



S.A No. 918 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A No. 918 of 2024
& CMP No. 29154 of 2024

Jothi

...Appellant

Vs.

1.Selvi
2. Sivakumar

... Respondents

PRAYER : This Second appeal is filed under Section 100 of CPC, to set aside the judgment and decree in A.S No. 5 of 2024 dated 16.08.2024 on the file of Subordinate Judge, Palacode confirming the judgment and decree in OS No. 75 of 2007 dated 07.10.2010 on the file of the District Munsif Court, Palacode.

For Appellant : Mr. B. Sundarapandiyan

For Respondents :

JUDGMENT

The appellants herein filed this second appeal to set aside the judgment and decree in A.S No. 5 of 2024 dated 16.08.2024 on the file of Subordinate Judge, Palacode confirming the judgment and decree in OS No. 75 of 2007 dated 07.10.2010 on the file of the District Munsif Court,

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Palacode.

2. The appellant herein/plaintiff filed a suit in OS No. 75 of 2024 on the file of the District Munsif Court, Palacode, for the relief of specific performance and directing them the respondents to execute the sale deed as per the Sale agreement dated 12.02.2004 with other consequential relief. The said suit was contested by the respondents herein/defendants stating that they were not intended to sell the property to the plaintiff and the alleged agreement dated 12.02.2004 was executed as security for loan transactions and the real value of the property is not mentioned in the agreement. Further, they also contend that suit property was already mortgaged with Land Development Bank, Dharmapuri. Therefore, they prayed to dismiss the suit. Before the Trial Court, both parties adduced their oral and documentary evidence, based on that Trial Court framed issues and finally held that suit agreement dated 12.02.2004 was executed for sale consideration of Rs.15,000/- and the plaintiff has paid only Rs.10,000/- as advance and balance amount has to be paid within a period of three months and execute the sale deed within 3 years i.e. on or before 11.05.2007. But the suit was filed after three years i.e., 14.05.2007, hence the suit was barred by limitation. Therefore, the suit was dismissed by the Trial Court. Aggrieved over the same, the plaintiff filed the appeal in A.S No. 5 of 2024 on the file



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of Subordinate Judge, Palacode, wherein the first appellate Court separately analysed the entire facts and evidence finally held that legal notice issued by the plaintiff after 3 years of sale agreement and one month before the expiry of limitation period. Furthermore, there is mortgage loan over the property for a sum of Rs. 1,25,000/- in the Land Development Bank, Dharmपुरi but the same property was entered into agreement for a sum of Rs.15,000/- as such itself proves that sale agreement was executed for the loan transaction. Apart from that, balance amount of Rs.5,000/- was not deposited by the plaintiff. However, In respect of limitation, it held that suit was filed within a limitation period. Accordingly, dismissed the appeal.

3. Challenging the concurrent finding of the Courts below, the plaintiff filed this appeal.

4. The learned counsel for the appellant/plaintiff submits that the Court below failed to take note of the fact that the defendants have failed to prove that the sale agreement dated 12.02.2004 was executed as security for the loan transaction nor prescribed when they received the loan from the plaintiff without which Court below held that sale agreement was executed as security for the loan transactions as such is erroneous and liable to be set aside.

5. On perusal of the records, it reveals that suit was filed by the



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plaintiff for the relief of specific performance to direct the defendants to execute the sale deed as per the sale agreement dated 12.02.2004 in which sale consideration was fixed Rs. 15,000/-. According to the plaintiff, he has paid a sum of Rs.10,000/- as advance and for remaining balance amount has to be paid within 3 months but there is no proof that within 3 months plaintiff had expressed his readiness and willingness to the defendants. Further, the suit was filed around one month before expiry of three years period, which itself shows that plaintiff not proved his readiness and willingness nor assigned reason for inordinate delay. Admittedly, the suit property was subjected to mortgage with Land development Bank, Dharmapuri for a sum of Rs.1,25,000/- but as per the sale agreement, sale consideration was fixed only Rs,15,000/- which proves that real value of the property not been mentioned in the agreement. As on date, mortgage due also not been paid. Therefore, plaintiff could not be a bonafide purchaser nor he proved that he entered into sale agreement with intention to purchase the property because value of the property itself not correctly stated in the agreement. To avail remedy of specific performance, the plaintiff bound to prove his readiness and willingness as required under Sections 16(3) of Specific Relief Act, As discussed above, plaintiff has not explained inordinate delay for filing suit. Besides, property also not been correctly

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valued, which probablise that suit agreement executed for loan transaction.

This Court does not find any reason to interfere with the findings of the Trial Court. There is no question of law involved in this case. The respondents/defendants are directed to repay the advance amount to the plaintiff with 6% interest from the date of agreement till the date of realisation, within a period of 8 weeks from the date of receipt of a copy of this judgment. Accordingly, this second appeal is dismissed. No Costs. Pending petition, if any, is/are closed.

17.12.2024

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1. The Subordinate Judge, Palacode.
2. The District Munsif Court, Palacode.
3. The Section officer, V.R Section, High Court, Madras.

T.V.THAMILSELVI,J.

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