



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

S.A. (MD)No.695 of 2021

and

C.M.P. (MD) .Nos.9227 & 9229 of 2021

A.Sivashanmugam

... Appellant/ Appellant / Plaintiff

Vs.

M.Ashokraj Kumar

... Respondent / Respondent / Defendant

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 03.02.2021 passed by the Principal District Court, Dindigul in A.S.No.131 of 2018, confirming the judgment and decree dated 25.07.2017 passed by the Additional Sub Court, Dindigul in O.S.No.10 of 2010.

For Appellant : VS.Karthi
for VS.Karthi Associates

For respondent : Mr.P.Balasubramanian

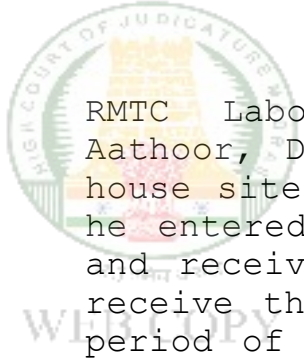
J U D G M E N T

The appeal is directed against the judgment and decree, dated 03.02.2021 made in A.S.No.131 of 2018, on the file of the Principal District Court, Dindigul, confirming the judgment and decree, dated 25.07.2017, made in O.S.No.10 of 2010, on the file of the Additional Sub Court, Dindigul.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court.

3. The averments made in the plaint, in brief, are as follows:-

The suit property originally belong to MDA/HSC 112



RMTC Labour Corporation Housing Society at Alamarathupatti Aathoor, Dindigul. They acquired the property and converted into house site. The defendant occupied the Plot No.79 and thereafter, he entered into sale agreement with the plaintiff on 14.02.2007 and received a sum of Rs. 2,00,000/- as advance and agreed to receive the balance sale consideration of Rs.1,00,000/- within a period of six months. This was the oral agreement between them. The plaintiff is always ready and willing to pay the balance sale consideration of Rs.1,00,000/-. But the defendant refused to receive the amount and execute the sale deed. Hence, the present suit has been filed.

4. The averments made in the written statement, in brief, are as follows:-

The defendant admits that the suit property originally belongs to MDA/HSA 112 RMTC Labour Corporation Housing Society at Alamarathupatti Aathoor, Dindigul and he was allotted Plot No.79. But, he denies the sale agreement entered into between them, on 14.02.2007. He further state that on the date of execution of sale agreement, the property was not vested with the defendant and hence, he is not entitled to enter sale agreement. Further, the sale agreement is executed only towards the security and he has no intention to sell the property. Hence, the suit is liable to be dismissed.

5. The plaintiff, in support of his case, before the trial Court, examined himself as P.W.1 and one Saravanan as P.W.2, and marked Exs.A1 to A4. On the side of the defendant, he examined himself as D.W.1 and no document was marked.

6. On the basis of the above pleadings, the trial Court framed necessary issues viz.,

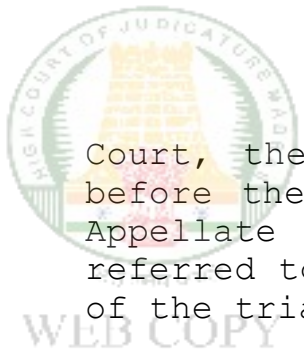
1. Whether the plaintiff is entitled for the relief of specific performance?

2. Whether the plaintiff is entitled for alternative relief?

3. Whether it is true that the plaintiff is always not ready to execute the sale?

4. To what other relief?

7. The trial Court, based on the oral and documentary evidence, dismissed the suit in respect of the relief of specific performance and granted an alternative relief.



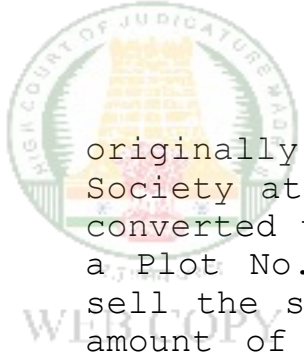
8. Aggrieved by the judgment and decree of the trial Court, the plaintiff preferred an appeal in A.S.No.131 of 2018, before the learned Principal District Judge, Dindigul. The lower Appellate Court has also very much relied on the documents referred to and accepted by the trial Court, confirmed the decree of the trial Court and dismissed the appeal.

9. Against the concurrent findings of the Courts below, the unsuccessful defendant filed the present appeal before this Court.

