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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.1 of 2010

Muthurajan ... Appellant /Plaintiff

-vs-

1. Govindammal (died)
2. Muthu Jayalakshmi
3. Annapoorani
4. M.Abirami ... Respondents/Defendant

(R2 and 3 were brought on record as L.Rs. Of the deceased 1st respondent and R4 impleaded as proposed respondent vide order dated 11.12.2019 made in CMP.Nos.18333 and 18334/2017 in A.S.No.1/2010)

Appeal Suit filed under Section 96 read with Order XLI Rule 1 of CPC. against the judgment and decree dated 06.08.2009 in O.S.No.427/2005 on the file of the learned Additional District-cum-Fast Track Court No.V, Coimbatore at Tiruppur.

For Appellant : Mr.C.R.Prasannan

For Respondents : Mr.S.Parthasarathy,
2 to 4 Senior Counsel
assisted by Mr.C.Veeraraghavan

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Appeal Suit has been filed against the judgment and decree dated 06.08.2009 passed in O.S.No.427/2005 on the file of the learned Additional District Judge, Additional District-cum-Fast Track Court No.V, Coimbatore at Tiruppur.



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2. Mr.C.R.Prasannan, learned Counsel appearing for the appellant briefly narrating the background facts would submit that the defendant late Govindammal, who is the mother of the plaintiff/appellant herein, was the absolute owner of the suit property. Therefore, a sale agreement dated 13.10.2003 was entered into between the plaintiff/appellant and the defendant/deceased 1st respondent, fixing the sale price at Rs.25,00,000/- and also indicating the time limit at 12 months. However, the time was not stipulated as the essence of the agreement. It is also stated that on the date of the execution of the sale agreement, a sum of Rs.15,00,000/- was also paid to his mother by the appellant herein. Subsequently, the mother went back from the terms of the agreement. Consequently, the appellant issued a pre-suit notice dated 22.02.2005 expressing his readiness and willingness to pay the money for the execution of the sale deed for which a reply dated 05.03.2005 was received from the deceased 1st respondent denying the execution of the sale agreement that she had signed in blank stamp papers and plain papers and that was fabricated as though she has executed an agreement for sale of the suit property, therefore suit for specific performance of the contract would not lie.

3. After filing a Written Statement by the defendant-the mother of the plaintiff who was then aged about 71 years, the matter was taken up for trial. The learned trial Judge has framed the following issues for consideration:

1. Whether the plaintiff is entitled to the relief of specific performance of the contract of sale?

2. Whether the suit sale agreement dated 13.10.03 is truly executed by the defendant? And

3. To what relief?

Thereafter, the trial court, taking into account the facts that the sale agreement dated 13.10.2003 was executed between the mother and the son whereas the mother in her written statement stated that she had no intention or necessity to sell the property-in-question to anybody much less to her only son, the plaintiff therein; that the property described in the plaint would worth more than Rs.1,50,00,000/- for which only Rs.25,00,000/- alone was agreed upon as a total sale price; that the defendant had no desire as alleged in the written statement to settle the same in favour of the plaintiff; and that her desire was to keep the property as her absolute property till



her death and after her death her property shall devolve as per law, namely, among the plaintiff and two sisters, and also going into the evidence produced during the trial that the value of the property was more than Rs.2,10,00,000/-, as admitted by the parties and supported by Ex.X1, has dismissed the suit, however, passed a direction, directing the defendant to pay damages of Rs.15,50,000/- to the plaintiff with interest at 12% from the date of the plaint till the date of payment as the plaintiff has paid a sum of Rs.15,00,000/- to the defendant and they are only son and mother. Aggrieved by the same, the plaintiff has filed the present Appeal. However, unfortunately, during the pendency of the appeal, the mother passed away. Now the lis is between the brother and the sisters.

4.Mr.C.R.Prasannan, learned Counsel appearing for the appellant also assailing the conclusions and findings reached by the trial court refusing the prayer for granting the decree for Specific Performance in favour of the appellant stated that when it has been agreed by the deceased mother-defendant that a sum of Rs.15,00,000/- was paid by the appellant to her, the learned trial court, while directing the refund of the said amount of Rs.15,00,000/- with interest at the rate of 12% ought to have created charge over the property because it is not known after the death of the mother of the appellant whether the appellant's sisters would repay the money. Therefore, in all fairness, the trial court ought to have created charge as per Section 100 of the Transfer of the Property Act, 1982.

5. Learned Counsel for the appellant further stated that when a sum of Rs.15,00,000/- was admittedly paid and that has been proved inasmuch as that the direction given by the trial court for the payment of Rs.15,50,000/- to the plaintiff with interest at 12% clearly shows that the amount of Rs.15,00,000/- was paid in the year 2003, the appellant having lost huge money in 2003, 18 years ago, cannot be advised to take the money with a meagre interest of 12%. Therefore, as it is also the will and wish of the deceased mother-defendant that after her life time, the suit property should be partitioned among her children, the suit for specific performance may be granted by this Court to the extent that the plaintiff as a son is legally entitled to inherit the property-in-question.

6. Mr.Parthasarathy, learned Senior Counsel assisted by Mr.C.Veeraraghavan, learned Counsel appearing for the respondents 2 to 4 also took time to take instructions. But after some times, when the matter was listed, finding it difficult to get a favourable response fairly stated that the



daughters of the 1st respondent-defendant have also filed a civil suit. Therefore, passing a partial decree for specific performance granting 1/3rd share would be causing more encumbrances and litigations among them, he pleaded.

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7. We also find some merits on the said submissions. Therefore, we hereby confirm the impugned decree and judgment passed by the learned trial court, directing the defendant to pay a sum of Rs.15,50,000/- back with interest at 12% to the plaintiff/appellant herein by virtue of Section 100 of the Transfer of the Property Act, 1882, however, the appellant shall have a charge over the property-in-question till the said amount is paid with interest.

8. With this observation, the Appeal Suit is disposed of. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

The Additional District Judge, Additonal District Court-cum-Fast Track Court No.V, Coimbatore at Tiruppur.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.C.R.Prasanan, Advocate Sr.67250
+1cc to Mr.C.Veeraraghavan, Advocate Sr.67022

A.S.No.1/2010

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