



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 06.01.2022	Date of Pronouncing Judgment 10.01.2022
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.1084 of 2012

Kuppuswamy,
S/o.Panchanathan,
South Street,
Sri Aadhivarahanallur Village,
Kattumannarkovil Taluk.

... Appellant/Plaintiff

Vs.

Ilayaperumal,
S/o.Boorasamy, North Street,
Sri Aadhivarahanallur Village,
Kattumannarkovil Taluk.

... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree passed by the Subordinate Judge's Court, Chidambaram dated 15.06.2011 in A.S.No.22 of 2010 reversing the judgment and decree of the District Munsif-cum-Judicial Magistrate Court at Kaatumannarkovil dated 21.01.2010 in O.S.No.39 of 2004.

For Appellant : Mr.V.Anand

For Respondent : Mr.Pa.Kadirvel

J U D G M E N T

The Plaintiff is the Appellant herein. For the sake of convenience, parties are referred to as per the litigant's status before the trial Court.

2.The Appellant/Plaintiff filed a suit in O.S.No.39 of 2004, seeking relief of specific performance of Ex.A1 suit sale agreement. The trial Court has allowed the suit. Against which, Appeal in A.S.No.22 of 2010 has been preferred by the Defendant, the same was allowed and hence the Second Appeal.



"1. Whether the first Appellate Court is correct in law in coming to the conclusion that time is the essence of the contract in Ex.A1 and hence specific performance need not be ordered with reference to specific immovable property as against the established concept that in regard to immovable property time is not the essence of contract?

4. After hearing the rival submissions made by the respective parties, the trial Court found that Ex.A1 suit sale agreement is dated 20.12.2003, the sale consideration is fixed at Rs.30,000/-, advance paid under the agreement is Rs.5,000/-, the balance to be paid is Rs.25,000/- and the period of completion of sale transaction is 31.03.2004. After issuing Ex.A2 legal notice, dated 24.03.2004, which was served on the Respondent under Ex.A3, Suit was filed on 28.04.2004. It is a specific case of the Plaintiff, both in the plaint as well as by PW1 that further payment of Rs.10,000/- was paid on the Pongal day of 2004. However, no endorsement was made, since it is a festival time, so is the Ex.A2 legal notice and PW1 evidence. Trial Court has disbelieved the plea of further payment of Rs.10,000/-, however, accepted the case of the Plaintiff that he is ready and willing to perform his part of contract. Accordingly allowed the suit.

5.The lower Appellate Court has reversed the finding, since the plea of further payment of Rs.10,000/- is found to be false, on the sole ground, the Appeal was allowed and the Plaintiff was non suited.

6.It is seen from the written statement that the Defendant also taken a plea that he is not the owner of the suit property and his brother Ramakrishnan is the owner of the suit property, by relying upon Ex.B7 Will, executed by Ramakrishnan. Ex.B7 is a photocopy. Though the Will is said to have been registered, certified copy was not marked. The same is taken note of by the trial Court and relying upon Ex.A5 patta that he is in possession of the document, the trial Court has rightly come to



the conclusion that Ex.B5, B6, B7 does not advance the case of the Defendant. Admittedly, though Ex.A5 is a revenue document, it conclusively proves that the Plaintiff is in possession of the property. Had the Defendant is not the owner of the property, he need not contest the suit. Had the contention of the Defendant that only his brother is the owner of the suit property, the brother could have filed petition to implead to contest the suit. No explanation is offered during the cross examination of DW1, as to the non filing of the certified copy of Ex.B7 and hence the trial Court has rendered finding that plea of the Defendant that he is not the owner is not substantiated and the said reasoning by the trial Court does not call for any interference, as the same does not suffer from any irregularity or illegality, warranting interference under Section 100 of the Civil Procedure Code.

7.The next contention raised by the learned counsel for the Respondent that his further payment of Rs.10,000/- was not proved in the manner known to law. Except the oral assertion of PW1, there is nothing on record and hence, both the Courts below rightly disbelieved the further payment of Rs.10,000/- made on 14.01.2004 as stated supra.

8.The date of agreement was 20.12.2003, legal notice was issued on 24.03.2004, calling upon the Defendant to come and execute the sale deed. Reply was issued on 30.03.2004 under Ex.A4 and the Suit was filed on 28.04.2004. PWs.1, 2, 3 and 4 are the scribe and the attestors of Ex.A1-suit sale agreement. Taking note the evidence of attesting witness and the scribe of the documents, both the Courts below have rightly come to the conclusion that Ex.A1 is agreement of sale and in the absence of any positive evidence by the respondent/defendant to show that it is only executed as a security for loan transaction has rightly held that Ex.A1 is suit sale agreement. It is a specific evidence of the Plaintiff both in Ex.A2 legal notice and in the witness box that he is ready to pay the balance of the amount viz., 25,000/- and hence both the Courts below rightly come to the conclusion that Plaintiff is ready and willing to perform his part of contract. He has shown his readiness and willingness to purchase the property as he is a man of means, for payment of balance sale consideration of Rs.25,000/- and has expressed his willingness under Ex.A2 and hence the readiness and willingness as contemplated under Section 16(3) of the Specific Relief Act, is being satisfied, the trial Court has rightly allowed the relief of specific performance of Ex.A1, suit sale agreement. The said decree has been reversed by the lower Appellate Court on the sole ground



that Rs.10,000/- viz., the further payment is found to be false, it remains to be stated that Plaintiff is unable to prove the further payment. However it is the settled case of the Plaintiff that on 14.01.2004, for festival the Defendant made payment of Rs.10,000/- and hence, he failed to prove the further payment of Rs.10,000/- and it is not a false plea and hence, the reason assigned by the lower Appellate Court in reversing the well considered judgment of the trial Court is warranting interference at this Appeal stage.

9. Therefore, this Court holds that balance consideration to be paid is Rs.25,000/-, and the said payment has to be made and the finding rendered by the trial Court is restored and the finding of the lower Appellate Court is set aside. The substantial questions of law framed at the time of admission are answered in affirmative in favour of the Appellant/Plaintiff and against the Defendant.

10. Accordingly, the Second Appeal is allowed, setting aside the Judgment and Decree passed by the learned Subordinate Judge, Chidambaram, dated 15.06.2011 in A.S.No.22 of 2010 and restoring the Judgment and Decree of the learned District Munsif-cum-Judicial Magistrate, Kaatumannarkovil, dated 21.01.2010 in O.S.No.39 of 2004. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sai

To

1. The learned Subordinate Judge,
Chidambaram.

2. The learned District Munsif-cum-Judicial Magistrate,
Kaatumannarkovil.

Copy to
The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.V.Anand, Advocate SR.2364

S.A.No.1084 of 2012

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srg 11/02/2022