



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.31 of 2010

Anusuya

...Plaintiff / Appellant / Appellant

Vs

1.Shanthi

2.Geetha Sundar

3.Poonima Sundar

...Defendants / Respondents / Respondents

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.74 of 2005 dated 18.09.2006 on the file of the Additional District and Sessions Court / Fast Track Court – III, Chennai, confirming the judgment and decree made in O.S.No.6553 of 1995 dated 29.08.2003 on the file of the VI Assistant City Civil Court, Chennai.

For Appellant : Mr.V.Subramani

For Respondents : No appearance



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JUDGMENT

The plaintiff in O.S.No.6553 of 1995 on the file of the VI Assistant City Civil Court, Chennai which suit was dismissed on 29.08.2003 and subsequent appeal in A.S.No.74 of 2005 on the file of the Additional District and Sessions Court / Fast Track Court No.III, Chennai, was also dismissed on 18.09.2006 is the appellant herein.

2.Heard the learned counsel for the appellant on the points of law necessitating and requiring admission of the Second Appeal.

3.Even before addressing the questions raised by the learned counsel for the appellant, it would be worthwhile to explain the reasons for institution of the suit.

4.The appellant herein who was the plaintiff in the suit, claimed that her father C.Chinnaraju had purchased a property at S.No.91/2, 97/1 Puliur Village, Block No.74, Egmore – Nungambakkam Taluk, Chennai District, Door No.9 Athirayapuram, 1st Main Road, Choolaimedu, Chennai –



600 094 and Door No.2A, Athirayapuram, 2nd Main Road, Choolaimedu, Chennai – 600 094, measuring about 9828 sq.ft. He died intestate in the year 1973. Her mother Swarnabai had also predeceased him. There was a litigation among the legal representatives, which included the plaintiff, her brother and sister and they indulged in a suit for partition and separate possession in O.S.No.1041 of 1981 before the XII Assistant City Civil Court. A settlement was effected on 09.02.1987 and the plaintiff was entitled to an undivided share of 1/4th share in the property was recognized and the share was actually given to her.

5.The plaintiff however had grievances. The plaintiff then claimed that one another brother Indirakumar who was also a bachelor had died intestate and therefore claimed that the 1/4th share had consequently increased to 1/3rd share. The three sharers at that particular stage were the plaintiff, her sister and brother.

6.Thereafter, without intimating, according to the plaintiff, the defendant entered into an agreement to sell the property and also to put up flats and to develop the property. The plaintiff claimed that such agreements



were without her knowledge. She had therefore issued a public notice in the newspapers on 18.09.1993 and again on 29.06.1993. She also issued an advocate notice and also lodged a complaint with the jurisdictional police.

7.In the meanwhile, the suit in O.S.No.1041 of 1981 in which a Compromise had been entered into was decreed in accordance with the compromise.

8.The plaintiff further claims that thereafter on 09.05.1994, a further agreement was entered into according to which, she should be paid a sum of Rs.85,000/- and pursuant to the agreement to promote the property she should be given two separate flats. It is admitted that even on the date of the agreement, the plaintiff had received a sum of Rs.75,000/- by way of cash and subsequently, a sum of Rs.10,000/- was also paid by way of demand draft.

9.However, the flats were not constructed in accordance with the time schedule and there were issues regarding such construction. This made the plaintiff to institute a suit seeking a declaration that the compromise agreement which is interlinked according to the plaintiff with the construction, was null and void and should not be recognized by the Court. The defendants therein contested the suit.



10. After trial the suit was dismissed, primarily because it was found as a fact that the plaintiff had benefited under the said compromise agreement which she wanted to be set aside by receiving a sum of Rs.85,000/- which was paid to her and therefore, having received the said amount, she cannot turn around and claim that the agreement is void. As on date, it is represented that out of the two flats, the possession of one flat had been handed over and possession of the other flat has still not been handed over to her. There are still some issues with respect to the construction of the flat.

11. The First Appellate Court had also considered the very same issue and also found that the plaintiff had received and benefited by the payment of Rs.85,000/- and had been given possession of one flat and therefore cannot turn around and claim that the compromise agreement was void.

12. It is stated by the learned counsel for the appellant that one of the reasons why the plaintiff claimed that the agreement is void is that it had not been registered. But however, the parties had understood the terms of agreement and as a matter of fact, the plaintiff had benefited from such agreement. The plaintiff had also not taken any steps either before the Trial Court or before the First Appellate Court to return back the possession of the



flat or the amount received by her. She had also not protested when possession of one of the flats was handed over to her. She is in enjoyment of the said flat.

13. Thus in accordance with the compromise agreement which the plaintiff seeks to set aside as null and void, she has benefited a sum of Rs.85,000/- and she has also benefited by way of receiving one flat. The only aspect to which she could have some grievances was that the other flat is under construction. To that extent for the loss incurred owing to the delay in handing over that one flat, both the Courts below granted liberty to sue for damages.

14. The Second Appeal being an extension of the original suit, though it should be narrowly construed and admitted only on a substantial question of law, still since both the Courts had granted that particular permission to the plaintiff to sue for damages, I would retain that liberty given to the plaintiff / appellant herein and hold it is for the appellant to workout her remedy in manner known to law.

15. The learned counsel for the appellant raised an apprehension about the issue of limitation. But having granted permission to the appellant herein, the sue for damages and since the appellant has been pursuing the



relief under the hierarchy of Courts continuously, it is for the appellant to explain the reasons, if at all the issue of limitation is put, I am confident that it would be examined in its proper perspective. Retaining the liberty of the appellant to sue for damages and holding that no substantial question of law arises for admission, the Second Appeal is dismissed. No costs.

28.06.2022

Index:Yes/No
Internet:Yes/No
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To

- 1.The Additional District and Sessions Court / Fast Track Court – III, Chennai,
- 2.The VI Assistant City Civil Court, Chennai.
- 3.The Section Officer, VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

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