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S.A(MD).No.323 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A(MD)No. 323 of 2011

Thapasimuthu Nadar

.... Appellant/Appellant/1st Defendant

Vs.

1.Gopinathan

... 1st Respondent/Respondent/Plaintiff

2. Sekar

3.Vimala

.. Respondents 2 and 4/Respondents/
Defendants 2 and 3

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree 24.02.2010 in A.S.No.29 of 2008 on the file of the District Judge, Kanyakumari at Nagercoil confirming the judgement and decree dated 23.04.2008 in O.S.No.26 of 2004 on the file of the Subordinate Judge, Kuzhithurai.

For Appellant	: Ms.Anandhavalli
For R1	: Mr.B.Christopher
For R2 & R3	: Mr.P.Subbiah

J U D G M E N T

Challenging a concurrent finding in a suit for specific performance in O.S.No.26 of 2004 and in A.S.No.29 of 2008, the first defendant has come forward with a present Second Appeal. Parties are referred to by the rank before the trial court.



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2. The plaintiff has come forward with the straightforward case. According to him, on 16.10.2003, he entered into a registered sale agreement with the first defendant for purchasing the suit property belonging to the first defendant for total sale consideration of Rs.1,20,000/- under an agreement and paid Rs.1,10,000/- as advance and the agreement stipulated 3 months time for completing the same. Thereafter, the plaintiff issued Ex.A.2 suit notice dated 24.12.2003 well within three months time stipulated for performing the contract and this was not replied to by the defendants. Thereafter, the plaintiff came forward to perform his contractual obligation under Ex.A.1. Hence, the suit was laid for enforcing the contract.

3. The principal defence taken by the defendants in their written statements is that Ex.A.1 was executed only as a security for a certain loan, which the first defendant borrowed from the plaintiff.

4. The dispute went to trial and before the trial court, the plaintiff examined himself as P.W.1 and produced Ex.A.1 to Ex.A.11. The various documents he had produced *inter alia* included the documents showing the market value of the property in question at the relevant time. For the defendants, the



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first defendant entered witness box as D.W.1 and the son of the first defendant, who is arrayed as the second defendant, was examined as D.W.2 and they produced no documents on their side.

5. It may be stated that during the pendency of the suit, the first defendant has sold the property to his son, who in turn his son sold the property to his sister, the third defendant. Given this setting, the trial court after appreciating the evidence before it, decreed the suit. So far as successive *pendente lite* transfers are concerned, the trial court came to the conclusion that they are not *bonafide* purchasers since they are siblings of the first defendant. Aggrieved by the decree of the trial court, the first defendant has preferred A.S.No.29 of 2008 in which the defendants 2 and 3 have filed Cross Objection. In other words, it is an inner family affair between the first defendant and his children. The First Appellate Court has chosen not to disturb the findings of the trial court and dismissed the appeal.

6. The first defendant has preferred the present Second Appeal. This Second Appeal is not yet admitted. Heard the learned counsel for the appellant, the learned counsel appearing for the first respondent and the learned counsel



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appearing for the respondents 2 and 3. This Court has perused the documents.

7. This Court finds that the judgments of the courts below are in order and appreciation of the evidence by them cannot be faulted. After all, the defendants' conduct is also not appreciable since they did not issue a reply notice, as it would signify their conduct in relation to the cause of action. Added to this, was the first defendant's hurry to sell the property to his own son, and the latter's hurry to sell the property to his sister. In a suit for specific performance, not only the conduct of the plaintiff matters, but so also the conduct of the defendants.

8. Looking over from any conceivable angle, this Court is satisfied that there is no ground to admit this Second Appeal and accordingly, the same is dismissed. No costs.

9. The learned counsel for the respondent/plaintiff submitted that during the pendency of this Second Appeal, an Execution Petition has been laid and



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sale deed has been executed by the Executing Court on behalf of the judgment debtor and delivery of property has also been obtained and the appeal has become infructuous. This is recorded. Since this Court has chosen not to admit the appeal, the statement of the learned counsel for the respondent/plaintiff may not be very material, though they are not irrelevant.

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Index : Yes/No

Internet: Yes/No

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To

- 1.The District Judge, Kanyakumari at Nagercoil
- 2.The Subordinate Judge, Kuzhithurai.
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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N.SESHASAYEE, J.,

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