



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A(MD)No.218 of 2017

and

CMP(MD) No.4399 of 2017

Chinnammal (died)

Murugesan ...Appellant/second Appellant/second Plaintiff
-vs-

1.Rajammal

2.Loganathan ... Respondents/Respondents/Defendants

(Cause title accepted vide Court order
dated 22.09.2016 made in CMP(MD)
No.7279 of 2016 in SA(MD) SR.No.48837/2011)

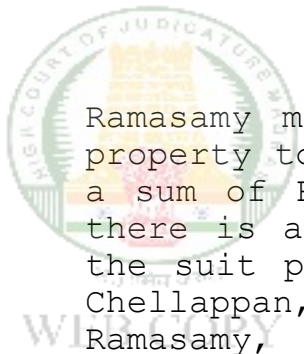
Prayer :- The second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.177 of 2006 dated 24.08.2010 on the file of the Principal Subordinate Judge, Tiruchirappalli in confirming the judgment and decree in O.S.No.386 of 1998 dated 13.12.2005 on the file of the District Munsif Court, Musiri.

For Appellant : Mr.V.Raghavachari
For Respondents : Mr.K.Kovindarajan

JUDGMENT

This Second Appeal is filed to set aside the judgment and decree passed in A.S.No.177 of 2006 dated 24.08.2010 on the file of the Principal Subordinate Judge, Tiruchirappalli in confirming the judgment and decree in O.S.No.386 of 1998 dated 13.12.2005 on the file of the District Munsif Court, Musiri.

2.The case of the plaintiffs is that the suit property was originally owned by the deceased first defendant - Ramasamy and he had entered into a sale agreement with one Chellappan, who is the husband of the first plaintiff and father of the second plaintiff. In pursuance of the sale agreement, Chellappan took possession of the property and was in enjoyment. The said Chellappan died on 18.11.1997. The plaintiffs are the legal heirs of the deceased Chellappan. According to the plaintiffs, the said Ramasamy sold the property to Chellappan for a sum of Rs.2,700/- in the year 1968. The Chellappan was in possession of the property. There was a conflict arose between the Chellappan and Ramasamy in the year 1991. So, by virtue of Ex.A1, dated 30.01.1991 both Chellappan and the



Ramasamy mutually agreed that the Chellappan would hand over the property to the first defendant. In turn, the said Ramasamy to pay a sum of Rs.2,700/- within a period 90 days. In the event, if there is a failure to repay the same, the Ramasamy has to return the suit property to the said Chellappan. After the death of the Chellappan, the defendants, who are the legal heirs of the said Ramasamy, refused to return the property to the plaintiffs. Therefore, legal notices were issued on two occasions i.e., 27.11.1995 and 11.11.1998. Since there was no reply from the said Ramasamy, the present suit came to be filed, by the legal heirs of the said Chellappan.

3.The defendants filed a written statement stating that there was no agreement entered into between the deceased Chellappan and Ramasamy and they denied the execution of Ex.A1. The deceased Chellappan had not purchased the suit property under an oral sale in the year 1968 for a sum of Rs.2,700/- and the possession was not at all handed over to him. Further Ex.A1 cannot be construed as a sale agreement. Therefore, there is no merit in the suit and the suit is liable to be dismissed.

4.Before the trial Court, during trial, on the side of the plaintiffs, one witness was examined as P.W1 and eleven documents were marked as Ex.A1 to A11. On the side of the defendants, one witness was examined as DW1 and ten documents were marked as Ex.B1 to Ex.B10.