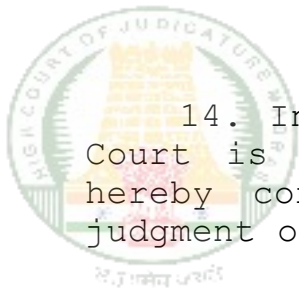
10. The learned counsel appearing for the appellant/plaintiff would submit that he entered into a sale agreement with the respondent/defendant on 14.02.2007 and in the cross-examination, the respondent admitted that only after the sale agreement, he signed in Ex.A1 and handed over the possession on the very same day of sale agreement, dated 14.02.2007. But, both the Courts below have failed to consider the same. He would further submit that the appellant is ready and willing to complete the sale transaction and to prove the same, P.W.2 was also examined. It is the further case of the appellant that the respondent herein categorically admitted in his proof affidavit that the possession was handed over to the appellant and he has been in continuous possession of the suit property. However, the finding of the Courts below that possession was not handed over to the appellant. As per Section 103 of the Evidence Act, the burden is on the respondent to prove his case that a sum of Rs.2,00,000/- was received only towards the loan transaction and for that loan transaction only, the possession was handed over to the appellant and the appellant has proved his case beyond doubt. Hence, he prayed for allowing this appeal.

11. The learned counsel appearing for the respondent/defendant would submit that he leased out the suit property to the plaintiff for Rs.2,00,000/- and there was no recital in the sale agreement that possession was handed over to him. He would further submit that in the cross-examination, the appellant/plaintiff has admitted that the suit property has been in his possession and enjoyment and that he had not paying any rent to the premises. Further, he sublet the property to one Velayuthan and collecting rent from him. Therefore, the lower appellate Court has rightly dismissed the appeal and he prayed for dismissal.

12. I have carefully considered the submission made by the learned counsel for the appellant/plaintiff and the learned counsel for the respondent/defendant and perused the materials available on record.



13. It is an admitted fact that the suit property originally belonged to MDA/HSA 112 RMTCL Labour Corporation Housing Society at Alamarathupatti Aathoor, Dindigul and the said Society converted the land into house sites and the defendant was allotted a Plot No.79. The plaintiff states that the defendant agreed to sell the suit property for Rs.3,00,000/- and received the advance amount of Rs.2,00,000/- and agreed to receive the balance sale consideration of Rs.1,00,000/- within a period of six months and entered into a sale agreement on 14.02.2007 under Ex.A1. However, the defendant states that it was executed only as a security and not with an intention to sell the suit property. The defendant further states that he was transferred to outstation and hence, he intended to lease his property and accordingly, he leased out the suit property to the plaintiff for Rs.2,00,000/-. It is seen that there was no recital in the sale agreement that the possession was handed over to the plaintiff. It is further seen that the plaintiff, in the cross examination admitted that the suit property has been in possession and enjoyment and that he had not paying any rent to the premises. It established the fact that the defendant leased out the property to the plaintiff. It is also seen that there is more evidence to show that it is only a lease agreement and not a sale agreement between the plaintiff and the defendant. In the absence of any evidence produced, both the trial Court as well as the appellate Court come to the conclusion that it is only for a lease amount paid by the plaintiff for residing in the said house. The plaintiff's contention that was waiting for the defendant to retire in the year 2010, then only he can execute the sale deed was not established by any materials and no cogent reasons shown. Further, in the year 2010 only he filed a suit ie., after the retirement of the defendant and before that, the plaintiff has not initiated any legal proceedings for registering the sale deed. Even though the plaintiff and the defendant executed a sale agreement, it is only an advance amount for staying in the house and the defendant is the absolute owner of the suit property. The lower Court has rightly come to the conclusion that it is only a lease agreement and the plaintiff has not paid any amount as rent to the premises occupied. Further, he sublet the property to one Velayutham and collecting rent from him. Further there is no materials as well as any document available on record to show that the plaintiff has taken appropriate steps to execute the sale agreement, as per the said agreement. Hence, this Court is of the view that the trial Court as well as the lower appellate Court have rightly rendered the judgment and decree, which need no interference by this Court and the second appeal is liable to be dismissed, at the admission stage itself holding that there is no substantial question of law arises.



14. In the absence of any question of law to be decided this Court is not inclined to admit the case of the appellant and hereby concurs with the decision on facts and well reasoned judgment of both Courts.

15. In the result, the Second Appeal is dismissed, confirming the judgment and decree, dated 03.02.2021 made in A.S.No.131 of 2018, on the file of the Principal District Court, Dindigul, confirming the Judgment and decree, dated 25.07.2017, made in O.S.No.10 of 2010, on the file of the Additional Sub Court, Dindigul. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

16. The appellant/plaintiff is hereby directed to withdraw the amount already deposited in the Court and the judgment rendered by the trial Court regarding the interest is confirmed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

To

1.The Principal District Court,
Dindigul.

2.The Additional Sub Court,
Dindigul.

Copy to

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.VS. KARTHI ASSOCIATES, Advocate (SR-34191[F] dated 11/11/2021)

S.A. (MD) No. 695 of 2021
11.11.2021