



WEB COPY



S.A.No.321 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.321 of 2022
and
C.M.P.No.6763 of 2022

V.Sekhar

... Respondent/ Plaintiff / Appellant.

Vs.

Muthusamy

... Appellant / Defendant/ Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Decree and Judgement passed in A.S.No.70 of 2018 on the file of the II Additional District Judge at Puducherry dated 19.08.2019 partly reversing the judgment and decree in O.S.No.103 of 2010 on the file of the Principal Sub Judge at Puducherry.

For Appellant : Mr.P.Veeraraghavan

For Respondent : Mr.V.Vadivelou for Caveator



JUDGMENT

WEB COPY

The unsuccessful plaintiff before the lower appellate Court is the appellant before this Court. It is necessary to allude to the facts of the case in order to appreciate the dispute on hand. The parties are referred to in the same status as before the Trial Court.

2. The plaintiff had instituted O.S.No.103/2010 on the file of the Principal Sub Judge, Puducherry seeking specific performance of an agreement of sale entered into between him and the defendant on 21.05.2007. It is the case of the plaintiff that under this agreement of sale the defendant had agreed to sell the suit property to the plaintiff for a total consideration of Rs.1,75,000/- and out of this, the plaintiff had paid a sum of Rs.1,65,000/- as an advance on the very same day. The balance sale consideration that was payable was a sum of Rs.10,000/- which was to be paid within a period of 3 months from the date of execution of the agreement of sale.

3. The plaintiff would submit that the defendant was bound to execute



WEB COPY



S.A.No.321 of 2022

the sale deed in his favour by producing the antecedent title deeds and Nil encumbrance certificate in respect of the suit property. In case, the defendant failed to execute the same, the plaintiff was at liberty to get it registered through Court by paying the balance amount of Rs.10,000/- into the Court. The plaintiff would submit that he has always been ready and willing to perform his part of the agreement and had, on several occasions, approached the defendant with the balance amount however, the defendant had been very evasive. This constrained the plaintiff to issue a legal notice on 08.02.2008 calling upon the defendant to come forward to register the sale deed after receiving the balance sale consideration. The notice had been received by the defendant on the very next day and a reply notice was issued on 18.02.2008 containing untenable facts and allegations. Therefore, the suit.

4. The defendant on entering appearance had filed a written statement inter alia denying the various allegations contained in the plaint. The defendant would submit that he had never intended to sell the property to the plaintiff and had never approached the plaintiff with such an offer. He would submit that suit property worth more than Rs.5,00,000/- even in the



year 2007. Therefore, the defendant would not have agreed to sell the property for a lesser value. The defendant would contend that he and the plaintiff had been doing business together and in the course of this business, the defendant had to pay the plaintiff a sum of Rs.50,000/-. The defendant would submit that he was ready to execute a simple mortgage deed for the said amount and the plaintiff had obtained an unregistered simple mortgage deed in the year 2001 for the sum of Rs.50,000/-. The defendant would submit that he has been regularly repaying a sum of Rs.1,000/- towards interest to the plaintiff. Since the defendant had not repaid the principal amount a fresh unregistered simple mortgage deed for a sum of Rs.50,000/- was executed in the year 2004. The defendant would state that since he was not able to repay the principal amount the plaintiff had asked the defendant to come over to put his signature in the deed. However this time instead of a mortgage deed the plaintiff had made ready a sale agreement and insisted on the defendant affixing his signature. Since he had muscle power with him the defendant had no other option except to sign the agreement. The plaintiff had assured the defendant that he would not cheat him as he was aware that the property was worth over a sum of Rs.5,00,000/-. The agreement is now sought to be misused by the plaintiff. Therefore he prayed to dismiss the suit



S.A.No.321 of 2022

with costs.

WEB COPY

5. The learned District Munsif had framed the following issues :-

"1. Whether the plaintiff is entitled for a Judgement and Decree directing the defendant to execute the sale deed in favour of the plaintiff in respect of the plaint schedule mentioned property by receiving the balance sale consideration of Rs.10,000/- (ten thousand only)?

