

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2019

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.Nos.1673 & 1674 of 1999

M.Parthasarathy (Deceased)

2.P.Bhuvaraghamurthy

...Appellants in S.A.Nos.1673 & 1674 of 1999

[2nd appellant brought on record as Legal Representatives of the deceased sole appellant vide order of Court dated 10.02.2015 made in CMP.Nos.856 to 858 of 2008 in S.A.No.1673 of 1999].

Vs

1.Smt.Mala

Smt.Suguna (Deceased)

...Respondents in S.A.Nos.1673 & 1674 of 1999/Plaintiffs

3.K.Chandrasekaran

...3rd respondent in S.A.No.1673/1999 & 5th respondent in S.A.No.1674/1999

4.C.Rajesh

...4th respondent in S.A.No.1673/1999 & 6th respondent in S.A.No.1674/1999

5.C.Rajalakshmi

...5th respondent in S.A.No.1673/1999 & 7th respondent in S.A.No.1674/1999

6.J.Manjula

...6th respondent in S.A.No.1673/1999 & 8th respondent in S.A.No.1674/1999

7.J.Divya

...7th respondent in S.A.No.1673/1999 & 9th respondent in S.A.No.1674/1999

8.J.Saranya

...8th respondent in S.A.No.1673/1999 & 10th respondent in S.A.No.1674/1999

9.C.S.Surendra Babu

...3rd Respondent in S.A.No.1674 of 1999

10.Smt.Jayalakshmi

...4th Respondent in S.A.No.1674 of 1999

RR3 to 5 brought on record as Legal Representatives of the deceased R2 vide order of court dated 10.02.2015 made in CMP.Nos.125 to 127 of 2015 in S.A.No.1673 of 1999.

RR6 to 8 brought on record as Legal Representatives of the deceased sole appellant (i.e) Legal Representatives of the predeceased son of the sole appellant vide order of court dated 25.02.2015 in CMP.Nos.128 to 130 of 2015 in S.A.No.1673 of 1999.

2nd Appellant brought on record as LR of the deceased sole appellant and RR5 to 7 brought on record as LRs of the deceased R2 vide order dated 10.02.2015 made in CMP.Nos.859 to 861 of 2008 and CMP.Nos.134 to 136 of 2015 respectively in S.A.No.1674 of 1999.

RR8 to 10 brought on record as LRs of the deceased sole appellant (i.e) LRs of predeceased son of the sole appellant vide order of court dated 25.02.2015 made in CMP.Nos.125 to 130 of 2015 in S.A.No.1674 of 1999.

Prayer in S.A.Nos.1673 & 1674 of 1999: The Second Appeals are filed under Section 100 of CPC, against the judgment and decree made in A.S.Nos.166 & 167 of 1992, dated 02.12.1994 on the file of the VII Additional City Civil Court, Chennai confirming the judgment and decree made in O.S.Nos.7163 & 7436 of 1983 dated 06.04.1990 on the file of the XV Assistant City Civil Court, Chennai.

For Appellant : Mr.G.Janakiraman
[in both the Second Appeals]

For Respondents 3 to 5 : Mrs.V.Yamunadevi
[in SA.No.1673 of 1999]
For Respondents 5 to 7
[in SA.No.1674 of 1999]

For Respondent 7 : Mr.V.Bhiman
[in SA.No.1673 of 1999] For Sampathkumar Associates
For Respondents 8 & 10
[in SA.No.1674 of 1999]

For Respondents 3 & 4 : Dismissed vide order
dt.07.02.2009
[in SA.No.1674 of 1999]

JUDGMENT

S.A.No.1673 of 1999 arises from O.S.No.7163 of 1983 on the file of the XV-Assistant City Civil Court, Chennai. The appellant herein was the plaintiff in the said suit. The suit had been filed for recovery of possession of the suit schedule property as a vacant land and for damages. The suit was dismissed. The appeal filed in A.S.No.166 of 1992 before the VII-Additional City Civil Court, Chennai, was also dismissed. The plaintiff had then filed the present Second Appeal. The Second Appeal has not yet been admitted.

2.S.A.No.1674 of 1999 arises from O.S.No.7436 of 1983 which is suit for specific performance. The suit was decreed. The appeal filed by the first defendant in A.S.No.167 of 1992, had been dismissed. Challenging that, the first defendant had filed a present Second Appeal. The Second Appeal has not yet been admitted.

3.In O.S.No.7163 of 1983, the plaintiff Parthasarathy had stated that, he was the owner of the land in Door No.49, B.B.Road, Vyasarpadi, Chennai-600 039. The second and third defendants Mrs.Mala and Mrs.Suguna had offered to purchase the said land together with the adjacent lands which were owned by the plaintiff to a total extent of two grounds. They paid an advance of Rs.1,000/- on 27.06.1975. The plaintiff had given a receipt dated 27.06.1975. The agreement of sale was evidenced by the receipt dated 27.06.1975. It was stated that the defendants did not take any steps to perform their part of the agreement. Thereafter, the plaintiff took steps to sell the lands. He sold 1885 sq.ft of land to one Mrs.N.Jayalakshmi under sale deed dated 15.09.1983, registered as Doc.No.1667/1983 in the office of the Sub-Registrar, Purasaiwakkam. He sold an extent of 700 Sq.ft to Mr.C.S.Surendarababu by sale deed dated 27.09.1983, registered as Doc.No.1735/1983 in the office of the Sub-Registrar, Purasaiwakkam. The plaintiff claimed that he retained title for 1907 sq.ft. He also stated that the defendants had put up two separate superstructures in the said 1907 sq.ft. of land. He stated that therefore the land must be handed back to him as a vacant site and that the defendants should pay damages at the rate of Rs.100 per month.

