



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD)No.52 of 2019 and
CMP(MD) No.1975 of 2019

M.M.Jamal Mohideen ..Appellant/Appellant/Defendant

Vs.

Saifulla ..Respondent/Respondent/Plaintiff

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree dated 23.03.2018 made in A.S.No.12 of 2016, on the file of I Additional District Court, Tuticorin, confirming the judgment and decree dated 21.07.2016, made in O.S.No.71 of 2007, on the file of the Sub Court, Tuticorin.

For Appellant : Mr.A.Arumugam for
M/s.Ajmal Associates

For Respondent : Mr.P.Vinoth for
Mr.R.Subramanian

J U D G M E N T

The defendant in O.S.No.71 of 2007 is the appellant. Challenge is to the confirming judgment and decree of the Appellate Court made in A.S.No.12 of 2016.

2.The suit was laid by the plaintiff seeking declaration of his title and recovery of possession, contending that the property originally belonged to one S.Seju Sulaiman, by virtue of allotment made in the deed of partition dated, 30.03.1979. The plaintiff had purchased the property from S.Seju Sulaiman under the Sale Deed dated 26.03.2007. According to the plaintiff, since the defendant was in possession of the property even prior to the sale in his favour, he had approached the defendant and informed him of his intention to purchase and there was no objection from the defendant to the said proposal. It is also averred that the defendant agreed to vacate and hand over the possession, once the sale is completed. Contending that the defendant went back on his promise and claimed to be in possession and an agreement of sale dated 04.05.1994, the plaintiff laid the suit for declaration and recovery of possession.



3.The suit was resisted by the defendant, claiming that the vendor of the plaintiff, S.Seju Sulaiman had entered into an agreement of sale dated 04.05.1994 with his father Mahadhoom Meera Sahib, agreeing to convey the property for a total consideration of Rs.1 Lakh and also received an advance of Rs.90,000/-. The sale deed could not be executed since the purchaser was away at Srilanka. The recitals in the agreement also required the vendor, namely S.Seju Sulaiman to execute the sale deed in favour of the defendant, if Mahadhoom Meera Sahib is unable to come back from Srilanka. It is also claimed that the said Mahadhoom Meera Sahib died at Srilanka in the year 2006 and therefore, the defendant required the vendor namely S.Seju Sulaiman to execute a sale deed upon receipt of the balance sale consideration. The said S.Seju Sulaiman failed to honour the agreement and comply with the demand made by the defendant. The defendant would therefore contend that he being in possession pursuant to the written agreement of sale, the plaintiff cannot evict him in view of Section 53(A) of the Transfer of Property Act.

4.At trial, the plaintiff was examined himself as PW 1 and his vendor S.Seju Sulaiman was examined as PW 2. Exs. A1 to A10 were marked on the side of the plaintiff. The defendant examined himself as DW 1 and one Vellathurai was examined as DW 2. Exs.B.1 to B 38 were marked. Ex.B.37 is an agreement of sale, dated 04.05.1994.

5.The learned trial judge, who tried the suit, upon consideration of the evidence on record, concluded that the agreement under Ex.B 37 itself has not been proved in accordance with law. Even assuming the agreement to be true, according to the learned trial judge, the plaintiff has not satisfied the requirements of Section 53A of the Transfer of Property Act, in order to enable him to retain the possession, *de hors* conveyance of the title in favour of the plaintiff. On the said conclusion, the learned trial judge, decreed the suit as prayed for. Aggrieved, the defendant preferred an appeal in A.S.No.12 of 2016.The Appellate Court upon reconsideration of the evidence on record, substantially agreed with the findings of the trial Court. Upon such agreement, the learned Appellate Judge dismissed the appeal. Hence, this Second Appeal.

6.Notice of motion was ordered on 14.03.2019 and Mr.P.Vinoth for Mr.R.Subramanian appears for the respondent. I have heard Mr.A.Arumugam ,the learned counsel appearing for the appellant and Mr.P.Vinoth, for Mr.R.Subramanian, the learned counsel for the respondent.

7.Mr. A.Arumugam, the learned counsel appearing for the

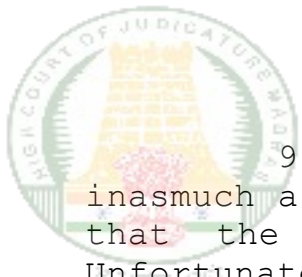


appellant would vehemently contend that the Courts below erred in concluding that the appellant is not entitled to the protection under Section 53A of the Transfer of Property Act. He would further submit that once the sale agreement dated, 04.05.1994, marked as Ex.B37 is proved by examination of DW 2, the Courts below ought not to have disbelieved the same. Mr.Arumugam, would also further submit that the agreement could not fructify in a sale deed, because the father of the defendant was away at Srilanka.

8.I have considered the submissions of the learned counsel for the appellant. I am unable to accept the contention of the learned counsel for the appellant that the appellant has satisfied the requirements of Section 53A of Transfer of the Property Act. Assuming for a moment that the agreement dated 04.05.1994 is true and valid and the same has been proved in accordance with law, the defendant can protect his possession, only if he is able to satisfy the requirements of Section 53A of the Transfer of Property Act. Section 53A of the Transfer of Property Act, 1882 reads as follows:-

"Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]"



9.No doubt, the first two conditions have been satisfied inasmuch as there is a written agreement and the agreement recites that the purchaser is put in possession of the property. Unfortunately, the third condition has not been satisfied and there is no evidence to the effect that either the appellant's father or the appellant himself were willing to perform their part of contract. Ex.B37, fixed a period of three months for the performance of the contract. No scrap of paper has been produced to demonstrate the readiness and willingness on the part of either agreement vendor or his son, the defendant herein. In the absence of any proof in respect of readiness and willingness, I do not think that the Courts below could be faulted for concluding that the defendant would not be entitled to the protection offered under Section 53A of the Transfer of the Property Act. Both the Courts below have disbelieved Ex.B37 as well as the evidence of DW 2. Therefore, I do not think that the findings of the Courts below can be said to be without any evidentiary basis.

10.Despite his best efforts, Mr.A.Arumugam, the learned counsel appearing for the appellant is unable to make out a question of law, much less a substantial question of law to enable me to entertain the appeal. Therefore, the Second Appeal fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn

To

1.The I Additional District Judge, Tuticorin.

2.The Subordinate Judge, Tuticorin.

3.The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court,
Madurai.



+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-11703[F] dated 17/03/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11813[F] dated 17/03/2021)

WEB COPY

Judgment made in
S.A.(MD)No.52 of 2019 and
CMP(MD) No.1975 of 2019
Dated 16.03.2021

KM(24.05.2021) 5P 7C