

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.301 of 2014
and
MP.No.1 of 2014

1. Thandavarayan

2. E.Govindan

3. E.Allimuthu

4. E.Thangaraj

5. E.Paramasivam

6. R.Kala

7. Minor Meganathan

Rep. By Next friend & Mother R.Kala

8. P.Lakshmi

..Appellants/Appellants/Plaintiff

Vs.

Lakshmi Ammal

..Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 19.11.2013 made in A.S.No.70 of 2010 on the file of the I Additional Subordinate Judge, Salem, concurrent to the judgment and decree dated 01.03.2010 made in OS No.1565 of 2004 on the file of the II Additional District Munsif Court, Salem.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr. T.Sezhian
for M/s. R.Meenal

J U D G M E N T

The legal representatives of the plaintiff in OS No.1565 of 2004 have come up with this Second Appeal, being aggrieved by the

dismissal of their suit for specific performance of the agreement dated 31.01.2001.

2. According to the plaintiffs, the deceased first plaintiff entered into an agreement of sale with the defendant agreeing to purchase the suit properties for a consideration of Rs.70,000/- on 31.01.2001. An advance of Rs.25,000/- was paid on the date of the agreement and the period of 90 days was fixed for the payment of balance of sale consideration and for the execution of Sale Deed. Despite the fact that the plaintiffs were ready to pay the balance of sale consideration and get the sale deed executed, the defendant did not come forward to execute the sale deed.

3. It is specifically averred by the plaintiffs that they had purchased the Stamp Papers for execution of sale deed and got the draft Sale Deed engrossed on stamp papers of value of Rs.11,800/- on 02.05.2001. The defendant did not come forward to execute the sale deed. Hence they are forced to sue for specific performance.

4. The defendant would resist the suit contending that the agreement is not true and valid. It is also claimed that the plaintiff had used the blank signed stamp papers and blank papers entrusted with the first plaintiff for some other purpose. It was also pointed out that even the stamp papers have been purchased even in September 2000, in the name of one Subbrayan.

5. The Trial Court upon a consideration of evidence on record concluded that the suit agreement is not true and genuine. The Trial Court pointed out certain features in the signatures and attestation of the documents to conclude that the suit agreement is not true and valid. On the said findings, the Trial Court dismissed the suit. Aggrieved by the legal representatives of the plaintiff, who died pending suit preferred an appeal in AS No.70 of 2010.

6. Pending Appeal the appellants also filed IA Nos.68 of 2010 and 30 of 2011 seeking to let in additional evidence by examining the said Subbrayan in whose names the stamp papers were purchased and the attesting witnesses to the sale agreement dated 31.01.2001. Curiously the Lower Appellate Court took up the Appeal at the first instance decided the Appeal. The Lower Appellate Court concurred with the findings of the Trial Court and dismissed the Appeal.

7. The applications for letting in additional evidence in IA Nos.68 of 2010 and 30 of 2011, were taken up subsequently and dismissed on the ground that the Appeal has been disposed of.

Needless to point out that this manner of disposal of applications filed under Order XLI Rule 27, is not in compliance with the requirements of Order XLI Rule 27 of the Code of Civil Procedure. Once an application to let in additional evidence is filed under Order XVI Rule 27 of the code of Civil Procedure, it is incumbent upon the Lower Appellate Court to decide the same along with the Appeal. The Lower Appellate Court must consider, as to whether, the applicants have made out a case for letting in additional evidence. If the Lower Appellate Court concludes that the applicants had made out a case for allowing additional evidence under Order XLI Rule 27, it has to follow the procedure for taking evidence by retaining the Appeal on its file and requiring the Trial Court to take such evidence or by remitting the matter to the Trial Court for letting in evidence. Both the above courses have not been adopted by the learned Appellate Judge.

8. I find that the method of disposal of the petitions for additional evidence by the learned Appellate Judge is wholly unsatisfactory as it does not comply with the requirements of Order XLI Rule 27 of the Code of Civil Procedure. Though three questions of law has been framed at the time of admission, since the manner in which the application under Order XLI and Rule 27 has been disposed of by the Appellate Court, forces me to set aside the judgment of the Appellate Court and remit the matter to the Lower Appellate Court with a direction to consider the applications filed under Order XLI and Rule 27 along with the appeal and decide the same. If the appellate Court should come to the conclusion that additional evidence should be allowed or that the applicants have made out a case for letting in additional evidence under Order XLI and Rule 27, it shall follow the procedure prescribed under Order XLI Rule 28 and 29 for letting in additional evidence.

9. In view of the decision on the third question of law that the Lower Appellate Court has failed to follow the mandatory procedure in disposal of the application under Order XLI Rule 27, the other two questions of law do not require to be dealt with at this stage.

10. The judgment of the Lower Appellate Court is therefore, set aside and the applications in IA Nos.68 of 2010 and 30 of 2011 are restored. The Second Appeal is allowed and the matter is remitted to the Lower Appellate Court with a direction to the Lower Appellate Court to consider and dispose IA Nos.68 of 2010 and 30 of 2011 in the manner known to law strictly in terms of Order XLI Rule 27, 28 and 29. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

11. The parties are required to appear before the Lower Appellate Court on 06.01.2020. The Lower Appellate Court shall make an endeavor to dispose of the Appeal within a period of four months from 06.01.2020, on or before 30th April 2020 positively and the report of such disposal shall be sent to this Court. Since the Second Appeal allowed and the regular appeal is remanded, the appellants will be entitled to refund of the Court fee paid in the Second Appeal.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The I Additional Subordinate Judge,
Salem.
2. The II Additional District Munsif,
Salem.
3. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 92195

+1cc to Mr.R.Meenal, Advocate, S.R.No. 91825

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and MP.No.1 of 2014

BS (CO)
GN(19/02/2020)

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