



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.843 of 2010

and

M.P.(MD)No.1 of 2010

WEB COPY

1.S.A.Alagarsamy (Died)

2.Soundaravalli

... Appellants/

Appellants/Defendants 1&2

(1ST APPELLANT DIED 2ND APPELLANT IS THE ,
ONLY LEGAL HEIR. MEMO USR 894/12 IS RECORDED.,
VIDE COURT ORDER DATE 28/01/15 MADE IN SA.843/2010)

Vs.

1.C.Dharmaraj

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

2.C.Singaraj

... 2nd Respondent/2nd Respondent/
3rd Defendant

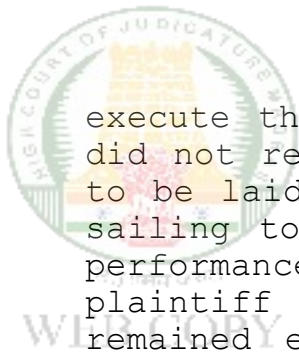
Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.08.2009 passed in A.S.No.105 of 2007 on the file of the 2nd Additional Sub Judge, Madurai, confirming the judgment and decree dated 30.03.2007 passed in O.S.No.344 of 2002 on the file of the District Munsif Court, Madurai Taluk, Madurai.

For Appellants : Mr.A.R.Sethupathy

For Respondents : Mr.P.M.Vishnuvarthanan for R1
Mr.A.Saravanan for R2

JUDGEMENT

The contesting defendants in O.S.No.344 of 2002 on the file District Munsif Court, Madurai Taluk, Madurai filed this second appeal. The first respondent herein namely, C.Dharmaraj filed the said suit seeking the relief of specific performance. The third defendant/C.Singaraj is none other than the brother of the plaintiff. There is not dispute that the suit property belonged to defendants 1 and 2. The defendants 1 and 2 had executed mortgage deed dated 01.04.1997 (Ex.A2) in favour of the plaintiff and the third defendant. Thereafter, the suit sale agreement dated 20.06.1997 was also entered into (Ex.A1). The consideration was fixed at Rs.27,720/- and a sum of Rs.3,000/- was paid as advance on 20.06.1997 on his behalf and on behalf of the third defendant. The time for completing the sale was five years. Legal notice dated 31.05.2002 (Ex.A3) was issued calling upon the defendants 1 and 2 to



execute the sale deed. Though the legal notice was received, they did not respond. Therefore, the suit for specific performance came to be laid. Since the plaintiff and the third defendant were not sailing together, the plaintiff alone filed the suit for specific performance even though the sale agreement was in favour of both the plaintiff and the third defendant. The third defendant also remained ex-parte. The defendants 1 and 2 contested the suit. Based on the divergent pleadings, the trial Court framed the necessary issues.

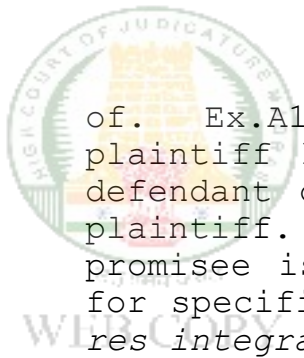
2.The plaintiff examined himself as P.W.1 and Exs.A1 to A6 were marked. The defendants examined themselves as D.W.1 and D.W.2 and two other witnesses were also examined but no documentary evidence was marked on their side.

3.After consideration of the evidence on record, the trial Court decreed the suit as prayed on 30.03.2007. Aggrieved by the same, the defendants 1 and 2 filed A.S.No.105 of 2007 before the II Additional Sub Court, Madurai. By the impugned judgment and decree dated 31.08.2009, the decision of the trial Court was confirmed and the appeal was dismissed. Challenging the same, this second appeal came to be filed. During the pendency of the second appeal, the first appellant/Alagarsamy passed away. Since the second appellant/Soundaravalli, his sister was sole legal heir, the question of taking steps to bring legal heirs on record did not arise.

4.Though the second appeal was filed way back in the year 2010, it has not been admitted till date. The learned counsel appearing for the surviving appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to formulate the substantial question of law and admit the second appeal and take it up for disposal later.

5.Per contra, the learned counsel for the first respondent submitted that no substantial question of law arises for consideration. The learned counsel for the second respondent submitted that he is very much in joint possession of the suit property and therefore, the sale deed may have to be jointly executed in favour of the plaintiff and the third defendant.

6.I carefully considered the rival contentions and went through the evidence on record. There is no dispute on the basic facts. The Courts below have concurrently found that the defendants 1 and 2 executed Ex.A1/sale agreement dated 20.06.1997 and the time for completion of the sale was fixed as five years. It has been found that the plaintiff has made out a case of grant of specific performance and nothing has been brought out to dislodge the concurrent findings rendered by the Courts below in favour of the plaintiff. No substantial question of law really arises for consideration. However, one aspect of the matter must be taken note



of. Ex.A1/sale agreement was executed not only in favour of the plaintiff but also in favour of the third defendant. The third defendant did not come forward for filing the suit along with the plaintiff. Now the question is whether when one of the joint promisee is not willing to join as a co-plaintiff, whether a suit for specific performance can be maintained. The issue is no longer *res integra*. There are catena of decisions holding that such a suit is very much maintainable. One such decision is reported in **AIR 1979 Madras 130 (Ponnuswami Gounder Vs. Rama Boyan and Others)**. In the said decision, it was held that where the contract was in favour of more than one person and if some of them are not willing to join as plaintiffs, the others could file a suit for specific performance of contract impleading those who are not willing, as plaintiffs and a person cannot be prevented from filing a suit merely because he is only a joint promisee and other promisees have refused to join him in filing the suit. Of course in the said decision, it has been held that the inter-se rights of the plaintiff and the unwilling joint promisee will have to be worked out separately. In this case, the defendants 1 and 2 had executed a joint mortgage in favour of the plaintiff and the third defendant. It also seen that the plaintiff and the third defendant are in joint possession of the suit property. Therefore even while sustaining the impugned judgment and decree, which have directed the execution of the sale deed conveying the suit property in its entirety in favour of the plaintiff, the right between the plaintiff and the third defendant will have to be worked out separately. The said issue is left open.

7.The second appeal is dismissed with the aforesaid observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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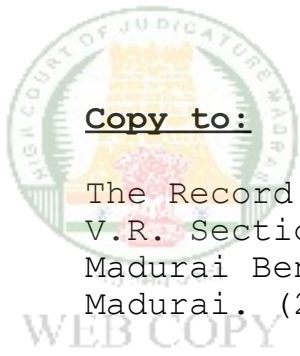
/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The II Additional Sub Judge,
Madurai.
- 2.The District Munsif,
Madurai Taluk,
Madurai.



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Madurai Bench of Madras High Court,
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+1 CC to M/s.A.SARAVANAN, Advocate (SR-9532[F] dated 02/03/2022)

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-9553[F] dated
02/03/2022)

+1 CC to M/s.T.R.SUBRAMANIAN, Advocate (SR-9837[F] dated 03/03/2022
)

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RD(29.03.2022) 4P 8C