



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

A.S. (MD) .No. 185 of 2019

1.A.Baskaran (Died)

2.B.Vijayalakshmi

3.B.Ananth

4.B.Ajitha Mini

[Appellants 2 to 4 are brought on record as LR's of the deceased sole appellant vide Court order, dated 30.11.2021.]

...Appellants/Plaintiffs

Vs.

1.C.Jeyasekar

2.N.Madaswamy

3.K.S.Geetha

...Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the Judgment and Decree, dated 01.02.2018 passed in O.S.No.136 of 2009 on the file of the learned District Judge, Kanyakumari District at Nagercoil, and allow the present appeal.

For Appellants :Mr.C.Sankar Prakash

For Respondents :No appearance

ORDER

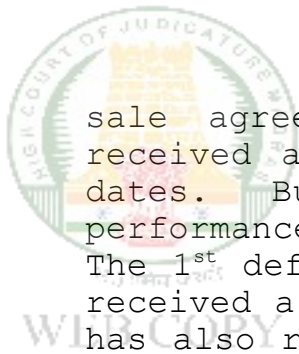
This Appeal Suit has been filed against the Judgment and Decree, dated 01.02.2018 in O.S.No.136 of 2009 passed by the learned District Judge, Kanyakumari District at Nagercoil.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The suit in O.S.No.136 of 2009 was filed by the deceased A.Baskaran/plaintiff on the file of the learned District Judge, Kanyakumari District at Nagercoil, for specific performance against the defendants and the said suit was dismissed on 01.02.2018. Aggrieved over the same, the appellants are before this Court.

4.Heard learned counsel appearing for the appellants. Eventhough, the names of the respondents were printed in the cause list, no one appeared on behalf of them. Perused the material documents placed on record.

5.The deceased A.Baskaran has filed a suit in O.S.No.136 of 2009 as a rank of plaintiff for specific performance against the 1st defendant, to direct him to execute sale deed on the basis of the



sale agreement, dated 01.04.2009. The 1st defendant has also received a sum of Rs.3 lakhs, as consideration, on two different dates. But, the plaintiff has filed the suit only for specific performance to execute the sale deed by the defendant Nos.1 to 3. The 1st defendant has admitted in his written statement that he has received a sum of Rs.3 lakhs as advance for the sale agreement. He has also ready to pay back the amount. Originally, the property is belongs to 2nd and 3rd defendants. They have entered into the sale agreement, dated 01.04.2009 with the 1st defendant. So, the 1st defendant has no rights to execute the sale deed and he has also ready to pay back the advance amount. But, the Court below has dismissed the suit that the plaintiff has not claimed any relief for the refund of advance amount.

6.In view of the foregoing reasons, this Appeal suit is allowed by setting aside the Judgment and Decree, dated 01.02.2018 in O.S.No.136 of 2009 passed by the learned District Judge, Kanyakumari District at Nagercoil. The 1st defendant is directed to refund the said sum of Rs.3 lakhs to the plaintiffs, with 6% interest, from the date of filing of the suit in O.S.No.136 of 2009 till the date of decree i.e., 01.02.2018, within a period of six months from the date of receipt of copy of the order. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The District Court,
Kanyakumari District at Nagercoil.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.SANKAR PRAKASH, Advocate (SR-3287[F] dated 01/02/2022)

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