



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.1199 of 2013
in M.P.No.1 of 2013

C.Madhan

...Appellant/Plaintiff

Vs.

1.Chinnasamy

2.Kannammal

...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 03.01.2013 passed in A.S.No.06 of 2012 on the file of the District and Sessions Court, Dharmapuri, in confirming the judgment and decree dated 29.11.2011 passed in O.S.No.63 of 20017 on the file of the Additional Sub Court, Dharmapuri.

For Appellant : Mr.P.Mani

For Respondents : Mr.G.Jermiah

JUDGMENT

The plaintiff is the appellant in the present Second Appeal.

2.The plaintiff filed a suit for specific performance on the ground that he entered into a Sale Agreement with the defendants on 17.04.2003 and that total sale consideration was fixed as Rs.1,50,000/- and an advance of Rs.1,20,000/- was paid to the defendants on the date of the agreement. For the payment of the balance sale consideration, the time limit of twenty four months was fixed. The further case of the plaintiff is that he was always ready and willing to perform his part of the contract by paying the balance sale consideration. However, the defendants did not come forward to execute the Sale Deed in favour of the plaintiff. Hence, the plaintiff issued a legal notice to the defendants on 15.4.2005. A reply notice was given by the defendants on 14.06.2005 denying the claim made by the plaintiff. Left with no other option, the plaintiff filed the suit for specific performance.



WEB COPY

3.The specific defence taken by the defendants is that the document itself was executed towards a loan that was given by the plaintiff and there was no intention to sell the property to the plaintiff.

4.Both the Courts below on considering the facts and circumstances of the case and on appreciating the oral and documentary evidence, came to a conclusion that the agreement is more in the nature of loan document and accordingly, rejected the relief of specific performance and alternatively directed the defendants to repay back the amount of Rs.1,20,000/- with interest. Aggrieved by the same, the plaintiff has filed the present second appeal.

5.Heard the learned counsel for the appellant and carefully perused the findings rendered by both the Courts below.

6.On carefully reading the findings rendered by both the Courts below, it can be seen that there was sufficient evidence to come to a conclusion that the transaction between the parties was a loan transaction and Ex. A1 was never intended to be acted upon by the defendants to convey the property in favour of the plaintiff. The factual finding rendered by both the Courts below is on appreciation of the evidence and this Court does not find any perversity in those findings. The Courts below rightly granted the alternative relief of refund of the sum of Rs.1,20,000/- with interest in favour of the plaintiff. No substantial questions of law are involved in the second appeal.

7.In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1.The District and Sessions Judge, Dharmapuri.

2.The Additional Subordinate Judge, Dharmapuri

3. The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.P. Mani, Advocate sr 11223.

S.A.No.1199 of 2013
in M.P.No.1 of 2013

NMI (CO)
SP(21/03/2022)