



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.02.2022

DELIVERED ON : 04.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

WEB COPY

A.S.(MD)No.150 of 2018

and

C.M.P.(MD)No.8835 of 2018

1.M.Rajammal
2.M.Selvakumar
3.M.Ravisankar

...Appellants/Defendants 2,3&5

Vs.

1.A.Mahendran
2.Rajeshwari

...Respondent 1/Plaintiff
...Respondent 2/Defendant 4

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the judgment and decree, dated 19.08.2015 made in O.S.No.65 of 2013, on the file of the II Additional District Judge, Thoothukudi.

For Appellants : Mr.V.Meenakshi Sundaram for
Mr.G.Gomathi Shankar

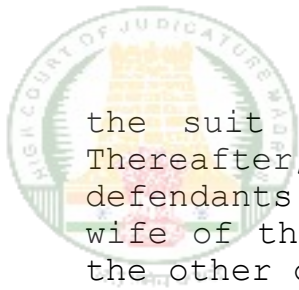
For R1 : Mr.A.Arumugam for Mr.R.Gandhi

For R2 : No appearance

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment of the learned II Additional District Judge, Tuticorin, dated 19.08.2015, made in O.S.No.65 of 2013.

2.The appellants are the defendants 2,3 and 5. The first respondent/plaintiff has filed the suit for specific performance on the basis of the sale agreement dated 21.12.2010 in respect of the suit properties belonged to the first defendant. It is pleaded that the first defendant agreed to sell the suit properties in favour of the plaintiff for a sale consideration of Rs.23,00,000/- and the plaintiff paid an advance amount of Rs.18,00,000/-. It is agreed between the plaintiff and the first defendant that the plaintiff should pay the balance sale consideration of Rs.5,00,000/- within a period of three years and get the sale deed registered in his favour. Since the first defendant did not execute the sale deed as agreed after receiving the balance sale consideration, the plaintiff has filed the suit for specific performance, after issuing legal notice. The first defendant was the sole defendant at the time when



the suit was filed. During the pendency of the suit, he died. Thereafter, his wife, sons and daughter were impleaded as the defendants 2 to 5. The fourth defendant, namely Rajeshwari is the wife of the plaintiff. The fourth defendant submitted to decree and the other defendants were set exparte.

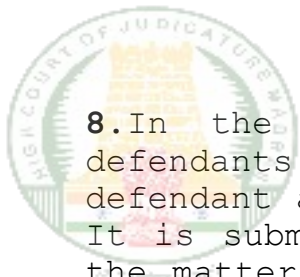
3. Even when the first defendant was alive, he did not make his appearance and contested the suit. The learned trial judge has passed an exparte decree by observing that the fourth defendant has submitted to the decree and the defendants 2,3 & 5 remained exparte. Since the fourth defendant being the wife of the plaintiff, she should be an interested party and there is no wonder wonder that she submitted to a decree.

4. Though the learned counsel for the appellant submitted that at the time of executing the sale agreement, the first defendant was suffering from cancer and he was in the house of the plaintiff and the sale agreement was not in support of any sale consideration. However these were not pleaded before the trial court.

5. On perusal of the judgment of the learned trial judge, it is seen that no issues have been framed with regard to the genuineness of the sale agreement. The issue could have been appreciated better if the defendants 2,3 and 5 had filed their written statement. If the appellants are allowed to contest the suit by way of filing the written statement, that will be helpful in the interest of substantial justice. But that can be done only if the suit is remanded to the file of the trial Court for fresh disposal.

6. It is learnt that subsequent to the decree, an execution petition was filed and the sale deed was also executed in favour of the plaintiff through Court. Since the first respondent/plaintiff had incurred expenses towards stamp duty and got the sale deed executed in his favour, the setting aside the decree and remanding the suit to the trial Court should not cause any loss to the first respondent/plaintiff. Hence, it is appropriate that the appellants should bear the cost of stamp duty expenses and other cost of execution proceedings. In feel that only on such conditions, the matter can be remanded to the trial Court for fresh disposal.

7. During the course of submission, the learned counsel for the appellant submitted that considering the extraneous circumstances and the liability to bear the stamp duty expenses and other costs of the execution proceedings, the Court fee paid on this appeal may be refunded. As per Section 67 of Court Fees Act, in the event of the suit is remanded in an appeal for fresh decision by the lower Court, the refund of the court fee paid on the memorandum of appeal can be allowed. However, if the remand was caused due to the fault of any of the parties, no refund of court fee should be allowed.



8.In the case on hand, the parties are family members. The defendants 2,3 & 5 are the wife and children of the deceased first defendant and the plaintiff is the husband of the fourth defendant. It is submitted by the learned counsel for the appellants that if the matter is remanded to the trial court, it would be helpful for the parties to work out a settlement. In such circumstances, remanding the matter by setting aside the decree would help the parties to stand on a better level playing field for making negotiations. In the extraneous circumstances of the case and for encouraging settlement, I feel refund of court fee should be allowed.

9.In the result, the Appeal is disposed and the judgment of the learned II Additional District Judge, Thoothukudi in O.S.No.65 of 2013, dated 19.08.2015, is set aside and the matter is remitted back to the file of the II Additional District Court, Thoothukudi for fresh disposal, after giving an opportunity to the defendants 2, 3 & 5 to file their written statements, on the condition that the appellants deposit the stamp duty expenses and other cost of the Execution Proceedings in the account of the trial court within a period of two weeks from the date of receipt of the copy of this order. And in the event of such deposit made, the respondent is at liberty to withdraw the same by making proper application before the trial court. Refund of court fee paid on this appeal is also permitted. It is needless to state that if the appellants/defendants 2,3 & 5 do not comply the above condition, the appeal will stand dismissed automatically. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

To

1.The II Additional District Judge,
Thoothukudi.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)



copy to

The Sub Assistant Registrar,

C.O. Section,

Madurai Bench of Madras High Court, Madurai.

(for refund of Court Fee purpose)

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-10070[F] dated
04/03/2022)

Judgment made in
A.S. (MD) No.150 of 2018
and C.M.P. (MD) No.8835 of 2018
04.03.2022

SVS (CO)

TR(01.04.2022) 4P 6C