

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 09.01.2020

Delivered on: 13.01.2020

Coram:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.123 of 2013

and

M.P.No.1 of 2013

1.Radha

2.Mageswaran

3.Minor Mythili,
rep.by her mother and
natural guardian
Radha, the first appellant

4.Muni Venkatammal Appellants/Appellants/Plaintiffs

vs.

Thanjammal Respondent/Respondent/Defendant

Second Appeal is filed against the judgement and decree dated 06.08.2012 passed by the Principal District Judge, Krishnagiri, A.S.No.43 of 2011 reversing the judgement and decree dated 29.06.2011 passed by the Principal Sub Judge, Krishnagiri, in O.S.No.5 of 2009.

For appellants :: Mr.V.Raghavachari

For Respondent :: Mr.P.M.Duraiswamy

JUDGEMENT

This second appeal is filed by the plaintiffs in the suit as against the judgement and decree, dated 06.08.2012 passed by the Principal District Judge, Krishnagiri, in A.S.No.43 of 2011, reversing the judgement and decree, dated 29.06.2011, passed by the Principal Sub Judge, Krishnagiri, in O.S.No.5 of 2009, which was one for specific performance of the sale agreement (Ex.A1), dated 29.12.2004.

2.The appellants herein are the plaintiffs in the suit. The respondent was the defendant. The appellants/plaintiffs have approached the trial Court by filing O.S.No.5 of 2009, seeking a direction to the defendant to execute and register an appropriate sale deed, conveying the suit property in their favour and receive the balance sale consideration of Rs.10,000/- and if there is failure on the part of the defendant, the Court may execute the sale deed on behalf of the defendant.

3.The suit was filed on the basis of the registered sale agreement (Ex.A1) dated 29.12.2004, executed by the defendant in favour of the first plaintiff's husband. The first plaintiff's husband died on 13.02.2006. The trial Court, after advertng to the various materials placed on record and also pleadings of the parties, has passed a decree by holding that the plaintiffs were entitled only for return of the amount of Rs.1 lakh paid under the registered sale agreement (Ex.A1), dated 29.12.2004, from the defendant, together with interest at the rate of 6% per annum from the date of Ex.A1 till the date of realisation. The trial Court has held that there was complete absence of readiness and willingness on part of the plaintiffs in completing the sale transaction. It was further held by the trial Court that according to the defendant, as indicated in the written statement, there was no intention of sale of the suit property and it was merely a loan agreement between the defendant and the first plaintiff's husband Chandiran and therefore, the plaintiffs were not to be granted the relief of specific performance. The trial Court, after taking note of the submissions of the defendant, has passed a direction for return of the money, which was said to have been paid under Ex.A1-the sale agreement, by the first plaintiff's husband/Chandiran, to the defendant. As against the judgement and decree of the trial Court, the plaintiffs filed an appeal, in A.S.No.43 of 2011, before the lower appellate Court.

4.A mere perusal of the judgement and decree of the lower appellate Court shows that the lower appellate Court has wrongly described the appellants/plaintiffs as appellants/defendants and the defendant in the suit was also described as appellant. The lower appellate Court not only wrongly described the array of parties in the appeal before it, but ultimately, when the appeal came to be dismissed, it concluded that the appeal was allowed and the judgement and decree of the trial Court was set aside. The lower appellate Court failed to appreciate the simple fact that the appellants before it were the plaintiffs in the suit and if the appeal was allowed, the plaintiffs were entitled to succeed in the suit and in which event, the trial Court's judgement and decree, refusing to grant the relief as prayed for by the plaintiffs, was to be reversed. However, in the process,

the lower appellate Court has mistakenly held that the appeal was allowed and ultimately set aside the judgement and decree of the trial Court. In the said circumstances, the present Second Appeal has been filed by the plaintiffs.

5.Shri.V.Raghavachari, learned counsel appearing for the second appellants, would point out the basis of misunderstanding and the mistake committed by the lower appellate Court in describing the parties, which demonstrated the complete lack of application of mind on the part of the appellate Court. The appellants/plaintiffs have invited an adverse judgement and decree, at their instance, through the appellate Court's judgement, in setting aside the judgement and decree of the trial Court, wherein there was, atleast a direction, directing the return of money paid under Ex.A1-sale agreement. According to the learned counsel, such a course adopted by the appellate Court is completely unacceptable in law.

6.In fact, the learned counsel would draw the attention of this Court to the ultimate conclusion reached by the lower appellate Court, as observed in Paragraph Nos.11 and 12, which would clearly indicate that there was complete absence of application of mind on the part of the appellate Court. The lower appellate Court, while passing the judgement, has, in fact, more than in one place, held that the appeal needed to be allowed in order to set aside the judgement and decree of the trial Court, however, it has miserably failed to understand that the appeal was actually preferred by the plaintiffs. It is open to the appellate Court either to dismiss the appeal or to allow the same, but cannot set aside the judgement and decree of the trial Court, at the instance of the plaintiffs. The learned counsel appearing for the appellants would draw the attention of this Court to the various points raised in the appeal.

