



S.A.No.916 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.916 of 2022

&

C.M.P.No.18840 of 2022

K.Paramasivam

...Appellant

Vs

1.Chandra

2.Raja

3.Palanisamy

4.Lakshmi

... Respondents

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 18.03.2019 in A.S.No.19 of 2018 on the file of the I Additional Subordinate Court, Salem, confirming the Judgement and Decree dated 25.01.2018 in



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O.S.No.148 of 2015 on the file of the I Additional District Munsif Court, Salem.

For Appellant : Mr.D.Sivakumaran

JUDGEMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The facts in brief is herein below narrated with the parties being referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed a suit in O.S.No.148 of 2015 on the file of the I Additional District Munsif, Salem, for specific performance of an alleged agreement dated 30.06.2006. It is the case of the plaintiff that on 30.06.2006, he had entered into a sale agreement with one K.Muthusamy and an indenture of sale agreement was also entered into between the two.

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3. The property, which is the subject matter of this agreement is 1200 Sq.ft of a cart track to reach the plaintiff's land in S.No.70/1A on the East and 69/10B on the west. The 1st defendant is the wife and defendants 2 to 4 are the children of the said Muthusamy. As per the agreement, the total sale consideration was fixed at a sum of Rs.60,000/- and Muthusamy had received a sum of Rs.40,000/- as an advance. It was agreed that the balance amount would be paid when the sale was registered.

4. The plaintiff would contend that he has been ready and willing to go ahead with the sale, which is his part of the contract, right from the beginning. Thereafter, Muthusamy suffered various diseases and was taking treatment and in order to meet his medical expenses, he had also received the balance sale consideration of a sum of Rs.20,000/- on 10.09.2006 and entrusted the property to the plaintiff, for which he had



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made an endorsement on the rear of the sale agreement. The said Muthusamy died on 06.10.2006 leaving behind him surviving the defendants as his legal heirs.

5. The plaintiff's case is that he had taken possession and spent considerable sums of money for the development of the property and therefore he is entitled to the protection under Section 53 A of the Transfer of Property Act. Further, since the possession had been handed over issue of limitation would not apply. Therefore, the suit for specific performance came to be filed in the year 2015.

6. The defendants had filed a written statement inter alia denying the contents of the plaint and it was their specific case that the said Muthusamy was an Alcoholic, which was taken advantage by one Arayee, wife of Ammasi, Palanisamy, son of Kanda Gounder and Thailan, son of Ramasamy, who had obtained signature in various



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blank papers and stamp papers, from and out of these signed papers present agreement has been created.

7. The defendants would contend that not a single penny had been paid to the said Muthusamy either on 30.06.2006 or on 10.09.2006. The said Muthusamy and the 1st defendant had given a complaint to the Police who refused to take any action. The defendants would further submit that there were other suits filed by the plaintiff pending against them in O.S.No.971 of 2014, O.S.No.527 of 2014 and O.S.No.225 of 2015. Therefore, this would clearly show that the only attempt on the part of the plaintiff was to some how knock away the property.

8. The learned I Additional District Munsif, Salem, had framed the following issues:

1. வாதி தாவாவில் கோரியுள்ள "ஏற்றதை ஆற்றுக"



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பரிகாரம் வழங்கத்தக்கதா?

2.வேறு என்ன பரிகாரம் வழங்கத்தக்கது?

9. The learned I Additional District Munsif, Salem had considered the cross examination of P.W.2 and held that not only was the execution of the sale agreement not proved but also the passing of consideration. That apart, the agreement is of the year 2006, whereas the suit has been filed only on 20.02.2015 which is nearly 5 years after the date of the agreement. Ultimately, the suit was dismissed.

10. Challenging the said Judgement, the plaintiff has filed an appeal in A.S.No.19 of 2018 on the file of the I Additional Sub Court, Salem. The learned I Additional Subordinate Judge, Salem, also confirmed the Judgement of the Trial Court and challenging the same the appellant is before this Court.



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11. Heard the learned counsel and perused the records.

12. The suit agreement is dated 30.06.2006 and no time has been specified for the performance of the contract. However, the balance amount to be paid is just a sum of Rs.20,000/-. Though the plaintiff has stated that he was ready and willing to perform his contract, no steps have been taken and the balance sum of Rs.20,000/- was paid on 10.09.2006. Therefore, the suit ought to have been filed on or before 09.09.2009. However, the suit has been filed only on 16.02.2015, i.e., after a lapse of over a period of 5 years. Therefore, the suit is clearly barred by limitation.

13. That apart, the plaintiff has not come forward with a definite case as to how the said Muthusamy alone had a right to the suit property particularly when one Ammasi, Periannan, Vadivel and Kathirvel had an interest in the suit property, which is a cart track. The



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Lower Appellate Court has found that the plaintiff in his cross examination has clearly admitted that Muthusamy's relatives also had a right to the suit pathway and that Muthusamy do not have an exclusive right or interest to the same.

14. That apart, the Lower Appellate Court has also found that the plaintiff has not been able to prove the passing of consideration adequately.

15. Considering the above, I see no infirmity in the Judgement and Decree of the Courts below. Accordingly, the Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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- 1.The I Additional Subordinate Court,
Salem.
- 2.The I Additional District Munsif Court,
Salem.



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P.T.ASHA, J.,

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