

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29/01/2020
Delivered on	10/02/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.69 of 2020 &

C.M.P.No.1359 of 2020

K.Selvanathan

.. Appellant/Respondent/Plaintiff

Versus

K.Narayanasami

.. Respondent/Appellant/
Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 29.08.2019 in A.S.No.30 of 2018, on the file of III Additional District Court, Vellore reversing the Judgment and Decree dated 04.04.2018 in O.S.No.44 of 2014, on the file of Sub-Court, Vaniyambadi, Vellore.

For Appellant : Mr.R.Subramanian

JUDGMENT

This appeal is directed against the judgment and decree passed by the III Additional District Judge, Vellore in A.S.No.30 of 2018, reversing the judgment and decree passed by the Sub Court, Vaniyambadi in O.S.No.44 of 2014. The plaintiff in O.S.No.44 of 2014 is the appellant herein and the suit was instituted for specific performance and delivery of possession of the suit property and for costs.

2. The case of the plaintiff is that the defendant is the absolute owner of the suit property and he wanted to sell the suit property to the plaintiff for his urgent family expenses. The plaintiff entered into a registered agreement with the defendant on 11.01.2012, agreeing to purchase the property for a sum of Rs.1,10,000/-, in which, Rs.1,00,000/- was paid as advance and for the payment of balance sum of Rs.10,000/-, 11 months time was fixed. The plaintiff has been

always ready and willing to pay the balance sale consideration and to perform his part of contract, but the defendant delayed and evaded to perform his part of contract. Hence, the plaintiff issued a legal-notice on 08.01.2014, but the defendant did not receive the same and it was returned as "refused". Hence, the suit.

3. The defendant in his written statement has denied and disputed the averments made in the plaint. It is the case of the defendant that the suit sale agreement is a forged one and no advance amount was ever given to the defendant, as stated by the plaintiff. One Pattabiraman, who is the husband of the Document Writer-Dhanalakshmi and her relative-Palani were doing real estate business and the defendant had friendship with them. While so, the sale agreement was created by misusing the innocence of the plaintiff. After coming to know about the fraud and cheating, the defendant lodged a complaint with the Police and the same was registered in Crime No.61 of 2014. In respect of other properties, they made several encumbrances and to remove the same, the defendant filed O.S.No.95 of 2014. With regard to the possession, it is stated that the possession is with the defendant and prayed to dismiss the suit.

4. Based on the above pleadings, the trial Court framed necessary issues. On the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A3 were marked. On the side of the defendant, three witnesses were examined as D.W.1 to D.W.3, but no exhibits were marked.

5. After evaluating the evidence adduced by the parties, the trial Court decreed the suit. Aggrieved over the same, an appeal was preferred before the III Additional District Judge, Vellore in A.S.No.30 of 2018. The appellate Judge, set-aside the judgment and decree passed by the Trial Court by allowing the appeal. Assailing the same, the present appeal has been filed.

6. Mr.R.Subramanian, learned counsel for the appellant would submit that the defendant admitted execution of the agreement of sale, but only contended that the plaintiff obtained the same fraudulently and therefore, the onus is on the defendant to prove that the document was obtained by playing fraud. It is further contended that the lower appellate Court failed to note that D.W1, in his evidence admitted that patta stands in the name of the plaintiff and hence, he cannot be permitted to let in contra oral evidence. It is the submission of the learned counsel that Ex.A1 is the registered sale agreement and presumption about the genuineness of the deed is to be drawn in favour of the plaintiff, but no evidence was adduced by the defendant in rebuttal of the legal presumption.

7. In the matter on hand, according to the plaintiff, the defendant, who is the owner of the suit property, entered into a sale agreement on 11.01.2012 under Ex.A1 thereby, agreeing to sell the suit property for a total sale consideration of Rs.1,10,000/-, and on the same day, an advance amount of Rs.1,00,000/- was paid. 11 months time was fixed for performance of the contract. The contention of the defendant is that the Ex.A1-sale agreement is a forged document and he never received Rs.1,00,000/- under Ex.A1. The trial Court, held that as the defendant admitted execution of Ex.A1-sale agreement, he has no right to deny passing of consideration. It was also found that both the plaintiff and the defendant belong to the same Village.

