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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.Nos.307 & 308/2017 and CMP.Nos.7252 & 7253/2017

V.K.Mani .. Appellant/Appellant/Defendant in SA.307/2017
..Appellant/Appellant/Plaintiff in SA.308/2017

Vs.

K.N.Thangavel .. Respondent/Respondent/Plaintiff in SA.307/2017
...Respondent/Respondent/defendant in SA.308/2017

Common Prayer:- Second Appeals filed under Section 100 of the Civil Procedure Code to set aside the common judgment and decree dated 06.10.2016 made in A.S.No.43/2014 and A.S.No.51/2014 on the file of the learned I Additional District Judge, Erode confirming the common judgment and decree dated 26.03.2014 made in O.S.No.79/2011 and O.S.No.48/2012 on the file of the learned Principal Subordinate Judge, Erode.

For Appellant :Mr.A.Sundaravadhanan
in both appeals

For Respondent :Mr.G.Pavendhan
in both appeals

COMMON JUDGMENT

- (1) The above second appeals in SA.No.307/2017 and SA.No.308/2017 have been preferred by an V.K.Mani who is the the plaintiff in O.S.No.48/2012 before the Principal Sub Court, Erode and defendant in O.S.No.79/2011.
- (2) Brief facts that are necessary for the disposal of these second appeals are as follows:
- (3) The appellant in these appeals filed the suit in O.S.No.48/2012 for specific performance of a Panchayat Muchalika dated 03.12.2000 which was marked as Ex.B9. It is admitted before this Court that the plaintiff and defendant



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have jointly purchased the suit property. It is the case of the appellant in the suit in O.S.No.48/2012 that a misunderstanding arose between the plaintiff and defendant and that there was a compromise between them in the presence of panchayatars on 03.12.2000.

- (4) It is the further case of the appellant that as per the Panchayat Muchalika which was reduced into writing in the presence of panchayats on 03.12.2000, there was a compromise by which the defendant agreed to receive a sum of Rs.1,53,000/- from the plaintiff to sell to his half share in Item Nos.1 to 4 in the suit properties.
- (5) It is the further case of the appellant that the appellant/plaintiff was always ready and willing to perform his part of contract and that the plaintiff though requested the defendant on several occasions to receive the sale consideration, the defendant was postponing the execution of the Sale Deed. The appellant further states that the plaintiff approached the panchayatars who are holding the Panchayat Muchalika dated 03.12.2000 and approved the plaintiff's decision to file the present suit as against the defendant to enforce the terms of Panchayat Muchalika as the defendant failed to execute the Sale Deed as agreed.
- (6) Even before the suit in O.S.No.48/2012 was filed by the appellant, it is admitted that the respondent herein had filed the suit in O.S.No.79/2011 before the Principal Sub Court, Erode for partition of one of half share in all the four suit properties. Both the suits were tied together and disposed off by a common judgment.
- (7) The Trial Court after framing necessary issues, found that the appellant though agreed to pay the entire consideration on or before 15th of vaikasi month of that year, did not perform his part of contract and held that the appellant is not entitled to get the relief of specific performance. As a consequence, the suit filed by the respondent for partition was also decreed by the Trial Court.
- (8) As against the judgment and decree dismissing the suit filed by the appellant in O.S.No.48/2012, the appellant preferred an appeal in AS.No.51/2014. Similarly, as against the judgment and decree in O.S.No.79/2011 granting a preliminary decree for partition in favour of the respondent, the appellant preferred an appeal in AS.No.43/2014. Both the appeals were dismissed before the I Additional District



Court, Erode by a common judgment and decree dated 06.10.2016.

(9) Aggrieved by the concurrent judgments and decrees of the Courts below the above Second Appeals have been filed.

(10) The appellant has raised following substantial questions of law in the Memorandum of Grounds of Second Appeal.

S.A.No.307/2017

1. Whether the Lower Court was right in granting the relief of partition to the respondent despite holding Ex.B9 to be genuine without any proper discussion or reasoning?

2. Whether the Lower Court was right in holding that the Ex.B10 would not be binding on the respondent?

3. Whether the Lower Courts were right in non suiting the appellant by holding that the period of limitation would commence from date of the panchayat muchalika, Ex.B9 dated 03.12.2000 once when the appellant has derived his right to file the suit only on 09.11.2010?

S.A.No.308/2017

1. Whether the Lower Courts were right in holding that the Panchayat Muchalika B9 dated 03.12.2000 would not bind the respondent despite holding the same is genuine?

2. Whether the Lower Courts were right in holding that the Consent Deed in Ex.B10 would not bind the respondent?

3. Whether the Lower Courts were right in non suiting the appellant by holding that the period of limitation would commence from date of the panchayat muchalika, Ex.B9 dated 03.12.2000 once when the appellant has derived his right to file the suit only on 09.11.2010?

(11) The plaintiff in O.S.No.48/2012 is also the defendant in the suit in O.S.No.79/2011. The defence raised by the appellant in the suit for partition is on the basis of the alleged



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Panchayat Muchalika namely the agreement signed by the parties in the presence of panchayatars. The Panchayat Muchalika was marked as Ex.B9. Though the Courts below have concurrently found that the Panchayat Muchalika is true and genuine, came to the conclusion that the plaintiff has not proved his readiness and willingness to perform his part of the contract and therefore is not entitled to seek specific performance of the Panchayat Muchalika.

- (12) It is admitted that there is a specific clause contained in the Panchayat Muchalika wherein the appellant has agreed to pay the entire consideration for the suit properties before a particular date. The agreement/Panchayat Muchalika is dated 03.12.2000 and the suit was filed only in the year, 2011, subsequent to the suit filed for partition. This indicates that the plaintiff was not ready and willing to perform his part of the Panchayat Muchalika which was also treated as an agreement.
- (13) In view of the findings of the Courts below, the appellant is not entitled to specific performance. It is also admitted before this Court that no amount was paid pursuant to the Panchayat Muchalika dated 03.12.2000. Therefore, the appellant is not entitled to enforce the Panchayat Muchalika. In view of the admitted facts, this Court is unable to find substance any of the substantial questions of law raised by the appellant. The facts admitted are sufficient to hold that the appellant is not ready and willing and had not paid any money as promised by him.
- (14) In the result, the Second Appeals are dismissed with cost confirming the common judgment and decree made in A.S.No.43/2014 and A.S.No.51/2014 dated 06.10.2016 and passed by the learned I Additional District Judge, Erode in confirming the common judgment and decree made in O.S.No.79/2011 and O.S.No.48/2012 dated 26.03.2014 by the learned Principal Subordinate Judge, Erode. Consequently connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

cda



To

1.The First Additional District Judge,
Erode.

2.The Principal Subordinate Judge,
Erode.

3.The Section Officer, VR Records,
High Court, Chennai.

+2cc to Mr.G.Pavendhan, Advocate SR.No.17120, 17121

+1cc to Mr.A.Sundaravadhanan, Advocate SR.No.17162

SA.Nos.307 & 308/2017
and CMP.Nos.7252 & 7253/2017

SSV(CO)
CB(11/04/2022)