

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019

PRONOUNCED ON : 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.589 of 2019

M.James Paul Rajan

..

Appellant

Vs.

G.Narendrakumar

..

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.10.2018 passed in A.S.No.34 of 2017 on the file of the Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 08.11.2016 passed in O.S.No.5505 of 2014 on the file of the 8th Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Balasubramanian

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 30.10.2018 passed in A.S.No.34 of 2017 on the file of the Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 08.11.2016 passed in O.S.No.5505 of 2014 on the file of the 8th Assistant Judge, City Civil Court, Chennai.

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

3.The suit has been laid by the plaintiff for the relief of mandatory injunction directing the defendant to handover the original sale deed document No.62 of 2006 dated 05.01.2006, SRO, Thiruvallur along with the original provisional letter of Allotment dated 31.07.2000 to the plaintiff.

4.As could be seen from the pleas put forth by the respective parties, it is found that Plot No.310 had been purchased by the plaintiff and it is also seen that the plaintiff had been handed over the allotment letter and the

sale deed and it is thus found that the plaintiff is the owner of the abovesaid property and accordingly, it is found that allotment letter and the sale deed had come to be issued in favour of the plaintiff with reference to the same. Now, according to the plaintiff, the defendant, who was his childhood friend and worked in the same department, the sale deed along with the letter of allotment had been entrusted to the defendant bonafidely for keeping the same in his safe custody and thereafter, the defendant had refused to hand over the same and in such view of the matter, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5. Per contra, it is the case of the defendant that it is he, who had paid the amount for the purchase of the Plot No.310 to the plaintiff and accordingly, it is his contention that the plaintiff had agreed to execute the sale deed in his favour in respect of the abovesaid Plot and only in that context, it is put forth by him that the original allotment letter and the sale deed had come to be handed over to him by the plaintiff and therefore, the plaintiff is not entitled to seek the relief prayed for.

6. Considering the materials placed on record, it is found that the allotment letter and the sale deed in question only stands in the name of the plaintiff. It is therefore obvious that it is only in favour of the plaintiff, the Plot No.310 had been allotted and accordingly, the abovesaid documents stand in the name of the plaintiff. Now, according to the plaintiff, reposing confidence on the defendant, he had entrusted the same with his custody and further, according to him, subsequently, the defendant had refused to return the same and hence, he had been necessitated to institute the suit for appropriate reliefs.

7. Per contra, according to the defendant, though the allotment of the abovesaid Plot stands in the name of the plaintiff, it is he, who had paid the entire amount for the purchase of the same and inasmuch as the plaintiff had also agreed to execute the sale deed in his favour subsequently, it is stated that the original allotment letter and the sale deed had been entrusted to him by the plaintiff. However, the abovesaid defence version projected by the defendant has been stoutly refuted by the plaintiff. In such view of the matter, when the defendant has come forward with the case that it is he, who had paid the entire consideration for the purchase of the abovesaid plot, if really, he had advanced any sum to the plaintiff with reference to the same, necessary receipt pointing to the same, would have been secured by the defendant from the plaintiff qua the same and on the other hand, it is seen that not even a scrap of paper has been put forth by the

defendant to evidence that it is he, who had paid the entire sale consideration for the acquisition of the Plot No.310 and in such view of the matter, the case projected by the defendant that only in that context, the plaintiff had entrusted the allotment letter and the sale deed cannot be believed and had been rightly rejected by the Courts below. Furthermore, if really, the plaintiff had agreed to execute the sale deed in favour of the defendant as put forth by the defendant in his written statement, as found and held by the Courts below, the defendant would have endeavoured to place acceptable and convincing materials that the plaintiff had agreed to sell the abovesaid plot to him and as rightly held by the Courts below, in the event of the failure of the plaintiff to execute the sale deed in his favour at that point of time, the defendant would have taken appropriate legal action against the plaintiff. On the other hand, when there is no material on the part of the defendant evidencing that the plaintiff had agreed to execute the sale deed as abovenoted, when the defendant has also failed to establish that it is he, who had paid the entire amount for the purchase of the Plot No.310, in such view of the matter, there is no need on the part of the plaintiff to execute the sale deed in favour of the defendant, as there had been no consensus ad idem between the parties qua the sale of the abovesaid Plot by the plaintiff in favour of the defendant. As rightly determined by the Courts below, if the abovesaid version put forth by the defendant has any element of truth, the defendant would have instituted the suit for specific performance against the plaintiff as per law and initiated other legal action and on the other hand, nothing has been projected on the part of the defendant evidencing that he had taken any further steps for the accomplishment of the sale transaction put forth by him in the written pleas. The contention put forth by the defendant that he has paid certain amount by way of cheque to the plaintiff, as rightly determined by the Courts below, is found to be in respect of the hand loan availed from the plaintiff for the treatment of Heart attack and when the abovesaid amount is not shown to be only towards the sale consideration as such, the abovesaid version of the defendant has been rightly turned down by the Courts below and accordingly, the plaintiff being the lawful owner of the Plot No.310 and he is entitled to retain the custody of the allotment letter and the sale deed pertaining to the same and the defendant has failed to establish the lawful custody of those title documents with him, in such view of the matter, the Courts below are found to be justified in accepting the plaintiff's case and granting the relief in favour of the plaintiff as prayed for.