8. It is relevant to note that the plaintiff gave evidence as PW1 and deposed that he paid Rs.1,00,000/- to the defendant in his house and at that time, no one was present. But the recital in Ex.A1 sale agreement shows that the advance amount was paid in the presence of the elders in the Registrar Office. PW2 has given evidence stating that in his presence the advance amount was paid to the defendant. In Ex.A1 sale agreement, it is stated that possession of the suit property was handed over to the plaintiff. PW1 also deposed in the same line, but, in the suit, the recovery of possession is sought for. In view of the contradictory evidence, the appellate Court doubted the genuineness of Ex.A1 sale agreement and the same was dealt with in para 10 of the appellate Court judgment.

9. The suit was resisted by the defendant contending that the sale agreement is forged and no advance amount was received by the defendant. Therefore, the mere registration of the document would not amount to discharge of the burden of proof lies on the plaintiff. It is settled law that in the suit filed for specific performance, the burden of proof is on the plaintiff to prove the execution of the sale agreement and his readiness and willingness to perform his obligation from the date of agreement, till the date of the decree.

10. In the matter on hand, the sale agreement is said to have been executed on 11.01.2012 and 11 months period was fixed for performance of the contract. Admittedly, the plaintiff issued pre-suit notice after lapse of 2 years, i.e., 08.01.2014. The trial Court, without looking into the points referred supra came to the conclusion that the execution of the sale agreement and passing of consideration was proved. The appellate Court, after analyzing the entire evidence, rightly set-aside the judgment of the trial Court. Hence, I find no illegality or perversity in the judgment of the appellate Court.

11. In the result, the appeal fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

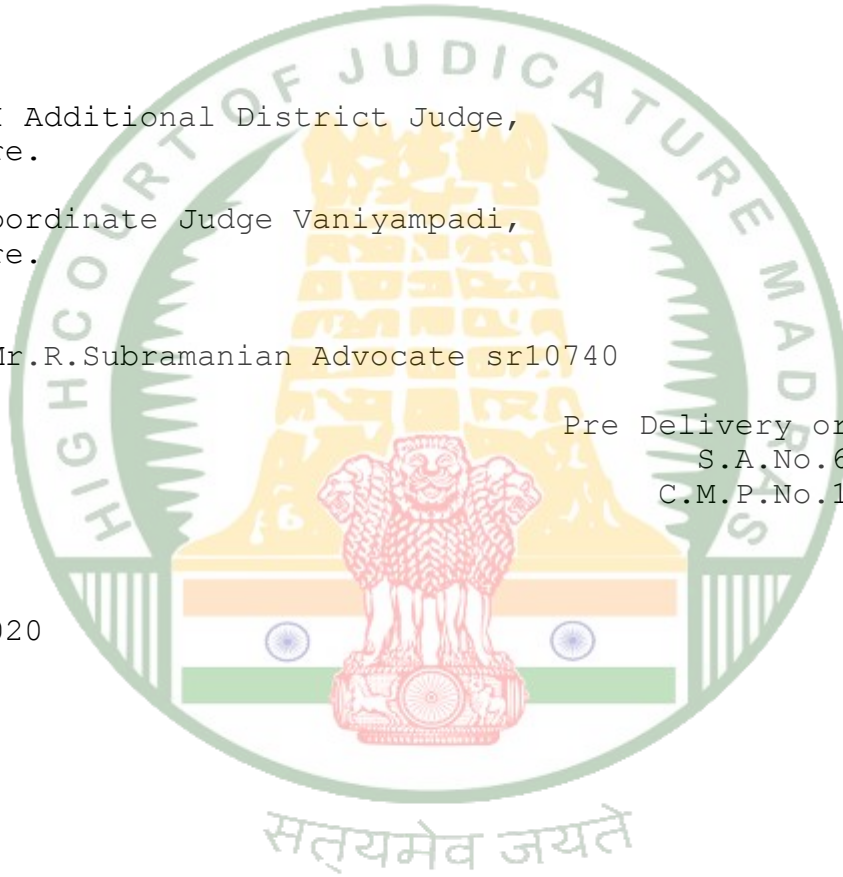
r n s
To

1. The III Additional District Judge,
Vellore.
2. The Subordinate Judge Vaniyampadi,
Vellore.

+1 cc to Mr.R.Subramanian Advocate sr10740

Pre Delivery order made in
S.A.No.69 of 2020 &
C.M.P.No.1359 of 2020

pm(co)
aa03/09/2020



WEB COPY