

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.1298 OF 2019

AND

C.M.P.NO.28009 OF 2019

M.Rangaraj

... Appellant/Plaintiff

Vs

1.K.M.Natarajan
2.M.Murugesan
3.A.D.Viswanathan
4.Ramasamy Gounder
5.P.Murugesan
6.Jaganathan
7.Murugesan
8.Azhagesan
9.N.Senthilkumar
10.P.Murugesan

... Respondents/Defendants

Prayer:-

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 22.02.2019 made in A.S.No.11 of 2017 on the file of the IV Additional District Judge, Erode District at Bhavani partly modifying the judgment and decree dated 20.04.2016 made in O.S.No.127 of 2003 on the file of the Subordinate Judge, Bhavani.

For Appellants : Mr.Mouli L.

J U D G M E N T

The unsuccessful plaintiff in O.S.No.127 of 2003 on the file of the Sub Court, Bhavani is the appellant in this appeal. The suit was filed for specific performance on the basis of the agreement of sale dated 06.06.2002.

2. The case of the plaintiff is that on 06.06.2002, the first defendant entered into an agreement of sale with the plaintiff to sell the suit property for a sum of Rs.1,30,000/-. On the date of sale agreement, the first defendant received a

sum of Rs.1,20,000/-. It is further stated that on 01.12.2002, the first defendant received a further sum of Rs.7,500/- from the plaintiff and thereafter, voluntarily extended the time for execution of sale upto 05.06.2003. When the plaintiff approached the first defendant to execute the sale deed on 12.05.2003, he refused and hence, the suit.

3.The suit was resisted by the first defendant, denying the case of the plaintiff. According to the first defendant he borrowed money from the plaintiff and the sale agreement was executed only for security. It is further stated that on the date of plaint, the value of the property was Rs.2,10,000/- and hence, prayed for dismissal of the suit.

4.On the basis of the pleadings, the trial Court framed necessary issues and permitted the parties to lead their evidence. On the side of the plaintiff, three witnesses viz., P.W.1 to P.W.3 were examined and Exs.A1 to A4 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B4 and Ex.C1 were marked. Upon consideration of both oral and documentary evidence, the Trial Court dismissed the suit. On appeal, the Appellate Court partly decreed the suit and directed the first defendant to refund the advance amount along with interest at 12% per annum. Assailing the judgment and decree, the present appeal is filed.

5. Mr.Mouli L., learned counsel for the appellant would submit that though the first defendant contested the suit by stating that there was money transaction, but, no evidence was produced to substantiate the same. It is further stated that execution of Ex.A2 was denied by the first defendant, but, the opinion of the experts was against the first defendant.

6. Heard the learned counsel for the appellant and perused the materials available on records.

7.In the case on hand, it is not in dispute that the first defendant is the absolute owner of the property measuring an extent of 3.65 acres of land in S.No.477/1 at Mylambady Village, Bhavani Taluk. It is the case of the plaintiff that the first defendant entered into the agreement of sale with the plaintiff on 06.06.2002 agreeing to sell the property for a sum of Rs.1,30,000/- and on the date of agreement, he received Rs.1,20,000/- and sought time for performing the contract within a period of six months. Subsequently on 01.12.2002, a further sum of Rs.7,500/- was paid and the time was extended for another six months.

8. The first defendant resisted the suit, contending that he did not intend to sell the property as per the agreement dated

06.06.2002 and it was only for security of loan transaction. The Courts below, having considering the evidence adduced by the parties, came to the conclusion that the first defendant had no intention to sell the property as per the agreement Ex.A1 dated 06.06.2002. Ex.B4 shows that value per acre of the land was Rs.4,50,000/-. It appears that though, the appellant argued before the trial Court for an alternative prayer for refund of the advance amount, the suit was dismissed in entirety. While considering the point No.2, the Appellate Court granted the relief and directed the first defendant to refund the advance amount along with 12% interest per annum. The first Appellate Court on proper appreciation of evidence granted the alternative prayer to the plaintiff.

9.For the foregoing reasons, I find no illegality or irregularity in the findings of the appellate Court. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

ms

To

1. The IV Additional District Judge,
Erode District at Bhavani.
2. The Sub Judge,
Bhavani.

Copy To

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

WEB COPY

S.A.No.1298 of 2019

MP (CO)
CS/16/12/2020