

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2020

DATE OF VERDICT : 20.02.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NO.930 OF 2005

1.Mageswaran
2.Raghupathy Devi
3.Mahalinga Vasagam

.. Appellants/Appellants/
Plaintiffs

Vs.

1.P.Ekambaram
2.Murugesan
3.Shanmugam (Died)

(R3 died The second appeal dismissed as abated as
against the 3rd respondent vide order of Court dated
21.01.2020 made in C.M.P.No.930/2005 in
S.A.No.12867 of 2005)

.. Respondents/Respondents/
Defendants

Prayer:

Second Appeal filed under Section. 100 of C.P.C. against the
judgment and decree passed in A.S.No. 1 of 2002 on the file of
the Additional District Judge, Fast Track Court No.V,
Chengalpattu at Tiruvallur (Sub-Court, Tiruvallur), dated
30.11.2004 confirming the judgment and decree passed in O.S.No.
113 of 1989 dated 18.07.2001 on the file of the District Munsif
Court, Tiruvallur.

For Appellants : Mr.R.Rajesh Vivekananthan

For Respondents : Notice served - R1 & R2
R3 - Died

J U D G M E N T

This appeal has been filed as against the judgment and
decree dated 30.11.2004 passed in A.S.No.1 of 2002 on the file
of the Additional District Judge, Fast Track Court-V,
Chengalpattu, Tiruvallur confirming the judgment and decree
dated 18.07.2001 passed in O.S.No.113 of 1989 on the file of the

District Munsif Court, Tiruvallur.

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

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

3.1. The suit is filed for specific performance. The case of the plaintiffs is that the first defendant is the owner of the suit property and she entered into an agreement for sale with the plaintiffs dated 01.12.1985. She agreed to sale the land comprised in Survey No.848/1-A admeasuring to an extent of 30 cents at the rate of Rs.4,000/- per cent along with the dilapidated house thereon for the sale consideration of Rs.1,20,000/-. On verification of the measurements, it was found that the land in existence in that Survey number was only 27 ½ cents and the portion of the house lies in Survey No.851 South of Survey No.848. Thereafter, the first defendant executed three sale deeds in favour of the plaintiffs.

4. In so far as the extent of 27 ½ cents, by the three sale deeds dated 04.04.1986 for sale consideration of Rs.48,750/-, Rs.40,250/- and Rs.21,000/- respectively and the house at Rs.1,10,000/-. Thereafter, she failed to register those sale deeds. Therefore, the plaintiffs insisted for execution of sale deed for the remaining extent of 2 ½ cents of land and portion of the house that lies in the suit item for the value of Rs.12,000/-. The first defendant agreed on 09.12.1985 to execute the sale deed for the same and also get concurrence of the second defendant and received sum of RS.12,000/- out of which the land is valued at Rs.10,000/- and the balance of the house portion that lies in it is valued at Rs.10,000/- and the balance of the house portion that lies in it is valued at Rs.2,000/-. Though the first defendant received the amount, thereafter, failed to execute the sale deed as agreed. When the plaintiffs have always ready and willing to perform their part of the contract, the first defendant failed to have the earlier sale deeds registered and thereafter, the plaintiffs had resorted to compulsory registration and after due notice and enquiry, the first defendant had them registered on 12.08.1986. In fact, the plaintiffs are in possession of house and land. Hence, the suit.

5. Resisting the same, the defendants filed written statement and stating that the first defendant has sold out the property as per the agreement. There is no other land or property to which the plaintiffs can lay claim. Further, there is absolutely no agreement regarding 2 ½ cents of land. The receipts for the payments made by the plaintiffs earlier with regard to the purpose of 27 ½ cents have been misused by the plaintiffs for the purpose of filing this suit. Therefore, the

second defendant has no power to execute any sale deed on behalf of the first defendant and prayed for dismissal.

6. On the side of the plaintiffs, examined P.W.1 and P.W.2 and were marked as Exs.A1 and A2. On the side of the defendants, examined P.W.1 and were marked Exs.B1 to B3. 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 by the same, the plaintiffs preferred an appal suit in A.S.No.1 of 2002 and the first Appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Aggrieved by the same, the plaintiffs filed this second appeal.

7. At the time of admission, the following substantial questions were formulated for consideration:-

"1. Whether the lower Appellate Court can invoke section 35 of the Stamp Act when once the document had been duly marked in the Trial Court?

2. Whether once the Trial Court (its office having reconstructed the document with the xerox copy, can the appellate court eschew it from evidence to the prejudice of the litigant? Whether it can go against the maxim "Act of Court may not prejudice any party".

3. Whether the alternative prayer for the relief of money paid under the agreement disentitles the plaintiff to the main relief?"

8. Heard Mr. R.Rajesh Vivekananthan, learned counsel appearing for the Appellants. Though notice served on respondents 1 and 2, none appeared either in person or through counsel.

