



S.A.No.420 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.420 of 2022
and
C.M.P.No.8739 of 2022

V.Padmanabhan

... Appellant/Appellant/Plaintiff

Vs.

B.Jayaseelan

...Respondent/Respondent/ Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 01.12.2020 passed in A.S.No.46 of 2019 on the file of the Additional District Judge, Hosur, confirming the Judgment and Decree dated 13.08.2019 passed in O.S.No.66 of 2012 on the file of the Principal Subordinate Judge, Hosur.

For Appellant : Mr.R.Bharathi Kumar



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JUDGMENT

The plaintiff in the suit for specific performance has filed this Second Appeal challenging the concurrent Judgments passed by the Courts below.

The brief facts are as follows:-

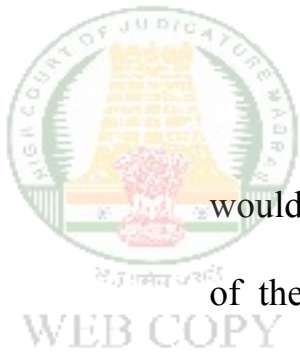
2. The suit property belonging to the defendant/respondent under a registered sale deed of the year 1976. The defendant is residing in the house property and the shop portion was rented out to the plaintiff from the year 2003, in which the plaintiff is in absolute possession and enjoyment. The defendant in order to meet the marriage expenses of his daughter, had decided to sale the suit property and the plaintiff had agreed to the same. As per the registered sale agreement dated 12.05.2009, the sale price was fixed at a sum of Rs.3,25,000/- and on the date of execution of the agreement a sum of Rs.2,25,000/- was paid by the plaintiff to the defendant. The plaintiff was bound to pay the balance sale consideration within a period of 3 years from the date of execution of the agreement.

3. The plaintiff would further submit that with the execution of the sale agreement the terms and conditions of the rental agreement had come to an end. The plaintiff would submit that despite his several requests to



proceed with the sale, the defendant had not come forward to execute the sale deed. This constrained the plaintiff to issue a legal notice dated 30.08.2011, calling upon the defendant to receive the balance sale consideration and execute a sale deed in his favour. However, to the shock and surprise of the plaintiff, the defendant issued a reply notice dated 03.11.2011, narrating a totally different story wherein the defendant had denied the execution of the agreement. The plaintiff had once again approached the defendant on 02.02.2012 but however the defendant refused to execute the sale deed, therefore, the plaintiff was constrained to file the suit for specific performance.

4. The defendant had resisted the above suit inter alia contending that he had mortgaged the entire suit property and the remaining property under the registered mortgaged deed dated 20.04.2004 by deposit of title deeds to one Mr. K.R.B.Naidu of Bangalore. The defendant had borrowed a sum of Rs.1,00,000/- from him and the same is still in force and defendant has not redeemed the same. While so, since he was in dire need of money to celebrate his daughter's marriage, the defendant had borrowed a sum of Rs.2,25,000/- from the plaintiff on 12.05.2009, and as a security he had executed an agreement of sale in favour of the plaintiff. The defendant



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would further submit that he is not aware of the language and the contents of the document in question as the same was not revealed to him. The defendant would further submit that the plaintiff who is a tenant on a monthly rental of Rs.1,350/- has committed default in the payment of the rents. Since the defendant was calling upon the plaintiff to vacate and hand over the vacant possession of the suit property, the plaintiff has come forward with the above suit.

5. The learned Principal Subordinate Judge, Hosur by Judgment and Decree dated 13.08.2019 in O.S.No.66 of 2012, was pleased to dismiss the suit and had also not granted the relief of refund on the ground that the plaintiff has not sought for a refund of the advance amount as an alternate relief. This order was taken up on appeal by the plaintiff to the Additional District Judge, Hosur, in A.S.No.46 of 2019. The learned Additional District Judge, Hosur, confirmed the Judgment and Decree of the Sub Court, Hosur in O.S.No.66 of 2013 with a modification. The suit for specific performance was dismissed and the plaintiff was granted the relief of recovery of Rs.1,50,000/- from the defendant with interest at 6% from 12.05.2009 till repayment, and refund of Rs.1,00,000/- deposited in the trial Court. Aggrieved by this concurrent Judgement dismissing his prayer for



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specific performance, the appellant is before this Court.

6. Heard the learned counsel for the appellant.

7. The plaintiff who is a tenant in respect of the shop portion of the property has entered into an agreement of sale on 12.05.2009 agreeing to complete the transaction within a period of 3 years. An advance of Rs.2,25,000/- as against the sum of Rs.3,25,000/- is said to have been paid on the said date. The records would indicate that the 1st notice has been issued only on 30.08.2011, nearly 2 years and 3 months after the execution of the agreement of sale. It is also seen that after agreement of sale was executed, the defendant has not been paying the rents in respect of the shop portion of the suit property. It is not the case of the plaintiff that the parties had agreed that the plaintiff can stop the payment of rent in the light of the agreement of sale. Be that as it may, the Courts below had rightly held that the plaintiff has not proved the readiness and willingness. Though the Trial Court has dismissed the suit intoto. The Appellate Court decreed the suit for the alternate relief. The appellant has not made out any case to state that the Judgement and Decree of the Courts below is perverse and requires re-consideration. That apart, no Substantial Question of Law has been made



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out, accordingly, the Second Appeal stands dismissed. No costs.

Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
shr

To

1.The Additional District Judge, Hosur.

2.The Principal Sub-ordinate Judge, Hosur.



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P.T. ASHA, J,
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