



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 434 of 2010

and

M.P. (MD) No. 2 of 2010

WEB COPY

Nanthagopal

...Appellant / Appellant / Plaintiff

-Vs-

1.S.V.Sakthivel (died)

2.N.Alagarsamy (died) ...Respondents / Respondents / Defendants

3.S.Soundarapandi

4.S.Saravanakumar

(Respondents 3 & 4 are brought on record as Lrs of the deceased
1st respondent vide order dated 11.02.2022
made in C.M.P. (MD) Nos. 10740, 10741 & 10742 of 2016)

5.A.Latha

(R5 is suo motu impleaded as Lrs of the deceased R2 vide
order dated 15.03.2022 made in S.A. (MD) No. 434 of 2010)

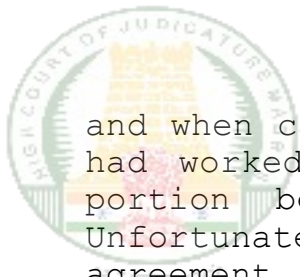
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 29.08.2008 in A.S.No.14 of 2007 on the file of the Fast Track Judge, Dindigul confirming the judgment and decree dated 29.11.2006 in O.S.No.129 of 1999 on the file of the Principal Subordinate Judge, Dindigul .

For Appellant : Mr.H.Lakshmi Shankar
For R3 to R5 : No appearance

JUDGMENT

The plaintiff in O.S.No.129 of 1999 on the file of the Principal Sub Court, Dindigul is the appellant in this second appeal.

2. The suit was for specific performance. The suit property admittedly belong to the second defendant Alagarsamy. There was an agreement between Alagarsamy and Periyakathirammal on the one side and the first defendant Sakthivel on the other. Pursuant to the said agreement dated 12.11.1997, Sakthivel / D1 was authorised to plot out a larger extent of the property and the said Periyakathirammal and Alagarsamy were to execute the sale deeds as



and when called upon to do so. The suit agreement dated 12.11.1997 had worked well upto a point. But when it came to selling the portion belonging to Alagarsamy, it ran into rough weather. Unfortunately, the plaintiff / appellant herein had entered into an agreement only with Sakthivel. He had given an advance amount of Rs.2,00,000/- only to Sakthivel. Since Sakthivel could not execute the sale deed, the suit for specific performance came to be filed. Sakthivel sailed with the plaintiff and even entered the witness box as P.W.2. However, the trial court by judgment and decree dated 29.11.2006 dismissed the suit. The same was also duly confirmed by the first appellate court vide judgment and decree dated 29.08.2008 in A.S.No.14 of 2007. Challenging the same, this second appeal came to be filed. During the pendency of the second appeal, both Sakthivel as well as Alagarsamy passed away. The wife of Alagarsamy was impleaded and service on her was effected through paper publication. However, there is no representation on her behalf.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit the second appeal and then take it up 'for disposal'.

4. There is no dispute that the appellant had entered into an agreement with the first defendant Sakthivel to purchase the suit property. There is again no dispute that the appellant had paid an advance amount of Rs.2,00,000/- to Sakthivel. But the plaintiff was denied the relief of specific performance because there was no privity of contract between the plaintiff and the land owner. Sakthivel / first defendant was also not the power agent of the land owner. Sakthivel had an agreement with the land owner. In fact, Sakthivel should have filed the suit for specific performance and the appellant should have joined with him as co-plaintiff. Instead, the plaintiff who had entered into an agreement with the agreement holder had filed the suit for specific performance. Under Section 54 of the Transfer of Property Act, 1882, agreement by itself will not create an interest. Because of the aforesaid reasons, the courts below denied specific performance. I cannot fault the said approach. No substantial question of law arises for consideration. The second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Fast Track Judge, Dindigul.

2.The Principal Subordinate Judge, Dindigul.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-20791[F] dated
25/04/2022)

S.A. (MD) No. 434 of 2010
22.04.2022

MGJ(03.06.2022) 3P 6C