



S.A.No.487 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 31.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.487 of 2017
and
CMP.No.12413 of 2017

Palanisamy

...Appellant

Vs.

1.The District Registrar
Office of the District Registrar
Karungalpalayam, Erode.

2.The Sub-Registrar
Office of the Sub Registrar
Ammapettai, Bhavani Taluk.

3.Selladurai
4.Vijayakumar
5.Arunkumar
6.Rajeshkumar
7.Shankar
8.Muthukrishnan
9.Ramya

...Respondents



S.A.No.487 of 2017

WEB COPY

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 06.03.2017 in A.S.No.3 of 2016 on the file of the learned IV Additional District Court, Erode, Bhavani confirming the judgment and decree dated 18.01.2016 in OS.No.41 of 2005 on the file of the learned Sub-Court, Bhavani.

For Appellant : Mr.V.Anandhamurthy

For Respondents : Mr.C.Sathish for R1 & R2
Government Advocate

Mr.N.Manokaran for R3 to R6

No appearance for R7 to R9

JUDGMENT

Aggrieved by the dismissal of the suit filed by the appellant seeking mandatory injunction to the respondents 1 & 2/defendants 1 & 2 to register the suit document P65/2003 in favour of appellant, he has



S.A.No.487 of 2017

come up with this Second Appeal.

WEB COPY

2. According to the appellant/plaintiff, the respondents 3 to 9 sold their right in the immovable property with the extent of 1.39 cents in RS.F.No.4/1, 4/6, 4/7 (Old S.F.Nos.809, 812B, 813B) of Vellithiruppur Village, under sale deed dated 16.09.2003, after receiving the sale consideration of Rs.1,50,000/-. However, the defendants 3 to 7 failed to complete the sale transaction by appearing before the Sub-Registrar. Hence, the appellant presented the sale deed before the second defendant seeking compulsory registration. On summons from the second respondent, the respondents 3 to 5 and 7 appeared before him and informed that they did not receive the sale consideration under the sale deed and therefore, there was no complete sale transaction. Based on his enquiry, the second respondent refused registration of the sale deed.

3. Aggrieved by the order passed by the second respondent, the appellant preferred an appeal before the first respondent. The appeal papers were sent to the first respondent by registered post on 25.05.2004



S.A.No.487 of 2017

and the same was received by the first respondent on 26.05.2004.

However, the appeal papers were returned to the appellant on 29.05.2004 on the ground that the appeal had not been preferred within the limitation period.

4. It was further averred by the appellant that the order refusing registration was received by the appellant only on 26.05.2004 and therefore, the appeal was preferred by him before the first respondent only thereafter. As the appeal preferred by the appellant was returned to the first respondent, the appellant was constrained to file a suit seeking directions to the official respondents to register the suit document.

5. The first respondent herein filed a written statement and resisted the suit on the ground that the suit was not maintainable without filing an appeal as contemplated under Section 73 of the Registration of the Act. The main contention of the respondents 3 and 7 in the written statement is that they specifically denied the receipt of any consideration.

It was their specific case that the value of the suit property was



S.A.No.487 of 2017

Rs.20,00,000/- and never agreed to sell the suit property for a meager sale consideration of Rs.1,50,000/-. It was specifically averred by the contesting respondents that they had not received any consideration for execution of the suit document and therefore, refused execution before the Sub-Registrar. It was also averred by the contesting respondents that the suit filed by the appellant was without exhausting the appeal remedy available under Section 73 of the Registration Act.

6. Before the trial Court, the appellant was examined as PW1. One of the attestors in the suit sale deed was examined as PW2. On behalf of the appellant, 8 documents were marked as Ex.A1 to Ex.A8. The respondents examined four witnesses as DW1 to DW4 and marked 11 documents as Ex.B1 to Ex.B11.

7. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant failed to prove that he paid the sale consideration for execution of the suit sale deed and that the respondents refused the execution of the sale deed



S.A.No.487 of 2017

before the Sub-Registrar. The trial Court dismissed the suit on the ground that the appellant failed to prove passing of consideration under the sale transaction.

8. Aggrieved by the same, the appellant preferred an appeal in A.S.No.03 of 2016 on the file of the IV Additional District Court, Erode at Bhavani. The first Appellate Court concurred with the findings of the trial Court. Aggrieved by the concurrent findings, the appellant has come up with this Second Appeal.

9. The learned counsel for the appellant submitted that both the Courts below erred in shifting the burden of proof on the appellant without considering the fact that the consideration was paid by him on the date of execution of the sale deed. The learned counsel for the appellant further submitted that, when it is the stand of the defendants that the suit document was given as security, the observation made by the Courts below as if the appellant failed to prove passing of sale consideration is vitiated by wrong application of burden of proof.



S.A.No.487 of 2017

WEB COPY

10. The registration of the document was refused by the second respondent mainly on the ground that the contesting respondents refused the execution of the sale deed on the ground of non receipt of sale consideration. In order to prove that the contesting respondents received the sale consideration before affixing their signature in the suit document, the appellant examined one of the attessor to the document as PW2. The Courts below rejected the evidence of PW2 on the ground that he himself admitted that there was a strained relationship between himself and the third respondent during cross examination. On behalf of the contesting respondents, two other persons who also attested the suit documents were examined as DW3 & DW4. Both the Courts below had given much importance to the evidence of DW4. However, DW3 is the independent witness Raju. He clearly deposed that the appellant has not paid any consideration for suit document. It is also admitted before the Courts below that the relationship between DW3 and the appellant also got strained. The suit document was attested by four witnesses and the



S.A.No.487 of 2017

contesting respondents examined two of them as DW3 & DW4. The appellant examined one attesting witness as PW2. On appreciation of oral evidence of PW2, DW3 and DW4, the Courts below came to the conclusion their evidence cannot be sole basis to come to a definite conclusion regarding payment of consideration by appellant. The Courts below also held, being a plaintiff appellant failed to examine independent witness to prove payment of consideration for suit document. The findings rendered by the Courts below that the appellant failed to prove the payment of consideration under the suit document is a question of fact based on appreciation of evidence. The same does not warrant any interference by this Court while exercising the jurisdiction under Section 100 of the Code of Civil Procedure in the absence of any perversity in the approach of Courts below. Hence, finding no substantial question of law arises for consideration, the Second Appeal deserves dismissal.

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.487 of 2017

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

31.10.2023

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

To

- 1.The IV Additional District Court, Erode, Bhavani.
- 2.The Sub-Court, Bhavani.
- 3.The District Registrar
Office of the District Registrar
Karungalpalayam, Erode.
- 4.The Sub-Registrar
Office of the Sub Registrar
Ammapettai, Bhavani Taluk.



WEB COPY



S.A.No.487 of 2017

S.SOUNTHAR, J.

dna

S.A.No.487 of 2017
and
CMP.No.12413 of 2017

31.10.2023