



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

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

A.S.No.81 of 2010

1. K. Nachimuthu Gounder (died)
2. K.N.Balan
3. N.Gajendran
4. N.Sivagami
5. P.Maheswari
6. P.Indira Devi ...Appellants/Defendants

Vs.

1. A.Chandran
2. G.Senthilmurugan ...Respondents/Plaintiffs

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 16.09.2008 made in O.S.No.29 of 2006 on the file of the learned I Additional District Judge, Erode.

For Appellants : Mr.N.Umapathy
For A.P.Soundararajan

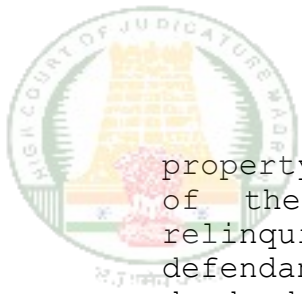
For Respondents : Mr.T.Murugamanickam
For Mr.V.Rajesh

JUDGMENT

The Appeal Suit is filed as against the Judgment and Decree dated 16.09.2008 made in O.S.No.29 of 2006 on the file of the learned I Additional District Judge, Erode.

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

3.The suit is for recovery of money. The case of the plaintiffs is that the plaintiffs were entered into an agreement for sale with defendants on 06.11.1995 to purchase the suit property at the rate of Rs.15 lakhs per acre. The total extent of the property ad measuring 2.42 acres. The plaintiffs paid a sum of Rs.10 lakhs as advance towards the part of the sale consideration. Thereafter, one Pongianna Gounder and Ramasami Gounder who are the adjacent land owners of the suit property, entered into the said property and removed the fixing stones and claimed right over the suit property. They also made a paper publication stating that they are the co-sharers of the suit



property and do not purchase the said property. Further the case of the plaintiffs is that, the second defendant already relinquished his right in favour of the first and third defendants in the year 1993 itself by the registered release deed dated 03.08.1993. Suppressing the said fact, he also entered into an agreement for sale with a view to cheat the plaintiffs. Though the plaintiffs were always ready and willing to perform their part of contract, the defendants failed to execute the sale deed in their favour. Therefore, the plaintiffs caused notice on 23.08.1996 thereby called upon the defendants rescinding the agreement for sale and to return the advance amount with interest at the rate of 24% per annum. Hence the suit.

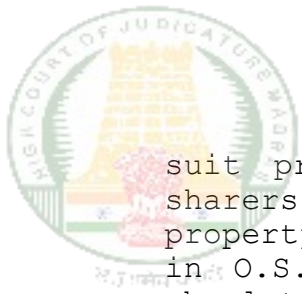
4. Resisting the same, the defendants filed written statement stating that the suit property is cleared free from all encumbrances. It is also false to state that Pongianna Gounder and Ramasami Gounder removed the stones in the suit property and tried to encroach into the suit property. In fact, the defendants filed suit in O.S.No.175 of 1996 against them seeking permanent injunction in respect of the suit property. The defendants denied the execution of agreement for sale and also receipt of Rs.10 lakhs. However the second defendant filed additional written statement stating that only on the insistence of the plaintiffs, he also signed in the agreement for sale. The defendants always ready and willing to perform their part of contract. Whereas the plaintiffs are not ready at any point of time to perform their part of the contract.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- "1. Whether the plaintiffs are entitled to the suit claim as prayed for?
2. Whether the alleged agreement dated 06.11.1995 is true and valid?
3. To what relief?"

6. On the side of the plaintiffs, they examined P.W.1 and marked Ex.P.1 to Ex.P.15. On the side of the defendants, they examined D.W.1 and no documents were marked. On perusal of the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made by the learned counsel on either side, the Court below partly decreed the suit. Aggrieved by the same, the defendants preferred this appeal suit.

7. The learned counsel appearing for the appellants/defendants raised two grounds that only to nullify the agreement for sale, the plaintiffs have falsely averred that Pongianna Gounder and Ramasami Gounder were trying to trespass into the



suit property and made publication as if they are also co-sharers of the suit property. They are strangers to the suit property and as such, the defendants filed a suit for injunction in O.S.No.175 of 1996 as against the said persons. There is absolutely no encumbrance over the suit property. The second defendant being the son of the first defendant has already relinquished his share in favour of the second and third defendants. Even then, as an abundant caution, he also signed in the agreement for sale. As per the agreement, the plaintiffs ought to have filed the suit for specific performance to direct the defendants to perform their part of the contract. However, the plaintiffs filed the present suit for recovery of money. Therefore, he prayed for dismissal of the suit.

8. The learned Senior Counsel appearing for the respondents/plaintiffs submitted that though the defendants denied the very execution of agreement for sale and receipt of advance amount, D.W.1 categorically admitted the execution of agreement and also receipt of the advance amount of Rs.10 lakhs. Admittedly, the defendants filed suit in O.S.No.175 of 1996 as against Pongianna Gounder and Ramasami Gounder in respect of the suit property. The said Pongianna Gounder and Ramasami Gounder were also made publication and stating that they are the co-sharers of the property and do not purchase the suit property. Therefore, the plaintiffs filed suit for recovery of money alone and not for specific performance. Therefore, the Court below rightly decreed the suit and prayed for dismissal of this appeal.

9. Heard Mr.N.Umapathy, learned counsel appearing for the appellants and Mr.T.Murugamanickam, learned counsel appearing for the respondents.

10. The only point for consideration in this appeal is that whether the plaintiffs are entitle to get back their advance amount or not?

11. The defendants examined D.W.1 and he categorically admittedly the execution of the agreement as well as the receipt of Rs.10 lakhs as advance amount. Admittedly, the defendants also filed suit in O.S.No.175 of 1996 as against Pongianna Gounder and Ramasami Gounder in respect of the suit property for bare injunction. The said persons were also made paper publication on 13.03.1996 in respect of the suit property, which was marked as Ex.P.2. In pursuant to the said publication on 23.08.1996, the plaintiffs caused notice thereby called upon the defendants to return the advance amount which was paid during the agreement for sale.

12. That apart, the second defendant already relinquished



his right in respect of the suit property in favour of the first and third defendants. Even then, he also entered into agreement for sale in respect of the suit property with the plaintiffs. Therefore, the plaintiffs made out a case that the defendants failed to execute the sale deed with free of all encumbrance. That apart no prudent man will purchase the encumbered property after knowing the fact that other persons also claimed title over the said property. Therefore, the Court below rightly decreed the suit and this Court finds no infirmity or illegality in the order passed by the Court below.

13. At that juncture, the learned counsel appearing for the appellants/defendants sought further time to make the payment as directed by the trial Court. Considering the request, the defendants are directed to pay the decree amount within a period of three months from the date of receipt of a copy of this Order.

14. Accordingly, this Appeal Suit stands dismissed. There shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. I Additional District Judge,
Erode.
2. The Section Officer,
V R Section, High Court,
Madras.

+1cc to M/s.V.Rajesh, Advocate, S.R.No.30346

A.S.No.81 of 2010

RSI (CO)
RGA(25/11/2021)