

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 424 of 2014

Manikkam

..Appellant/Defendant

Vs.

Kannan

...Respondent/Plaintiff

Prayer in both the appeals: Memorandum of Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree passed in A.S.No. 12 of 2012 dated 02.02.2013 on the file of the III-Additional District Court, Vellore at Tirupattur confirming the judgment and decree passed in O.S.No. 46 of 2008 dated 02.12.2011 on the file of the Sub-Court, Tirupattur.

For Appellant : Mr.R.Singaravelan Senior Counsel for
Mrs.M.Srividhya

For Respondent : Mr.T.M.Hariharan

J U D G M E N T

The defendant in O.S.No.46 of 2008 having suffered a decree for specific performance at the hands of the Courts below has come up with this second appeal.

2. The plaintiff laid the suit seeking specific performance contending that the defendant agreed to sell the property for a consideration of Rs.3,90,000/- and received an advance of Rs.60,000/- on 27.01.2008. A period of three months was fixed for performance of terms of the agreement. Since the defendant did not come forward to execute a sale deed, the plaintiff issued notice on 23.03.2008 expressing his readiness and willingness to comply with the terms of the agreement and seeking execution of sale deed. The defendant received the said notice on 24.03.2008 and sent a reply on 26.03.2008 with false averments. Upon receipt of the reply, the plaintiff laid the suit on 11.04.2008.

3. The defendant resisted the suit contending that the suit property is a joint family property belonging to the

defendant and his children. Therefore, he had no power of alienation over the property. It was also his further contention that he has borrowed a sum of Rs.25,000/- from the plaintiff and he has signed in blank stamp papers and other papers which have been utilized to create the agreement of sale. It was further contended that the plaintiff was not ready and willing to perform his part of the contract.

4. At trial, the plaintiff examined himself as P.W.1 and two witnesses namely, Vijayan and Rajendran, who figured as attesting witnesses to the sale agreement dated 27.01.2008 marked as Ex.A1 were examined to prove the execution of the sale agreement. Exs.A1 to A13 were marked on the side the plaintiff. The defendant examined himself as D.W.1. No documentary evidence was produced on the side of the defendant.

5. The Courts below, upon a consideration of the evidence found that the claim of the defendant that he had signed blank papers and the agreement has been created cannot be believed, in view of the categorical evidence of P.W.2 and P.W.3. Taking note of the certain admissions made by the defendant in his evidence as D.W.1, the Courts below concluded that the non-examination of the scribe of the document cannot be considered to be fatal. In fact, the Courts below found that the defendant as D.W.1 has admitted that P.W.2 and P.W.3 are not enigmically disposed towards him. The Courts below also found that the theory that the suit property is a joint family property is not acceptable, in view of the averments made in the written statement to the effect that the suit property was purchased with the help of the earnings of the defendant and his children and by sale of the jewellery of the wife of the defendant. It is not the case of the defendant that the suit property belonged to the family ancestrally and or that it was purchased from and out of ancestral nucleus. Therefore, the theory of joint family property was found to have been raised only for the purposes of setting up a plausible defence in the suit. The following questions of law were framed at the time of admission:-

i) Whether the Courts below have given much weightage to the non-examination of scribe to Ex.A1, the failure of which vitiates the concurrent conclusions arrived at by the Courts below?

ii) Whether the Courts below have given importance to the pendency of the partition suit in O.S.No. 31 of 2008 filed against the appellant / defendant seeking partition of the suit property which has got a thorough impact on the locus standi of the appellant to execute Ex.A1 ?

6. As far as the question of law No.1 is concerned, when the plaintiff has examined both the attestors to Ex.A1(sale

agreement) and nothing has been brought about to discredit their evidence, I do not think the non-examination of scribe can be said to be fatal to the claim of the plaintiff. In fact, the defendant as D.W.1 has admitted that both the P.W.2 and P.W.3 have nothing against him to have colluded with the plaintiff to create an agreement of sale. As regards the second question of law, it is seen that the O.S.No.31 of 2008 was filed after the presentation of the present suit. Even otherwise, the competency of the defendant to execute the agreement and the title of the defendant are foreign to the scope of the present suit which is one for specific performance. If the suit in O.S.No. 31 of 2008 is decreed in favour of the plaintiff therein she would have to work out her rights against the plaintiffs in the present suit in a manner known to law. Hence, the second question of law is also answered against the appellant. In view of the above, the appeal fails it is accordingly dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To:-

1. The Subordinate Judge,
The Sub Court, Tirupattur.
- 2.The IIIrd Additional District Judge,
The Additional District Court, Vellore.

Copy To:
The Record Keeper,
VR Section, High Court, Madras-104

+1cc to Mr.R.Singaravelan, Advocate SR.No.95182

+1cc to Mr.T.M.Hariharan, Advocate SR.No.94474

S.A.No. 424 of 2014

RR(CO)
GMY(21/07/2020)