8.The reasonings and conclusions of the Courts below for upholding the plaintiff's case centering on factual matrix and no valid reason is made out warranting any interference to the same in any manner and the same also not suffering from any perversity or irrationality, in such view of the matter, it is

seen that the second appeal is devoid of merits and holding that no substantial question of law is involved in the second appeal, accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

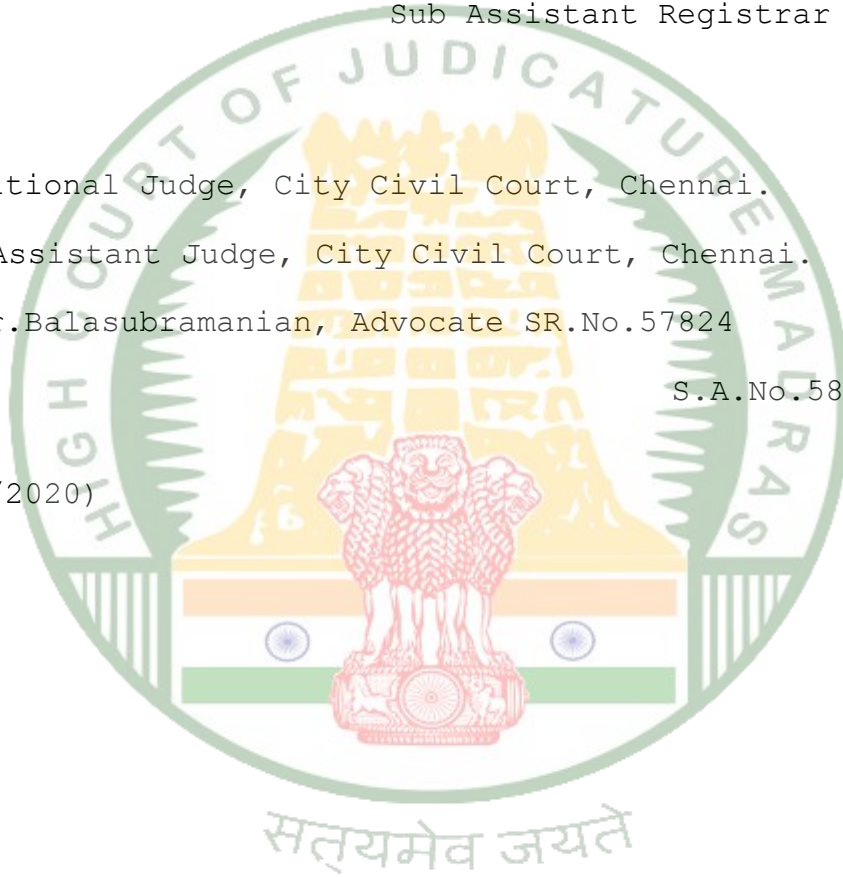
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To

- 1.The Additional Judge, City Civil Court, Chennai.
 - 2.The 8th Assistant Judge, City Civil Court, Chennai.
- +1cc to Mr.Balasubramanian, Advocate SR.No.57824

S.A.No.589 of 2019

BP (CO)
GMY (11/02/2020)



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