

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.167 of 2007
and
MP No.2 of 2007

Ammasai Gounder ... Appellant /Appellant/Plaintiff

Vs

1. Pavayammal
2. Shanmugam (Deceased)
3. Palanisamy
4. Venkidusamy
5. Saraswathi
6. Jeevarathinam
7. Shanthi
8. S. Senthilnathan ... Respondents

RR6 to 8 brought on record as LRs of the deceased R2 vide order of Court, dated 20.11.2018 made in M.P. Nos.1 to 3 of 2012 in S.A. No.167 of 2007.

Second Appeal filed under Section 100 C.P.C. against the judgment and decree made in A.S. No.65 of 2005 on the file of the Principal Sub Court, Gobichettipalayam, dated 02.03.2006 as confirmed by the judgment and decree made in O.S. No.534 of 2004 on the file of District Munsif Court, Gobichettipalayam dated 1.10.2004.

For Appellant : Mr.R.G. Narendhiran

For Respondents : R2- Died - steps taken
R1, R3 to 9 - served

JUDGMENT

This Second Appeal has been filed against the concurrent findings of the courts below. The plaintiff is the Appellant in this Second Appeal. The plaintiff filed O.S. No.89 of 1995 before the Sub Court, Gobichettipalayam, which was re-numbered as O.S. No.534 of 2004, against the respondent K.C. Nachimuthu

Gounder, who is the defendant in the suit seeking specific performance of an agreement of sale dated 23.04.1992. The said agreement of sale was entered into between K.C. Nachimuthu Gounder (defendant) as the seller and V.R. Venkatachalam, E.P. Kamalam and Ammasai Gounder, S/o. Sankara Gounder as purchasers. Subsequent to the agreement of sale dated 23.04.1992, the Appellant entered into an agreement of sale dated 14.09.1994 with V.R. Venkatachala Gounder, E.P. Kamalam and Ammsai Gounder, S/o. Sankara Gounder for the purchase of the said property.

2. The Appellant filed O.S. No.89 of 1995 before the Sub Court, Gobichettipalayam, which was re-numbered as O.S. No.534 of 2004 against K.C. Nachimuthu Gounder seeking specific performance of the agreement of sale dated 23.04.1992 and sought permission of the Court to permit him to pay the balance sale price of Rs.1,200/- and to direct the defendant (K.C. Nachimuthu Gounder) to receive the same and to execute a registered sale deed in his favour and on failure to comply with the said direction, he sought for a direction requesting the Court to execute a sale deed in his favour

3.A written statement was filed by the defendant in the suit stating that he agreed to sell the property under the agreement for sale dated 23.04.1992 only to Venkatachala Gounder, E.P. Kamalam and another Ammasai Gounder and not to the Appellant. According to the defendant K.C.Nachimuthu Gounder, time was the essence of the agreement for sale, dated 23.04.1992 and according to him, the balance sale price of Rs.1,200/-, out of the total sale consideration of Rs.40,200/- was not paid by Venkatachala Gounder, E.P. Kamalam and Ammasai Gounder in accordance with the terms of the contract.

4.It is the case of the defendant, K.C. Nachimuthu Gounder that the time for performance of the agreement of sale was three months and not three years, as pleaded by the Appellant/plaintiff in the plaint. It is also the case of the defendant that he and his sons own 4.12 acres of wet land situated in the northern bank of the Bhavani river. According to the defendant, the original vendees viz., V.R.Venkatachala Gounder, E.P. Kamalam and late S. Ammasai Gounder are having huge dry and garden lands lying few kilometres away on the northern side of the said river. They intended to lay an underground pipeline to draw water from the river and store the same into the tank like well and take the water through underground pipeline to their field. According to the defendant, the only land suitable for the said purpose belongs to his family. Therefore, V.R.Venkatachala Gounder, E.P. Kamalam and Ammasai Gounder approached the defendant and offered price for the land. According to the defendant, only under

those circumstances an agreement for sale was entered into by K.C. Nachimuthu, the defendant with V.R.Venkatachala Gounder, E.P. Kamalam and Late Ammasai Gounder on 23.04.1992. According to the defendant, the vendees viz., V.R. Venkatachala Gounder, E.P. Kamalam and Late Ammasai Gounder did not lay pipelines, as promised under the agreement of sale dated 23.04.1992. It is also pleaded in the written statement that the defendant also filed a suit in O.S. No.447 of 1995 before the District Munsif Court, Gobichettipalaym for specific performance of laying pipeline and perpetual injunction against the plaintiff and an interim injunction was also granted in favour of the defendant in I.A. No.1588 of 1995 against the Appellant / plaintiff on 10.11.1995.

5.The Trial Court framed the following issues :

(1) Whether the transfer of rights under the agreement for sale, obtained by the plaintiff in his favour, is valid?

(2) Whether the time was the essence of the suit agreement for sale?

(3) Whether the defendant is bound to execute the sale deed in favour of the plaintiff?

(4) To what other relief?

6.The Trial Court dismissed the suit on the ground that the Appellant / plaintiff was not ready and willing to perform the agreement of sale dated 23.04.1992, which is Ex. A1 entered into between V.R.Venkatachala Gounder, E.P. Kamalam and Ammasai Gounder and the defendant in the suit. As seen from the evidence available on record, the Appellant has also admitted in his oral evidence that the time for performance of the agreement of sale dated 23.04.1992 (Ex. A1) is three months. This fact has also been recorded by the Trial Court. The suit was filed by the Appellant/plaintiff only in the year 1995. Further, the Appellant was not a party to the agreement of sale dated 23.04.1992 (Ex. A1). The Appellant has also not made the vendees to the agreement of sale, dated 23.04.1992 (Ex. A1) as parties to the suit, though admittedly the Appellant had entered into an agreement of sale only with them.

