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S.A.No.540 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.540 of 2017

K.Karunanidhi

... Appellant

Vs.

1.Shakila

2.Jayadevan

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 16.03.2017 passed in A.S.No.14 of 2014 on the file of the Principal Sub Judge, Puducherry thereby confirming the decree and judgment passed in O.S.No.189 of 2009 on the file of the I Additional District Munsif Judge, Puducherry, by allowing the Second Appeal.

For Appellant : Mr.P.Veeraraghavan

For Respondents : Mr.K.Prakash for R2
R1- refused



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JUDGMENT

The unsuccessful second defendant in the suit for mandatory injunction is the appellant. The first respondent herein filed a suit for mandatory injunction against the appellant and the second respondent seeking direction to them to hand over the original title deeds of the suit property to the first respondent/plaintiff and also for a direction to the appellant and other respondent to pay a sum of Rs.99,000/- towards loss sustained to her by illegal detention of title deed. The suit was decreed by the trial Court and the first appeal preferred by the appellant herein was also dismissed. Aggrieved by the concurrent findings, the second defendant in the suit has come up with this Second Appeal.

2. According to the first respondent/plaintiff, he purchased the suit property from the second respondent by virtue of registered sale deed dated 18.06.2007. The sale transaction was brokered by the appellant herein. It was further averred by the first respondent that the appellant and the second respondent/defendant in the suit promised to hand over the original sale deed registered in her favour dated 18.06.2007 and the other original antecedent title deeds to her. However, inspite of several demands made by her, the



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appellant and the second respondent failed to hand over the title deeds as promised to her. Hence, pre-suit notice was issued on 16.02.2008 calling upon the appellant and the second respondent to hand over the original title deeds. In spite of the same, there was no response from the appellant and the second respondent. Hence, the first respondent was constrained to file a suit for mandatory injunction and recovery of damages.

3. The second respondent/first defendant remained *ex parte* before the Courts below. The appellant/second defendant filed a written statement denying the alleged averment of the first respondent, as if the appellant promised to hand over the original title documents to her. The appellant averred in his written statement that he never brokered the sale transaction between the respondents 1 and 2.

4. Before the trial Court, the first respondent was examined as PW1, one Gowri was examined as PW2. In support of the plaint averments, 7 documents were marked on behalf of the first respondent as Ex.A1 to Ex.A7 and the appellant was examined as DW1, no document was marked on the side of the appellant.



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5. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the first respondent succeeded in proving alleged promise made by the appellant and granted a decree for mandatory injunction and recovery of damages.

6. Aggrieved by the same, the appellant preferred an appeal in A.S.No.14 of 2014 on the file of the Principal Sub Judge, Puducherry. However, the appeal was dismissed by the first Appellate Court.

7. Challenging the concurrent findings by the first Appellate Court, the appellant has come up with this Second Appeal.

8. At the time of admission, this Court formulated the following substantial questions of law:

“1. Whether the appellant is bound to deliver the original title documents to the first respondent/plaintiff dehors the provisions of Section 55 of the Transfer of Property Act, 1882?

2. Whether the decree and judgment of the



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Courts below is nullity against the appellant in the absence of any specific pleading and law?

3. Whether burden of deliver of original title documents by the seller namely the second respondent/first defendant to the purchaser namely the first respondent/plaintiff can be shifted to the appellant?"

9. Since the first respondent/plaintiff refused to receive the notice sent by this Court, the name of the first respondent was printed in the cause-list. Though the first respondent's name is printed in the cause-list, there is no representation for the first respondent.

10. Heard the submission of the learned counsel for the second respondent.

11. The learned counsel for the appellant elaborated the substantial questions of law framed at the time of admission by submitting that under Section 55 of the Transfer of Property Act, it is the duty of the seller of property to hand over the title documents of the property to the purchaser and



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the appellant herein has no legal duty to deliver. The learned counsel for the appellant further submitted that the first respondent approached the Court below with a specific plea there was a promise by the appellant to hand over the original registered sale deed in her favour and other title documents. However, the alleged promise has not been proved by the first respondent by leading any acceptable evidence. Therefore, the conclusion reached by the Courts below as if there is understanding between the appellant and the first respondent as averred in the plaint is liable to be set aside for want of cogent evidence.

12. It is the specific case of the first respondent/plaintiff that there was understanding between the appellant and her, whereunder, the appellant promised to hand over the original sale deed registered in her favour along with other title documents. In support of this contention, the plaintiff examined herself as PW1 and yet another independent witness one Gowri was examined as PW2.

13. A perusal of evidence of PW2 would suggest that she has not deposed anything about alleged promise made by the appellant to hand over



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the original title deeds to the first respondent. During her cross examination, she has also admitted that she has not accompanied the parties to the Sub-Registrar's Office, when sale deed in favour of the first respondent was registered. Therefore, PW2 was not present at the time of registration of sale deed in favour of the first respondent. She had no knowledge about the understanding between the appellant and the first respondent. There is no evidence available on record to suggest there was understanding between the appellant and the first respondent, whereunder, the appellant promised to hand over the original title deeds to the first respondent. Therefore, the conclusion reached by the Courts below as if there was a promise by the appellant to hand over the original title deeds of the first respondent is not based on any evidence and therefore, the same is liable to be set aside.

14. It is an admitted case that the first respondent purchased the suit property from the second respondent under a registered sale deed. The original sale deed registered in favour of the first respondent has to be taken by her from the Registration Department. The first respondent has not taken any steps to examine the official witness from the Registration Department to show that the document registered in her favour was received by the appellant from



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the Registration Department. Further, the appellant is only third party to the sale transaction. There is no legal duty imposed on him to hand over the title documents of the subject matter of the sale to the purchaser.

15. In such circumstances, the decree for mandatory injunction passed by the Courts below directing the appellant to hand over the original title documents to the first respondent is liable to be set aside. When this Court already came to the conclusion that there is no understanding between the appellant and the first respondent to hand over the original title deeds, the prayer for recovery of damages claimed by the first respondent is also untenable. The first respondent is seeking the prayer for recovery of damages on the ground that she had put up construction in the suit property and she was unable to get permission for construction without original title documents. First of all, the first respondent ought not have to put up construction without getting necessary permission from the authorities. Secondly, in the absence of any evidence to show that there was a promise by the appellant to hand over the original title documents to the first respondent, the prayer for recovery of damages is also not maintainable against the appellant herein. Hence, the decree for recovery of damages as against the appellant is also set aside.



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16. At this juncture, the learned counsel for the appellant submitted that in pursuance of interim order passed by this Court dated 08.09.2017, the appellant deposited a sum of Rs.20,000/- to the credit of O.S.No.189 of 2009 on the file of the I Additional District Munsif Court, Puducherry.

17. In view of allowing of the Second Appeal, the appellant is entitled to get back the said amount. The appellant is permitted to make appropriate application before the concerned Court for withdrawal of the said amount.

18. In view of the discussions made earlier all the substantial questions of law formulated by this Court are answered in favour of the appellant and against the first respondent. Accordingly, the Second Appeal is allowed by setting aside the judgment and decree passed by the Courts below against the appellant.



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S.SOUNTHAR, J.

dna

19. (a) In the result, the Second Appeal is allowed by setting aside the judgment and decree passed by the Courts below against the appellant.

b) The suit filed by the first respondent is dismissed as against the appellant.

c) In the facts and circumstances of the case, there shall be no order as to costs.

07.11.2023

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

- 1.The Principal Sub Court, Puducherry.
- 2.The I Additional District Munsif Court, Puducherry.

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