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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2019
PRONOUNCED ON: 26.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.678 of 2019
and
C.M.P. No.12716 of 2019

1. Alamelu ammal
 2. Minor. Bakiyaraj
Rep by guardian mother Alamelu
 3. Minor. Bakiyam
Rep by guardian mother Alamelu
 4. Ganesan ... Appellants/Respondents/
Defendants
- Vs.
1. Murugan
 2. Chitrabanu
 3. Rajiv Gandhi ... Respondent/Appellants/Plaintiffs

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No. 2 of 2018, the Principal Subordinate Judge, Villupuram, dated 28.08.2018, reversing the judgment and decree in O.S. No.9 of 2009, on the file of the Principal District Munsiff, Thirukovilur, dated 26.04.2017.

For Appellant : Mr.K.Gangadaran

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 28.08.2018, passed in A.S.No.2 of 2018, on the file of the Principal Subordinate Court, Villupuram reversing the judgment and decree dated 26.04.2017, passed in O.S. No.9 of 2009, on the file of the Principal District Munsiff Court, Thirukovilur.

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 plaintiffs for recovery of money from the defendants with interest as damages on the footing that they had purchased the suit property measuring 10 cents of land from the first defendant, by way of a sale deed dated 12.09.2006 and they have totally spent a sum of Rs.58,531/- towards the abovesaid sale transaction and the plaintiffs have measured the suit property and they came to know that the defendants are the owners of 2 cents of land out of the 10 cents and not the owners of the remaining 8 cents situated to the eastern side of the aforesaid portion and hence the suit.

4. The defendants resisted the plaintiffs' suit contending that the suit property and the other properties belonged to one Chinnathambi gounder and he had executed a settlement deed dated 14.12.1964, in favour of his wife with reference to his properties and the first defendant was born to them and after the death of Chinnathambi gounder and Kasthuriammal, the first defendant was enjoying the property as their legal heir and it is further stated that the first defendant had executed two sale deeds, measuring 18 cents in favour of Vijayakumar on 21.08.2005 and one Pichaikari on 07.06.2006 and according to the defendants, the plaintiffs, only after measuring the boundaries of the suit property and after verifying about the encumbrances, had purchased the suit property and enjoying the same after the sale transaction and furthermore, with reference to the complaint given by the plaintiffs before the police, after inquiry, the plaintiffs had agreed that they would receive a sum of Rs.41,625/- towards sale consideration for 9 cents and on the other hand, without complying with the abovesaid terms, they had levied a false suit and the defendants are ready and willing to pay a sum of Rs.41,625/- and already deposited Rs.43,000/- in the Court and therefore, it is contended that the plaintiffs have to execute the sale deed in favour of the defendants and the defendants are ready to bear necessary expenses with reference to the same and therefore, prayed for the dismissal of the plaintiffs' suit.

5. Mainly seen, it is found that the first defendant, purporting to be the owner of the suit property measuring 10 cents, had alienated the same in favour of the plaintiffs, by way of a sale deed dated 12.09.2006, marked as Ex.A1. Now, according to the plaintiff, on measuring the same, it is stated that the defendants are found to be only the owners of 2 cents of land and not 10 cents and hence, the defendants are liable to compensate the plaintiffs with reference to the shortage of extent conveyed by them claiming to be the owner of the same and hence, the need for the suit. As rightly found by the first appellate Court, though the defendants would claim that they are the owners of the 10 cents of land alleged to have been sold by



