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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2023

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.85 of 2023
and
CMP No. 2804 of 2023

A.Veerappan
S/o.Amavasai Gounder ....Appellant

Vs

D.Bhoologam
S/o.Damodharan .... Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 19.04.2022 made in A.S.No.34 of 2015 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu, confirming the decree and judgment dated 30.06.2014 made in O.S.No.80 of 2009 on the file of the Subordinate Judge at Madurantakam.

For Appellant : Mr.T.Ganesan

JUDGMENT

This Second Appeal is directed as against the Judgment and Decree dated 19.04.2022 passed in A.S.No.34 of 2015 on the file of the

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Principal District Judge, Kancheepuram District at Chengalpattu, confirming the Judgment and Decree dated 30.06.2014 passed in O.S.No.80 of 2009 on the file of the Subordinate Judge at Madurantakam, thereby allowing the suit for specific performance.

2. The appellant is the defendant in the suit filed by the respondent herein for specific performance. The case of the respondent is that the respondent had entered into an agreement for sale and in order to sell the property for a total sale consideration of Rs.2,20,000/- and received a sum of Rs.2,00,000/- as advance. The remaining amount has to be paid at the time of execution of sale. The respondent is always ready and willing to pay the balance amount but the appellant has been demanding more money, hence the respondent paid Rs.1,00,000/- on 16.05.2007 and another sum of Rs.10,000/- on 16.06.2007 and Rs.18,000/- on 16.07.2007. Thus, the respondent had paid full amount as agreed by him. The appellant herein failed to perform his part of the contract. Hence, the suit.

3. The appellant resisted the suit and filed written statement stating that the appellant never had intention to sell the suit property and that he has not entered into any agreement for sale. It was only a loan transaction. At the time of execution of lease deed,

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conveniently the respondent forged an agreement for sale and registered the same. That apart, in the year 2005, the respondent approached the appellant requesting to lease out the suit premises for his business purpose. Therefore, a sum of Rs.60,000/- was fixed as lease amount for six years. The appellant signed in the document under the impression that the said document is a lease deed. Thereafter, he came to know that the respondent had cheated him and obtained his signature sale agreement instead of lease deed. The property was worth about Rs.20,00,000/-. However, now the respondent intended to sell the entire property for a very meagre amount. Further the appellant is the absolute owner of the total extent of 15 ½ cents comprised in Survey No.767/2 in which the appellant already had sold as extent admeasuring 0.05 cents by registered sale deed dated 14.02.2001 in favour of one Muthukumar. In turn the said Muthukumar executed the sale deed in favour of one Sangeetha on 12.05.2011. Therefore, the agreement for sale itself is void and it cannot be executed.

4. Based on the pleadings, the Trial Court framed the following issues :-

(i) Whether the suit agreement for sale is true, valid and executed by the defendant ?

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(ii) Whether the suit agreement for sale has been obtained by plaintiff from the defendant, by mis-representation ?

(iii) Whether the plaintiff is entitled to specific performance of contract ?

(iv) To what other relief ?

5. On the side of the respondent, he had examined P.Ws.1 & 2 and marked Exs.A1 to A5. On the side of the appellant, he had examined D.Ws.1 & 2 and marked Exs.B1 to B2.

6. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit. Aggrieved by the same, the appellants preferred an appeal in A.S.No.34 of 2015 before the Principal District Judge, Chengalpattu and the same was also dismissed and the Judgment and Decree of the Trial Court was confirmed. Aggrieved by the same, the present second appeal.

7. The learned counsel for the appellants has raised the following substantial questions of law:

(i) Whether Judgment and Decree are legally sustainable in as much, when the suit for specific performance arose based on the unenforceable, agreement for sale as the extent of property is wrong ?

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(ii) Whether Judgment and Decree of Courts below are legally sustainable in as much as no evidence was adduced or produced by the respondent/plaintiff to show that his demand for execution of sale agreement was denied and ignoring that there was no cause of action for the suit ?

(iii) Whether Judgment and Decree of Courts are legally sustainable in as much as when the sale consideration has been re-fixed at the request of the appellant/defendant, the earlier contract is enforceable by law ?

(iv) Whether Judgment and Decree of Courts below are legally sustainable in as much as when the sale consideration has been refixed, the suit for specific performance would arise based on unenforceable agreement for sale ?

8. Heard, Mr.T.Ganesan, the learned counsel appearing for the appellant and this Court considered the submission made by the learned counsel for the appellant.

9. The learned counsel appearing for the appellant would submit that the total extent of land is admeasuring 15 ½ cents, in which, already in the year 2001, the appellant executed the sale deed in favour of one Muthukumar in respect of 5 cents, which was marked as Ex.P1. In turn, the said Muthukumar executed the sale deed in favour of one Sangeetha

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on 12.05.2011. Therefore, the agreement for sale itself is void and it cannot be executed at any costs. It was only a loan transaction between the appellant and the respondent and utilising the illiteracy of the appellant, the respondent had executed the agreement for lease as a sale agreement. Unfortunately, both the Courts below failed to consider the same and decreed the suit.

10. A perusal of the records reveals that the appellant had executed an agreement for sale dated 18.04.2005 and the same was registered one. Accordingly, the total sale consideration is fixed as Rs.2,20,000/- in which on the same day, he received a sum of Rs.2,00,000/- as advance. Further, the appellant demanded to pay a sum of Rs.1,00,000/- and accordingly, the respondent had paid a sum of Rs.1,00,000/- on 16.05.2007 and a sum of Rs.10,000/- was paid on 16.06.2007. Further a sum of Rs.18,000/- was paid in favour of the appellant herein. From time to time, his signature was also found in the endorsement and the subsequent endorsement was marked as Exs.A2 to A4. Originally the sale deed was marked as Ex.A1. Subsequently, the total extent of property is 15 ½ amended by the respondent before the Trial Court as 10 ½ cents instead of 15 ½ cents. Therefore, the respondent proved his case.

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11. As such the Courts below have analyzed the evidences adduced by the parties, both documentary and oral in detail, and by giving cogent reasons, concluded rightly and decreed the suit and directed the appellant to execute the sale deed in favour of the respondent herein. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 19.04.2022 made in A.S.No.34 of 2015 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu, confirming the decree and judgment dated 30.06.2014 made in O.S.No.80 of 2009 on the file of the Subordinate Judge at Madurantakam, are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

13.02.2023

Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes / No

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To

1. The Principal District Judge,
   Principal District Court, Chengalpattu

2. The Subordinate Judge,
   Subordinate Court,
   Madurantakam.

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G.K.ILANTHIRAIYAN, J.

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