



S.A(MD)No.27 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.27 of 2014

and

M.P(MD)No.1 of 2014

V.Ponpandi Nadar

... Appellant/Appellant
/Plaintiff

Vs.

1.K.Hemalatha

2.A.Kalidasan

... Respondents1&2/Respondents
/Defendants

3.S.Rajendran

4.N.Thilagar

... Respondents 3 & 4

*(Respondents 3 and 4 are impleaded as a party respondents
in this appeal vide Court order, dated 23.09.2020 made in
M.P(MD)No.2 of 2014 in S.A(MD)No.27 of 2014 by JNBJ)*

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 27.06.2013 passed in A.S.No.4 of 2012 on the file of the Principal District Judge, Thoothukudi, confirming the judgment and decree, dated 09.11.2011 passed in O.S.No.179 of 2007 on the file of the Subordinate Judge, Thoothukudi and set aside the same.



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For Appellant : Mr.G.Prabhu Rajadurai
For R1 : Mr.KA.Raamakrishnan
For R2 : Ms.A.Banumathy
For R3 : Mr.V.Balaji
For R4 : Mr.S.Kishore Kumar

JUDGMENT

The plaintiff in the suit is the appellant. The suit is for specific performance of the agreement. The suit was dismissed by the trial Court by holding that the appellant was not entitled to the relief of specific performance. However, the trial Court directed the second respondent/second defendant to pay a sum of Rs.1,50,000/- to the appellant. Aggrieved by the same, the appellant filed the first appeal and the same was also dismissed. Aggrieved by the same, the appellant is before this Court.

2. According to the appellant, the suit property belonged to the first respondent. The second respondent is the husband of the first respondent. The second respondent as an agent of the first respondent entered into agreement of sale with the appellant on 19.02.2007 for selling the suit property to the appellant. On the date of agreement itself, the second respondent received an advance amount of Rs.50,000/-. The total sale



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consideration fixed in the agreement was Rs.4,85,000/- and the time fixed for performance of the agreement was one year. It was also pleaded by the appellant that the second respondent received a sum of Rs.1,00,000/- towards sale consideration payable under agreement on 16.07.2007. It was further averred that though the appellant was ready and willing to perform his part of the contract from the inception of the agreement on 23.11.2007, appellant received an information as if, the first respondent entered into a sale agreement with unknown third party by suppressing the sale agreement with the appellant. Therefore, the appellant was constrained to file a suit for specific performance.

3.The first respondent filed a written statement denying the sale agreement entered into with the appellant. It was the specific case that she never authorized second respondent to enter into a sale agreement with respect to her property. She also pleaded that she had not received any advance amount from the appellant and she was not even aware of the suit sale agreement. The suit was resisted by the first respondent mainly on the ground that there was no privity of the contract between the appellant and the first respondent.



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4.The second respondent remained *ex-parte*.

5.The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the first respondent never authorized the second respondent to enter into agreement with the appellant in respect of her property. The trial Court also came to the factual conclusion that there was no sale agreement between the appellant and the first respondent. The trial Court had rendered a finding that Ex.A1, produced by the appellant as sale agreement between the appellant and the second respondent could not be treated as sale agreement and at most, the same can only be treated as receipt. Consequently, the suit filed by the appellant was dismissed with regard to the main relief of specific performance. However, based on the receipt Ex.A1 produced by the appellant, the trial Court granted an alternative relief of return of advance amount by directing the second respondent to pay a sum of Rs.1,50,000/- to the appellant. Aggrieved by the same, the appellant filed an appeal in A.S.No.4 of 2012 on the file of the Principal District Court and the same was dismissed. Aggrieved by the said judgment and decree, the appellant is before this Court.



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6. The learned counsel for the appellant submitted that in order to seek the relief of specific performance of the agreement, the agreement need not be in writing. Even oral sale agreement is valid in eye of law. The learned counsel further submitted that Ex.A1 though cannot be treated as an agreement, it can be treated as evidence of concluded agreement between the first respondent and appellant and consequently, the Court below erred in negating the prayer for specific performance of agreement.

7. The appellant herein in the plaint specifically averred that he entered into an agreement with the second respondent in his capacity as agent of the first respondent on 19.02.2007. It was not his case that there was an oral agreement between the appellant and the first respondent. When the appellant in his pleading specifically stated that there was an agreement between the appellant and the second respondent in his capacity as agent of first respondent, it is incumbent on part of the appellant to prove that the second respondent obtained valid power from first respondent for entering into an agreement in respect of her property. However, the appellant failed to lead any evidence to show that the second respondent is the power agent of first respondent and hence, both the Courts below came to the conclusion that



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Ex.A1, a receipt allegedly issued by the second respondent would not bind the first respondent in any manner. In the absence any valid sale agreement between the appellant and the first respondent, the appellant is not entitled to seek specific performance of an agreement, which is not in existence. Therefore, I do not find any error in the findings rendered by the Courts below that the appellant failed to prove existence of any valid sale agreement between him and the first respondent. Finding no question of law much less the substantial question of law in this second appeal, the same is dismissed by confirming the judgment passed by the Court below.

8. In fine,

- a) this Second Appeal stands dismissed and the judgment and decree passed by the Courts below are confirmed;
- b) In the facts and circumstances of the case, there would be no order as to costs; and
- c) consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
vsd

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To

- 1.The Principal District Judge,
Thoothukudi.
- 2.The Subordinate Judge,
Thoothukudi.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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