

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1280 of 2019
and
C.M.P.No.27809 of 2019

M.Dhanasekaran ... Appellant/Defendant

Vs

S.Krishnan ... Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure set aside the judgment and decree dated 18.12.2018 made in A.S.No.275 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 05.02.2018 made in O.S.No.425 of 2012 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Sankaran

For Respondent : Mr.G.Thangavel

JUDGMENT

Challenge in the second appeal is the judgment and decree passed in A.S.No.275 of 2018 confirming the judgment and decree of the Trial Court passed in O.S.No.425 of 2012.

2.The suit in O.S.No.425 of 2012 was instituted for recovery of possession and for damages. It is the case of the plaintiff that the suit schedule property belonged to the defendant and by an agreement of sale dated 22.04.2006, he agreed to sell the property for a total sale consideration of Rs.14,50,000/- and after receipt of the entire sale consideration, a sale deed was executed on 6.8.2007, but he failed to handover vacant possession.

3. The suit was resisted by the defendant contending the sale deed dated 6.8.2007 was obtained by force.

Page numbers

4. The Trial Court framed necessary issues on the basis of the proceedings. Parties had let in oral and documentary evidence in support of their contentions. On appreciation of evidence, both the Courts below found that the plaintiff is entitled to succeed in the suit.

5. Heard Mr.K.Sankaran, learned counsel for the appellant, Mr.G.Thangavel, learned counsel for the respondent and perused the materials available on record.

6. It appears that the sale deed dated 6.8.2007 marked as Ex.A12 was put to challenge in O.S.No.13661 of 2010, but the defendant could not succeed. It is not disputed, this Court confirmed the decision made in O.S.No.13661 of 2010 and it has reached its finality.

7. It is the prime contention that the entire sale consideration was not paid and the evidence in this regard was overlooked by the Courts below. But this Court does not find any substance in the contention for the reason that the decision rendered in the earlier suit cannot be re-agitated in the present suit. This Court is of the considered opinion that no substantial question of law arises for consideration in the appeal. I find no perversity in the concurrent findings of the Courts below. It is also not disputed that in pursuance of the decree possession was handed over to the plaintiff.

8. It is represented by the learned counsel for the respondent/plaintiff that the respondent had already deposited a sum of Rs.1,40,000/- to the credit of O.S.No.425 of 2012, on the file of the XV Assistant Judge, City Civil Court, Chennai, in pursuance of the order of this Court. It is the submission of the learned counsel for the appellant that the said amount was the balance sale consideration and hence, the appellant may be permitted to withdraw the amount.

9. Per contra, the learned counsel for the respondent would submit that though the agreement of sale was entered into between the appellant and the respondent in the year 2006 and the sale was executed in the year 2007, the appellant had been squatting over the property illegally. Hence, the respondent is entitled for damages, which was also permitted in the first round of litigation.

10. However, subsequently, it was submitted by the learned counsel for the respondent that the respondent is not interested to initiate proceedings against the appellant claiming damages.

Page numbers

The learned counsel also said that the respondent has no objection for the defendant/appellant to receive Rs.1,40,000/- deposited to the credit of the suit.

11. Recording the above observations the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The XVII Additional Judge,
City Civil Court,
Chennai.

2.The XV Assistant Judge,
City Civil Court,
Chennai.

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

+1cc to Mr.K.Sankaran, Advocate SR.17128

+1cc to Mr.G.Thangavel, Advocate SR.17007

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SR(CO)
CB(22/12/2020)

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Page numbers