9. The suit is filed for specific performance. Even according to the plaintiffs, the first defendant entered into an agreement for sale by the agreement dated 01.12.1985 to sell the property comprised in Survey No.848/1-A admeasuring 30 cents at the rate of Rs.4,000/- per cent along with the dilapidated house thereon for a sum of Rs.1,20,000/-. On verification, it was found, the land in existence and the Survey No.848/1-A only measuring 27 ½ cents and the portion of the house also lies in the Survey No.851 South of the Survey No.848. After much pursuations, the first defendant executed sale deed dated 04.04.1986 for 11 ½ cents for the sale consideration of Rs.48,750, another sale deed executed for the property

admeasuring 9 cents for the sale consideration of Rs.40,250/- and another sale deed for the property admeasuring 7 cents at the rate of Rs.21,000/-. In total, 27 ½ cents of land and house for the sale consideration of Rs.1,10,000/- in favour of the plaintiffs. Though the first defendant failed to register the same, the plaintiffs had taken legal steps to register the same and accordingly, those sale deeds have been registered in their favour. Now, the plaintiffs insisted for execution of sale deed for an extent of remaining 2 ½ cents as agreed by the first defendant as per the agreement for sale deed dated 09.12.1985.

10. According to the plaintiff, they also paid a sum of Rs.12,000/- and the first defendant agreed to execute the sale deed for the said property in favour of the plaintiffs. The plaintiffs also marked the receipt for a sum of Rs.12,000/- issued by the first defendant in favour of the plaintiff dated 09.12.1985. On perusal of the Ex.A1, sale agreement executed by the first defendant in favour of the plaintiffs, if the extent of the property is less while measuring the property the amount will be reduced for a sum of Rs.4,000/-. Accordingly, the land was measured and found that there was only 27 ½ cents. Proportionately, sale consideration was reduced and the first defendant executed three sale deed for the total extent of 27 ½ cents property. Therefore, even according to the plaintiffs, there was no property admeasuring 2 ½ cents comprised in Survey No.848/1-A. In fact, the part of the house is also situated in his Survey No.851/1A. Further, there is no agreement between the plaintiffs and the first defendant in so far as the 2 ½ cents of property is concerned and as such the plaintiff failed to prove that the first defendant agreed to sell the same for the sale consideration of Rs.12,000/-. The date of sale agreement between the plaintiffs and the defendant is 01.12.1985. Whereas, the payment of Rs.12,000/- made on 09.12.1988 but the sale deed were executed on 04.04.1986. Even much later to the said payment in favour of the plaintiffs by the first defendant. Therefore, the plaintiffs failed to prove that the said payment was made over the registration of remaining property of 2 ½ cents. Even according to the plaintiff, there was no land admeasuring 2 ½ cents in the property as agreed by the first defendant to sale in favour of the plaintiffs. Therefore, both the Courts below rightly held against the plaintiffs and dismissed the suit.

11. In view of the above discussions, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below against the plaintiffs as such, this Court is of the considered opinion, no substantial questions of law is involved in this appeal. Be that as it may,

the substantial questions of law are answered against the plaintiffs and in favour of the defendants. In fine, this second appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kkn

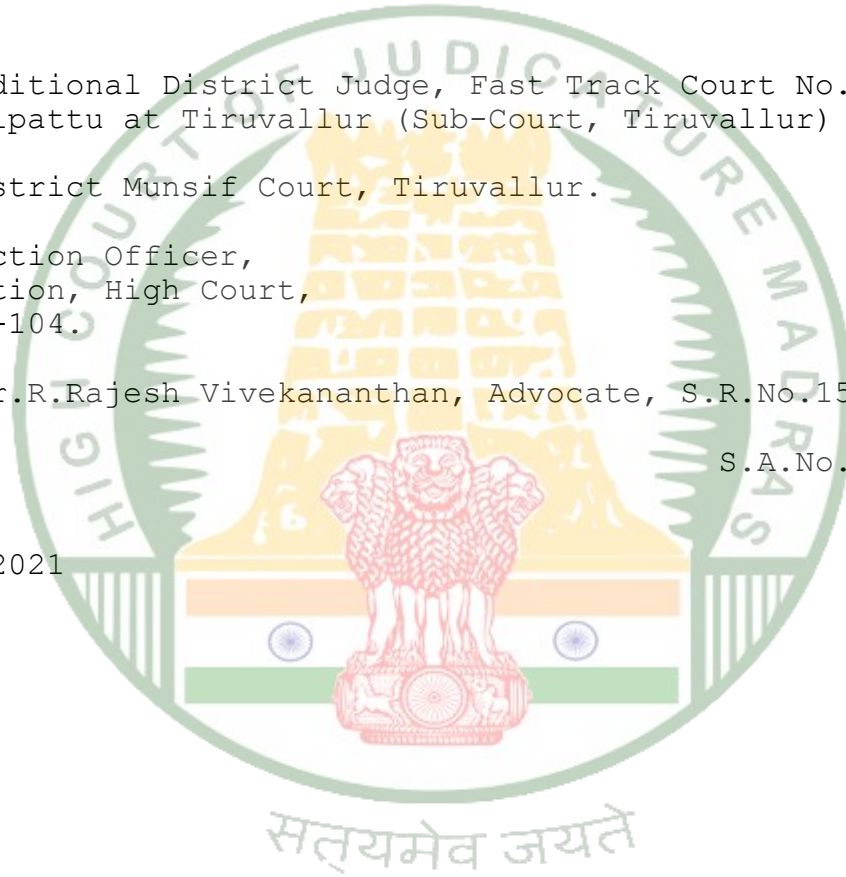
To:-

1. The Additional District Judge, Fast Track Court No.V,
Chengalpattu at Tiruvallur (Sub-Court, Tiruvallur)
2. The District Munsif Court, Tiruvallur.
3. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.R.Rajesh Vivekananthan, Advocate, S.R.No.15080

S.A.No.930 of 2005

RV(CO)
CS/01/02/2021



WEB COPY