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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.683 of 2014
and
C.M.P.No.1018 of 2017

M.Chandrasekaran ... Appellant/Plaintiff in Trial Court

Vs.

1. S.Srinivasan (died)
2. Kunjiraman
3. Dr.Sivakumar
4. T.Anwar
5. Ramankutti
6. Abdul Samad
7. Damodaran
8. P.Krishnan
9. P.Narayanan
- 10.R.Vijaya
- 11.Ravichandran
- 12.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town, Chennai - 600 003.
- 13.Radha Srinivasan
- 14.Arun Kumar
- 15.Krishnakumar

[R1 died. R13 to 15 brought on record as legal representatives of the deceased R1 vide Court order dated 09.03.2022 in CMP.Nos.14866 to 14868 of 2017]

... Respondents/Defendants in Trial Court

PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the decree and judgment passed in A.S.No.399 of 2011 on the file of VII Additional Judge, City Civil Court, Chennai dated 29.10.2013 in confirming the decree and judgment passed in O.S.No.2582 of 2007, on the file of VII Assistant Judge, City Civil Court, Chennai dated 10.01.2011.

For Appellant : Mr.D.Ashok Kumar



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For Respondents : Mr.S.Vijayakumar for R7
Mr.S.Ganeshan for R12
R3, 5, 7, 8, 10 to 12 - served
- no appearance
R2, 4, 6, 13 to 15 - not
ready notice
R1 and 9 - died

J U D G M E N T

The plaintiff is the appellant in this second appeal.

2. The case of the plaintiff is that he was originally the tenant in the suit property under the 1st defendant. Thereafter, he entered into an agreement of sale with the 1st defendant on 01.05.2004, marked as Ex.A1. As per this agreement of sale, the total sale consideration was fixed at Rs.3,00,000/- and an advance of Rs.34,000/- was also paid by way of demand draft to the 1st defendant. A further sum of Rs.1,50,000/- was also paid by way of cheque and the balance amount of Rs.1,16,000/- was also paid by way of cash to the 1st defendant. Thereby, the plaintiff claimed that he had paid the entire sale consideration to the 1st defendant.

3. The grievance of the plaintiff was that the common area that was available in the suit property was encroached and the defendants 1 to 10 were in illegal occupation of the property. That apart, the 1st defendant was also taking steps to sell the property to some other third parties. Hence, initially a suit was filed seeking for the relief of permanent injunction and later the larger relief of specific performance was also sought for. The plaintiff further claimed that he was ready and willing to perform his part of the contract and to purchase the property after the encroachments are removed. Accordingly, the suit came to be filed seeking for the relief of specific performance.

4. The 1st defendant filed a written statement and took a stand that the plaintiff had paid only a sum of Rs.34,000/- and he failed to pay the balance sale consideration as agreed in the sale agreement. Therefore, the 1st defendant took a stand that the plaintiff was not ready and willing to perform his part of the contract and the plaintiff was attempting to occupy the property without paying any rent by virtue of the sale agreement. Accordingly, the 1st defendant sought for dismissal of the suit.

5. Both the Courts below on consideration of the facts and



circumstances of the case and on appreciation of the oral and documentary evidence concurrently held against the appellant/plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this second appeal.

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6. Heard Mr.D.Ashok Kumar, learned counsel for the appellant and carefully perused the materials available on record. This Court also perused the findings rendered by both the Courts below.

7. Both the Courts below on appreciation of evidence, found that the agreement of sale which was marked as Ex.A1 never contained any clause which placed an obligation on the 1st defendant to remove the encroachers from the suit property. This was the ground that has been brought forward by the plaintiff while filing the suit and hence both the Courts found that the plaintiff was attempting to get the relief beyond what has been stated under Ex.A1 sale agreement. The Courts below also found that the defendants 2 to 11 are the other tenants under the 1st defendant.

8. The Courts below also took into consideration the contentions raised by the plaintiff wherein the plaintiff had sought for the removal of defendants 2 to 11 from the suit property, since according to the plaintiff they have encroached upon the common area in the ground floor and also in the staircase. While considering this issue, both the Courts found that the plaintiff was seeking for the relief which is impossible to perform since those defendants could be evicted from the property only in the manner known to law. This was due to the fact that the defendants 2 to 11 were claiming to be the tenants under the 1st defendant.

9. The Courts below also took into consideration yet another vital factor. On appreciation of the evidence available on record, the Courts found that the plaintiff had made a total payment of a sum of Rs.1,84,000/-. While so, through Ex.B4, which was the bank statement, it was found that the 1st defendant had re-funded Rs.34,000/- and a further sum of Rs.1,25,000/- by way of two cheques. The plaintiff was also cross-examined in this regard when he was examined as PW1. Thereby, both the Courts found that the plaintiff had received back a sum of Rs.1,59,000/- from the 1st defendant and what remained as a balance in the hands of the 1st defendant was only a sum of Rs.25,000/-. The 1st defendant took a stand that this amount was adjusted towards damages on account of the plaintiff remaining in possession of the property without payment of any rent.

10. This fact was taken into consideration by both the



Courts below and it was found that the plaintiff was more interested in getting back the amount from the 1st defendant and he was not interested in getting the sale deed executed in his favour.

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11. In the considered view of this Court, the findings rendered by both the Courts below are factual findings based on appreciation of oral and documentary evidence. This Court does not find any perversity in those findings which warrants the interference of this Court in this second appeal. In any event this Court does not find any substantial question of law involved in this second appeal.

12. In the result, the second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The VII Additional Judge,
City Civil Court, Chennai.
2. The VII Assistant Judge,
City Civil Court, Chennai.

Copy to:

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

S.A.No.683 of 2014

GPL (CO)
SU(08/04/2022)