2. Whether the Sale Agreement allegedly executed by the defendant in favour of the plaintiff is true and valid?

3. To what relief the plaintiff is entitled for ? "

6. The plaintiff had examined himself as P.W.1 and one Mr.Gopalakichenane as P.W.2 and Ex.A.1 to Ex.A.4 were marked. On the side of the defendant D.W.1 was examined and Ex.B.1 to Ex.B.5 were marked.



7. The learned Trial Court had decreed the suit as prayed for and the plaintiff was directed to deposit the balance consideration of Rs.10,000/- within a month. This Judgement and Decree was taken up on appeal by the defendant to the II Additional District Judge, Puducherry in A.S.No.70 of 2018.

8. Pending the appeal, the defendant had filed I.A.No.38 of 2019 to examine the officials of the revenue department to ascertain the guideline value and registered value of the properties around the suit property for the year 2007-2008 and the present value i.e., for the year 2018-2019. This application was dismissed by the appellate Court and ultimately the learned Judge had allowed the appeal and set aside the Judgement and Decree of the Trial Court.

9. The learned District Judge had non-suited the plaintiff on the ground that the plaintiff was not ready and willing to perform his part of the contract particularly when only a sum of Rs.10,000/- remained to be paid. The learned Judge held that the plaintiff had not taken any steps even after the period of 3 months had elapsed to have the sale deed registered or the



balance amount deposited. Even after the reply notice had been received from the defendant in the year 2008, the plaintiff had filed the suit only 2 years and 3 months thereafter. Therefore, the Appellate Court had stated that the plaintiff had failed to prove his readiness and willingness. Challenging the same the plaintiff is before this Court.

10. The Second Appeal has been admitted on the following Substantial Questions of law:-

“[1]Whether the judgement and decree of the First Appellate Court is sustainable in law when substantial payment of more than 95% of sale consideration was paid as advance tantamount to readiness and willingness to perform is apparent?

[2]Whether the judgement and decree of the First Appellate Court is against the judgment of the Supreme Court held in Motilal Jain Vs Ramdasi Devi and Others covering the matter ?



WEB COPY



S.A.No.321 of 2022

[3]Whether the decree and judgment of the First Appellate Court is contrary to the question of law applicable to the facts of the case?

[4]When the Trial Court correctly appreciated the facts and evidence in determining the issue of specific performance right and whether the First Appellate Court can set aside the order of the Trial Court for reason of delay in filing the suit after issuance of legal notice by appellant/plaintiff?"

11. Heard the counsels.

12. The admitted facts are that the plaintiff and defendant had signed a document styled as an agreement of sale on 21.05.2007 and on the date of the execution of the agreement a sum of Rs.1,65,000/- had been paid and leaving balance of Rs.10,000/-. The defendant had stated that he had not entered into an agreement of sale and that the plaintiff had taken advantage of the signatures that he had obtained from the defendant to create the



agreement of sale. However, this argument has been found against the defendant, since the defendant being an educated person has signed on the dotted lines. Under the agreement of sale 95% was paid and only 5% was left to be paid. However, though the agreement of sale stipulated a 3 months time for completing the contract even after receiving the reply notice dated 18.02.2008 from the defendant, where the defendant had refuted the plaintiff's claim and denied the execution of the sale deed, the plaintiff has come forward with the suit only 2 years and 3 months thereafter.

13. That apart, under the agreement of sale in case of a refusal by the defendant to execute the sale deed it was open to the plaintiff to file a suit for specific performance after depositing the said sum of Rs.10,000/-. However, in the instant case, the defendant has not come forward to make the payment but has filed the suit for specific performance. This itself would show that though the sum of Rs.1,65,000/- had been paid, the defendant was not willing to move forward with the sale agreement and therefore, the Substantial Question of law no.1 is answered against the plaintiff.



S.A.No.321 of 2022

WEB COPY

14. The learned District Judge has considered the evidence both oral as well as documentary and has come to the conclusion that the plaintiff has not proved the readiness and willingness. Therefore all the substantial questions of law are answered against the plaintiff and the Second Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

04.08.2022

Index : Yes/No
Internet : Yes/No
shr

To

1.The II Additional District Judge at Puducherry

2.The Principal Sub Judge at Puducherry.

10/11



WEB COPY



S.A.No.321 of 2022

P.T. ASHA, J,

shr

S.A.No.321 of 2022
and
C.M.P.No.6763 of 2021

04.08.2022