



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM

THE HON'BLE Mr.JUSTICE G.K.ILANTHIRAIYAN

A.S.No.85 of 2013

A.G.Shanmugam

...Appellant/Plaintiff

Vs.

1.P.Meenakshi

2.P.Loganathan

3.Hemalatha

4.Nagalakshmi

5.Uma Maheswari

6.V.M.Chandrasekaran

...Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 24.11.2012 made in O.S.No.131 of 2011 on the file of the Principal District Court, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For R1, R3 to R6 : No appearance

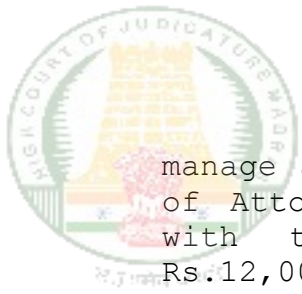
For R2 : Mrs.J.Prithivi

JUDGMENT

The Appeal suit is filed against the Judgment and Decree dated 24.11.2012 made in O.S.No.131 of 2011 on the file of the Principal District Court, Namakkal.

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

3. The brief case of the plaintiff is that the suit properties originally belonged one Palaniappan and it was an ancestral property. After demise of Palaniappan, the first defendant, along with the second defendant, executed a power of attorney dated 06.11.2000 in favour of the sixth defendant to



manage and administer and to sell the suit property. The Power of Attorney entered into an agreement for sale on 02.08.2003 with the plaintiff for a total sale consideration of Rs.12,00,000/- in respect of the suit property. On the date of agreement, the plaintiff paid a sum of Rs.2,00,000/- as advance and the time fixed to perform part of the contract was on or before 01.08.2009. When the plaintiff was ready and willing to pay the balance sale consideration, the defendant failed to execute the sale deed. Further, the case of the plaintiff is that the fifth defendant agreed to purchase the property for Rs.2,00,000/- and registered the sale agreement and also paid a sum of Rs.50,000/-. At the time of agreement of sale, there was three Pronote liabilities in favour of one Mani dated 24.12.2004 for a sum of Rs.2,75,000/- and for a sum of Rs.1,95,000/- dated 15.10.2004 and another Pronote in favour of the same person for a sum of Rs.1,00,000/- dated 12.11.2002. All the amounts were paid by the plaintiff on 10.11.2006 and the balance to be paid was only a sum of Rs.1,36,000/- After clearance of all the debts, plaintiff demanded to execute the sale deed. By way of all Pronotes and discharge of debts, the plaintiff paid a sum of Rs.8,20,500/-. Even then, the defendants failed to perform their part of the contract. Hence, the suit.

4. On receipt of summons, the defendants failed to appear before the Court below and as such the defendants were set exparte.

5. On the side of the plaintiff, he examined P.W.1 and marked Ex.A1 to Ex.A10. On perusal of the exhibits and also the evidence of P.W.1 and the submission made by the learned counsel, the Court below dismissed the suit. Aggrieved by the same, the present Appeal Suit.

6. The learned counsel for the appellant would submit that all the defendants were set ex-parte and even then, the Trial Court without considering the Ex.A1 to Ex.A10, simply dismissed the suit, stating that the plaintiff failed to prove his case. Further, he submitted that P.W.1 deposed that the defendants 1 and 2, along with one Palaniappan, entered into an agreement for sale for the total consideration of Rs.12,00,000/- and on the date of agreement, the plaintiff paid a sum of Rs.2,00,000/- as advance to the sixth defendant being a Power of Attorney for all the defendants. Ex.A4 is the Pronote in favour of one Mani. Ex.A5 is the Pronote in favour of one Velusamy. Ex.A6 is the Pronote in favour of again P.Mani and Ex.A7 is the Pronote in



WEB COPY
favour one Tamilarasu. It is in evidence, totally, the plaintiff discharged debts to the tune of Rs.8,20,500/-. Even then, the Court below, without considering the above evidence on record, dismissed the suit. He further submitted that the sixth defendant being the Power of Attorney received a sum of Rs.2,00,000/- as advance on behalf of other defendants and as such, the plaintiff is entitled for a decree at least for a sum of Rs.2,00,000/- as against the sixth defendant as a personal decree.

7. Per contra, the learned counsel for the defendants submitted that though the defendants failed to file the written statement before the Court below, it is the duty of the plaintiff to prove his case. Admittedly, the plaintiff failed to prove the execution of agreement for sale, payment of part of the sale consideration and the pronotes as alleged by the plaintiff are not proved. That apart, for execution of agreement, a time was fixed i.e., six years. Further according to the defendants that never executed the power of attorney in favour of the sixth defendant. The plaintiff also failed to prove the pronote, which were marked as Ex.A4 to Ex.A7 through any witness. Therefore, the Court below rightly dismissed the suit and prayed for dismissal of the suit.

8. Heard, the learned counsel for the petitioners and the learned counsel appearing for second respondent.

9. The plaintiff filed a suit for specific performance on the strength of the agreement for sale dated 02.08.2003, which is marked as Ex.A1. According to the plaintiff, apart from the payment of advance of Rs.2,00,000/- on the date of alleged agreement for sale dated 02.08.2003, the plaintiff claimed the debts to the earlier agreement holder in respect of the very same suit property and also stated that the pronote debts which were marked as Ex.A4 to Ex.A7 to various persons. When that being so, the plaintiff failed to examine any of the person who were settled by the plaintiff's before the Trial Court to prove the same. That apart, the plaintiff failed to prove that the suit property belongs to the defendants (Ex.A9 - Adangal Register). Though the plaintiff averred that a sum of Rs.2,00,000/- was paid as advance to the power of attorney i.e., the sixth defendant, he failed to examine any of the witness and failed to produce any materials to prove the same. Therefore, the plaintiff failed to prove the agreement for sale, payment of the part of sale consideration and also the suit property belonged to the defendants. That apart, on perusal of Ex.A1,



the alleged agreement for sale revealed that it was executed on 02.08.2003 and the time fixed for part performance was six years. Therefore, the very agreement for sale itself was not proved by the plaintiff and the Trial Court rightly dismissed the suit. Though the defendants were set exparte, this Court finds no illegality or infirmity in the order passed by the Court below.

10. In the result, the Appeal Suit is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

lpp

To

The Principal District Judge,
Namakkal.

Copy to:

The Section Officer,
VR Section, High Court, Madras

+1CC to Mr.T.Dhanyakumar, Advocate, Sr.No.28461

+1CC to Mr.J.Prithivi, Advocate, Sr.No.28400

A.S.No.85 of 2013

LN (CO)

K.RK. (08.10.2021)