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S.A.No.1128 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Second Appeal No.1128 of 2012
and
Miscellaneous Petition No.1 of 2012

M. Kadhiri Naidu

... Appellant

Vs.

K. Venkatasamy Naidu

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and the decree dated 28.02.2012 passed in A.S.No.13 of 2011, on the file of the learned Principal Subordinate Judge, Krishnagiri, reversing the Judgment and Decree dated 31.08.2010 passed in O.S.No.192 of 2007 on the file of the learned District Munsif, Krishnagiri.

For Appellant : Mr. G. Vigneshwar
For Mr. V. Nicholas

For Respondent : No appearance



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JUDGMENT

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This Second Appeal filed by the plaintiff challenging the Judgment and Decree of the Lower Appellate Court, where the Judgment and Decree of the Trial Court was set aside and consequently dismissing the suit filed by the plaintiff for recovery of money.

2. For the sake of convenience, the parties are referred as per their litigative status before the Trial Court.

3. According to the plaintiff, he had entered into Agreement of Sale, on 21.05.2006 with the defendant, wherein, the defendant has agreed to sell the suit property, for total sale consideration of Rs.20,000/- to the plaintiff and on the same day, a sum of Rs.10,000/- was paid as an advance and remaining balance sale consideration of Rs.10,000/- to be payable within a period of six months from the sale agreement. Even, after the lapse of six months and in spite of plaintiff's readiness and willingness, the defendant has not come forward to perform his part of the contract. Hence, the plaintiff has issued legal notice to the defendant, calling upon him to come forward to



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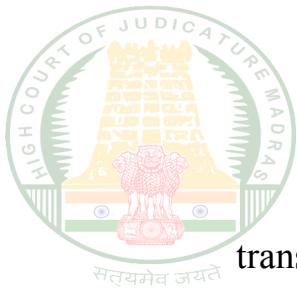
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execute the sale deed in his favour, on 18.11.2006. In spite of receipt of notice, the defendant has not come forward to execute sale deed and contrarily, issued reply notice stating false allegations on 28.11.2006. Hence, the suit.

4. The defendant resisted the suit stating that, he has received a sum of Rs.10,000/- as loan transaction for which, he was asked to subscribe the signature in the unfilled stamp papers and those stamp papers are used to fabricate the present agreement of sale by the plaintiff thereby, he denied the execution of agreement of sale with the plaintiff.

5. After framing necessary issues, the Trial Court decreed the suit in favour of the plaintiff.

6. Aggrieved over the same, the defendant has filed an appeal before the Appellate Court. After appreciating the evidence placed on record of both sides, the Appellate Court allowed the appeal, on the ground that the transaction entered between the plaintiff and the defendant is only a loan



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transaction and the suit property is not belongs to the defendant, thereby, the specific performance of the agreement of sale is not enforceable.

7. Challenging the Judgment and Decree of the Lower Appellate Court, this Second Appeal is filed by the plaintiff.

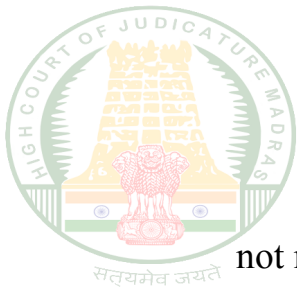
8. This Court after hearing the appellant, framed the following issues at the time of admission:

“1. Whether the Lower Appellate Court was right in setting aside the Judgment and Decree based on the admission of the plaintiff regarding title of the property?

2. Whether the admission of the plaintiff or whether in the absence of pleadings or any evidence from the defendant regarding title of the property, is sufficient to deny the relief of specific performance?

3. Whether the Lower Appellate Court was right in relying on the evidence of the plaintiff to hold that the defendant is not having Sale deeds?”

9. The learned counsel for the appellant has submitted that, it is true that P.W.1/plaintiff has stated in his cross examination that the property does



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not not belongs to the defendant herein and it belongs to the defendant's wife namely, Varalakshmi. But this was only a slip answer given in the cross examination and there is no evidence placed on record to show that, this property belongs to the defendant's wife. Based on the slip answers without any corroboration, the Lower Appellate Court has erred in dismissing the claim of the plaintiff for specific performance and prays to set aside the Judgment and decree of the Lower Appellate Court.

10. I have heard the submissions of the learned counsel for the appellant and also perused the records. Though notice was sent to the defendant/respondent herein, he refused to receive the notice and failed to appear before the Court.

11. In this case, the P.W.1/Plaintiff herein has made an admission in the cross examination that the suit property is not belong to defendant. In this case, though, the defendant had not come forward to divulge the name of the real owner of the suit property, in the pleadings, he questioned the plaintiff, regarding the ownership of the suit property and revealed that the



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defendant is not owner of the suit property. Admittedly, real owner namely Varakshmi is not party to Ex.A1-Sale agreement. For any contract of sale, the parties who come forward to sell the land shall have the salable interest. The evidence produced shows that, the plaintiff had never exercised any caution to verify the rights of defendant and not even any search was made by the plaintiff to know the real owner of property. This shows that, the plaintiff has entered into an agreement of sale with the defendant, who is not having any title to the suit property.

12. The capacity of the party to deal with the property is one of the important ingredient to makes out valid contract for sale between the parties, whereas, in this case, the person who has entered into a contract, i.e., the defendant is not having salable interest and this has been appreciated by the Appellate Court and rightly held that the Court cannot enforce the agreement for sale since, the defendant is not having any salable interest and this Court finds there is no infirmity in the said finding. Accordingly, this Court is of the view that the appeal is liable to be dismissed. Accordingly, the substantial questions of law is answered.



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13. The Second Appeal is dismissed. The Judgment and the decree dated 28.02.2012 in A.S.No.13 of 2011, passed by the learned Principal Subordinate Judge, Krishnagiri, reversing the Judgment and Decree dated 31.08.2010 in O.S.No.192 of 2007 passed by the learned District Munsif, Krishnagiri is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes / No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. The Principal Subordinate Judge, Krishnagiri.
2. The District Munsif's Judge, Krishnagiri.
3. The Section Officer, VR Section, High Court of Madras.

K.RAJASEKAR,J.

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