

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

S.A. 755 of 2018
and
C.M.P. 21685 of 2018

D.Rajamanickam ... Appellant/Plaintiff

Vs

1. P.Krishnamurthi
2. Minor K.Indhurekha,
represented by her next
friend and guardian Krishnamoorthy
... Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 of C.P.C., against the decree and judgment dated 27.10.2017 passed in A.S.No.14 of 2017 on the file of IV Additional District Judge, Erode at Bhavani confirming the decree and judgment dated 20.01.2017 passed in O.S.No.58/2011 by the Subordinate Judge, Bhavani.

For Appellant : Mr.R.Nalliyappan
For Respondents : No appearance

JUDGEMENT

The plaintiff is the appellant herein. He has filed a suit for specific performance to execute a sale deed in pursuant to the sale agreement dated 11.12.2007, with an alternative prayer to refund advance amount. The Trial Court has dismissed the suit in respect of relief of specific performance, but decreed the suit for refund of advance amount with an interest at the rate of 6%. Being aggrieved with the judgment and decree passed by the Trial Court, the Appellant/plaintiff has preferred an appeal in A.S.No. 14 of 2017, on the file of Addl. District Judge, Erode at Bhavani, and the lower Appellate Court has confirmed the judgment and decree passed by the Trial Court in the Suit. Challenging the above said Judgment and Decree, the present Second Appeal has been filed by the appellant.

2. The case of the plaintiff is as follows :-

The suit property belongs to the 1st defendant. On 11.12.2007, 1st defendant along with his minor son, has executed a sale agreement in favour of the plaintiff. The sale consideration was fixed as Rs.7,20,000/-, and a sum of

Rs.2,00,000/- has been paid as advance on the date of agreement, and the parties have agreed that the sale deed has to be executed on or before 14.06.2008, on payment of remaining sale consideration. Thereafter, on 13.02.2008, the plaintiff has paid a sum of Rs.1,00,000/-, towards part of sale consideration. Then, on 03.04.2008, the defendants have received another sum of Rs.10,000/- after making necessary endorsement in the agreement, and totally, the defendants have received a sum of Rs.3,10,000/- towards sale consideration. The appellant/plaintiff was ready and willing to pay the remaining sale consideration and to execute the sale deed, the respondents/defendants did not come forward to execute the sale deed and delayed the execution of the sale deed. In the above circumstances, on 11.06.2011, the appellant/plaintiff has sent a legal notice directing the defendants to execute the sale deed. Even thereafter, the defendants have failed to come forward to execute the sale deed. Hence, on 13.06.2011, the present suit has been filed.

3. The defendants have filed their written statement and admitted the sale agreement and also receipt of advance amount of Rs.2,00,000/- on the date of sale agreement. The defendants have also admitted the receipt of a sum of Rs.1,00,000/- on 13.02.2008 and another sum of Rs.10,000/- on 03.04.2008. But, the defendants have contended that the plaintiff was not ready and willing to execute the sale deed. It is only the appellant/plaintiff has committed the default and did not pay the balance sale consideration, and get the sale deed executed. As per the sale agreement, it is clearly stated that if the remaining sale consideration is not paid as on 14.06.2008, the sale agreement stands automatically cancelled. Since the plaintiff did not come forward to execute the sale deed on or before 14.06.2008, the sale agreement stands automatically cancelled. Apart from that, the plaintiff issued the legal notice only on 11.06.2011, just two days prior to the date of filing the Suit, and the defendants have received the legal notice only on 17.06.2011 and they have also sent reply on 24.06.2011. Even before that, the suit has been filed by the plaintiff.

4. The Trial Court after considering the pleadings and evidences available on record, come to a conclusion that the plaintiff did not prove his readiness and willingness to execute a sale deed, even though the time was fixed for execution of sale deed on 14.06.2008, the plaintiff has kept quite and issued a legal notice on 11.06.2011 after three years, and there is no explanation for the delay, and the Trial Court has dismissed the suit in respect of main prayer viz., for specific performance. However, since the defendants admitted the execution of sale agreement and also receipt of advance amount, decreed alternative prayer and directed the defendants to return the advance amount with interest.

5. Being aggrieved with the judgment and decree, the

plaintiff has filed an appeal in A.S.No.14 of 2017, on the file of IV Addl. District Judge, Erode at Bhavani and the lower appellate court has also after considering the entire materials available on record, confirmed the judgment and decree passed by the Trial Court and dismissed the Appeal. Now, challenging the above judgment and decree, the present Second Appeal has been filed.

