



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

Second Appeal No.567 of 2014

and

MP No.1 of 2014

Sugunabai ...Appellant/Appellant/2nd Defendant

.Vs.

1.Jinnah ..1st Respondent/1st Respondent/Plaintiff

2.Nagammal ..2nd Respondent/2nd Respondent/1st Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree as made in A.S.No.40 of 2010 dated 20.12.2013 on the file of the Subordinate Court, Gudiyatham, Vellore District confirming the judgment and decree as made in O.S.No.470 of 2004, dated 15.6.2010 on the file of the Principal District Munsif Court at Gudiyatham, Vellore District.

For Appellant : Mr.C.Vigneswaran

For Respondents : Mr.S.Sivaraman
for R 1

R2 - (notice served) No appearance

JUDGMENT

The 2nd defendant is the appellant in this Second Appeal.

2.The 1st respondent/plaintiff filed a suit for Specific Performance based on the sale agreement dated 14.12.1979. This sale agreement was entered into between the plaintiff and the defendants and the defendants agreed to sell the suit property for a total consideration of Rs.43,500/-. Out of the total sale consideration, a sum of Rs.33,500/- was paid by the plaintiff and admittedly, it was received by the defendants. At that



stage, a suit came to be filed by one Dhanalakshmi, who was the step daughter of the 1st defendant in O.S.No.270 of 1980 claiming for the relief of partition. The plaintiff was also made as the 4th defendant in the said suit. Even though, the suit was dismissed, it ultimately landed before the Apex Court and it is stated that 1/3rd share was granted in favour of the said Dhanalakshmi. In view of the same, the total suit property was confined to 2/3rd share. Hence, the plaintiff filed a petition for amendment of the plaint and the relief of Specific Performance was restricted to the 2/3rd share in the suit property.

3.Both the Courts below found in favour of the plaintiff and decreed the suit. Aggrieved by the same, only the 2nd defendant has filed this Second Appeal.

4.Heard Mr.C.Vigneswaran, learned counsel for the appellant and carefully perused the findings rendered by both the Courts below.

5.Both the Courts below on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case, found that the plaintiff was ready and willing to perform his part of the contract and that the plaintiff was not able to effectively prosecute his suit because of the partition suit filed by the above said Dhanalakshmi and the plaintiff had to necessarily await for the final verdict. Ultimately, the plaintiff lost 1/3rd share in the property and what was left to the plaintiff was the remaining 2/3rd share. The suit which came to be filed in the year 1983 was ultimately tried and judgment was passed by the trial Court in the year 2010. It is quite unfortunate that the suit had to wait for nearly 27 years to get disposed off, because of the pendency of the other case which came to an end only after the final judgment was rendered by the Hon'ble Supreme Court.

6.Both the Courts found that the defendants had admitted the execution of the sale agreement and they have also admitted that they were ready and willing to perform their part of the contract and execute the sale deed in favour of the plaintiff and only because of the filing of the partition suit, they were not able to execute the sale deed in favour of the plaintiff. Having taken such a stand, the defendants cannot be allowed to resist the rights flowing in favour of the plaintiff by virtue of the sale agreement, by merely pointing out to the delay in disposal of the suit.



7. In the considered view of this Court, there are absolutely no grounds to interfere with the findings of both the Courts below. No substantial question of law is available in the present Second Appeal. The learned counsel for the appellant made a faint attempt by pointing out the time consumed by this litigation and the consequent escalation of price of the property. The delay in disposal of the suit cannot be attributed to the plaintiff and the plaintiff had absolutely no control over the other suit that was filed for partition. If there is escalation in the price, the plaintiff cannot be made responsible for the same and in any case, the Hon'ble Supreme Court in *Narinderjit Singh v. North Star Estate Promoters Ltd.*, reported in 2012 5 SCC 712 has categorically held that escalation of the price of the property by itself is not a ground to deny the relief of Specific Performance.

8. 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.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP

To

1. The Subordinate Judge
Subordinate Court, Gudiyatham, Vellore District
2. The District Munsif, Gudiyatham, Vellore District

Copy to

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

+1 CC to Mr. S. Sivaraman, Advocate sr 10353

+1 CC to Mr. S. Sivaraman, Advocate sr 10353 (16/03/2022)

Second Appeal No. 567 of 2014

AD (CO)
SP (09/03/2022)