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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2019

PRONOUNCED ON : 23.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.740 of 2019
and
CMP Nos.14105 & 14108 of 2019

Vigneswaran ... Appellant/Plaintiff

Vs.

Rathigunam ... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.01.2019 passed in A.S.No.26 of 2018 on the file of IV Additional District Judge, Ponneri reversing the judgment and decree dated 16.04.2018 passed in O.S. No.40 of 2010 on the file of Subordinate Court, Ponneri.

For Appellant : Mr.N.R.Anantha Rama Krishnan

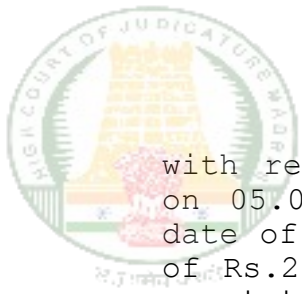
JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29.01.2019, passed in A.S.No.26 of 2018, on the file of the IV Additional District Court, Ponneri reversing the judgment and decree dated 16.04.2018, passed in O.S.No.40 of 2010, on the file of the Subordinate Court, Ponneri.

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 case of the plaintiff, in brief, is that the plaintiff and the defendant entered into an agreement of sale



with reference to the suit property for a sum of Rs.6,00,000/- on 05.03.2005 and the plaintiff advanced Rs.1,00,000/- on the date of the sale agreement and according to the plaintiff, a sum of Rs.2,50,000/- should be paid on or before 23.05.2005 and the remaining balance sale consideration to be paid on or before 14.06.2005 and it is stated that the possession of the suit property had been handed over to the plaintiff. However, though the plaintiff had been always ready and willing to perform his part of the contract and obtain the sale deed, the defendant had not come forward to execute the sale deed. Furthermore, according to the plaintiff, he had also cleared the loan amount of Rs.2,76,512.89 availed by the defendant by hypothecating the suit property with the Chennai Metropolitan Co-operative Housing Society Limited on 15.06.2005 and obtained receipt for the payment. But the defendant had obtained the original title deeds from the abovesaid Chennai Metropolitan Co-operative Housing Society Limited and further stated that the defendant, with malafide intention, has levied the suit for recovery of possession in O.S.No. 21 of 2010 as if putting forth the case that the plaintiff has not come forward with the suit to complete the sale transaction and the sale agreement is barred by limitation. The plaintiff has been always ready and willing to deposit the balance sale consideration and hence, the suit.

5. The defendant resisted the plaintiff's suit contending that the plaintiff has not been ready and willing to pay the balance sale consideration and the possession of the suit property is only with the defendant and the defendant has validly received the title deeds from the Co-operative society. The suit sale agreement is barred by limitation and the defendant never agreed to execute the sale deed as put forth by the plaintiff at any point of time and the sale agreement has expired on 14.06.2008 and as the plaintiff unlawfully evicted the defendant's brother from the suit property and illegally took possession, the defendant was necessitated to lay the suit in O.S. No.21 of 2010 and hence, prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A6 were marked. On the side of the defendant, DW1 was examined, Exs.B1 to B5 were marked.

7. On a consideration of the oral and documentary evidence and the submissions made, the trial Court was pleased to decree the suit in favour of the plaintiff. On appeal by the defendant, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and by way of



the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District Judge,
Ponneri.
2. The Subordinate Judge,
Ponneri.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.R.Anantha Rama Krishnan, Advocate sr.62912

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