



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A. (MD) No.603 of 2019

and

C.M.P (MD) No.12201 of 2019

WEB COPY

1.V.Saravanan
2.V.Saraswathi
3.V.Thangakumar
4.V.Chandra

... Appellants/Appellants / defendants
1 to 3 and 5

vs.

1.H.Arunkumar Sureka
2.A.Shanthi

... Respondents/ Respondent / plaintiff /
4th defendant

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.03.2019 passed in A.S.No.24 of 2017 on the file of the Principal District Judge, Thoothukudi, confirming the judgment and decree, dated 26.07.2017 passed in O.S.No.06 of 2006 on the file of the learned Subordinate Judge, Thoothukudi.

For Appellants : Mr.R.Maheswaran

JUDGMENT

The defendants in O.S.No.6 of 2006 on the file of the learned subordinate Judge, Thoothukudi having suffered a decree for specific performance in respect of 1/5th share of the first defendant, have come up with this second appeal.

2. The suit was filed by the plaintiff seeking specific performance of an agreement of sale dated 23.03.2005, entered into between the first defendant and the plaintiff, in and by which the first defendant had agreed to sell the entire property for a consideration of Rs.1,78,000/- and advance of Rs.1,60,000/- was paid. Under the agreement, time of six months was fixed for performance of the contract. According to the plaintiff, he was ready and willing to perform his part of the contract, but the defendants did not come forward to execute the sale deed after receiving the balance consideration. A legal notice was issued by the plaintiff on 26.11.2005 seeking performance of the contract. Alleging that the defendants did not come forward to execute the sale agreement, the plaintiff has come forward with the suit.

3. The first defendant filed written statement denying execution of the agreement and it was claimed by him that he borrowed a sum of Rs.50,000/- from the plaintiff and had executed



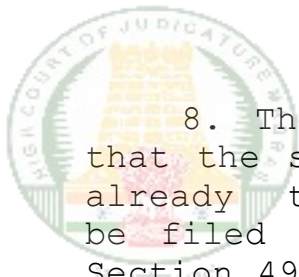
a promissory note as security during January, 2003. It is also alleged that the plaintiff had created an agreement, because of the misunderstanding in repayment of the said sum of Rs.50,000/-. It was also contended by the first defendant that the suit property belonged to his father Vellaichamy Nadar and on his death it devolved on his heirs, namely, his wife and children including the first defendant. It was also contended that other heirs of Velchamy Nadar are necessary parties to the suit, since they have a share in the property. Upon such defence, the other heirs of Velchamy Nadar were impleaded as defendants 2 to 5. The defendants 2 to 5 resisted the suit contending that the agreement entered by the first defendant in respect of the suit property is not valid. Oral partition set up by the plaintiff was also denied.

4. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A3 were marked. The third defendant was examined as D.W.1, no documents were filed.

5. The Courts below on appreciation of evidence on record, concluded that execution of the agreement by the first defendant has been proved by the plaintiff. The Courts below took note of the fact that the first defendant, who denied the agreement, had not led any evidence. The trial Court as well as the lower appellate Court took note of the fact that though the defendants 2 to 5 set up the case against the first defendant, the same counsel had appeared for them throughout. The Courts below found that there is active collusion between the defendants. The Courts below also found that oral partition pleaded by the plaintiff has not been established. On the said finding, the Courts below granted a decree for specific performance for 1/5th share of the first defendant alone and dismissed the suit in respect of the share of the defendants 2 to 5. Aggrieved, the defendants 1 to 3 and 5 have come up with this appeal.

6. I have heard Mr.R.Maheswaran, learned counsel for the appellants.

7. The learned counsel for the appellants vehemently contended that the plaintiff has not established the execution of the agreement. He would also claim that the agreement being an unregistered instrument and insufficiently stamped cannot be enforced. The Courts below took note of the fact that the third defendant admitted signature of the first defendant in the suit agreement. Therefore, I do not find any illegality in the conclusion of the Courts below regarding execution of agreement. As regards stamping, the plea was not raised before the Courts below and hence, the same cannot be raised after the document has been admitted in evidence.



8. The learned counsel for the appellants also pointed out that the suit agreement has not been registered. This Court had already taken a view that the suit for specific performance can be filed on the basis of the unregistered document in view of Section 49 of the Registration Act. Therefore, the said objection is not legally sustainable. It was pointed out that the first defendant entered into an agreement claiming that he is the owner of the entire property. The defendants 2 to 5 claimed that they are entitled to a share denying partition set up by the plaintiff. But the same counsel appeared for the defendants before the trial Court as well as the lower appellate Court. This conduct of the defendants would show that there is an active collusion between them and their conduct is bad. A decree for specific performance cannot be granted against the persons, who are not the parties to the contract. In view of the above, I do not see any question of law much less a substantial questions of law enabling me to entertain this appeal. Accordingly, this second appeal fails and dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge,
Thoothukudi.

2.The Subordinate Judge,
Thoothukudi.

Copy to

The Section Officer,-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.MAHESHWARAN, Advocate (SR-104830[F] dated
13/12/2019)

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