



S.A.No.852 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.01.2024

Pronounced on: 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.852 of 2017

1.Lakshmi

2.Madhumani

3.Pugalenth

4.Maheswari

...Appellants

Vs.

1. K.S.Visanathan (Died)

2. Rani

(impleaded as R2 vide order
dated 21.12.2023)

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 20.02.2017 made in A.S. No.09 of 2015 on the file of the Principal District Judge, Dharmapuri confirming the Judgment and Decree dated 22.07.2015 made in O.S.No.13 of 2011 on the file of the Subordinate Judge, Harur.

For Appellants : Mr.C.Munusamy

For Respondent : Mr.P.Valliappan,
Senior Counsel for



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S.A.No.852 of 2011

M/s.PV.Law Associates for R2
R1- Died

JUDGMENT

The unsuccessful defendants in a suit for specific performance are the appellants before me.

2. The plaintiff approached the Court seeking specific performance of an agreement of sale dated 01.06.2009. The agreement of sale was a duly registered instrument in and by which the defendants had agreed to convey the suit property in favour of the defendants, for a total sale consideration of Rs.1,75,000/-. The plaintiffs had paid an advance Rs.1,50,000/- and the balance of Rs.25,000/- was agreed to be paid within a period of three years. The plaintiff issued a notice on 30.08.2009 to which the defendants had sent a reply on 03.09.2009. Thereafter, the plaintiff issued a second notice on 25.11.2010 to which also the defendants sent a reply on 01.12.2010. Thereafter, the plaintiff filed a suit seeking relief of specific performance on 22.02.2011. The Trial Court as well as the First Appellate Court, found that the plaintiff was entitled to the relief of specific performance and that he was ready and willing to perform his part of the contract.



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3. Aggrieved by the concurrent findings of the Courts below, the defendants/owner of the property have preferred the above Second Appeal. The Second Appeal is yet to be admitted. However, the counsel on either side have argued the main Second Appeal finally.

4. I have heard Mr.C.Munuswamy, learned counsel for the appellants/defendants and Mr.P.Valliappan, learned senior Counsel for M/s.PV.Law Associates for R2.

5. The learned counsel for the appellants would contend that the defendants had categorically denied the execution of the suit sale agreement and therefore the plaintiff had to establish the truth and genuineness of the agreement of sale upfront and only thereafter, the Courts could have gone into the issue of readiness and willingness. He would further state that even otherwise the plaintiff had not been ready and willing to perform his part of the contract. In this regard, he would cite the delays occasioned even in issuing the pre-suit notices



and filing of the suit. He would further contend that the agreement was brought about under the guise of a Panchayat and he would further state that a partition suit is also pending and the defendants did not have absolute right to convey the property.

6. Per contra, learned Senior counsel, Mr.P.Valliappan would submit that the parties were very much at issue and it was not the case of the defendants that the plaintiff was not ready and willing and further he would contend that even though an abnormal three year period had been fixed for payment of a mere Rs.25,000/- alone, the same cannot be put against the plaintiff, especially when it was not the defendants case that the agreement was only a loan transaction and the parties never intended to sell/purchase the suit property. He would further state that the partition suit was also filed only after the execution of the agreement of sale and it was clearly filed only with a view to thwart the plaintiff's rights.



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7. I have paid my anxious consideration to the rival submissions advanced by the counsel on either side. I have also gone through the judgments of the Courts below. I am conscious of the fact that I am exercising jurisdiction U/s.100 of the Code of Civil Procedure and unless I find any substantial questions of law arising for consideration, I am not bound to interfere with the concurrent findings rendered by the Courts below.

8. Assessing and analysing the pleadings, oral and documentary evidence adduced by the parties, it is seen that the defendants have out right denied the agreement of sale. It is their specific case that they never agreed to sell the suit property to the plaintiff. Further, they have also stated that the sale consideration is also very low and no prudent seller/owner of the property would give away a valuable property for a song. Unfortunately, I find that the agreement of sale is a registered document.



9. The execution of the registered sale agreement is also not disputed by the defendants. Infact, it is their case that they have signed the document thinking that it was only a Panchayat decision/resolution. The evidence adduced by the defendants does not in anyway establish their case that the defendants never agreed to sell the property to the plaintiff and that the suit sale agreement was a fabricated document. The burden was on the defendants to establish that the suit sale agreement was not a true and genuine document and as rightly pointed out by the learned Senior counsel, Mr.P.Valliappan, it is not the defence set up by the appellants that the transaction was a loan transaction. The only defence is that the agreement was fabricated and brought about by the plaintiff under the guise of a Panchayat being held between the parties. If the defendants case was that the sale transaction was not a really intended sale transaction, but only executed for the purpose of security for a loan transaction, then in such event, the fact the parties had fixed an abnormal time period of three years for payment of paltry sum of Rs.25,000/- would loom



large.

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10. However, in the absence of such a plea taken by the appellants and their failure to establish that the agreement was a fabricated document and brought about without their knowledge or consent, then the Court has to necessarily go by the terms of the contract entered into between the parties. The Courts cannot dissect the terms agreed to between the parties, as the parties are the best judges as to why they have agreed upon certain clauses regarding sale consideration, payment of advance, time for payment of balance sale consideration etc.,

11. In the light of the categorical findings arrived at by both the Courts below that the agreement of sale is true, valid and binding on the appellants/defendants, I am unable to see any substantial questions of law arising for consideration in the above Second Appeal. The fact that time period of three years has been fixed for payment of



S.A.No.852 of 2017

Rs.25,000/- alone when substantial sale consideration of Rs.1,50,000/- has already been paid is not a matter of concern for the Court in the light of the specific defence set up by the appellants before the Trial Court.

12. For the foregoing reasons, I do not find any substantial questions of law arising for consideration and the findings of the Courts below are hereby confirmed. Second Appeal is dismissed. There shall be no order as to costs.

31.01.2024

Index : Yes/No
Internet : Yes/No
kpr

To

1. The Principal District Judge, Dharmapuri.
2. The Subordinate Judge, Harur.



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S.A.No.852 of 2017

P.B.BALAJI, J,
kpr

Pre-delivery Judgment in
S.A.No.852 of 2017



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S.A.No.852 of 2017

31.01.2024