

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MR JUSTICE N.SESHASAYEE

S.A. No. 613 of 2010

1.Mr.Kannappan

2.Mr.Ramesh

...Appellants/Appellants/Defendants

Vs.

Mr.C.Chinnappan

...Respondent/Respondent/Respondent

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the learned Principal District Judge of Krishnagiri, dated 22.7.2009 in A.S. No. 13 of 2008 confirming the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri, dated 17.7.2007 in O.S. No. 157 of 2003.

For Appellants : Mr. N.E.A. Dinesh

For Respondent : Mr. G.Surya Narayanan

JUDGMENT

The defendant in a suit for specific performance having suffered successive decrees before the courts below has come forward as appellant now. The parties would be referred by their rank before the trial court.

2. The brief facts are : According to the plaintiff, on 27.06.2001 he had entered into a registered agreement of sale for the purchase of the suit property for a total consideration of Rs.1,10,000/-, that he had paid an advance of Rs.1,00,000/-. The contract was to be performed within a period of two years. Shortly, before the expiry of the time fixed performance of the contractual obligations, the suit was laid for specifically enforcing the contract. No pre-suit notice, however, was issued by the plaintiff.

3. In the written statement, the defendant has contended that the sale agreement, notwithstanding its nomenclature, is executed essentially to support or to secure a loan that the plaintiff had advanced to him. It is also pleaded that the

plaintiff was not ready and willing to perform his part of the contract.

4. Before the trial court the suit agreement was marked as Ex-A1. For the Plaintiff, he was examined as PW1. He has also examined an independent witness as PW2 who has negotiated the transaction between the parties. On the other side, defendant was examined as DW1, another independent witness was examined as DW2. After appreciating the oral and documentary evidence before it, the trial court decreed the suit. On a challenge to the decree by the defendants before the First Appellate Court, the same came to be dismissed and hence, the defendants are here before this court with the present appeal.

5. This appeal is not yet admitted. However, notice was served on the respondent /plaintiff and he has entered appearance. Heard both sides.

6. The principal arguments of the learned counsel for the appellants is that: That the assertion of the defendants that Ex-A1 the agreement was executed only to secure a loan could be known from the fact of payment of the paltry sum of Rs.1,00,000/- and towards the balance sale consideration, two years period was fixed for performance. Both the Courts should have generally considered such terms as an indicator to come to a conclusion that the sale agreement, notwithstanding its nomenclature, was not intended to be performed, but was executed for supporting loan transaction.

7. Per contra, the learned counsel for the respondents submitted that PW2 has deposed in his cross examination that the two years period came to be fixed in Ex-A1 agreement because the suit property is a rose garden, and the duration of the harvest is generally two years. He also added that the Court may not take a pedantic view of the terms of the contract, but may have to consider that in the context of each particular case.

8. This court finds substantial merit on the submissions of the counsel for the plaintiffs/respondents. It needs to be remembered that Courts do not make contract of the parties. At the point of enforcing a contract in an action for specific performance, it is an equitable relief, all that the court is keen to evaluate is both the case that the plaintiff alleges and his over all conduct in relation to the action he has brought should be reasonably beyond suspicions and blames and suspicions.

9. With this in mind, if the facts taken along with the evidence in turn to, the evidence of PW2 explains a critical factor in understanding why a term of two years was stipulated

in Ext.A-1. He has deposed in his cross examination that two years period came to be fixed in Ex-A1, for accommodating harvesting of rose from the rose garden which the suit property was at the time when the contract was entered into. Therefore, when a critical factor on time stipulated for performance taken along with the extent of consideration that is remained to be paid, which the Courts normally consider as random tests for testing if what purports to be a sale agreement is intended to be so, is explained, necessarily, the structure of the appellant's argument become shaky.

10. The writing is on the wall for the defendant/appellant, as this Court finds no merit in the appeal. However, charity came from the plaintiff/ respondent when he offered an additional sum of Rs.4,00,000/- towards sale consideration, which, under the circumstances, this court considers as just, fair and reasonable on the part of the plaintiff. He requires a maximum period of three months for depositing such sum.

11. In the end this appeal is dismissed and the judgment and decree of the first appellate court 22.7.2009 in A.S. No. 13 of 2008 is confirmed. However, the plaintiff /respondent is directed to deposit an additional sale consideration of Rs.4,00,000/- within a period of three months from today wherein after defendants /appellants shall execute a sale deed.

12. It has now come to the light that a settlement deed has been executed by the first defendant in favour of his wife during the pendency of the first appeal and necessarily for causing the title, her presence is required. Therefore, the plaintiff may bring on record, the donee /settlee before the trial court in the execution petition if any, required to be filed by the plaintiff. No costs.

Sd/-

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Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The learned Principal District Judge,
Krishnagiri.

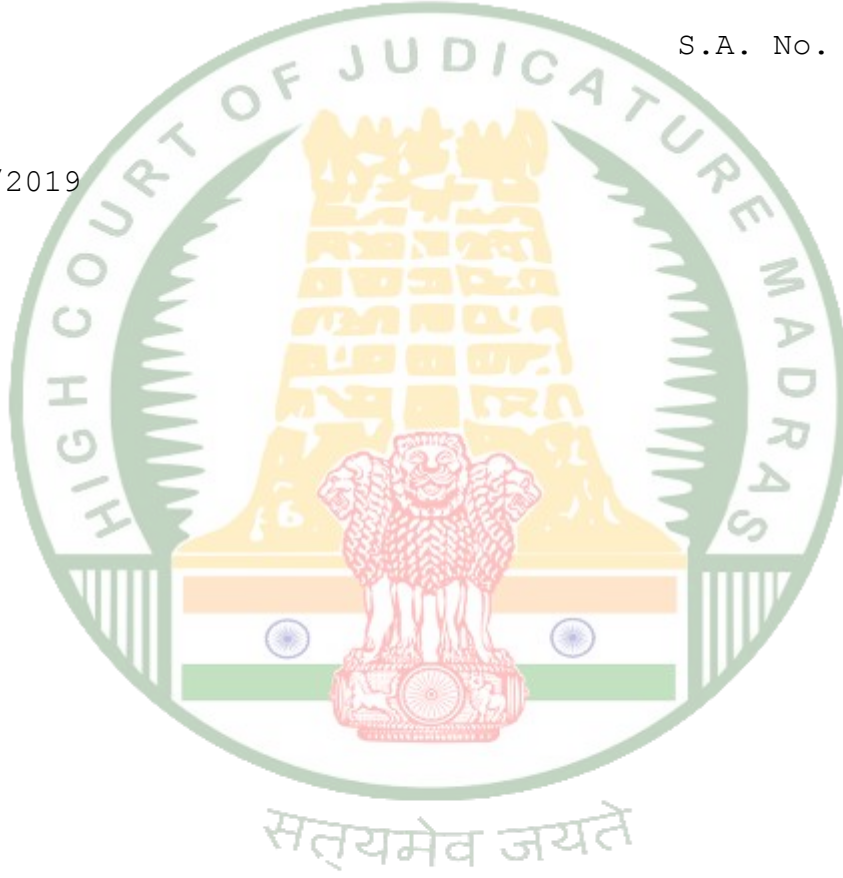
2. The learned Principal Subordinate Judge,
Krishnagiri.

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

+lcc to Mr.V.Nicholas, Advocate Sr.8328

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