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the first defendant in favour of the plaintiffs by way of Ex.A1 sale transaction, without any basis, the defendants have agreed that they would pay the plaintiffs a sum of Rs.41,625/- towards the value of 8 cents of land with reference to which the plaintiffs are complaining of shortage. In this connection, in paragraph 6 of the written statement, the defendants have clearly admitted that they are ready to pay the sale consideration of Rs.41,625/- to the plaintiffs or in the Court for the shortage of 8 cents of land covered under Ex.A1 sale transaction. If really the defendants are the owners of the 10 cents of land, there is no need for the defendants to come forward and deposit the abovesaid sum in favour of the plaintiff for the shortage of 8 cents of land qua the property sold by them under Ex.A1 sale transaction. The contention of the defendants' counsel that the plaintiffs have failed to establish that the defendants are not the owners of the 10 cents of land, as such, cannot be accepted, particularly, when the sale transaction marked as Ex.A1 has been executed by the first defendant in favour of the plaintiffs purporting to be the owner of the 10 cents of land in R.S.No.351/9C. In such view of the matter, it is for the defendants to establish that the extent of 10 cents of land lie on the ground comprised in R.S.No.351/9C and on the other hand, as rightly found by the first appellate Court, other than marking the settlement deed and the patta as Exs.B1 and B2, there is no proof placed on the part of the defendants, as such, for determining convincingly that they have title to the extent of 10 cents of land in R.S.No.351/9C. As abovenoted, there is no material proof on the part of the defendants to establish that the extent of 10 cents of land lie on ground after the alienation made by the first defendant in favour of Vijayakumar and Pichaikari as put forth in the written statement. Furthermore, as rightly pointed out by the first appellate Court, if the defendants are sure that they are the owners of the 10 cents of lands covered under Ex.A1 sale transaction, there is no need on the part of the defendants to come forward and pay the sum of Rs.41,625/- and as could be seen from the materials placed on record, the defendants are also found to have deposited a sum of Rs.43,000/- in the Court. Therefore, the abovesaid conduct of the defendants would only go to disclose that inasmuch as they did not have the title in respect of the extent of 8 cents of land as put forth by them and suppressing the same, they had alienated 10 cents of land in favour of the plaintiff under Ex.A1 sale transaction and when as per the terms contained in Ex.A1 transaction, the defendants have also made themselves liable to compensate the plaintiffs for any defective title in the property conveyed under the same, accordingly, the plaintiff had measured the property purchased and noting that the defendants are not the owners of the entire extent of the 10 cents of lands and they are the owners of 2 cents of land alone, hence been necessitated to institute the



suit against the defendants for the recovery of the amount due to them qua the shortage of 8 cents of lands sold to them vide Ex.A1 sale transaction.

6. The trial Court is found to have dismissed the suit mainly on the footing that the plaintiffs had not come forward to re-convey the shortage extent of land in favour of the defendants during the course of evidence and the trial Court has also disbelieved the plaintiffs' case on the footing that the plaintiffs have failed to establish that the defendants are not the owners of the 10 cents of land. However, as above pointed out and rightly determined by the first appellate Court, it is the bounden duty of the defendants to establish that they have a valid title to the 10 cents of land covered under Ex.A1 transaction and the 10 cents of land is actually available on ground in R.S.No.351/9C and when with reference to the same, when there is no material worth acceptance on the part of the defendants and unable to sustain the defence, when it is noted that the defendants have suo motu and voluntarily come forward to pay back the plaintiffs a sum of Rs.41,625/- and also deposited Rs.43,000/- into the Court, in such view of the matter, the trial Court had erred in shifting the burden on the plaintiffs for establishing the title of the 10 cents of land covered under Ex.A1 transaction.

7. When as per the terms of Ex.A1 transaction, only the defendants owe a duty to compensate the plaintiffs, if there is any defect in the property conveyed and when the parties had not entered into any agreement to re-convey the property back to the defendants on any ground, in such view of the matter, when there is no necessity on the part of the plaintiffs to re-convey the shortage of land to the defendants, the trial Court had placed undue importance on the refusal of the plaintiffs to re-convey the said shortage of land in favour of the defendants. In addition to that, without any relief sought for by the defendants for the re-conveyance of the property by way of a counter claim or by otherwise in the manner known to law, the trial Court has erred in determining that the plaintiffs are liable to re-convey the property and the same had been rightly assessed by the first appellate Court and set aside the same. No interference is warranted with reference to the determination of the first appellate Court in setting aside the order of the trial Court directing the plaintiffs to re-convey the property in favour of the defendants.

8. In the light of the above discussions, when there is no reliable material on the part of the defendants that the plaintiffs had agreed to receive a sum of Rs.41,625/- during the inquiry before the police and on the other hand, when considering the conduct of the defendants in voluntarily



agreeing to pay the said sum to the plaintiffs and had also deposited a sum of Rs.43,000/- in the Court and as above discussed, when the defendants have failed to establish that they are the owners of 10 cents of land covered under Ex.A1 sale transaction and failed to establish that the extent of 10 cents of land is available on ground comprised in R.S.No.351/9C, in such view of the matter, particularly, the plaintiffs having accepted, during the course of evidence, that they are claiming damages only with reference to the extent of 7 cents of land, accordingly, the first appellate Court is found to be justified in holding that the defendants are liable to pay a sum of Rs.43,531/- with interest as determined by it to the plaintiffs and when the abovesaid determination of the first appellate Court is based on the appreciation of the factual matrix involved in the matter and when the abovesaid determination had been arrived at by the first appellate Court on a proper analysis of the materials placed on record and as no substantial question of law is found to be involved in the matter, the second appeal is found to be not entitled for acceptance and accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Villupuram.
2. The Principal District Munsif,
Thirukovilur.

+1cc to Mr.K.Gangadaran, Advocate, S.R.No. 52579

S.A. No.678 of 2019

and

C.M.P. No.12716 of 2019

PM(CO)

GN(27/08/2019)