



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.850 of 2007

and

MP(MD)No.1 of 2007

WEB COPY

Hameed Sulthan Beevi

... Appellant/Appellant/Defendant

Vs.

1.K.A.Ashik Ali

... Respondent/Respondent/Plaintiff

2.P.M.Maharroof

... 2nd Respondent

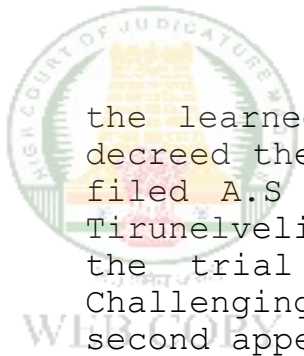
(R2 impleaded vide court order
dated 23.07.2021 in CMP(MD)No.11993/2017)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S No.74 of 2005 on the file of the I Additional District Judge, Tirunelveli dated 31.01.2007 confirming the judgment and decree passed in O.S No.104 of 2003 on the file of the 2nd Additional Subordinate Judge, Tirunelveli dated 27.06.2005.

For Appellant : Mr.M.P.Senthil
For Respondents : Mr.A.Arumugam for R1
Mr.S.A.S.Alaudeen for R2

JUDGEMENT

The defendant in O.S No.104 of 2003 on the file of the 2nd Additional Subordinate Judge, Tirunelveli is the appellant in this second appeal. The suit was one for specific performance. The first respondent Thiru.K.A.Ashik Ali filed the said suit by pleading that the appellant herein had agreed to sell the suit property for consideration of Rs.3,50,000/- and entered into a sale agreement dated 14.03.1997. According to the plaintiff, she received an advance amount of Rs.1,65,000/- on the date of execution of sale agreement and a further sum of Rs.30,000/- on 26.07.1997. The defendant after agreeing to conclude the sale transaction, evading to perform her part of the contract. Therefore, the plaintiff issued notice dated 27.08.2000 calling upon the defendant to come forward to conclude the sale transaction. The plaintiff sent yet another notice dated 27.09.2000. Though two notices were received by the defendant, she chose not to respond. The plaintiff was left with no other option but to file the suit for specific performance. The plaintiff examined himself as PW.1. The attestors of the document were also examined on his side. Exs.A1 to A7 were marked. The defendant examined herself as DW.1. No documentary evidence was adduced on her side. After consideration of the evidence on record,



the learned trial Judge by judgment and decree dated 27.06.2005 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S No.74 of 2005 before the I Additional District Court, Tirunelveli. By the impugned judgment and decree, the decision of the trial court was confirmed and the appeal was dismissed. Challenging the same, this second appeal came to be filed. The second appeal was admitted on the following substantial questions of law :

“1.Whether the findings of the courts below are vitiated by its failure to consider the evidence of PW.2 to PW.4 are contradictory with reference to Ex.A1 and in the absence of any evidence regarding due execution of Ex.A1?

2.Whether the courts below is right in not considering the specific defense that the alleged agreement of sale is unenforceable in law by reason that the appellant is not an absolute owner of the suit property?

3.Whether the courts below are not right in considering the plea of limitation especially when the appellant was not inclined to execute the sale deed on the very notice issued to the respondent under Ex.A4?.”

2.I have been spared the trouble of answering these substantial questions of law, because the impugned judgment passed by the first appellate court does not satisfy the requirements of Order 41 Rule 31 of CPC. This is a suit for specific performance. The defendant had specifically denied having executed the suit agreement. The courts below ought to have framed issues relating to “readiness and willingness” of the plaintiff. Another issue is as to whether the plaintiff had proved the due execution of the suit agreement. Without framing such points for determination, by a cryptic judgment, the first appellate court had disposed of the matter. The first appellate court attached significance only to the suggestion put by the counsel to the plaintiff witness. There is absolutely no discussion on the evidence adduced. In this view of the matter, the impugned judgment and decree is set aside. The second appeal is allowed and the matter is remanded to the file of the first appellate court for fresh consideration on merits and in accordance with law. The first appellate court will frame appropriate points for determination and thereafter give a disposal. I make it clear that all the issues are left open. No costs. Consequently, connected miscellaneous petition is closed.

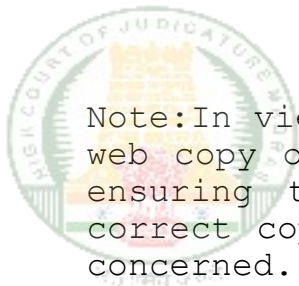
Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To:

1.I Additional District Judge,
Tirunelveli.

2.II Additional Sub Court,
Tirunelveli.

Copy to :

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-24822[F] dated 30/07/2021)

+1 CC to M/s.A.ARUMUGAM, Advocate (SR-24854[F] dated 02/08/2021)

**SA(MD)No.850 of 2007
and
MP(MD)No.1 of 2007
29.07.2021**

RS (13.09.2021) 3P 7C