



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 16.09.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

S.A(MD)No.369 of 2020
and C.M.P (MD)No.4327 of 2020

M.Mohideen Pitchai : Appellant/Appellant/Plaintiff

Vs.

Sahul Hameethu : Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C, against the Judgment and Decree passed by the Additional District and Sessions Court (FTC), Tenkasi dated 16.03.2020 made in A.S.No.83 of 2019, confirming the judgment and decree made in O.S.No20 of 2012 dated 28.04.2018, on the file of the Additional Sub Court, Tenkasi.

For Appellant : Mr.D.Srinivasaragavan

J U D G M E N T

The plaintiff in a suit for specific performance has approached this Court, after having successively lost his suit before both the courts below.

2.The case of the plaintiff is that the suit property was one integrated the property originally belong to the defendant and his brother Mytheen Pitchai that there was some oral partition between the brothers in which northern half was allotted to the share of Mytheen Pitchai and that the plaintiff has purchased the same on 21.11.2008 under Ex.A.2. As regards southern half, the plaintiff has entered into an agreement of sale with the defendants Vide Ex.A.1 sale agreement dated 24.08.2011. The property dealt with under Ex.A.1 is described in the 3rd schedule to the plaint.

3. The total sale consideration by the plaintiff is fixed at Rs.3.25 lakhs out of which the plaintiff had paid Rs.1 lakh to the defendant on the date of agreement. The balance sale consideration of Rs.1.5 lakhs was required to be paid within a period of 4 months. According to the plaintiff, on 24.08.2011 she had paid another sum of Rs.25,000/- to the defendant towards part payment of sale consideration but did not obtain any receipt for the same. As the defendant evaded execution of the sale deed, she laid the suit for specific performance after issuing necessary legal notice.

4. In his written statement, the defendant has contended that there has never been any partition between the defendant and his



brother, that in Ex.A.1 agreement itself it is stated that only undivided half share is being sold. Secondly, he also contended that the entire document is a forged document and that the plaintiff did not pay any sale consideration and also disputed payment of Rs.25000/ subsequently on 24.11.2011.

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5. The matter went to trial before which the plaintiff examined herself as P.W.1 and examined two other witnesses. For the defendant, he did not enter into witness box and his wife deposed for him as D.W.1.

6. Both the courts below in essence did not find the plaintiff's readiness and willingness to perform his contract and also suspected Ex.A.1 agreement. Since it is recited in Ex.A.1 that the property was undivided whereas the plaintiff has laid the suit as if there was partition. This apart, the trial court has also found that the plaintiff has not proved that Rs.25,000/- was ever paid. Challenging the same, the plaintiff has filed first appeal in A.S.No.83 of 2019 and the First Appellate Court has confirmed the judgment of the trial court. Hence, the plaintiff is before this Court.

7. Heard the learned counsel for the appellant.

8. The learned counsel strongly contended that the defendant has not entered into witness box and the courts below have failed to draw adverse inference against the defendant. He also tried to collate certain facts to indicate that there exist substantial question of law.

9. This Court is unable to appreciate the efforts of the learned counsel for the appellant. First it has to be emphasized that a suit for specific enforcement of a contract does not just depend on the mere probable merit of the plaintiff's case since the relief is discretionary in character. This implies that even if there is a preponderating probability about the plaintiff's case still if his conduct found to be discomfiting to the conscience of the court, the relief can still be denied. On this aspect, law is far too well entrenched in the jurisprudential terrain. Therefore, unless the plaintiff/appellant can demonstrate that there is some perversity in the approach of the courts below in failing to exercise discretion in his favour, no substantial question of law can be set to exist. Now, if all other facts are kept aside, still one fact that disturbs the conscience of the court right at the outset is false claim of the plaintiff that he had paid Rs.25,000/-. This is a finding on fact and there is nothing on record to indicate that this finding of the courts below is perverse. If this plea is false, necessarily it will reflect on the conduct of the plaintiff which ultimately will deny him a remedy in equity jurisdiction of the court. That precisely what the courts below have done.



10. This Court does not find any material to interfere with the judgment and decree of the Appellate Court. There is no merit in this appeal and the same is dismissed. In consequence, this Court confirms the Judgment and Decree passed by the Additional District and Sessions Court (FTC), Tenkasi date 16.03.2020 made in A.S.No.83 of 2019, confirming the judgment and decree made in O.S.No20 of 2012 dated 28.04.2018, on the file of the Additional Subordinate Court, Tenkasi. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

CM

To

1.The Additional District and Sessions Judge (FTC),
Tenkasi.

2.The Additional Subordinate Judge, Tenkasi.

+1 CC to MR.D. SRINIVASA RAGAVAN, Advocate (SR-17209[F] dated 17/09/2020)

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VB (05.10.2020) 3P 4C