



WEB COPY



S.A.No.183 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.183 of 2017
and
CMP.No.3852 of 2017

1.Mariyappan
2.Jayalakshmi
3.Manimegalai
(R2 & R4 transposed as appellants
2 & 3 vide Court order dated 19/04/2022
made in CMP.No.6781 of 2022 in
S.A.No.183 of 2017)

... Appellants

Vs.

1.Sakthivel
2.Jayalakshmi
(Transposed as 2nd appellant)
3.Mallika
4.Manimegalai
(Transposed as 3rd appellant)

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 10.08.2016 made in



S.A.No.183 of 2017

A.S.No.14 of 2013 on the file of the Additional District Court, Namakkal, confirming the judgment and decree dated 29.02.2012 made in O.S.No.412 of 2010 on the file of the Sub-Court, Namakkal.

For Appellants : Mr.V.Perumal
For Respondents : Mr.C.Jagadish for R1
R2 to R4 – No appearance

JUDGMENT

The Second Appeal was originally filed by the unsuccessful first defendant in the suit. Later on defendants 2 & 4 who were arrayed as respondents 2 & 4 in the Second Appeal have been transposed as appellants 2 & 3. The first respondent herein filed a suit for specific performance of agreement dated 06.06.2005 entered between him and the other parties in the Second Appeal. The suit was decreed by the trial Court and the appeal filed by the first appellant was dismissed. Aggrieved by the same, the appellants are before this Court.

2. According to the first respondent, he entered into the suit sale agreement on 06.06.2005 with the appellants and other respondents for



S.A.No.183 of 2017

purchase of the property covered under agreement for a sale consideration of Rs.6,45,000/-. On the date of agreement itself an advance of Rs.4,00,000/- was paid to the agreement vendor and the balance amount was agreed to be paid within a period of one year. Later on 24.05.2006, the first respondent paid a sum of Rs.45,000/- towards balance sale consideration and obtained endorsement on the back side of the agreement. It was further averred that during June 2006, the first respondent paid a further sum of Rs.25,000/- to the agreement vendor and that the first respondent is ready and willing to perform his part of contract and get the sale deed executed, but the agreement vendor evaded the request and therefore, the pre-suit notice was issued on 04.06.2007 calling upon them to complete sale transaction after receiving balance sale consideration. The agreement vendor/defendants sent a reply denying of execution of suit agreement and contended that it was executed as a security for loan transaction. In these circumstances, the first respondent was constrained to file a suit for specific performance.

3. The appellants and other respondents, who were arrayed as defendants in the suit, filed a written statement and denied the execution of suit sale agreement. According to them the first appellant borrowed a sum of



S.A.No.183 of 2017

Rs.2,00,000/- to meet medical expenses of his wife and as a security for proper repayment, he signed 10 rupees blank stamp papers and green papers and the same could have been used by the first respondent to file a suit.

4. It was further averred by the appellants and the other respondents/defendants that the actual value of the sale agreement mentioned property would be Rs.5,00,000/- per acre and therefore, there is no occasion for them to enter into sale agreement for a sum of Rs.6,45,000/-. On these grounds the appellants and other respondents sought for dismissal of the suit.

5. Before the trial Court, the first respondent was examined as PW1 and attestors to the suit sale agreement have been examined as PW2 and PW3. On behalf of the first respondent, 7 documents were marked as Ex.A1 to Ex.A7. On behalf of the defendants, the first appellant was examined as DW1 and no documentary evidence was let in by the defendants.

6. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that due execution of suit sale agreement was proved and hence, the first respondent was entitled to



S.A.No.183 of 2017

decree for specific performance. Aggrieved by the same, the first appellant alone preferred an appeal in A.S.No.14 of 2013 on the file of the Additional District Court, Namakkal. The first Appellate Court concurred with the findings of the trial Court. Aggrieved by the same, the first appellant has come up with this Second Appeal. After numbering of the Second Appeal, the respondents 2 and 4 were transposed as appellants 2 & 3.

7. The learned counsel for the appellants submitted that the suit sale agreement is only a security for loan transaction and therefore, the first respondent is not entitled to seek specific performance of the same. The learned counsel for the appellants further submitted that the time limit for completion of sale transaction was mentioned as one year in the suit sale agreement. However, the first respondent issued pre-suit notice only after expiry of two years and hence, he failed to prove his readiness and willingness to perform his part of the contract. As per Ex.A1 suit sale agreement, the sale consideration was Rs.6,45,000/- and an advance amount of Rs.4,00,000/- was paid on 06.06.2005. Subsequently, on 24.05.2006 a further sum of Rs.25,000/- was paid and endorsement was also made regarding the said payment on the back side of the first page of sale agreement. The agreement and endorsement



S.A.No.183 of 2017

thereon were marked as Ex.A1 and Ex.A2. The due execution of suit sale agreement and endorsement made thereon were properly proved by the first respondent by examining the attestors to the suit sale agreement and endorsement as PW2 and PW3.

8. Both the Courts below based on the evidence of PW1 to PW3 came to the concurrent findings that due execution of suit sale agreement and endorsement thereon were proved. The said factual findings are binding on this Court, in the absence of any perversity in appreciation of the oral evidence. The suit sale agreement is dated 06.06.2005 and as per the recitals found in the suit sale agreement, the same was in occupation of tenant at the time agreement and it was clearly mentioned that the tenant will occupy the property for three years and the possession of the property will be delivered to agreement vendor only after three years.

9. It is seen from Ex.A1 and Ex.A2, the first respondent pleaded substantial portion of the sale consideration namely Rs.4,45,000/- was already paid and the remaining amount to be paid is only Rs.2,00,000/-. It was explained by the first respondent that since the suit property was in occupation



S.A.No.183 of 2017

of a tenant, he waited for some time and then issued pre-suit notice calling upon the sale agreement vendor to execute the sale agreement after receiving the balance sale consideration. Thus there is some delay on the part of the first respondent in issuing pre-suit notice and filing of the suit. The same has been clearly explained by the fact that the suit property was not in physical possession of agreement vendor.

10. The Courts below on appreciation of evidence available on record came to the correct conclusion that the first respondent proved his continuous readiness and willingness from the date of the agreement to the date of filing of the suit. The said factual conclusion reached by the Courts below does not call for any interference by this Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure. Finding no substantial question of law arises for consideration in this appeal, the Second Appeal is dismissed.

11. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.



WEB COPY



S.A.No.183 of 2017

S.SOUNTHAR, J.

dna

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

22.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

- 1.The Additional District Court, Namakkal
- 2.The Sub-Court, Namakkal.

S.A.No.183 of 2017
and
CMP.No.3852 of 2017