4.In O.S.No.7436 of 1983, the plaintiffs Mrs.Mala and Mrs.Suguna Chandran had stated that they had entered into an agreement of sale with the first defendant, Parthasarathy and paid an advance of Rs.1,000/- on 27.06.1975 for purchase of two grounds at Rs.6,000/- per ground. A further advance of Rs.2,000/- was paid to Pattammal, the mother of the first defendant, Pattammal. Receipts were given for the payment. It was also stated that they were put in possession and they were permitted to put up constructions. They also built two houses and they are living there for the past 8 years. The first defendant is residing in the very same street. He had seen the construction of the two houses. He had not raised any objection. The plaintiffs were waiting for the first defendant to execute the sale deed. However, the first defendant sold a portion measuring 700 sq.ft. to the second defendant Mr.C.S.Surendarababu and another portion measuring 1885 sq.ft. to the third defendant Mrs.Jayalakshmi. Claiming that the first defendant should execute a sale deed as agreed on 27.06.1975, the suit had been filed for specific performance and also for injunction restraining the first defendant from interfering with the plaintiffs' possession.

5.Both the suits came up for consideration on 06.04.1990 and by a common judgment of even date, the learned XV-Assistant City Civil Court, Judge, Chennai, dismissed O.S.No.7163 of 1983 and decreed O.S.No.7436 of 1983. It was specifically found as a fact that there was an executable agreement between the parties and pursuant to such agreement, as admitted by the plaintiff in O.S.No.7163 of 1983, the defendants were put in possession. It was also stated that the defendants have put up two separate houses and this was admitted by plaintiff. The plaintiff had sold two other portions namely 1885 sq.ft. to Mrs.N.Jayalakshmi and 700 sq.ft to Mr.C.S.Surendarababu. It was also found as a fact that the plaintiffs in O.S.No.7436 of 1983, were ready and willing to perform their part of the agreement and that they had also put up constructions only with the permission of the defendant in the said suit and that they had been in continuous occupation. Consequently, O.S.No.7163 of 1983 seeking recovery of possession was dismissed and O.S.No.7436 of 1983 seeking specific performance was decreed.

6.Challenging the common judgment, A.S.No.166 of 1992 and A.S.No.167 of 1992 were filed by the plaintiff Parthasarathy in O.S.No.7163 of 1983 who was the first defendant in O.S.No.7436 of 1983. By a common judgment dated 02.12.1994, the learned VII-Additional City Civil Court, Judge, Chennai, confirmed the judgment of the trial court on each and every fact. It was confirmed that there was an existing agreement and that pursuant to the agreement, possession was handed over and permission to construct houses was also granted and two separate houses were also constructed. It was also found that the respondents in the

appeal were in continuous possession. It was therefore found that specific performance of the agreement should be effected.

7.It had been contended by the learned counsel for the appellant that only a receipt was produced evidencing agreement. However, both the courts held that even in the plaint in O.S.No.7163 of 1983, the plaintiff Parthasarathy had admitted that there was an agreement to sell and he was under obligation to sell and he had in fact received part sale consideration. It has been the further contention of the learned counsel for the appellant that the description of the property was not properly given in the receipt. However, both the courts have concurrently held that the receipt evidenced agreement to sell and as a matter of fact, though the agreement was for two grounds, only 1907 sq.ft. was available and specific performance of that portion was granted.

8.It must also be mentioned that pending the Second Appeal, the appellant Parthasarathy died and though he had two sons only one son was brought on record as his legal heir and as second appellant. The widow and children of the other son were impleaded as respondents. It must also be mentioned that the second appeals have been pending for the past more than 20 years. The appeals were actually filed in the year 1995. There are no substantial questions of law which arise for consideration. As a matter of fact, while filing the appeal in the grounds of appeals, substantial questions of law have also not been framed. The learned counsel for the appellant forwarded the substantial questions of law during the course of hearing today. But however, this Court in second appeal cannot re-appreciate the evidence and the concurrent findings on fact, unless they are perverse.

9.Consequently, I hold that no issue on law arises and that the facts have been settled concurrently by both the courts below, holding that plaintiffs in O.S.No.7436 of 1983 are entitled for specific performance as sought for in the said suit. Consequently, both the Second Appeals are rejected, since there are no substantial questions of law which arise for consideration. No Costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

smv

To

1.The VII Additional City Civil Court, Chennai

2.The XV Assitant City Civil Court, Chennai

Copy to

The Section Officer,
VR Section
High Court, Madras 104.

S.A.Nos.1673 & 1674 of 1999

KJ(CO)
SP(03/04/2019)