



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.08.2020

Pronounced on: 24.08.2020

WEB COPY

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Second Appeal No.758 of 2010 and
M.P.No.1 of 2010

M.Dhanalakshmi,
6/7, Raja Veethi,
Govinda Reddipalayam,
H/o.Pudur,
Vellore Taluk.

...Appellant/Plaintiff

/versus/

M.Sathiyanarayanan,
No.234, Govinda Reddipalayam,
H/o.Pudur,
Vellore Taluk.

...Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 22.01.2010 made in A.S.No.18 of 2008 on the file of the Subordinate Judge, Vellore confirming the judgment and decree dated 31.01.2008 made in O.S.No.594 of 1998 on the file of the Additional District Munsif, Vellore.

For Appellant : Mr.R.Vasudevan

For Respondent : Mr.P.Satheesh Kumar

J U D G M E N T

(The case has been heard through video conference)

This second appeal is against the concurrent finding of the Courts below in a suit for specific performance. The plaintiff is the appellant herein.



2.Plaint averment:

The defendant Sathyanarayanan and his father Perumal agreed to sell the suit schedule property for a consideration of Rs.70,000/- and received advance of Rs.20,000/-. They executed an agreement for sale on 04/09/1998 wherein, the time for performance was fixed as 6 months. The suit property was purchased by Perumal in the name of his wife Nandagi Ammal. After the demise of Nandagi Ammal, partition of her property was effected. Permal Naicker got $\frac{1}{2}$ share in the suit property. His son Sahyanarayanan and daughter Pownammal have $\frac{1}{4}$ share each. Perumal and Sathyanarayanan agreed that they will make the other sharer also to execute sale deed. Though the plaintiff is always ready and willing to perform her part of contract and pay the balance sale consideration, the defendant Sathyanarayanan delaying the completion of transaction. Perumal and son of Pownammal had so far received Rs.52,500/- representing their $\frac{3}{4}$ th share of total sale consideration. The defendant alone refusing to perform his part of contract . Hence the suit .

3.Defendant averment:

The suit property was purchased by his mother Nandagi Ammal. The entire property was given to this defendant in a oral partition among the family members. On the death of Nandagi Ammal, the defendant is in possession and enjoyment of the suit property as its absolute owner. The alleged sale agreement purported to have been executed by him and his father Perumal denied. The said deed is a forged one created by the plaintiff with the help of Perumal to grab the property. The plaintiff cannot lay suit for specific performance based on forged agreement deed.

4.Based on the pleadings, the trial Court framed the following issues:-

"1) Whether the sale agreement dated 04/09/1998 is genuine , valid and binding ?

2) Whether the suit schedule property allotted to the the defendant in entirety ?

3) Whether the defendant is bound to execute the sale deed in favour of the plaintiff as prayed ?



4) What other relief ?”

5.The plaintiff deposed in support of her case and marked the sale agreement dated 04/09/1998. On the side of the defendant, the defendant and one Chamundi Naicker were examined as DW-1 and DW-2. Eight exhibits were marked on the defendant side.

6.The trial Court dismissed the suit holding that, the unregistered sale agreement Ex A-1 not proved by the plaintiff by examining the witnesses to the document or its scribe. The corrections found in Ex.A-1 not countersigned. Admittedly, the plaintiff has not asked the defendant to complete his part of contract. Before filing the suit, no demand for performance of contract was made, to infer refusal.

7.On appeal, the First Appellate Court pointing out the corrections found in Ex A-1 in respect of sale consideration and the contradiction in respect of payment of consideration and the recipients, concurred the views of the trial court and dismissed the appeal.

8.Heard the learned counsel on either side. The documents and the depositions of the parties perused.

9.Ex A-1 sale agreement is alleged to have been executed by Perumal and his son Sathyanarayanan (defendant). The case of the plaintiff as found in the plaint is that, apart from these two executants, one Pownammal have $\frac{1}{4}$ share in the property. The said Pownammal is not a party to the sale agreement nor a party in the suit. In the plaint, it is averred that, Perumal and Pownammal received a total sum of Rs.52,000/- towards their shares. In the deposition, the plaintiff has said, Pownammal son received the money. Either way, no receipt or proof for the payment placed before the Court. The suit for specific performance is laid against the sole defendant though admittedly there are other sharers. If the plaintiff case that except the defendant all other sharers are ready to perform the contract, there should have been some proof for the same. Witnesses should have been examined in support of that plea. The plaintiff has not even examined the witnesses to the sale agreement Ex A-1 to prove its execution. When the execution of Ex A-1 is denied by the defendant, the plaintiff ought to have taken steps to prove the execution, leave alone the right of the other parties.



10. The Courts below have rightly dismissed the suit. No substantive question of law involved in this case. Accordingly, the second appeal is dismissed with costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm
To

1. The Subordinate Judge,
Vellore.
2. The Additional District Munsif,
Vellore.
3. The Section Officer,
VR Section, High Court,
Madras.

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and M.P.No.1 of 2010

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