



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.395 of 2022
and
CMP.No.8367 of 2022

P.Jayamuthu Naicker

... Appellant/Plaintiff

Vs.

1.V.Mani

2.Raji

...Respondents/ Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.14 of 2016, on the file of the Additional Sub-Ordinate Judge at Kancheepuram, dated 25.10.2019 dismissing the Appeal suit by confirming the Decree and Judgment passed by the learned Principal District Munsif Judge at Kancheepuram in O.S.No.155 of 2013 dated 21.08.2014.

For Appellant : Mr.A.Lakshmi Narasimhan

JUDGMENT

The plaintiff who has unsuccessfully contested a suit for specific performance is the appellant before this Court. The facts in brief are as follows:-

2. The appellant/ plaintiff had filed the suit O.S.No155 of 2013 on the file of the Principal District Munsif, Kancheepuram, seeking relief for specific performance of an oral agreement of sale with reference to the suit schedule property. It is the case of the plaintiff that he had entered into this oral agreement of sale to purchase the suit schedule property from the 1st defendant for a total sale consideration of Rs.27,000/-. A sum of Rs.20,000/- was paid on the date of the agreement and the balance was agreed to be paid at the time of



registration. Pursuant to this oral agreement of sale, the 1st defendant had also handed over the possession of the suit property with the original documents. Despite several requests being made by the plaintiff to execute the sale deed, the defendant has not been coming forward for the registration of the sale agreement.

3. A legal notice dated 01.10.2009 was issued by the 1st defendant and there was no response to the same. When the plaintiff had personally approached the defendant to execute the sale deed, the defendant demanded a higher amount since the value of the properties had increased. The plaintiff therefore paid a sum of Rs.64,000/- to the 1st defendant and obtained a registered sale deed on 26.10.2009, in his favour to an extent of 30 cents from out of the entire extent of 54 cents in Survey No.521/3A. The plaintiff would contend that he had paid the entire sale consideration and was ready to perform his part of the contract but however it was the defendant who was stalling the same. Therefore, he had come forward to file the suit in question.

4. The 1st defendant though served had not appeared before the Court and was therefore set ex parte on 27.09.2013. The 2nd defendant had entered appearance in the suit but did not choose to file a written statement and was therefore, set ex parte on 07.12.2013. The Court below proceeded to pass a Judgment after hearing the plaintiff alone. The learned District Munsif, Kancheepuram, dismissed the suit on the grounds of limitation. This Judgment was taken up on appeal by the plaintiff to the Additional Subordinate Judge, Kancheepuram, in A.S.No.14 of 2016 who had also dismissed the appeal with the very same observation.

5. Heard Mr.A.Lakshmi Narasimhan, learned counsel for the appellant.

6. The plaint does not indicate the date on which the plaintiff and the defendant had entered into the oral sale agreement. That apart, the contention of the plaintiff that he had paid a sum of Rs.64,000/- and obtained a registered sale deed on 26.10.2009, to an extent of 30 cents appear to be suspicious, since the 1st defendant had issued a legal notice dated 01.10.2009 (Ex.A.8) acknowledging the sale agreement and payments but refusing to execute the sale deed as there was a great delay on the side of the plaintiff to seek specific performance. This legal notice is issued in the year 2009, however, the plaintiff has filed the suit for specific performance in the year 2013 nearly 4 years after the refusal of



consent and after defendant has categorically informed the plaintiff that he would not execute the sale deed. In the light of the above, the time for filing the suit for specific performance would commence at least from the date of Ex.A.8 (legal notice dated 01.10.2009). However, the petitioner has not come forward to file the suit for specific performance within 3 years thereafter.

7. In view of the above, no ground is made out for interfering with the concurrent Judgment and Decree of the Courts below. Accordingly, the Second Appeal is dismissed for want of any Substantial Question of law. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal District Munsif
at Kancheepuram

2.The Additional Sub-Ordinate Judge
at Kancheepuram

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CMP.No.8367 of 2022

PMK (CO)
CB(04/07/2022)