



S.A.No.124 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.124 of 2021

and

C.M.P.No.2568 of 2021

1. A.Vedagiri
2. V.Kannan
3. V.Vedachalam
4. Rani

... Appellants

Vs.

K.Parthasarathy

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 20.02.2020 in A.S.No.10 of 2018 on the file of the District and Sessions Court No.II, Kanchipuram, and confirming the judgment and decree dated 30.08.2017 in O.S.No.62 of 2007 on the file of the Subordinate Court, Kanchipuram and allow the present second appeal.

For appellants : Mr.K.A.Ravindran

For respondent : Mr.T.Dhanyakumar

JUDGMENT

The defendants who have concurrently lost before the Courts



below, have filed the above second appeal, challenging the judgment and decree dated 20.02.2020 in A.S.No.10 of 2018, in and by which, the learned District and Sessions Judge, Kanchipuram, dismissed the appeal filed by the defendants, against the judgment and decree dated 30.08.2017 in O.S.No.62 of 2007 on the file of the Subordinate Court, Kanchipuram.

2. The brief facts of the case are set out hereinbelow and the parties are referred to in the same array as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff sought for specific performance of agreement of sale dated 22.11.2006. It is the case of the plaintiff that the defendants who are the absolute owners of the suit schedule property had entered into a registered sale agreement with him on 22.11.2006 agreeing to sell the suit schedule property for a sale consideration of Rs.3,50,000/-. On the date of the agreement, a sum of Rs.2,50,000/- was paid by the plaintiff and the balance was payable within a period of



4 months from the date of the sale agreement.

WEB COPY

2.2. It is the case of the plaintiff that he was always ready and willing to pay the balance sale consideration and it was the defendants who were evading to receive the balance and perform their part of the contract. This constrained the plaintiff to issue a legal notice on 12.03.2007 calling upon the defendants to fix the date, time and place for performance of their part of the contract. Though they received the notice, they have not chosen to reply or comply with the contract. Therefore, the suit in question was filed by the plaintiff.

2.3. The defendants, on entering appearance, filed a written statement *inter alia* contending that the plaintiff has not come forward to execute the sale deed. The suit property is a joint family property for which the defendants 1 to 4 only had a 1/3rd share. The other 2/3rd share belonged to other owners and without effecting a partition, the defendants could not sell their shares. Further, the other legal heirs had not co-operated either for partition or for sale of their 1/3rd share. The



defendants had been requesting the plaintiff to pay the balance sale consideration and to execute the sale deed. However, the plaintiff was the one who was evading and neglecting.

2.4. The defendants had filed an additional written statement *inter alia* contending that there was a suit for partition in O.S.No.60 of 1991 pending on the file of the District Munsif Court, Chengalpattu, which was decreed and final decree proceedings had been initiated by the defendants and an Advocate Commissioner was appointed in I.A.No.32 of 1999 who had also filed his report suggesting modes of division. Pursuant to this report, the final decree also came to be passed on 19.08.2008.

2.5. However, the other legal heirs are not co-operating for effecting the partition of the plaintiff's 1/3rd share. In these circumstances, the defendants were unable to sell their share and complete their obligation. Further, the plaintiff who had entered into an agreement for 1/3rd share has filed the suit for the entire property.



Further, partition can be effected only if all legal heirs are included.

WEB COPY

TRIAL COURT:

3. The learned Sub Judge had framed the following issues:

“(i)Whether the plaintiff is entitled to a decree of specific performance of contract against the defendants as prayed for?

(ii)To what other relief the plaintiff is entitled to ?”

3.1. An additional issue was also framed as to “Whether the plaintiff is entitled to specific performance of contract with regard to 'B' schedule property.”

4. The learned Judge, on detailed consideration of the evidence on record, decreed the suit and directed the defendants to perform the contract in respect of the suit schedule property within 2 months, aggrieved by which, the defendants had filed A.S.No.10 of 2018 on the file of the District and Sessions Court, Kanchipuram,



which also confirmed the judgment and decree of the Trial Court, against which, the present second appeal is filed.

5. It is challenging this concurrent judgment and decree of both the Courts below that the defendants before this Court.

DISCUSSION:

6. The sale agreement was executed and advance payment was made only with reference to the undivided 1/3rd share, Mr.K.A.Ravindran, learned counsel appearing for the appellants/defendants would also make his submissions that since the defendants getting land in excess of what was agreed. However, there is no registered agreement for the excess land and the value of the land is a sum of Rs.1400/- per cent. Therefore, he would submit that the respondent/plaintiff has to also pay for excess land and only then, he would be entitled to have the sale deed executed in his favour.

7. Mr.T.Dhanyakumar, learned counsel for the respondent/plaintiff stoutly refuted this contention and submitted that



the suit has been filed in respect of the agreement of sale executed between the plaintiff and the defendants. The agreement itself is for undivided 1/3rd share and the price has been agreed for this 1/3rd share. Further, final decree has been granted and all the sharers have been allotted their respective shares.

8. Heard the learned counsels.

9. The agreement of sale entered into between the plaintiff and the defendants. It is with reference to a 1/3rd share out of the extent of 8.25 acres and in the final decree proceedings also, it is this extent that has been allotted to the defendants and being the agreement holder, the plaintiff is entitled to that extent. The argument that the plaintiff has to pay compensation for the enhanced area has not been proved by the defendants. The other contention of the defendants is that the plaintiff has not proved his readiness and willingness. On the contrary, the plaintiff has not only proved his case but the defendants have themselves admitted the agreement. The suit is also not belatedly



S.A.No.124 of 2021

instituted since the plaintiff has come forward with this suit before the end of the 4 months period given in the agreement.

10. Consequently, the judgment and decree passed by both the Courts below are upheld and I see no reason to disagree with the concurrent findings of the Courts below, particularly, when the appellants do not contemplate any question of law much less a substantial question of law.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.

16.11.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The District Judge,
Kanchipuram.

2. The Sub Judge,
Kanchipuram.

3. The Section Officer, V.R. Section, High Court, Madras.

8/9



WEB COPY



S.A.No.124 of 2021

P.T.ASHA, J.,

ssa

S.A.No.124 of 2021
and
C.M.P.No.2568 of 2021

16.11.2023