

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.488 of 2014 and

M.P.No.1 of 2014

Adhinarayanan

.. Appellant

Vs.

1. Babu

2. Thiyagarajan

... Respondents

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgement and decree on the file of the District Court, Thiruvarur in A.S.No.9 of 2010 dated 30th August 2013 in confirming the Judgement and decree in O.S.No.21 of 2009 dated 15th September 2010, on the file of the Sub Judge, Tiruvarur.

For Appellant : Mr.V.Raghavachari

For Respondents : No appearance

J U D G M E N T

The plaintiff in O.S.No.21 of 2009 whose suit for specific performance was dismissed by the trial Court, upon its affirmation by the lower appellate Court in A.S.No.9 of 2010 has come up with this second appeal.

2. The plaintiff sued for specific performance on the strength of an agreement entered into between him and the first defendant, on 28.12.2007. The total consideration was fixed at Rs.1,53,090/- and an advance of Rs.40,000/- was paid. It is averred that the balance amount should be paid within a period of six months from the date of the agreement. It is also stated that the plaintiff has paid a further sum of Rs.25,000/- on 29.12.2007 and the plaintiff was put in possession of the property. An endorsement was also made to that effect in the agreement. The plaintiff claiming that he has always been ready and willing to perform his part of the contract, issued a notice, demanding performance on 11.05.2009. The same was received by the defendants on 16.05.2009. It is claimed that

the defendants did not comply with the said notice. Hence, the plaintiff has come up with the suit on 21.07.2009.

3. The suit was resisted by the first defendant contending that he is not the absolute owner of the property and the agreement was not intended to be acted upon as an agreement of sale. It is also contended that the plaintiff was not ready and willing to perform his part of the contract and he never made a demand within the time fixed under the agreement.

4. At trial, the plaintiff was examined as PW.1 and three other witnesses were examined as P.Ws.2 to 4. Exs.A1 to A5 were marked. The 1st defendant was examined as D.W.1. No documentary evidence was produced by the defendants.

5. The trial Court upon a consideration of the evidence on record, concluded that the agreement and the endorsement are true. But the trial Court however concluded that the plaintiff has not established that he was always ready and willing to perform his part of the contract. The fact that there was no demand within the period fixed under the contract was also taken into account by the trial Court. The trial Court also concluded that there was no consensus ad idem between the parties for conveyance of the property, more so, when it is found that the first defendant was not the absolute owner of the property. The admission on the side of the plaintiff to the effect that he had not verified the title at the time entered into agreement, was also taken into account by the trial Court. On the above findings, the trial Court dismissed the suit.

6. Aggrieved, the plaintiff preferred an appeal in A.S.No.9 of 2010. The lower appellate Court on a re-appreciation of the evidence on record concurred with the findings of the trial Court and dismissed the appeal. Hence, the plaintiff has come to this Court by way of this Second appeal.

7. I have heard Mr.V.Raghavachari, learned counsel for the appellant. Notice of motion was ordered on 02.06.2014. Though the respondents have been served, they are not appearing either in person or through counsel duly instructed.

8. Mr.V.Raghavachar, learned counsel appearing for the appellant would vehemently contend that the Courts below were not right in refusing the decree for specific performance on the ground that the defendant is not the owner of the property. He would also pointed out that his readiness and willingness was never questioned by the defendants. I am not unable to accept the said submissions.

9. No doubt true, the Court in a suit for specific performance cannot go into the question of title and pronounce upon it. But at the same time, the Court cannot test the veracity of the agreement by looking at the prevailing circumstances. Admittedly, the second defendant was also the owner of the property. The first defendant had entered into an agreement of sale of the entirety of the property. The first defendant had taken a plea that the agreement was not intended to be acted upon to an agreement for security of loan transaction.

10. Considering these factors, the trial Court as well as the lower appellate Court came to a conclusion that the parties were not at consensus ad idem regarding the purpose of the agreement.

Dehors the above, the Courts below have concurrently recorded a finding that the plaintiff was never ready and willing to perform his part of the contract. The agreement is dated 28.12.2007. It fixes a period of six months for performance. The said period of six months expired on 28.06.2012. Admittedly, no demand was made till 06.05.2009. The plaintiff has been inactive for nearly one year from the date of expiry of the period fixed under the agreement. There is no explanation forthcoming from the plaintiff for this prolonged silence on his side. The defendant had taken a specific plea that the plaintiff was not ready and willing to perform his part of the contract and an issue has been framed under Section 16 (c) of the Specific Relief Act and the same has been answered against the plaintiff by both the Courts below.

11. I do not find any perversity in the factual conclusions of the Courts below, which would enable me to interfere with the concurrent findings in the Second Appeal. I do not find any question of law, much less substantial question of law to enable me to entertain this second appeal. The trial Court dismissed the suit for specific performance while granting a decree for refund of advance. The second appeal is dismissed confirming Judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

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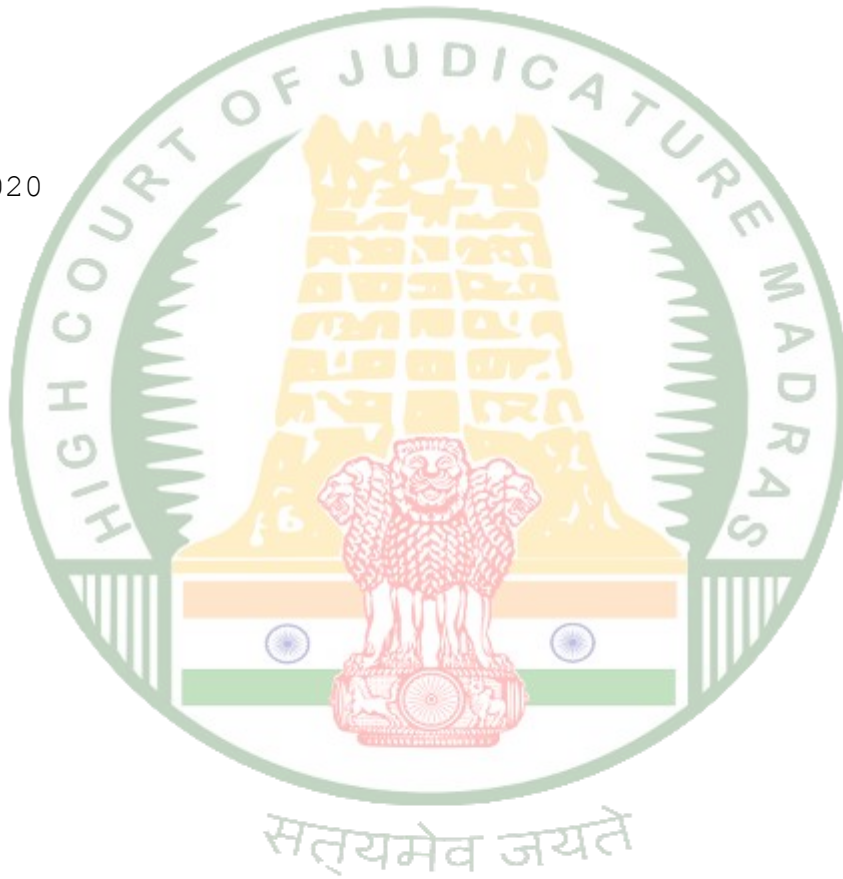
1. The District Court, Thiruvavarur.

2. The Sub Judge, Tiruvavarur

+1 cc to Mr.V.Raghavachari Advocate sr25324

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