



S.A. No. 518 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.518 of 2024

and

C.M.P.No. 16736 of 2024

A.Sundaram

.. Appellant

Versus

Selvi (died)

1. Yuvaraj @ Venkatesh

2. Kowsalya

3. Arunachalam

4. Palanivel

5. Manoharan

.. Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 23.02.2024 made in A.S.No.68 of 2019 on the file of Principal District Court, Namakkal confirming the judgment and



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decree dated 10.01.2018 made in O.S.No.325 of 2008 on the file of

Subordinate Court, Rasipuram.

For Appellant : Mr.T.I.Thirumalaisamy

For Respondents : Mr.N.Manoharan for R3 to R5

R1 and R2 - left

JUDGEMENT

The appellant, who filed a suit in O.S.No.325 of 2008 on the file of Subordinate Judge, Rasipuram seeking for the relief of specific performance and on hearing both sides, the trial judge partly decreed the suit. Against which, he preferred an appeal suit in A.S.No.68 of 2019, on the file of Principal District Judge, Namakkal and the same was dismissed confirming the findings of the trial court. Challenging the concurrent findings of the courts below, the appellant/plaintiff preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit for the relief of specific performance directing the defendants to execute the sale deed as per



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the sale agreement dated 04.04.1999 executed between them and with subsequent endorsements said to be made by the defendants. But, the defendants have not accepted the alleged endorsement and also disputed the validity of the sale deed.

4. Considering the evidence on record and also on considering evidence adduced by both parties, the trial court held that the plaintiff has not proved his readiness and willingness and also not able to prove the payment of Rs.90,000/- as advance, but however, he proved the payment of advance of Rs.60,000/-. To that effect, the trial court directed the defendants to repay the advance amount with interest at the rate of 9% and the interest at the rate of 6% from the date of judgment till realisation and not granted the relief of specific performance.

5. Challenging the said findings, the plaintiff preferred an appeal in A.S.No. 68 of 2019 on the file of Principal District Judge, Namakkal and the same was also dismissed by the first appellate judge holding that he has not proved his readiness and willingness and confirmed the findings of trial court. Now, challenging the concurrent findings of the courts below, the plaintiff preferred this Second Appeal.



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6. The learned counsel for appellant would submit that the courts below failed to consider other two endorsements. So, the plaintiff is entitled for a sum of Rs.90,000/- together with interest. Furthermore, the plaintiff is having valid defence to prove his case, but it was not properly appreciated by the courts below.

7. The learned counsel for respondents would submit that the subsequent endorsements were not proved by the plaintiff beyond reasonable doubt. Hence, the courts below disagreed with the claim of plaintiff and his readiness and willingness. Hence, he prayed to dismiss this Second Appeal.

8. Both the courts below concurrently held that the plaintiff has not proved his readiness and willingness, besides two endorsements in respect of receipt of advance. But, there is an endorsement in respect of receipt of advance amount of Rs.60,000/-. Thus, both the courts below granted the relief with interest at the rate of 9%. However, the plaintiff approached the court in the year of 2008, but all these years, he was dragged on with the proceedings. Considering that, this Court suggested to have amicable



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settlement between the parties, as such, the plaintiff has agreed to receive the advance amount of Rs.60,000/- together with interest at the rate of 18% from 13.10.2008 to till today, which comes around Rs.1,71,840/- along with advance amount of Rs.60,000/-, totally a sum of Rs.2,40,000/- (Rupees two lakhs forty thousand only). The defendants are directed to pay the said amount within a period of two weeks from the date of receipt of copy of this order. Accordingly, the matter is settled between the parties and this Second Appeal is disposed of. The plaintiff is directed to get court fee within a period of two weeks from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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To

Principal District Judge,
Namakkal.



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T.V.THAMILSELVI, J.

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