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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.793 of 2017
and C.M.P.No.19805 of 2017

Shanmugam ...Appellant/Appellant/Plaintiff

Vs.

1. Madeswari

2. Balamurugan ...Respondents/Respondents/Defendants 2 & 3

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the II Additional District Court, Kallakurichi, dated 17.08.2017 made in A.S.No.3 of 2016 confirming the judgment and decree of the Sub Court, Kallakurichi, dated 11.12.2015 made in O.S.No.43 of 2007.

For Appellant : Mr.S.Sounthar

For Respondents : Mr.P.Valliappan

J U D G M E N T

Aggrieved over the concurrent findings of the Courts below, the plaintiff has preferred the above Second Appeal.

2. The plaintiff filed a suit for specific performance. According to him, he entered into a registered sale agreement with the defendant on 23.07.2004 for purchase of the suit property for sale consideration of Rs.1,50,000/- and paid a sum of Rs.1,25,000/- on the date of agreement. It is agreed that the balance amount of Rs.25,000/- shall be paid within one year from the date of agreement, that is to say on or before 23.07.2005. The defendant was evading the execution of the sale deed and therefore, the plaintiff issued a legal notice dated 15.07.2005 as he was always ready and willing to perform his part of contract, but, the defendant has evaded. Hence, the plaintiff filed a suit for specific performance.

3. In the written statement, the defendant denied the averments made in the plaint and contended that it is only a loan transaction.



4. The trial Court after framing appropriate issues, on the ground that time of one year is granted for small balance of sale consideration and wrong description of the property and sale consideration being unreasonably lesser than the market value of the property and the time taken for filing the suit after issuance of legal notice went against the plaintiff for exercising the discretion in favour of him, had dismissed the suit holding it as a loan transaction. On appeal, the First Appellate Court, after analysing of the evidence as well as the excerpts of the judgment, confirmed the findings of the trial Court and dismissed the appeal. Aggrieved over the same, the appellant preferred the above Second Appeal.

5. Mr.S.Sounthar, learned counsel for the appellant would vehemently contend that the judgment of the First Appellate Court does not qualify to be called as a judgment because it does not discuss any of the factual aspects, does not discuss the issue, and does not record any reason for confirming the judgment of the trial Court. Therefore, on the face of it, the judgment has to be set aside and the matter has to be remanded to the trial Court.

6. On the merits of the case, he would contend that the time fixed for performance was one year and within time, he issued a legal notice vide Ex.A2 and called upon the defendant to come and execute the sale deed. In spite of that, the defendant has evaded the performance of his part of the contract and the plaintiff was always ready and willing. However, the trial Court without considering his readiness and willingness and the small amount of balance of consideration and evasion of the defendant to perform his part of contract, has wrongly concluded against the plaintiff. Therefore, the decree and judgment of the Courts below are liable to be set aside.

7. I have considered the submission.

8. On the face of it, it is noted that D.W.1 has categorically given evidence by marking Ex.B4, which is the guideline value of the property at Rs.3,81,440/-. It is also deposed that due to the formation of four lane road, value of the property has jumped upto 60 lakhs. Therefore, there is no necessity for them to sell the property worth more than Rs.3,81,440/- for a meager sum of Rs.1,50,000/-. It is only a loan transaction. P.W.1 also would categorically admit that before entering into an agreement, he has not visited the suit property nor verified the encumbrances with regard to the property. He would also admit that the existence of a house is wrongly mentioned. Further, he would admit that he has not verified the guideline value of the property. The evidence of P.W.2, who is a witness to the sale agreement does not support the case of the plaintiff. He would depose that he was not aware of the contents of the document, which was entered



between the parties and the purpose for which it was entered into.

9. Further, in respect of value of the property also, the evidence of P.W1 is not convincing and he feigned ignorance of the value. P.W.3 would also state that he was not aware of the negotiations as to how the property was valued, what was the value of the land, value of the house, value of the well and motors. He would simply say that there was negotiation for 1 ½ hours. This evidence, on the side of the plaintiff, does not make out a clear case that there was "consensus ad idem". On the other hand, the evidence on the side of the defendant goes to show that it is a loan transaction.

10. Considering the facts and circumstances of the case, it can be inferred that the plaintiff has failed to make out the clear case for exercising the discretion in his favour. The Courts below have rightly arrived at a concurrent conclusion on facts that the plaintiff is entitled to the relief he sought for. I do not find any discrepancy in the concurrent finding. The Second Appeal does not give rise to any question of law much less any substantial question of law for admitting the same. Therefore, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The IIIrd Additional Judge,
The II Additional District Court, Kallakurichi.

2.The Sub Judge,
The Sub Court, Kallakurichi.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate SR. No. 63199

+1cc to Mr.P.Valliappan, Advocate SR. No. 63153

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SSN (CO)

PR (31/05/2022)