

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1194 of 2019

Nirmala Devi

.. Appellant/Appellant/Plaintiff

Versus

1. Muniammal
2. Muniappan
3. Durairaj

... Respondents/Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.03.2019 made in A.S.No.56 of 2016 on the file of the Subordinate Court, Dharmapuri, confirming the judgment and decree dated 08.04.2015 made in O.S.No.106 of 2012 on the file of the District Munsif Court, Dharmapuri.

For Appellant : Mr.V.Sakkarapani

JUDGMENT

Aggrieved over the judgment and decree of the Courts below, the plaintiff has preferred this appeal.

2. The case of the plaintiff is that the defendants 1 and 2, who are the owners of the suit schedule properties have executed a power of attorney dated 11.04.2017, appointing the third defendant as their power agent to maintain and deal with the properties. Based on the power of attorney, the third defendant entered into an agreement with the plaintiff on 06.06.2007 agreeing to sell the properties for Rs.50,000/-. It is her further case that on the date of agreement, Rs.10,000/- was paid towards advance and the balance sale consideration of Rs.40,000/- was paid to the third defendant and a receipt was given by the defendants 1 and 2 after receiving the balance sale consideration.

3. The plaintiff would further state that she was always ready and willing to perform her part of contract. While so, the defendants 1 and 2 had cancelled the power of attorney by a deed of cancellation on 28.03.2012 and hence,

the suit was filed for specific performance.

4. The defendants 1 and 2 filed a written statement disputing the averments made by the plaintiff. According to the defendants 1 and 2, the power of attorney was not executed with the intention to sell the properties. They denied the receipt of advance of Rs.10,000/- and the balance amount of Rs.40,000/- from the third defendant.

5. The third defendant, who is the husband of the plaintiff remained ex-parte. The Trial Court after framing necessary issues, permitted the parties to lead evidence. On behalf of the plaintiff, two witnesses were examined and Exs.A1 to A8 were marked and the second defendant examined himself as DW1 and produced Exs.D1 to D6. After analysing both the oral and documentary evidence, the Trial Court dismissed the suit and the finding of the Trial Court was confirmed by the Appellate Court in A.S.No.56 of 2016. Challenging the same, this second appeal is filed.

6. Mr.V.Sakkarapani, learned counsel for the appellant would submit that though both the Courts below came to the conclusion that the power of attorney executed by the defendants 1 and 2 in favour of the third defendant is genuine, but failed to note that the sale agreement entered into between the third defendant and the plaintiff is genuine and the plaintiff is entitled for decree for specific performance. He would further add that the plaintiff had paid the entire sale consideration and it was also proved through evidence and hence the findings of the Courts below are to be set aside.

7. In the instant case, Ex.A1 is the agreement of sale dated 06.06.2007, wherein two years term was fixed for completion of sale. Even though, the defendants 1 & 2 had taken a stand that the power of attorney was given only to maintain the property and the power agent has no right to sell the property, both the Courts below have rejected the case of the defendants.

8. Ex.A5 was marked to establish that the balance sale consideration of Rs.40,000/- was paid to the defendants 1 and 2. However, Ex.A5 was disbelieved by the Courts below on the grounds that the defendants 1 and 2 could not have received the balance amount after issuing notice to cancel power of attorney and in Ex.A5, no amount was mentioned. The original documents of title to the suit property were produced by the plaintiff when her husband did not contest the case. Taking note of that fact, it was observed that the plaintiff and the third defendant are trying to snatch the property of the defendants 1 and 2. Though Ex.A5 is held as a fabricated one, a direction was issued to the defendants 1 and 2 to return

Rs.50,000/- to the plaintiff along with 9% interest.

9. Perusal of the records would show that the suit property has an extent of about 2 1/2 acres and it is the case of the appellant that the third defendant had agreed to sell the property for Rs.50,000/-. This Court can take judicial notice that the value of the property mentioned in the agreement is meager and if the suit is decreed, it would cause much prejudice and hardship to the defendants 1 and 2. It is settled law that the specific performance is an equitable relief, if the decree of specific performance causes hardship to the defendants, the prayer for specific performance can be rejected and a direction can be issued for refund of the advance amount.

10. In the light of the above facts, this Court finds no illegality or irregularity in the concurrent findings warranting interference of this Court. No question of law arises for consideration in this appeal. In that view, the appeal is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Subordinate Court,
Dharmapuri.

2.The District Munsif Court,
Dharmapuri.

Copy to:

The Section Officer,
VR Section, High Court,
Madras.

SJ(CO)
CB(09/03/2020)

S.A.No.1194 of 2019

WEB COPY