

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.571 of 2018
and C.M.P.No.17268 of 2018

S. Muthu ... Appellant/Respondent/Plaintiff

Vs.

1. L.Ponnusamy
2. Palani Ammal
3. Pappu @ Pappayee
4. Kaliyammal ... Respondents/Appellants/Defendants 2 to 5

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 04.06.2018 in A.S.No.1 of 2016 on the file of the learned Principal District Judge, Namakkal, modifying the Judgment and Decree dated 16.10.2015 in O.S.No.378 of 2008 on the file of the learned Subordinate Judge, Tiruchengode, (O.S.No.178 of 2007 on the file of the learned Subordinate Judge, Namakkal).

For Appellant : Mr.Senthil
for Mr.D. Shivakumaran

JUDGMENT

The plaintiff is the appellant before this Court. The appeal arises against the concurrent Judgment and Decree in the suit for Specific Performance.

2.The appellant/plaintiff had filed a suit O.S.No.178 of 2007 on the file of the learned Subordinate Judge, Namakkal, for Specific Performance of an Agreement dated 18.03.2004. It is his case that he had entered into an Agreement of Sale with one Lakshmana Gounder, the father of the respondents/defendants 2 to 5 in respect of the suit property. The sale consideration was fixed at a sum of Rs.1,24,000/- per acre and the total consideration was fixed as Rs.4,00,000/-. The plaintiff has paid an advance of Rs.1,25,000/- and the time for performing the Sale Deed fixed at 300 days. On 07.08.2006, the plaintiff had approached the defendants to execute the Sale Deed, however, he evaded the same and on 04.07.2007, he attempted to sell the property to the third parties, thereby, constraining the

plaintiff to file the suit.

3.The suit was resisted by the defendants 2 to 5, since the 1st defendant had died pending the suit, inter alia contending that an Agreement of Sale was nothing but forgery and that the property does not exclusively belong to the deceased defendant but also belongs to all the defendants. The defence was that the plaintiff had entered into an earlier Agreement on the very same terms that has been extracted in the Agreement dated 18.03.1996. However, since the plaintiff had purchased some other properties from one Kaliyannan the defendants were not willing to sell the property. It is the case of the plaintiff that the plaintiff had used the Sale Agreement Deed dated 18.03.1996 to create the Sale Agreement dated 18.03.2004 and therefore, the plaintiff has not come to Court with clean hands. He was not entitled to decree for Specific Performance.

4.The learned District Munsif and the learned Subordinate Judge decreed the suit and challenging the Judgment and Decree, the defendants had filed A.S.No.1 of 2016 on the file of the learned Principal District Judge, Namakkal. On a detailed examination of the documents as well as the oral evidence, the learned Judge allowed the appeal and set aside the Judgment and Decree of the learned Subordinate Judge, Tiruchengode. Challenging this Judgment and Decree, the plaintiff is before this Court.

5.Mr.Senthil, who appeared on behalf of Mr.D.Shivakumaran, learned counsel for the plaintiff would argue that the plaintiff had proved Ex.A.1 - Sale Deed by examining the witnesses and therefore, the Appellate Court ought to have dismissed the appeal. He would further argue that though the defendant who had come forward with the case that the document Ex.A.1 -Agreement of Sale was forged, he had not let in any evidence to substantiate this pleading and therefore, the Appellate Judge has grossly erred in allowing the appeal and modifying the Judgment and Decree for the alternative relief.

6.Heard the counsel appearing for the appellant and perused the material available on record.

7.It is seen that the plaintiff and the defendant have as early as in the year 1996 entered into a Sale Agreement in respect of the very same property and which has been marked as Ex.B.2 wherein the sale price is the same. The fact that eight years after the earlier Agreement, subsequent Agreement had been entered into for the very same price, would only pre-suppose that the Agreement has been created on the basis of the earlier agreement and therefore, the plaintiff has suppressed this earlier agreement in his pleadings and has not come to Court

with clean hands. The fact that the plaintiff has suppressed the material facts before the Courts below. The Judgment and Decree of the learned Appellate Judge cannot be found fault with. The plaintiff/appellant has not made out any questions of law much less the Substantial Questions of Law involved in the Second Appeal.

Hence, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Mps

To

1.The Principal District Judge,
Namakkal.

2.The Subordinate Judge,
Tiruchengode.

+1cc to Mr.D.Shivakumaran, Advocate, S.R.No. 79500

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PM(CO)
GN(31/05/2019)

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