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S.A.No.760 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.760 of 2022
and
C.M.P.No.15544 of 2022

P.Alamelu ...Appellant/Respondent/Plaintiff

Vs.

1.Somaskandan ...1st Respondent/1st Appellant/
1st Defendant

2.Shanmuga Vel ...2nd Respondent/2nd Appellant
/2nd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.12.2021 in A.S.No.24 of 2016 on the file of the learned Subordinate Judge, Nagapattinam District, reversing the Judgment and Decree dated 22.03.2016 in O.S.No.138 of 2012 on the file of the District Munsif, Nagapattinam District.

For Appellant : Mr.Vijendran



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JUDGMENT

The plaintiff has filed the above appeal challenging the Judgment and Decree passed by the learned Subordinate Judge, Nagapattinam District, in A.S.No.24 of 2016, in and by which the Decree for specific performance obtained by her before the learned District Munsif, Nagapattinam District, in O.S.No.138 of 2012 was set aside. The parties are referred to in the same litigative status as in the Original Suit.

2.The brief resume of the facts that has been culminated in filing of the present appeal is narrated herein below:

The plaintiff had filed the suit for specific performance stating that he had entered into an Agreement of Sale in respect of the suit schedule properties. The sale consideration fixed was a sum of Rs.60,000/- and the said the amount was paid and the possession was also handed over to the plaintiff. The plaintiff would submit that in



the month of August 2009, she had approached the 1st defendant to execute and register the Sale Deed in her favour on 10.08.2009 and stamps have been purchased and the Sale Deed as instructed by the 1st defendant was prepared and the same was duly executed by the 1st defendant and attested. The Sale Deed was presented for registration on 11.08.2009, however, the 1st defendant did not appear for the registration and he kept postponing the same. The 1st defendant thereafter with an ulterior motive colluded with the 2nd defendant and created a registered Sale Deed dated 17.05.2012 as if he had sold the 1st item of the suit property for a valid sale consideration to the 2nd defendant. She would contend that she has been ready and willing to perform her part of the contract. Though the Sale Deed has been executed it was not registered. She would submit that from the date of oral agreement of sale she is in possession and enjoyment of the suit properties and she is entitled to the benefit of Section 53A of the Transfer of Property Act.



3.The 1st defendant had filed a Written Statement *inter alia* denying the alleged oral Agreement and the sale consideration. She would submit that the signature in the Sale Deed dated 10.08.2009 was not his signature. He would submit that the 1st item of the suit property was sold to him under a registered Sale Deed dated 17.05.2012. The 1st item of the property was in possession of the 2nd defendant and the 1st defendant was in possession of the second item of the suit property. The 2nd defendant had also filed a Written Statement on the very same lines.

4.The learned District Munsif, had framed the following issues:

“(1)Whether the plaintiff is entitled for the relief of specific performance as prayed for?

(2)Whether the plaintiff is entitled for the alternative relief of recovery of money as prayed for in the suit?

(3)To what other relief, the parties are entitled



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to?”

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5.The plaintiff had examined six witnesses besides herself and marked Ex.A.1 to Ex.A.11. The defendants had examined two witnesses and marked Ex.B1 to Ex.B.9.

6.The learned Judge, after perusing the record, pleadings and hearing the arguments, decreed the suit. Challenging the same, the defendants had filed A.S.No.24 of 2016 on the file of the learned Subordinate Judge, Nagapattinam District. On considering the evidence and the arguments, the Appellate Court had found that the plaintiff has not proved her possession of the suit property. Reliance had been primarily placed on the evidence of PW5, the Village Administrative Officer. The learned Judge had found that the statement made by the witnesses was not supported by documentary



evidence. The documents that have been filed in support of the plaintiff's possession is Ex.A.10 and Ex.A.11. Both of which are of the year 2015 after filing of the suit. Further, the suit being one for specific performance the same has been filed fifteen years after the date of the alleged oral sale. That apart, the plaintiff would claim that though it is claimed that the Sale Deed has been executed on 10.08.2009, the 1st defendant had not come forward to register the same immediately. However, the suit has been filed only on 20.07.2012 which would clearly show that there is no *bonafide* in the suit. Challenging the same, the appellant is before this Court.

7.Heard the learned counsel appearing for the appellant and perused the papers.

8.The plaintiff has come to the Court on three grounds, viz., (1) she had an oral agreement of sale with the 1st defendant, (b)she has been put in possession of the property and (3)the Sale Deed was



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executed on 10.08.2009.

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9.The defendant has denied all the above. To prove possession, the plaintiff has filed Ex.A.10 and Ex.A.11 which are of the year 2012 and 2015, i.e., after the filing of the suit. Therefore, the same cannot be taken into consideration. That apart. the 1st defendant had sold away the 1st item of the property on 17.05.2012. The plaintiff is very much aware about the said Sale. However, the suit came to be filed only thereafter. The plaintiff who has entered into an oral agreement has not taken steps to have the same registered or to file a suit for specific performance and it is only 15 years thereafter that she has come forward with the suit. The suit is clearly barred by limitation. From the date of the oral agreement of sale, possession has also not been proved.

10.The defendants have denied the signature in the Sale Deed dated 10.08.2009 which has been marked as Ex.A.1. The document



cannot be considered since it is not a registered document. Further, the plaintiff has failed to prove his readiness and willingness from the date of the alleged Agreement of Sale. Consequently, no substantial question of law arises in the above Second Appeal and the plaintiff has not been able to establish any perversity or error in the order passed by the Lower Appellate Court.

The Second Appeal is dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

15.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The Subordinate Judge,
Nagapattinam District.

2.The District Munsif,



Nagapattinam District.

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P.T. ASHA, J,

mps

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