



S.A. No. 695 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.695 of 2024
and
C.M.P.No. 22505 of 2024

Naseeba

... Appellant

Versus

Raman (died)

1. Mariyammal

2. Poongodi

3. Prema

4. Suguna

5. R.Velu

... Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 28.06.2024 passed in A.S.No.19 of 2023 on the file of Subordinate Judge, Pappireddipatti reversing the judgment and decree passed in O.S.No.50 of 2012 on the file the District Munsif, Pappireddipatti.

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For Appellant

: Mr.C.Munusamy

JUDGEMENT

Challenging the reversal findings of the first appellate court, the plaintiff preferred this Second Appeal. Before the trial court, she filed a suit for specific performance directing the defendants to execute the sale deed based on the sale agreement dated 30.05.2011. The defendants denied the agreement as well as other terms. They contested the case and adduced their evidence. Considering both oral and documentary evidence, the trial judge decreed the suit in favour of plaintiff.

2. Challenging the said findings, the defendants preferred an appeal in A.S.No.19 of 2023 before the Subordinate Court, Pappireddipatti, wherein the first appellate judge independently analysed the facts and evidence and on considering the same, finally held that the sale agreement was executed in the year 2011, which is not correct, because in the year of 2011, the value of the property was fixed only as Rs.94,000/- however, P.W.1 in her evidence deposed that the value of the property was Rs.7,85,000/- at the



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time of entering agreement and she had paid the amount on various occasions to the defendants, but it is totally contrary to the terms of sale agreement. Therefore, the first appellate judge held that plaintiff has not proved her claim and he has also observed that for the balance sale consideration of Rs.5000/-, 11 months period was fixed, but within a stipulated time, the plaintiff has not paid the amount and thereafter, nearly about 7 months later, she issued a notice calling upon the defendants to execute the sale deed, for which, the defendants have given suitable reply. However, the evidence of P.W.1 itself shows that she was well aware of the value of suit property at the time of sale agreement.

3. Furthermore, by relying the ratio laid down in the authority held in ***AIR 2001 SC 2783*** in the case of ***Arulappan s. Ayalya Naik***, the first appellate judge held that the jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Considering that the specific relief is not granted. Moreover, the first appellate judge found that the evidence of plaintiff itself clearly shows that she has not approached the court with clean hands and according to the defendants, it is only a loan agreement and



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not a sale agreement as claimed by the plaintiff. Further, the evidence of P.W.1 was not supporting the case of D.W.1. Though there is oral as well as documentary evidence, the same has not proved the claim of plaintiff. Accordingly the appeal was allowed. Moreover, the value of property now became very high, but, for very less value, the sale consideration was fixed, so, plaintiff is not entitled for execution of the sale deed and the evidence of P.W.1 also unbelievable so as to pay meagre amount of Rs.5000/-, Ex.A2 agreement was created for 11 months. Accordingly, the suit was dismissed by allowing the appeal. The refund of advance amount was not granted by suo motu by relying the authority held in Civil Appeal No.921 of 2022. Now, challenging the said findings, this Second Appeal was preferred.

4. The learned counsel for appellant would submit that there is a substantial question of law arise for consideration, but in the evidence of P.W.1 itself, she has stated that she knew the value of the property at the time of sale agreement is Rs.7,85,000/- but contrary to that, the sale consideration was fixed only for Rs.94,000/-. Even assuming that she is a bonafide purchaser, she cannot compel the party to sell his property for lesser value and the plaintiff is bound to prove her case and the party cannot



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go against their own evidence. Therefore, there is no question of law arise for setting aside the findings of the first appellate judge, which needs no interference of this court. Hence, I do not find any merit in this Second Appeal as there is no question of law involved for consideration. Accordingly, this Second Appeal is dismissed as no merit. However, the respondents/defendants are directed to refund the advance amount of Rs.89,000/- with 12% interest from the date of filing the suit till realisation and the balance amount, she deposited in the court is liable to be returned to the plaintiff with accrued interest. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

25.10.2024

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To

Sub-Judge,
Pappireddipatti.



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T.V.THAMILSELVI, J.

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