



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1587 of 2008

1. M.Ameerjan (Deceased)
S/o, Sheik Meeran,
82 Chinnusami Street,
Fort,
Salem.

1st Appellant / Appellant / Plaintiff

2. Chanbetty,
W/o, late M.Amirjan

3. Bajan,
S/o, late M.Amirjan

4. Zubeedaa Sulthana,
D/o, late M.Amirjan

Appellants 2 to 4 are at
1A Mayam Pillaiyar Koil Street,
PCS Transport Building,
Salem Main Road,
Namakkal - 637 001.

[Appellants 2 to 4 brought on record
as Lrs of the deceased sole appellant
vide order of Court dated 16.07.2014
made in M.P.Nos.1 and 2 of 2014]

...2 to 4 Appellants / Lrs of the 1st Appellant

Vs.

H.M.Iqbal Ahmed,
S/o,M.A.Habib Sahib,
8 Anjal Nagar II Street,
Madurai.

...Respondent / Respondent / Defendant



Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 27.06.2002 made in A.S.No.157 of 2001 on the file of the Principal District Court, Salem, confirming the judgment and decree dated 31.10.2000 made in O.S.No.578 of 1996 on the file of the I Additional District Munsif Court, Salem.

For Appellant : Ms.Zeenath Begum

For Respondent : No appearance
Set exparte

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 27.06.2002 passed in A.S.No.157 of 2001 on the file of the Principal District Court, Salem, confirming the judgment and decree dated 31.10.2000 passed in O.S.No.578 of 1996 on the file of the I Additional District Munsif Court, Salem.

2. Today when the matter is taken up for hearing, there is no representation for the respondent and accordingly the respondent being called and remaining absent, set exparte.

3. Considering the pleas and the materials placed on record as well as the submissions put forth by the appellants' counsel, it is found that the suit has been laid by the plaintiff for the relief of permanent injunction based on the agreement of sale dated 13.01.1994 marked as Ex.A8. According to the plaintiff, Aliya Begum entered into a sale agreement marked as Ex.A8 and she received a sum of Rs.80,000/- as advance and put the plaintiff in the possession of the property agreed to be sold. The abovesaid agreement had been seriously disputed by the defendant and as rightly concluded by the Courts below, it is the bounden duty of the plaintiff to establish that Ex.A8 sale agreement is a true and valid one. As concluded by the Courts below, no material worth acceptance has been placed by the plaintiff to evidence that Ex.A8 sale agreement is an authenticated one. In addition, the plaintiff has also not established that Aliya Begum had the entitlement to convey 1/3 share, when it is noted that Aliya Begum is entitled to only 1/12 share of the suit property amounting to an extent of 228



sq.ft alone.

4. The plaintiff though would claim that he had been put in the possession and enjoyment of the suit property pursuant to the sale agreement, however the plaintiff has miserably failed to establish the same. As held by the Courts below, on a reading of the recitals contained in Ex.A8 sale agreement, nothing has been clearly averred therein that the plaintiff had been put in the possession and enjoyment of the property agreed to be conveyed pursuant to the sale agreement and been put in the possession of the said property prior to the sale agreement. When there is no acceptable material evidencing the claim of possession and enjoyment of the suit property based on the sale agreement Ex.A8 on the part of the plaintiff and when the suit property is a vacant site, accordingly, the Courts below are found to be justified in holding that the plaintiff has failed to establish his claim of possession of the suit property at any point of time pursuant to Ex.A8 sale agreement or prior to the same till the date of filing of the suit. In such view of the matter, when the agreement of sale would not create any right or interest over the suit property to the agreement holder, the plaintiff's claim of title and possession over the suit property based on Ex.A8 agreement of sale falls to the ground.

5. From the materials available on record, it is found that the defendant has purchased the suit property under Exs.B1 and B2. The abovesaid sale deeds had been admitted by the plaintiff. The plaintiff's suit for specific performance had also been dismissed. That apart, despite having knowledge about the sale deeds Exs.B1 and B2, the plaintiff has failed to implead the purchaser+ in the suit laid by him for specific performance. It is stated by the plaintiff's counsel that the plaintiff has failed to pay the balance sale consideration as directed by the Court, therefore, it is evident that the plaintiff has never been ready and willing to perform his part of contract based on Ex.A8 sale agreement.

6. In the light of the abovesaid factors, when the plaintiff has miserably failed to establish his claim, possession and enjoyment of the suit property based on Ex.A8 agreement of sale and when the documents projected by the plaintiff marked as Exs.A7, A12 to A15, A24 and A25 had been for correct reasons, discarded by the Courts below and when as above pointed out, the



defendant's claim of title to the property in question under Exs.B1 and B2 not having been controverted as held by the Courts below, the relief of permanent injunction being an equitable and discretionary relief and accordingly the Courts below are found to be justified in not granting the abovesaid relief in favour of the plaintiff and against the defendant.

7. In view of the above, it is noted that the Courts below, on proper and convincing reasons, had dismissed the plaintiff's suit, based on the correct appreciation of the oral and documentary evidence adduced in the matter, both on factual matrix and on the points of law and nothing has been pointed out by the plaintiff's counsel to show that the same are in any manner, perverse, illogical and irrational. In such view of the matter, no substantial question of law is found to be involved in this second appeal.

8. In conclusion, the judgment and decree dated 27.06.2002 passed in A.S.No.157 of 2001 on the file of the Principal District Court, Salem, confirming the judgment and decree dated 31.10.2000 passed in O.S.No.578 of 1996 on the file of the I Additional District Munsif Court, Salem are confirmed. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal District Judge,
Principal District Court,
Salem.
2. The I Additional District Munsif,
I Additional District Munsif Court,
Salem.



Copy To:

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

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.11713

S.A.No. 1587 of 2008

SSD(CO)
SB(06/09/2021)