

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2019

Date of Verdict : 10.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1111 of 2004
and C.M.P.No.8125 of 2004

Arumutha grounder ...Appellant/Plaintiff

Vs.

Kalianna grounder(died)
2.K.Sengoda Gounder
3.Palaniammal
4.Muthupillai ...Respondents/Defendant
(RR2 to 4 brought on record as
LR's of the deceased sole respondent
viz., Kalianna Gounder vide order
of court dated 18.10.2019 made in
CMP.No.3792 of 2019 in
SA.No.1111 of 2004)

Prayer :-

This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.09.2002, in A.S.No.44 of 2002 on the file of the Additional District Court cum Fast Track Court No.IV Erode at Bhavani, confirming the decree and judgment dated 13.11.1998 in O.S.No.483 of 1996 on the file of the Additional District Munsif of Bhavani.

For Appellant : Mr.N.Manokaran

For Respondents

For R3 : K.Ponmani
for M/s.Zeenath Begum
: R1 - died
: R2 and R4 - notice served

JUDGMENT

This second appeal is directed as against the judgment and decree dated 30.09.2002, in A.S.No.44 of 2002 on the file of the Additional District Court cum Fast Track Court No.IV Erode at Bhavani, confirming the decree and judgment dated 13.11.1998 in O.S.No.483 of 1996 on the file of the Additional District Munsif of Bhavani.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1 The suit is filed for specific performance and partition. The plaintiff and the defendant entered into an agreement for sale dated 07.02.1985 for the total consideration of Rs.20,000/-. On the date of agreement, the plaintiff paid a sum of Rs.14,785/- as advance to the defendant and part of sale consideration and the sale agreement was duly registered one. As per the agreement for sale, within seven years from the date of agreement, the plaintiff has to pay the balance sale consideration and to execute the sale deed. In fact, on the date of agreement, the plaintiff was inducted into possession of the suit schedule property. When the plaintiff is ready and willing to perform his part of contract with the balance amount, the defendant dodged to perform his part of contract to register the sale deed in favour of the plaintiff.

3.2 Further stated that the defendant also filed suit against the plaintiff before the District Munsif Court, Bhavani for vexacious prayer. The original agreement for sale was sent for expert opinion in the suit filed by the defendant in O.S.No.163 of 1981, which culminated in execution proceedings in EP.No.141 of 1990. Thereafter the plaintiff caused legal notice on 03.01.1994 calling upon the defendant to receive the balance sale consideration and execute the sale deed. Hence, the suit for specific performance and for partition.

4. The defendant resisted the plaintiff's case by filing written statement stating that admittedly the suit property belongs to the defendant. The defendant denied the agreement for sale and also the receipt of sum of Rs.14,785/- as advance towards the part of sale consideration. The defendant never executed any sale agreement in favour of the plaintiff on 07.02.1985 and never received any sum as advance and part of sale consideration from the plaintiff. The suit agreement itself is a forged one and created by impersonation. Originally the dispute arose between the plaintiff and the defendant in the year 1979 itself, which resulted in the filing of the suit by the defendant in O.S.No.163 of 1981 and it was decreed on 10.02.1982. That being so, it is unbelievable to know that they have entered into a sale agreement and in fact, the defendant also filed another suit in the year 1990 for permanent injunction as against the plaintiff in respect of the very same property. In the contempt proceedings as against the plaintiff, the plaintiff categorically deposed that the defendant dodged for the past five years by not executing any sale deed. Therefore, the suit itself is barred by limitation.

4.2 Further stated that the plaintiff ought to have filed the suit within a period of seven years from the date of alleged agreement for sale. The suit was initially filed before the Subordinate Court, Erode in the year 1994, which has no territorial jurisdiction to try the same. Thereafter, transferred the suit on the enhancement of the pecuniary jurisdiction before the trial court in the year 1996. Therefore, the suit is barred by limitation and the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and thirteen documents were marked as Ex.A.1 to Ex.A.13. On the side of the defendants D.W.1 was examined and Ex.B.1 to Ex.B.15 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.44 of 2002 before the Additional District Court cum Fast Track Court No.IV Erode at Bhavani. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the courts below are correct in refusing to decree for specific performance of the agreement of sale on the ground that the contract is not supported by consideration even after finding that the amount covered under the sale agreement made use of for the purpose of settling the dues to the cooperative Bank?

b) Whether the courts below are correct in dismissing the suit for specific performance especially when the execution of the sale agreement had been proved and also the defence of forgery had been falsified by the report of the handwriting expert?

c) Whether the Ex.A.12 dated 07.02.1985 is supported by consideration, if not, whether the plaintiff is entitled to get the decree for specific performance in view of the report marked as Ex.A.13 which falsifies the denial of execution by the defendant?

7. The learned counsel appearing for the plaintiff and the defendant are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard Mr.N.Manokaran, learned counsel appearing for the Plaintiff and Mr.K.Ponmani, learned counsel appearing for the defendant.

9. This Court considered the rival submission made by the learned counsel on either side.

10. Ex.A.12 is the sale agreement executed between the plaintiff and the defendant. According to the said agreement, a sum of Rs.14,785/- was paid as advance and part of consideration out of Rs.20,000/- as full sale consideration of the suit property. The remaining sale consideration to be paid within a period of seven years from the date of sale agreement and on receipt of the balance sale consideration, the sale deed has to be executed. The plaintiff is none other than the own son of the defendant. The suit property belongs to the defendant. From the year 1979 onwards, there was a dispute between the plaintiff and the defendant. Already there was a suit proceedings between them.

11. Admittedly, the suit property is a self acquired property by the defendant. In E.P.No.141 of 1990, the plaintiff filed application to send for the agreement for sale to verify the signature. On the report from the hand writing expert found that the signature of the defendant is proved and as such the trial court found that Ex.A.12 was executed by the defendant in favour of the plaintiff on 07.02.1985. On perusal of the recital of the agreement, a sum of Rs.14,785/- was paid to the Agricultural Cooperative Bank, Bhavani. There is no evidence to show that on behalf of the defendant, the plaintiff paid that amount to the Agricultural Cooperative Bank, Bhavani. According to the plaintiff, the possession was handed over on the date of agreement for sale. With respect to the suit filed by the defendant for permanent injunction in respect of the very same property in O.S.No.690 of 1989, in which the suit was decreed in favour of the defendant and against the plaintiff, which was marked as Ex.B.13 and B.14. Further in the Ex.A.12, there is no recital that a sum of Rs.14,785/- was paid to the defendant. Further the time for remaining sale consideration was fixed as seven years. When already there was a dispute between the plaintiff and the defendant, the execution of the sale agreement itself is not believable one. When any part of sale consideration is not paid to the defendant, the plaintiff is not entitled for specific performance of the suit property.

12. Further, when the suit property is admittedly a self acquired property and as such the plaintiff is not at all entitled for any partition over the suit property. The plaintiff failed to prove his case before the trial court by unimpeachable evidence. Further, both the courts below found

that the plaintiff approached the Court with unclean hands by suppressing so many materials as well as the facts.

13. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in the second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in the Second Appeal, are answered as against the plaintiff and in favour of the defendant.

14. Accordingly, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Fast Track Court No.IV Erode
at Bhavani,

2.The Additional District Munsif
Bhavani.

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

+1cc to Mr.N.Manokaran, Advocate SR.No.2901

+1cc to M/s.Zeenath Begum, Advocate SR.No.2797

S.A.No.1111 of 2004

NRJK (CO)
GMY (27/08/2020)