5.The trial Court, after considering the submissions made by both the parties, came to the conclusion that Ex.A1 is not a sale agreement. Therefore, the plaintiffs are not entitled for any relief of specific performance. Furthermore, the suit is also dismissed on the ground of limitation. Admittedly, the defendants are in possession of the property. Therefore, the trial Court came to the conclusion that they have supposed to have filed the present suit within three years, but the suit came to be filed on 14.11.1998. Aggrieved over the judgment and decree, the appellants herein filed an appeal in A.S.No.177 of 2006 before the Principal Subordinate Judge, Tiruchirappalli. The appellate Court also dismissed the appeal on the ground that the suit is barred by limitation as well as Ex.A1 is not at all a sale agreement and it cannot be construed as a sale agreement. Aggrieved over the said judgment and decree, the second appeal has been filed suggesting the following substantial question of law:-

(i) Is it correct that the Courts below dismissed the suit and discharge the liability of the respondents to execute the sale deed in favour of the plaintiff as per oral agreement between the parties by mere execution of Ex.A1?

(ii) Is it correct the Courts below dismissed the suit in entirety on the misconception of the facts that



the plaintiffs claimed the specific performance of contract under Ex.A1 but not under oral agreement?

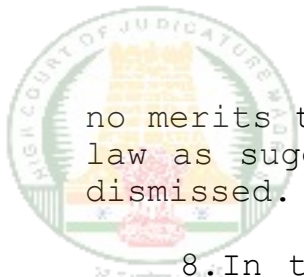
(iii) Is it correct that the Courts below dismissed the suit on the ground of limitation, when the time is not essences of the contract between the parties?

(iv) Is it correct that the Courts below had dismissed the suit on the ground that the revenue records not mutated in name of plaintiff after delivery of physical possession without transfer of title by the defendant?

(v) Whether the Courts below are right in not considering Art.54(2) of Limitation Act?

6.The contention of the appellants is that in the year 1968, the oral sale contract was made between deceased first defendant and Chellappan. The said Chellappan paid a sum of Rs.2,700/- as sale consideration. But the sale agreement is not registered and no sale deed was executed. When there was a conflict between the deceased first defendant and the Chellappan in the year 1991, Ex.A1 was executed. According to the plaintiffs, it is a sale agreement. A perusal of the said document would make it clear that the Chellappan had agreed to hand over the property to the deceased first defendant. In turn, first defendant has to pay a sum of Rs.2,700/- within a period of 90 days. If he failed to pay a sum of Rs.2,700/-, he has to return the property to the Chellappan. Therefore, the cause of action arose immediately on the expiry of 90 days from the date of execution of Ex.A1. In the present case, the suit was filed on 14.11.1998. Therefore, the Courts below had rightly dismissed the suit on the ground of limitation. The appellants supposed to have filed the present suit within a period of three years from the date of expiry of 90 days and admittedly, no suit was filed. Therefore, the dismissal of the suit by both the Court below on the ground of limitation is right and I do not find any infirmity on that aspect.

7.With regard to the relief of specific performance, the appellant/plaintiff heavily relied upon Ex.A1 and contended that it was a sale agreement between the parties. A perusal of the content of the sale agreement, it would appear that the first defendant has to pay a sum of Rs.2,700/- within a period of 90 days from the date of agreement. In the event of failure, the first defendant has to return the property to Chellappan. First of all, Ex.A1 has been disputed by the defendants, even assuming it was legally executed. At any cost, it cannot be construed as a sale agreement, but it was an understanding between the parties to pay a sum of Rs.2,700/-, that too, the same was not proved in the manner known to law. The Court below also came to a conclusion that Ex.A1 is not at all a sale agreement and also not proved in the manner known to law. Therefore, the suit was dismissed by both the Court below. I am also concurred with the finding of both the Court below and I find



no merits to admit the second appeal on the substantial questions of law as suggested by the appellant. Hence, the same is liable to be dismissed.

8.In the result, this Second Appeal is dismissed by confirming the concurrent Judgments and decrees passed by the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

To

1.The Principal Subordinate Judge,
Tiruchirappalli.

2.The District Munsif,
Musiri.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-21820[F]
dated 27/04/2022)

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-22323[F] dated 28/04/2022)

S.A(MD)No.218 of 2017

Dated: 27.04.2022

DKS (CO)

GC(02.06.2022) 4P 7C