interest at the rate of 30% per annum. Since the major portion of the sale consideration had been paid by him, the plaintiff had to necessarily agree to this agreement. Once again the balance amount was paid by him in installments on 29.04.1995 and a total amount of Rs.2,01,800/- was paid by him as against the balance Rs.75,500/-. In all, the plaintiff had paid total a sum of Rs. 5,46,300/-. When the plaintiff demanded the execution of the sale deed, the defendants further demanded a sum of Rs. 1 lakh failing which they had threatened to damage the PVC pipelines. Once again the plaintiff appears to have paid the said sum in installments and the defendants promised to execute the sale deed.
- While so, defendants 1 and 2 sent a legal notice stating that the lands had been leased to the plaintiff and the

lease amount was payable for one year. The plaintiff had defaulted in the payment of rent for over 10 years. The defendants therefore, demanded the plaintiff to hand over possession. The plaintiff met the defendants in person and the defendants requested the plaintiff to ignore the notice and assured the plaintiff that they would execute the sale deed. Believing these words no reply was sent by the plaintiff. However, the defendants attempted to take possession constraining the plaintiff to send a reply, in which had contended that he was in possession, only as an agreement holder in the suit property. Meanwhile, the defendants had instituted proceedings before the Special Collector, Kancheepuram under the cultivating tenants ; for recovery of lease rental and possession. Considering the above the plaintiff had come forward with the present suit.

3. The defendants denied the case of the plaintiff and contended that they were cultivating tenants under the defendants and they had denied receipt of the amounts as pleaded in the plaint and had also contended that they had filed CTP.10/2002 before the Special Collector, Kancheepuram and the same was pending . They, therefore sought for the dismissal of the suit. Defendants 12 and 13 also filed their written statement, adopting the averments made by the defendants 1 and 2. They also contended that the plaintiff who claims to have entered into an oral agreement, even in his own pleadings, has spread out the repayment of balance sale consideration to 13 years and therefore, the suit is barred by limitation.

4. The Trial Court on appreciation of materials on record and the pleadings, dismissed the suit vide Judgment and Decree dated 30.09.2011, and challenging the legality of the same, the plaintiff had filed A.S.No.40 of 2014 and the file of the learned I Additional District Judge, Thiruvallur . The learned District Judge also dismissed the appeal and confirmed the Judgment and Decree of the Trial Court and challenging the concurrent Judgment and Decree, the plaintiff is before this Court.

5. Heard Mr.T.P.Sekar, learned counsel for the appellant and also perused the material placed before it.

6. From the records, it is very clear that the plaintiff who has come forward with the suit for specific performance which is an equitable relief, on his own conduct, has claimed to have paid the amounts spread over a period of 13 years, which clearly shows that the plaintiff was neither ready nor willing to go ahead with the agreement of sale. That apart, the suit is hopelessly barred by limitation and in these circumstances, the plaintiff cannot seek to have the suit decreed. Further, the

defendants have categorically denied not only the agreement but also receipt of the various sums of money collected from the plaintiff. The plaintiff unfortunately has not been able to prove the fact that he had made payments on various dates. In these circumstances the Judgment and Decree of the Courts below does not suffer from any infirmity. There is no question of law much less than the substantial question of law warranting interference at the hands of this Court.

7. In the result, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mpa/jrs

To

1.The I Additional District Judge,
Thiruvallur,
Thiruvallur District.

2.The Subordinate Judge,
Thiruvallur,
Thiruvallur District.

+1 cc to M/s.T.P.Sekar, Advocate Sr.No.81448

S.A.No.643 of 2018
and
C.M.P.No.19956 of 2018

NRL (CO)
CSL/10.01.2019

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