7.At this, this Court found that the basis of understanding of the lower appellate Court, while passing the judgement and decree in allowing the appeal, has to be faulted, since as contended by the learned counsel for the appellants, there was a complete absence of application of mind on the part of the lower appellate Court. The ultimate conclusion reached by the appellate Court that the appeal needed to be allowed and accordingly it was allowed and consequently, the judgement and decree of the trial Court was set aside, to say the least, was appalling and how the appellate Judge had completely misunderstood the array of parties.

8.Although the learned counsel for the respondent would submit that de hors the conclusion, the lower appellate Court has dealt with various factual aspects and issues and ultimately held against the appellants/plaintiffs, nevertheless, since the

mistake committed by the appellate Court is writ large on the face of the judgement and decree of the appellate Court and therefore, the other consideration by the lower appellate Court cannot be held to be valid and correct. From the operative portion of the judgement and decree of the appellate Court, it could be seen that the very understanding of the array of parties, was completely misplaced and incorrect and while disposing of the appeal, the lower appellate Court has miserably failed to understand as to which party was on appeal and what was the scope of appeal filed before it. In the said circumstances, this Court is of the considered view that before dealing with the merits of the second appeal, the matter requires to be sent back to the lower appellate Court for considering the appeal afresh, after proper understanding of the array of parties, before it.

9. In the above circumstances, without dealing with the Substantial Questions of Law raised in the Second Appeal, the matter is remanded back to the lower appellate Court, viz., the Principal District Judge, Krishnagiri, for fresh consideration of the appeal filed by the plaintiffs. The lower appellate Court is directed to consider the same and pass appropriate judgement and decree within a period of three months from the date when the matter stood remanded back to its file. It is made clear that this Court has not expressed any opinion on the merits and demerits of the rival contentions of the parties and the lower appellate Court is directed to dispose of the appeal on the basis of the materials and pleadings placed for consideration before it.

In the result, the second appeal stands disposed of as indicated above. Registry shall return back the records to the lower appellate Court forthwith. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

Msk

To

1. The Principal District Judge, Krishnagiri

2. The Principal Sub Judge, Krishnagiri

Copy To

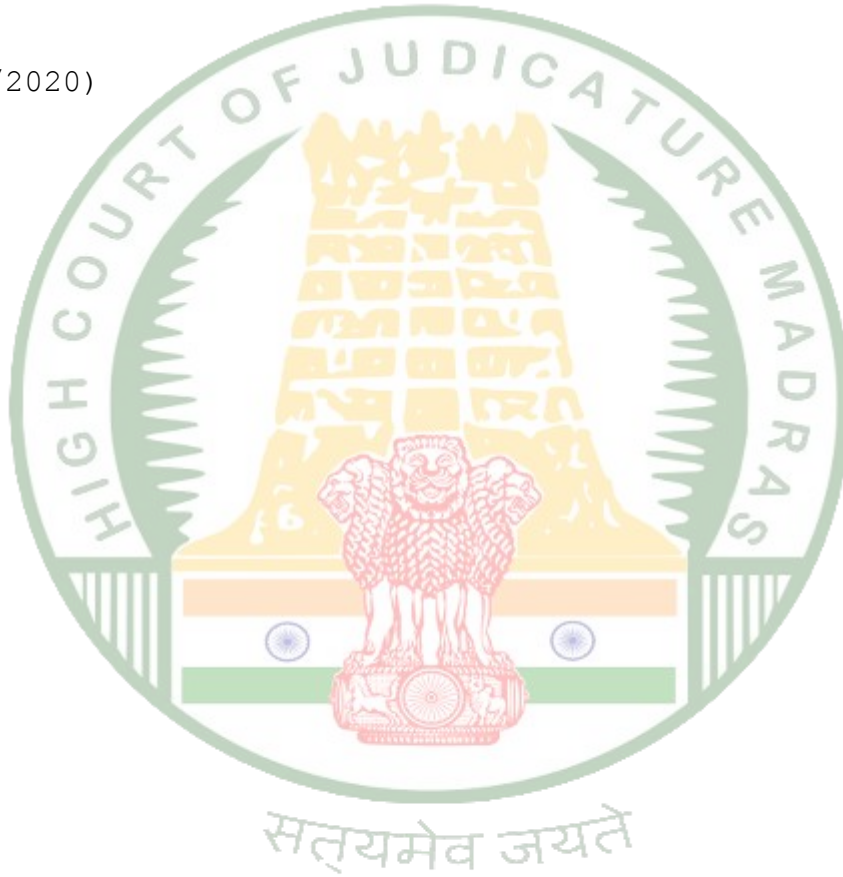
The Section Officer,
VR Section, High Court, Madras.

+2ccs to Mr.V.Raghavachari, Advocate SR.No.2427, 2933

+2ccs to Mr.P.M.Duraiswamy, Advocate SR.No.2373

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PPA (CO)
GMY (20/08/2020)



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