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A.S.No.673 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.673 of 2019

Kalairani

... Appellant

Vs.

1.Suresh Raja

2.Maheshwaran

... Respondents

Prayer: Appeal Suit is filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, to set aside the judgment and decree dated 29.03.2019 in regard to the alternative prayer of return of advance amount, made in O.S.No.322 of 2013 on the file of the III Additional District and Sessions Court, Tiruppur at Dharapuram.

For Appellant : Mr.M.Guruprasad

For R1 : Mr.A.K.Sridharan

For R2 : No Appearance



J U D G M E N T

The Appeal Suit is filed against the judgment and decree dated 29.03.2019 passed in O.S.No.322 of 2013.

2. The appellant is the 1st defendant in O.S.No.322 of 2013 and 1st respondent is the plaintiff, who instituted a Suit for Specific Performance based on the suit sale agreement dated 07.06.2013. The plaintiff had stated that the suit mentioned property is situated in Sithravuthampalayam Village, Dharapuram Taluk, which is self acquired properties of one Mr.Balasubramaniam, who is the father of the defendants in the Suit. As per the Sale Deed dated 02.03.1994, the said Balasubramaniam was in possession and enjoyment of the suit properties and agreed to sell the properties to plaintiff for a sale consideration of Rs.29,00,000/- and registered a sale agreement, which was executed on 07.06.2013. The plaintiff paid Rs.7,00,000/- towards advance of sale agreement and the time of completion of sale was three months from the date of suit sale agreement.

3. On 12.09.2013, the said Balasubramaniam, who entered into a sale agreement with the plaintiff died leaving the defendants 1 and 2 as his legal



heirs. Now the defendants are in possession and enjoyment of the suit schedule properties. The plaintiff demanded the defendants 1 and 2 to receive the balance sale consideration of Rs.22,00,000/- and execute the Sale Deed in favour of the plaintiff, since the defendants had evaded the execution of the Sale Deed. The 1st defendant filed a Suit in O.S.No.184 of 2013 to declare the unilateral cancellation of Settlement Deed executed by her father is null and void.

4. As far as the said O.S.No.184 of 2013 is concerned it was re-numbered as O.S.No.286 of 2016 and the Suit was decreed in favour of the plaintiff in that Suit. Therefore, the cancellation deed executed by the said Balasubramaniam was declared as null and void and consequently, the 1st defendant is entitled for the suit schedule property based on the settlement deed executed by his father Balasubramaniam.

5. The defendants filed a written statement denying the plaint averments. The main contention raised in the written statement is that the said Balasubramaninan father of the defendants had no saleable right at the time of execution of the suit sale agreement on 07.06.2013, since he



executed a settlement deed in favour of the 1st defendant prior to the suit sale agreement. The advance amount received by the said Balasubramaniam to the tune of Rs.7,00,000/- was also denied in the written statement.

6. The Trial Court based on the pleadings between the parties framed the following issues:

Issues : 322/2013:

1. *Whether the suit properties are separate property of he deceased Balasubramaniam?*
2. *Whether Balasubramaniam had right over the suit properties to enter into sale agreement?*
3. *Whether the plaintiff was in readiness and willingness to perform the sale?*
4. *Whether the plaintiff is entitled to get the decree of specific performance or alternative prayer as prayed for with costs?*
5. *What other reliefs the plaintiff entitled for?*

7. Regarding issue No.1, whether the suit properties are separate property of the deceased Balasubramaniam. The Trial Court found that the said Balasubramaniam purchased the property in the year 1994 and it was a self acquired property. The property was absolutely separate property of the



deceased Balasubramaniam and therefore, there was no impediment to decide the rights between the plaintiff and the defendants.

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8. Regarding the right of the said Balasubramaniam to enter into a suit sale agreement, the Trial Court elaborately considered the suit sale agreement Ex.A1 document and found that the said Balasubramaniam executed the suit sale agreement with the plaintiff and registered the same in the Sub-Registrar's Office by receiving the advance amount of Rs.7,00,000/- In this regard, the Trial Court found that the deceased Balasubramaniam agreed to sell the suit property for a total consideration of Rs.29,00,000/- to the plaintiff and entered into a sale agreement on 07.06.2013, which was registered. He received a sum of Rs.7,00,000/- towards advance sale consideration amount from the plaintiff. The period for execution of sale was three months. Unfortunately the said Balasubramaniam died on 12.09.2013.

