

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2019

PRONOUNCED ON: 22.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.760 of 2019
and
CMP No.14716 of 2019

C.Selvi Appellant/Defendant

Vs.

G.Komala Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.41 of 2018, on the file of the Additional District Court (Fast Track Court), Vellore dated 09.10.2018 confirming the judgment and decree of the trial Court dated 27.03.2018 passed in O.S. No.36 of 2012 on the file of the Principal Subordinate Court, Vellore.

For Appellant : Mr.N.C.Ashok kumar

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 09.10.2018, passed in A.S.No.41 of 2018, on the file of the Additional District Court (Fast Track Court), Vellore confirming the judgment and decree dated 27.03.2018, passed in O.S. No.36 of 2012, on the file of the Principal Subordinate Court, Vellore.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance.

4. The plaintiff has laid the suit against the defendant seeking for the enforcement of the sale agreement dated 27.09.2010.

5. Briefly stated, according to the plaintiff, the defendant agreed to sell the suit property in her favour for a sum of Rs.1,75,000/- and entered into a sale agreement dated 27.09.2010 and received a sum of Rs.1,00,000/- as advance, on the date of the sale agreement and both parties agreed that the balance amount of Rs.75,000/- should be paid on or before 26.09.2011 and the sale transaction should be completed and even though the plaintiff has been ready and willing to perform her part of the contract and also issued a legal notice dated 03.09.2011 and another legal notice on 07.12.2011, as the defendant failed to come forward to execute the sale deed, according to the plaintiff, she has been necessitated to lay the suit for appropriate relief.

6. According to the defendant, he had only borrowed a sum of Rs.1,00,000/- as loan from the plaintiff and the plaintiff had obtained the sale agreement from her instead of registered simple mortgage deed and according to the defendant, he had never offered to sell the suit property for Rs.1,75,000/- and according to him, the suit property is worth more than Rs.20,00,000/- and further, it is stated that the plaintiff had taken away the sale deed pertaining to the suit property and falsely issued a legal notice and the plaintiff is not entitled to seek the relief of specific performance and hence, the suit is liable to be dismissed.

7. Considering the pleas put forth by the respective parties and also the materials placed on record, the Courts below were pleased to accept the plaintiff's case. Impugning the same, the present second appeal has been preferred.

8. The main defence put forth by the defendant for resisting the plaintiff's case is that the sale agreement had been obtained from her only in connection with the loan amount received by her from the plaintiff for a sum of Rs.1,00,000/- and that she had never agreed to sell the suit property to the plaintiff as put forth by the plaintiff. In this connection, it is found that the plaintiff had issued a legal notice calling upon the defendant to receive the balance sum and execute the sale deed on 03.09.2011. Thereafter, it is seen that the defendant had approached the plaintiff and sought for extension of time and it is seen that the parties had agreed for extension of time, the agreement with reference to the same has been marked as Ex.A5. If really, the sale agreement had been executed by the defendant in lieu of the loan transaction, the defendant would not have endeavoured to approach the plaintiff to extend the time for the performance of the sale agreement. In addition to that, as rightly found by the Courts below, if the sale agreement had been taken in lieu of the loan transaction, the defendant would not have handed over the

original title deed relating to the suit property. The original title in the name of the defendant has been marked as Ex.A2 on the side of the plaintiff. The factum of handing over of the original sale deed to the plaintiff has been admitted by the defendant during the course of evidence and the defendant has also further admitted that the sale agreement had been taken by the plaintiff from him only on the date of advancement of the amount under Ex.A1 sale agreement. Though the defendant would claim that the suit property is worth Rs.20,00,000/- she has not produced any document pointing to the same, further admitted that on her behalf, one Balaji had attested the sale agreement and furthermore, also admitted that she had put his signature in Ex.A1 in English and in Ex.A5 in Tamil and furthermore, also admitted that Ex.A1 sale agreement had been registered and also admitted that she had not responded to the legal notice issued by the plaintiff and in all, would also admit that she had approached the plaintiff and sought for extension of time and only in connection with the same, Ex.A5 document had come into existence. Therefore, when the defendant has clearly admitted the case of the plaintiff without any ambiguity and admitted the receipt of the advance amount and the handing over of the original title deed, the request for extension of time and the execution of Ex.A5 with reference to the same and when the defendant has not come forward with any material to show that the sum of Rs.1,00,000/- given by the plaintiff is only a loan amount and the defendant having also not come forward with any clear particulars as to the terms entered into between the parties with reference to the repayment of the alleged loan amount with interest to be paid on the same etc., in such view of the matter, the Courts below are found to be wholly justified in rejecting the defence version and accordingly, rightly found acceptance with the plaintiff's case and considering that the reasonings and conclusions of the Courts below are based upon the proper appreciation of the materials placed on record and not warranting any interference in any manner, in such view of the matter, I do not find acceptance with the second appeal preferred by the defendant.

9. For the reasons aforesaid, no substantial question of law is involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

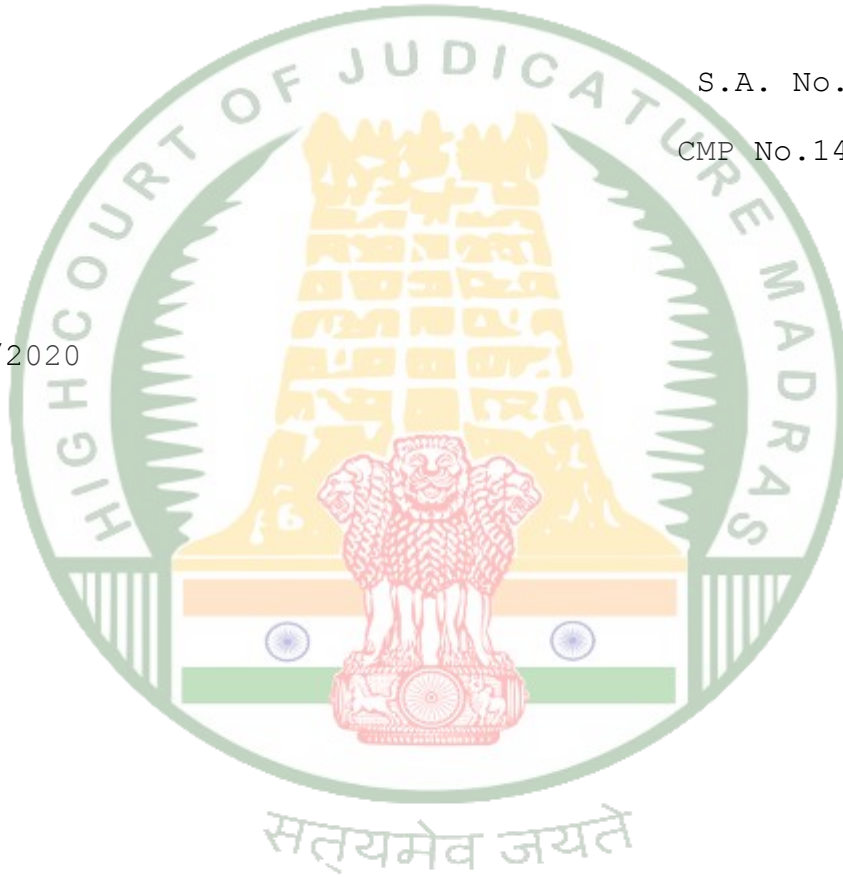
To

1. The Additional District Judge,
The Additional District Court,
(Fast Track Court), Vellore.
2. The Principal Subordinate Judge,
Vellore.

+lcc to Mr.C.Jagadish, Advocate Sr.62687

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