



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. [MD]No.209 of 2018

and

C.M.P. [MD]No.12112 of 2018

A.Palanisami

... Appellant/Plaintiff

Vs.

K.Ayyakkannu

... Respondent/Defendant

PRAYER: First Appeal is filed under Section 96 of C.P.C., praying to set aside the judgment and decree made in O.S.No.29/2016 dated 07.06.2017, on the file of the learned Principal District Judge, Pudukkottai.

For Appellant : Mr.Veerakathiravan, Senior Counsel

for M/s.Veera Associates

For Respondent : No appearance

JUDGMENT

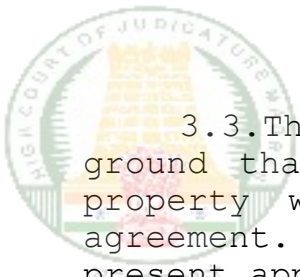
Aggrieved over the decree and judgment of the trial Court, dismissing the suit for specific performance, the present appeal has been filed.

2.The parties are arrived at their own ranking as before the Trial Court.

3.The brief facts leading to the filing of the present appeal are as follows:

3.1.The defendant agreed to sell the suit properties for a total sale consideration of Rs.12,00,000/- on 13.03.2014 and received Rs.10,00,000/- as advance and agreed to execute the sale deed within a period of two (2) years. The plaintiff was always ready and willing to perform the part of contract and expressed his willingness many times. But the defendant evaded to execute the document. Subsequently, the plaintiff came to know that the defendant had already sold the suit property in the year 2013 to one Vellaiyammal and suppressing the said fact, the defendant has fraudulently entered into a sale agreement with the plaintiff. Hence, the suit came to be filed. The defendant remained ex-parte before the trial Court.

3.2.The plaintiff examined himself as P.W.1 and marked Exs.A1 to A5.



3.3.The trial Court dismissed the suit mainly on the sole ground that as per Ex.A.2, the encumbrance certificate, the suit property was already sold by the defendant much prior to the agreement. Aggrieved against the said order of dismissal, the present appeal has been filed.

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4.Learned Senior Counsel appearing for the appellant mainly contended that the agreement is a registered one. Though the Survey Numbers were agreed to be sold, the defendant has not disputed the agreement and remained ex-parte. The trial Court has simply dismissed the suit mainly on Ex.A.2, encumbrance certificate, on the ground that the entire property was already sold. Such approach of the trial Court is not on proper appreciation of documents. In fact, only a small portion of the property is sold whereas large area is agreed to be sold by the defendant. Therefore, it is his contention that dismissal of the suit solely on the ground that the property was sold earlier is not valid and prays for allowing the appeal.

5.In the light of the above submissions, now the points arising for consideration are as follows:

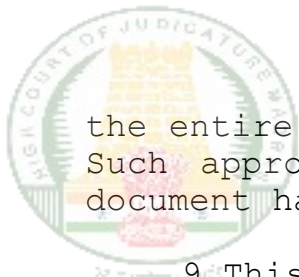
"1) Whether the judgment of the trial Court in dismissing the suit in entirety on the ground of Ex.A.2, encumbrance certificate is valid in law?

2)What are the reliefs the appellant is entitled?"

6.Despite the name printed, none appeared for the respondent.

7.The suit has been filed to enforce the contract namely, Ex.A.1. Ex.A1 is an admittedly registered document. The same indicates that totally 4 survey numbers in an extent of 53 cents. 0.53 ares in S.No.62/3, 0.77 ares in S.No.237/5B, 0.14 ares in S.No.59/9B and 0.02.5 hectares house property in S.No.238/8A8 were agreed to be sold for a total sale consideration of Rs.12,00,000/-. The agreement was entered on 13.03.2014. The agreement also further shows that a sum of Rs.10,00,000/- is said to have been paid and the time stipulated was two [2] years. In the trial Court, the defendant remained ex-parte. However, on the basis of Ex.A.2, encumbrance certificate, the trial Court has dismissed the suit.

8.On a perusal of Ex.A.2, as rightly pointed out by the learned Counsel for the appellant, the approach of the trial Court is not proper. Ex.A.2 shows that an extent of 27.17 cents namely, 0.11 ares in S.No.62/3 and 5 cents in S.No.59/9B is sold. The remaining extent agreed to be sold in Survey No.237/5B, 238/8A8 is not sold. Similarly, other than 27.17 cents in Survey No.62/3, the remaining portion is not sold. This aspect has not been taken into consideration by the trial Court. The trial Court proceeded as if



the entire suit property has been dealt much prior to the agreement. Such approach is not proper. That itself clearly shows that the document has not been properly appreciated by the trial Court.

9.This Court is of the view that judgment of the trial Court, dismissing the suit mainly based on Ex.A.2., is certainly liable to be interfered with. Accordingly, the judgment of the trial Court is set aside and the matter is remanded back to the trial Court with a direction to give opportunity to the parties namely, the plaintiff to amend the plaint suitably and to seek relief by making necessary amendments, keeping in mind of Section 12 of the Specific Relief Act, 1963 and also for alternative relief. Fresh notice also to be issued to the defendant in the above proceedings.

10.Accordingly, the appeal is partly allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Principal District Judge,
Pudukkottai.

2.The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-12688[F] dated
22/03/2021)

A.S.[MD]No.209 of 2018
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SVN(CO)
KB(24.05.2021) 3P 5C