9. Importantly, one of the attestor, who signed as witness in the Ex.A1 suit sale agreement also examined as PW2, who has deposed that he knows that the payment made by Sureshraj to Balasubramaniam was



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towards advance sale consideration and both the plaintiff and the deceased Balasubramaniam entered into sale agreement on 07.06.2013. Relying on the deposition PW2, who is one of the attestor in the Ex.A1 document, the Trial Court arrived at a conclusion that the said Balasubramaniam and the plaintiff entered into a sale agreement on 07.06.2013 and the proposed vendor has received a sum of Rs.7,00,000/- towards advance sale consideration. Though the 1st defendant had contended that the sale agreement was sham and nominal and no consideration was passed on, defendants had failed to disprove the Ex.A1 through relevant material evidence. Thus, the Trial Court relied on the deposition of the PW2, who signed as witness in the Ex.A1 document and arrived at a conclusion that the suit sale agreement was entered into between the deceased Balasubramaniam and the plaintiff and the deceased Balasubramainam has received a sum of Rs.7,00,000/- towards advance sale consideration from the plaintiff. However, the Trial Court rightly formed an opinion that the said deceased Balasubramaniam had no saleable right on the suit property, since he executed a settlement deed in favour of the 1st defendant prior to suit sale agreement Ex.A1 document.



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10. In view of the above discussion, the Trial Court further considered, whether the plaintiff is entitled for alternate relief for refund of the advance amount of Rs.7,00,000/-, which was received by the none other than the father of the 1st defendant during his life time pursuant to the suit sale agreement, which was a registered document marked as Ex.A1. The Trial Court with reference to the decision arrived regarding the registration of suit sale agreement and passing on the advance sale consideration, which has been confirmed through the deposition of PW2, held that the plaintiff is entitled for the alternate relief for refund of the advance amount of Rs.7,00,000/- with interest

11. The learned counsel for the appellant mainly contended that passing on the advance sale consideration was not established by the plaintiff before the Trial Court and therefore, the Trial Court has committed an error in granting alternate relief for refund of advance amount.

12. The learned counsel for the 1st respondent / plaintiff objected the said contention by stating that the Trial Court categorically found that PW2 one of the attestor, who signed as witness in Ex.A1, deposed before the



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Trial Court that the plaintiff Sureshraj has given a sum of Rs.7,00,000/- towards advance to the deceased Balasubramaniam and a suit sale agreement was registered on 07.06.2013. When the attestor, who signed as a witness in the Ex.A1 document deposited before the Trial Court, the said deposition was not disproved by the defendants in the Suit through any document or through oral evidence. That being the factum, the Trial Court is right in granting the alternate relief for refund of the advance amount and there is no infirmity.

14. This Court is of the considered opinion that the deposition of PW2 relied on by the Trial Court for arriving at a conclusion that the suit sale agreement was registered and that the deceased Balasubramainam received an advance sale consideration of Rs.7,00,000/- deserves no interference, since the factum regarding the registration of suit sale agreement and passing on the advance sale consideration was not disproved by the defendants.

15. Thus, this Court do not find any infirmity in respect of the alternate relief granted by the Trial Court for refund of advance amount of



Rs.7,00,000/- to the plaintiff pursuant to the suit sale agreement Ex.A1 document.

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16. Accordingly, the judgment and decree dated 29.03.2019 passed in O.S.No.322 of 2013 stands confirmed and consequently, the Appeal Suit in A.S.No.673 of 2019 is dismissed. No costs.

17. The appellant and the 2nd respondent are directed to settle the advance amount of Rs.7,00,000/- along with the interest as decreed by the Trial Court within a period of three (3) months from the date of receipt of a copy of this order.

28.02.2023

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes

To

The Judge,
III Additional District and Sessions Court,
Tiruppur,
Dharapuram



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A.S.No.673 of 2



S.M.SUBRAMANIAM, J.

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