



S.A.No.813 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 17.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.813 of 2023

and

C.M.P.No.25463 of 2023

Thanjappan

... Appellant/Plaintiff

Vs

Chinnaraji

... Respondent / Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 25.11.2021 made in A.S.No.42 of 2011 on the file of the Subordinate Judge, Vaniyambadi partly allowed the Judgment and Decree dated 02.03.2015 made in O.S.No.84 of 2013 on the file of Additional District Munsif Court, Vaniyambadi.



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For Appellant : Mr.R.Ramesh

JUDGMENT

The plaintiff who has been unsuccessful before both the Courts below has preferred the above second appeal.

2. The facts culminating in the filing of the above second appeal are herein below set out briefly and the parties are referred to in the same ranking as before the trial Court.

3. The plaintiff has filed the suit O.S.No.84 of 2014 on the file of the Additional District Munsif, Vaniyambadi seeking specific performance of contract against the defendant.

4. It is the case of the plaintiff that he had entered into an agreement of sale with the defendant for the sale of the defendant's



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property described in the schedule to the suit. The sale consideration was fixed at a sum of Rs.78,200/- and an advance of Rs.10,000/- was paid on 13.06.2007. The agreement was that the sale deed would be executed within a period of 3 months. The plaintiff would submit that though he has been ready and willing to proceed with the agreement, the defendant was evading to perform his part of the contract. Thereafter, on 18.06.2010, the defendant had received a further sum of Rs.5,000/- and an endorsement to this effect has been made. The plaintiff had issued a notice on 28.11.2011 calling upon the defendant to execute the sale deed dated on 07.12.2011. However, the defendant has not obliged the request.

5. The defendant had filed a written statement *inter-alia* denying the very agreement and contending that he had never agreed to sell his property. He had submitted that the agreement was a false and forged agreement and the endorsement is barred by limitation.



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Therefore, he prayed that the suit be dismissed.

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6.The trial Court had framed the following issues:

(i) Whether the suit sale agreement is real and valid?

(ii) Whether the plaintiff is entitled for the relief of specific performance of agreement dated 13.06.2007?

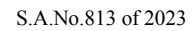
(iii) Whether the endorsement dated 18.06.2010 is forged one?

(iv) To what relief the plaintiff is entitled?

7. The plaintiff had examined himself as P.W.1 and one Nandakumar as P.W2 and Exs.A1 to A3 were marked. The defendant had examined himself as D.W1 and no documents were marked on his



8. The learned Additional District Munsif, Vaniyambadi on considering the evidence both oral and documentary came to the conclusion that the agreement was a fabricated and forged one and that the agreement contains certain insertions. However, the Court below has taken note of the evidence of P.W2 who had deposed to the execution of the agreement by the defendant. However, the Court below had dismissed the suit on the ground that the alleged endorsement on 18.06.2010 is beyond the period of limitation as the agreement was to be executed on or before 13.09.2007 whereas the endorsement itself has been made only on 18.06.2010 and this endorsement has been refuted by the plaintiff. The suit has been filed only in the year 2013. Ultimately, the suit came to be dismissed. Aggrieved by the said judgment and decree, the plaintiff had filed A.S.No.42 of 2017 on the file of the Subordinate Judge, Vaniyambadi.





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plaintiff is a sum of Rs.68,200/-. So even after the period of three years, the plaintiff has not come forward to pay the balance sale consideration. On the contrary, a sum of Rs.5,000/- is alleged to have been paid on 18.06.2010, i.e 5 days after the period of three years. This clearly shows that the plaintiff has not proved his readiness and willingness and the Courts below have rightly dismissed the suit. I see no reason to reverse the judgment passed by the Courts below. Further, no substantial question of law has been made out by the appellant / plaintiff. Accordingly, the second appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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



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P.T.ASHA, J.,

srn

To

1. The Subordinate Judge,
Vaniyambadi
2. The Additional District Munsif Court,
Vaniyambadi.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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