6. I have heard the submissions made by learned counsel appearing for the appellant and perused the materials available on record carefully.

7. The case of the plaintiff is that, pursuant to the sale agreement further, he has paid the part of sale consideration of Rs.1 lakh on 13.02.2008, and another sum of 10,000/- on 03.04.2008, and thereafter, the plaintiff was ready and willing to execute the sale deed, but only the defendants are refusing to execute the sale deed. The courts below after considering the evidence both oral and documentary has held that from 03.04.2008 till 11.06.2008, the appellant/plaintiff did not take steps to execute the sale deed, and there is no materials available on record to show that the plaintiff was ready and willing to execute the sale deed. Only on 11.06.2011, the plaintiff has issued a legal notice seeking the defendants to execute the sale deed, and immediately, within two days i.e. On 13.06.2011, he has hurriedly filed the Suit. Even though the plaintiff has contended that he was ready to execute the sale deed, but there is no materials available on record to establish that the plaintiff was ready and willing to execute the sale deed. Only after three years, from the date of sale agreement, he has come forward to issue the legal notice and within two days, he has filed the Suit, and the unexplained delay on the part of the plaintiff clearly shows that the plaintiff was not ready and willing to execute the sale deed and to perform his part of contract. Considering the above facts that both the courts below have concurrently held that the plaintiff was not ready and willing to perform his part of contract, and hence, negated the relief of specific performance.

8. I have also carefully considered the materials available on record and I do not find any error in the Judgment and Decree passed by the courts below. I also do not find any substantial question of law arises in the present Second Appeal, accordingly, the present Second Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.IV Addl. District Judge,
Erode at Bhavani.

2.The Subordinate Judge, Bhavani

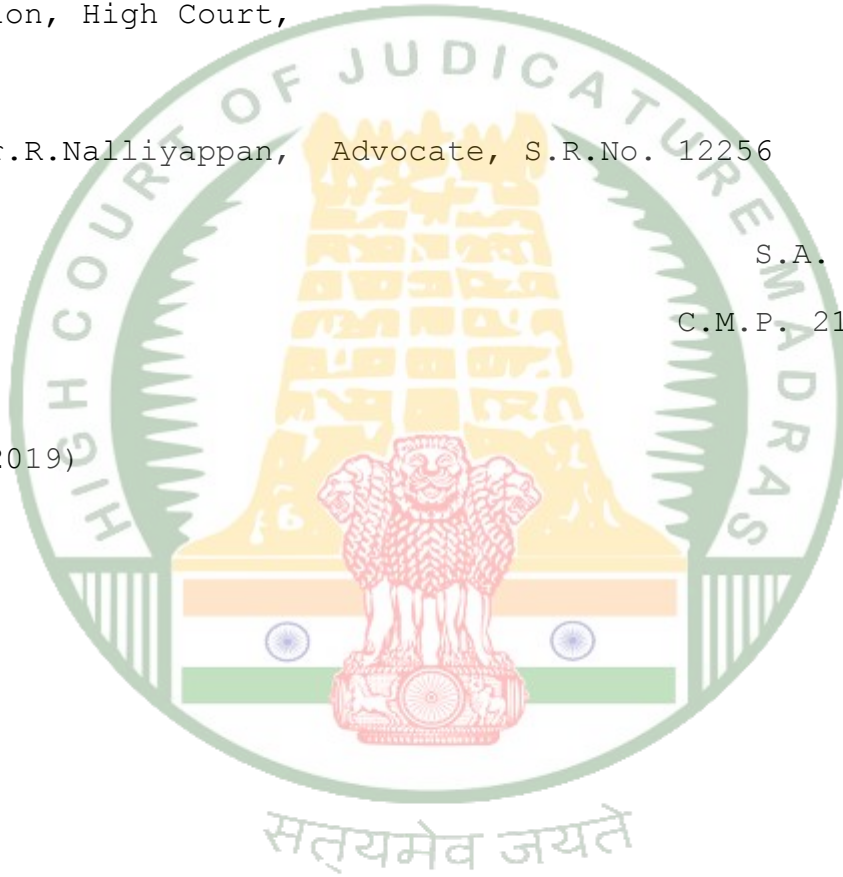
Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No. 12256

S.A. 755 of 2018
and
C.M.P. 21685 of 2018

SAI (CO)
GN(13/08/2019)



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