



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.269 of 2012

and

M.P.No.1 of 2012

Rajaraman

... Appellant/Plaintiff

Vs.

1.Arumugam

2.Lakshmanan

... Respondents/Defendants

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree passed in A.S.No.45 of 2010, by the learned Subordinate Judge, Chidambaram, dated 28.04.2011, confirming the judgment and decree passed in O.S.No.5 of 2006, by the District Munsif cum Judicial Magistrate Court, Parangipettai, dated 28.09.2010.

For Appellant : Mr.A.Muthukumar

For R1 : Died

For R2 : No appearance

JUDGMENT

Notice of motion alone was ordered in this Second Appeal.

2.The unsuccessful plaintiff is the appellant herein.

3.This Second Appeal has been filed against the judgment and decree passed in A.S.No.45 of 2010, by the learned Subordinate Judge, Chidambaram, dated 28.04.2011, wherein, the learned Judge has confirmed the judgment and decree passed in O.S.No.5 of 2006, by the District Munsif cum Judicial Magistrate Court, Parangipettai, dated 28.09.2010.

4.For the sake of convenience the parties are referred to as per their litigative status before the trial Court.

5.Brief facts of the case are as follows:



(a) The plaintiff has filed a suit in O.S.No.5 of 2006, before the learned Subordinate Judge, Chidambaram, for specific performance of Ex.A2/Sale Agreement. The first defendant, who is the vendor, original owner of the property has filed a written statement by stating that he has already sold the property to the second defendant and hence, the second defendant was also impleaded as a party. Thereafter, both the defendants have filed separate written statements alleging that the plaintiff is not ready and willing to perform his contract and hence, the suit property was sold by the first defendant to the second defendant.

(b) During the course of trial, on behalf of the plaintiff PW1 to PW3 were examined and Exs.A1 to A7 were marked; on behalf of the defendants DW1 & DW2 were examined and Exs.B1 to B6 were marked; Court documents Exs.C1 & C2 were also marked.

(c). After going through the oral and documentary evidences, the Trial Court, by an order dated 28.09.2010, has dismissed the said suit. Aggrieved against the dismissal order, the plaintiff has preferred an appeal suit in A.S.No.45 of 2010, before the learned Subordinate Judge, Chidambaram, wherein, the learned Judge by an order dated 28.04.2011, has dismissed the appeal by confirming the Judgement and decreed passed by the Trial Court. Hence, the Second Appeal.

6. Heard the learned counsel for the appellant through video conference and perused the materials placed on record.

7. Mr.A.Muthukumar, the learned counsel for the appellant would contend that both the Courts below are erred in rejecting Ex.A2/Sale Agreement, on the basis of Ex.B5/copy of the sales register given by the District Registrar, when no one was examined in support of it and Registration Department was not authorised to issue the same.

8. Though PW1 could said that he was in a possession of the suit property, however I find that the pleadings and the evidence of PW1 are to the effect that the specific performance relief sought for only based upon Ex.A2/Sale Agreement dated 01.07.2003 not on Ex.A1/Sale Agreement entered between the first defendant(original owner) and the father of the plaintiff, assumes significance.

9. On a perusal of the records, it is seen that as per Ex.A1/Sale Agreement, dated 07.06.1971, an agreement was entered between the first defendant and the father of the plaintiff and



the sale consideration at Rs.1,800/- and the same was paid by the father of the plaintiff. It is the further case of the plaintiff that Ex.A2/Sale Agreement was entered between the first defendant and the plaintiff is on 01.07.2003 and the sale consideration at Rs.4,700/- and the plaintiff alleged to have been paid a sum of Rs.3,700/- whereby, the earlier amount of Rs.1,800/- was adjusted and balance amount of Rs.1,000/- has to be paid. Thereafter, the suit was filed on 08.04.2005 namely after one year ten months of the sale agreement and there is no pleadings or evidence to the fact that PW1/plaintiff is ready and willing to perform his part of the contract in respect of Ex.A2/Sale Agreement. Both the Courts below have relied upon Ex.B5/Copy of the Sales Register issued by the District Registrar and came to the conclusion that Ex.A2/Sale Agreement is forged document and fabricated for the purpose of filing of the above said suit.

10.Further, the records reveals the fact that when the written statement was filed by the defendants 1 & 2 alleging that Ex.A2/Sale Agreement dated 01.07.2003 is fabricated document, it appears that the learned District Munsif has addressed letter to the District Registrar (Admin) calling for the details of the stamp paper, wherein, Ex.A2/Sale Agreement was came into force. As per the pleadings and the writing recitals in Ex.A2/Sale Agreement, the agreement said to have been entered on 01.07.2003. As per the communication under Ex.B5/copy of the Sales Register issued by the District Registrar Admin, Chidambaram, the Stamp Paper itself sold only on 01.12.2003 through the stamp vendor T.K.Kajamoideen, Parangipettai Village and it was purchased by the plaintiff viz., R.Rajaraman and it is clear that the agreement between the parties alleged to have been on 01.07.2003 could not have been possible and accordingly both the Courts below have held that Ex.A2/Sale Agreement is a fabricated document.

11.After going through the evidence of PW1 and also taking note of the pleadings therein, I find that both the Courts below have rightly come to the conclusion that the plaintiff has not pleaded his ready and willingness as contemplated under the Specific Relief Act and his evidence is also lacking as to why he has waited for more than one and half years for institution of the suit.

12.Further, on proper appreciation of both the oral and documentary evidence, both the Courts below have rightly come to the conclusion that the plaintiff having failed to prove the ready and willingness on his part and have negatived the specific relief of Ex.A2/Sale Agreement. Specific performance



of an agreement cannot be granted merely for asking the plaintiff to demonstrate his readiness[ready with money] and his willingness[willing to buy the property]. In the absence of any positive evidence to show both the essential elements of Section 16(3) of the Specific Relief Act, both the Courts below have rightly negated the claim. This Court has no hesitation to reject the plea raised by the learned counsel for the appellant.

13.No substantial questions of law has been arised for consideration in this Second Appeal.

14.Accordingly, this Second Appeal stands dismissed. The judgment and decree passed in A.S.No.45 of 2010, by the learned Subordinate Judge, Chidambaram, dated 28.04.2011, confirming the judgment and decree passed in O.S.No.5 of 2006, by the District Munsif cum Judicial Magistrate Court, Parangipettai, dated 28.09.2010, is hereby confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Court,
Chidambaram.

2.The District Munsif cum Judicial Magistrate Court,
Parangipettai.

3.The Section Officer,
VR Section, High Court,
Madras 600 104.

+1cc to Mr.A.Muthukumar, Advocate SR.No.62494

S.A.No.269 of 2012
and M.P.No.1 of 2012

SJ(CO)
GN(29/12/2021)