7.The Trial Court has also taken note of the fact that the Appellant / plaintiff has admitted in his oral evidence that he is not in a position to pay the balance sale consideration of Rs.1,200/- under the agreement of sale dated 23.04.1992 (Ex. A1). As seen from the evidence available on record, no evidence has been let in by the Appellant / plaintiff to establish that he is having the means to pay the balance sale consideration and

he has also not filed any documentary evidence before the Trial Court to establish the mode of payment of the sale consideration to the vendees of the defendant, as per the agreement of sale, dated 14.09.1994, (Ex. A2). The trial Court based on the evidence available on record, has also given a finding that the Appellant / plaintiff has not at all established as to how the defendant in the suit has handed over possession of the suit schedule property to the original vendees under the agreement of sale, dated 23.04.1992 (Ex. A1). Based on the evidence available on record, the Trial Court has given a categorical finding that Ex. A2 viz., the Agreement of sale 14.09.1994 said to have been entered into between the plaintiff and the vendees of Ex.A1 is not a genuine document and that the Appellant / plaintiff has been used by the original vendees to file this false suit. The Trial Court has also observed that the non examination of the original vendees would lead to an irresistible adverse inference against the Appellant / plaintiff. The Trial Court has also observed that the original vendees instead of approaching the court by themselves have obviously chosen the Appellant / plaintiff to sue the defendant by transferring the rights under the original agreement of sale Ex.A1 through another agreement Ex. A2, dated 14.09.1994 that too within about three weeks from the date of re-iteration of his stand by the defendant that he will not execute the sale deed in favour of the original vendees, due to their non readiness and willingness to pay the balance sale consideration on time. The Trial Court has considered the oral and documentary evidence let in by both the parties to the suit and only thereafter has dismissed the suit filed by the Appellant / plaintiff.

8. Aggrieved by the dismissal of the suit O.S. No.534 of 2004 by the District Munsif Court at Gobichettipalayam, the Appellant / plaintiff preferred an appeal before the Sub Court, Gobichettipalayam in A.S. No.65 of 2005. The first appellate court has duly considered the findings of the Trial Court and has confirmed the said finding by dismissing the appeal. Aggrieved by the dismissal, the instant Second Appeal has been filed.

9. At the time of the admission of the Second Appeal, the following Substantial questions of law were formulated by this Court.

1. Whether the courts below erred in law, in dismissing the suit for specific performance, by holding that Ex. A1 and A2 are not genuine and intended to be acted upon, especially under the circumstances, where the defendant himself has admitted the execution as well as the receipt of advance amount, under his written statement?

2. Whether the courts below erred in law in not applying the well established principles of law that any amount of pleading not supported by evidence is not valid and the court cannot rely upon such pleading to decide the case against the plaintiff?

Discussion :

10. In the case on hand, two agreements of sale, viz. Ex.A1 and Ex.A2, are the subject matter of consideration. Ex. A1 is the agreement of sale entered between the defendant K.C. Nachimuthu Gounder (defendant) as the seller and V.R. Venkatachala Gounder, E.P.Kamalam and Ammasai Gounder, S/o. Sankara Gounder as purchasers. Ex. A2 is the agreement of sale dated 14.09.1994 entered into between V.R. Venkatachala Gounder, E.P. Kamalam and Ammasai Gounder as sellers who are the vendees under Ex.A1 and the Appellant Ammasai Gounder as purchaser.

11. Before the Trial Court, the Appellant has conceded that he is only a servant under V.R. Venkatachala Gounder, E.P. Kamalam and Ammasai Gounder, the purchasers under Ex. A1 and he does not have the means to pay the balance sale price under Ex. A1. He has also admitted that he has been set up only by the purchasers under Ex. A1 to file the suit against K.C. Nachimuthu Gounder, the owner of the suit schedule property. He has also admitted that the balance sale consideration under Ex.A1 will have to be paid by Venkatachala Gounder, E.P. Kamalam and Ammasai Gounder to K.C. Nachimuthu Gounder, within a period of three months from the date of agreement of sale(Ex. A1). Only based on the oral and documentary evidence, the Trial Court has come to the right conclusion that the subsequent agreement of sale dated 14.09.1994 (Ex. A2) with the Appellant is not a genuine one, and the same is unenforceable. The first Appellate Court has also confirmed the findings of the Trial Court by its judgment and decree dated 2.3.2006 passed in A.S. No.65 of 2005.

12. Specific performance is a discretionary relief prior to the Specific Relief (Amendment) Act, 2018. Being a discretionary relief, based on the evidence available on record, the Trial Court has rightly dismissed the suit, which has been confirmed by the first Appellate Court. The factual finding of the Courts below is based on the materials and evidence available on record and this Court does not find any perversity in the said findings. The general rule is that the High Court will not interfere with the concurrent findings of the courts below. Some of the well-recognised exceptions are, where,

1) the courts below have ignored material evidence or acted on no evidence ;

2) the courts have drawn wrong inferences from the proved facts by applying the law erroneously; or

(3) the courts have wrongly cast the burden of proof.

13.The case on hand does not come under any of the aforementioned exceptions, as the findings given by the Trial Court, confirmed by the first Appellate Court are based on materials and evidence available on record and does not suffer from any perversity or material irregularity. There is no substantial question of law involved in this second appeal.

Conclusion :

14.In view of the factual concurrent findings, the questions of law formulated by this Court at the time of admission of this appeal do not merit consideration. Accordingly, the second appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sub Judge,
Gobichettipalayam.

2. The District Munsif, सत्यमेव जयते
Gobichettipalayam.

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

+1cc to M/s.R.G.Narendhiran, Advocate Sr.76621

S.A. No.167 of 2007

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srg 17/02/2020