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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HONOURABLE Ms.JUSTICE P.T. ASHA

S.A.No.268 of 2008
and M.P.No.1 of 2008

Govindasamy

... Appellant/Appellant/Plaintiff

Vs.

1. Pushpa
2. Selvi
3. Vijaya
4. Murugesan

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.29 of 2002, dated 10.06.2003 on the file of the Sub Court, Dharapuram, confirming the Judgment and Decree passed in O.S.No.113 of 2000, dated 28.03.2002 on the file of the District Munsif Court, Kangayam, Erode District.

For Appellant : Mr.S.Saravanan

For Respondents : No appearance

JUDGMENT

The plaintiff in a suit for specific performance and for an alternative relief of recovery of an advance amount of Rs.9,000/- with interest, is the appellant before this Court.

2. The facts in brief are as follows:

The appellant would submit that the suit property belonged to one Sarkar, the husband of the 1st respondent and the father of the respondents 2 to 4 herein, by virtue of the sale Deed dated 07.09.1982. Under an agreement of Sale, dated 12.11.1997, the said Sarkar agreed to sell the same to the Appellant for a total sale consideration of a sum of Rs.11,000/- and on the date of the agreement, he had received a sum of Rs.9,000/- as advance. The balance amount of Rs.2,000/- was to be paid within a period of one year, on receipt of which, the said Sarkar had undertaken to execute the Sale Deed. It is the case of the Appellant that possession of the suit property was handed over



to him on the date of agreement itself. He would contend that he is in possession of the suit property by putting up a hut and using it as a kitchen and for residential purposes. His wife's property is situate to the southern side of the suit property where the Appellant resides with his family. The Appellant would submit that he was all along ready and willing to execute the Sale Deed. However, Sarkar was postponing the execution of the Sale Deed under one pretext or the other. Sarkar died a few months prior to the institution of the suit and the legal heirs did not come forward to execute the Sale Deed. Therefore, the Appellant was constrained to issue a legal notice dated 25.07.2000 which was returned unserved. Thereafter, the respondents have attempted to disturb the Appellant's possession and enjoyment of the suit property on 16.05.2000 which was successfully prevented. Once again on 07.06.2000, an attempt was made. Therefore, the Appellant has come forward with the suit in question.

3. The written statement filed by the 2nd defendant / 2nd Respondent was adopted by other Respondents. The respondents had at the outset denied the very agreement of sale and the receipt of money. It is their case that the said Sarkar had no necessity to sell the suit property and that he had died in the year 1999 itself. The respondents would submit that after the death of the said Sarkar, they had settled out in Erode. In order to safeguard the suit property, the plaintiff who was their neighbour was permitted to use the property. Unfortunately, the Appellant with a view to grab the property, had created that agreement of sale. The signature contained therein does not belong to Sarkar and the house in the suit property was constructed by late Sarkar and not by the Appellant. There was never an intention to sell the property. The Sale agreement has also not been executed by late Sarkar.

4. The learned District Munsif, Kangayam had framed issues and the Appellant had examined himself as P.W 1 and also examined 2 others witnesses. In support of his contention, he had filed Exs.A1 to A7. The 2nd defendant/ 2nd Respondent had examined herself as D.W.1 and had not marked any documents in support of her case. The Commissioner's report had been marked as Exs.C1 and C2. Ultimately, the learned District Munsif, Kangayam, had dismissed the suit. Aggrieved by the said Judgment and Decree, the Appellant had filed A.S.No.29 of 2002 on the file of the Sub Court, Dharapuram. The learned Subordinate Judge dismissed the appeal and confirmed the Judgment and decree of the Trial Court. Challenging those concurrent Judgments and Decrees, the Appellant is before this Court.



5. When the matter had come up for admission, this Court has directed notice to the respondents. Though notice has been served on the respondents by substituted service (Publication), none appeared on behalf of the respondents.

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6. Mr.S.Saravanan, learned counsel appearing on behalf of the Appellant would submit that the Courts below have totally overlooked the evidence of P.Ws.2 and 3 who have adduced evidence regarding the execution of the agreement of sale Ex.A1. He would further submit that once the agreement has been proved, the Courts below ought to have atleast granted the alternative relief of refund of money. He would further submit that the Respondents have themselves admitted that they have put the Appellant in possession of the property which would once again go to show that there was an agreement between the parties.

7. The learned counsel would rely upon the Judgment reported in CDJ 1966 SC 281 - M/s.Hindustan Construction Co. Ltd. Vs Union of India in support of his argument that the writing of name would also be considered as a signature. He would contend that in the light of the above Judgment, the findings of the Courts below that, P.W.3 has not signed the document and it is only his name that has been written, is per se erroneous. He would also rely on the Judgment reported in CDJ 2015 SC 686 - K.Nanjappa (Dead) by Lrs. Vrs. R.A.Hameed Alias Ameersab (Dead) by Lrs. And another in support of his arguments that he is entitled to refund of money.

8. Heard the learned counsels and perused the records.

9. The case of the appellant is that he had entered into an agreement of sale dated 12.11.1997 for the purchase of the suit property and that a considerable portion of the sale consideration, i.e. a sum of Rs.9,000/- had been paid on the very same day of the execution of the agreement and what would remain was a sum of Rs.2,000/- which is payable within a period of one year. However, the first notice that has been issued by the plaintiff is only on 27.05.2000 and that too after the death of the original vendor and there is no explanation for the silence between the period from 12.09.1997 till the date of first legal notice. The balance amount is only minuscule sum of Rs.2,000/-. Further, the fact that no steps had been taken till the death of Sarkar has created suspicion in the minds of the Courts regarding the very execution of this agreement of sale, particularly, when the Respondents have denied the agreement and also the signature of the said Sarkar. By not taking any steps to have the agreement specifically enforced for nearly a period of three years, the plaintiff has clearly not proved his readiness and willingness to go ahead with the Sale Deed and



also lends credence to the contention of the respondents that the agreement is a fabricated one. The Courts below have been prompted to believe the contentions of the respondents/defendants that the agreement of sale was a fabricated one by reason of the fact that, the words "handed over possession" (உங்கள் சுவாதினத்தில் விட்டுவிட்டேன்) appears to be an interpolation. The style of writing and the Ink used are different. P.W.3 has also accepted the same. The Courts below found that this addition has not been countersigned by late Sarkar. Therefore, the Courts below have come to the conclusion that the very agreement of sale has been fabricated by the Appellant and therefore, the suit for specific performance had been dismissed and the alternative relief was also not granted. The Courts below having appreciated the evidence on record properly, this court sitting in Second Appeal cannot re-appreciate the evidence on record. I do not find any substantial question of law warranting interference of this court to the concurrent Judgment and Decree of the Courts below. The Second Appeal stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Sub Court, Dharapuram.
2. The District Munsif Court,
Kangayam, Erode District.
3. The Section Officer,
VR Section, Madras High Court,
Chennai.

+1CC to Mr.S.Saravanan, Advocate, Sr.No.33720

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PL (CO)
K.RK. (19.11.2021)