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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Second Appeal No.626 of 2013
and MP.No.1 of 2013

Manimekalai

..Appellant/Appellant/Plaintiff

.Vs.

1.Jegathambal

2.Sunrise Agri Farms

Rep.By its Managing Partner

R.Vimalraj Chordia and other Partners

Through their Power Agent

Perumal, S/o.Chinnasamy

No.9, Prakasam Nagar

Ulunthurpettai, Ulunthurpettai Taluk.

..Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the Principal Subordinate Judge, Vriddhachalam passed in A.S.No.1/2012 dated 13.9.2012, confirming the judgment and decree of the 2nd Additional District Munsif Court, Vriddhachalam, passed in O.S.No.114/2007 dt.29.8.2011.

For Appellant : Mr.J.Antony Jesus

For Respondents : Mr.S.Kumaradevan
Mr.A.Prakash
for R 1

R2 - No Appearance

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2.The plaintiff filed the suit seeking for the relief of Specific performance based on the agreement of sale dated 2.2.1985 marked as Ex.A-1.



3.The case of the plaintiff is that the 1st defendant is the owner of the suit property. On 2.2.1985, the plaintiff entered into an agreement of sale with the 1st defendant and the total sale consideration was fixed as R.3,550/-. According to the plaintiff, the entire sale consideration was paid to the 1st defendant on the date of the agreement itself. That apart, the plaintiff also claims that she was put in possession of the suit property on the same day and she continues to be in possession and enjoyment of the same.

4.The further case of the plaintiff is that the agreement of sale did not fix any particular time limit for the execution of the sale deed. When the plaintiff approached the 1st defendant for execution of the sale deed, the 1st defendant demanded for the payment of a sum of Rs.25,000/- and it was refused to be paid by the plaintiff. Thereafter, the plaintiff called the 1st defendant for execution of the sale deed on 12.03.2007 and the 1st defendant refused to execute the sale deed. Left with no other option, the suit came to be filed on 13.3.2007, seeking for the relief of Specific Performance.

5.The 1st defendant filed a written statement. The 1st defendant took a stand that the property was given to the plaintiff on lease on an yearly basis and the plaintiff was also paying the lease amount every year. The 1st defendant denied the factum of entering into an agreement of sale with the plaintiff. The 1st defendant has also raised the issue of limitation and the exorbitant delay in filing the suit after nearly 22 years after the execution of the so called agreement of sale. Accordingly, the 1st defendant had sought for the dismissal of the suit.

6.The 2nd defendant was the subsequent purchaser of the suit property and the 2nd defendant was added as a party in the suit by an order dated 20.8.2009.

7.Both the Courts below on considering the facts and circumstance of the case and on appreciation of the oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed the present Second Appeal.

8.Heard Mr.J.Antony Jesus, learned counsel for the appellant and Mr.S.Kumaradevan learned counsel for the 1st respondent. This Court also carefully considered the materials available on record and the findings rendered by both the Courts below.

9.It is an admitted case that the plaintiff has filed the suit after nearly 22 years from the date of the execution of the sale agreement. The justification given by the plaintiff was that the agreement of sale did not fix any time limit and the



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plaintiff was also put in possession of the suit property and therefore as and when the plaintiff demanded for the execution of the sale deed, the 1st defendant was bound to execute the sale deed. This is in view of the fact that the plaintiff had already paid the entire sale consideration in favour of the 1st defendant.

10.Both the Courts below on appreciation of the oral and documentary evidence found that there was absolutely no justification for the plaintiff to have approached the Court after 22 years and sought for the relief of Specific Performance. Even if the plaintiff had paid the entire sale consideration, that does not mean that the plaintiff will sleep over her rights and not demand for the execution of the sale deed in her favour. Unless, the sale deed is executed in favour of the plaintiff, the title will not pass on to the plaintiff. The willingness on the part of the plaintiff to get the sale deed executed in her favour is totally absent in the present case. The relief of Specific Performance is an equitable relief and both the Courts below found that there was absolutely no explanation for the plaintiff to have waited for nearly 22 years to file the suit for Specific Performance. The findings given by both the Courts below does not suffer from any perversity and is not liable to be interfered by this Court.

11.There is yet another issue which goes against the plaintiff. In the present case, the plaintiff is claiming for the protection under Section 53A of Transfer of Property Act, 1882 since according to the plaintiff, she was put in possession of the suit property in part performance of the agreement. This plea taken by the plaintiff cannot be considered since such a defense can be taken and considered only if the sale agreement is registered. The law on this issue is too well settled.

12.In view of the above discussion, this Court does not find any ground to interfere with the judgment and decree passed by both the Courts below. In any event, no substantial question of law is involved in this Second Appeal.

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

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar



KP

To

1.The Principal Subordinate Judge,
Vriddhachalam.

2.The 2nd Additional District Munsif,
Vriddhachalam.

Copy to:

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

Second Appeal No.626 of 2013

GPL (CO)
PR (06/05/2022)