



S.A.(MD) No.650 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

S.A.(MD) No.650 of 2007

and

M.P.(MD) No.1 of 2007

M.Kamalmydeen

... Appellant/Respondent/
Plaintiff

Vs.

Shanewas

... Respondent/Appellant/
2nd Defendant

Prayer: Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 13.04.2006 made in A.S.No.38 of 2005 on the file of the Principal District Court, Madurai by reversing the judgment and decree dated 15.04.2005 made in O.S.No.215 of 1996 on the file of the 2nd Additional Subordinate Court, Madurai.

For Appellant : No appearance

For Respondent : Mr.M.Saravanan



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JUDGMENT

This second appeal is filed by the plaintiff in O.S.No.215 of 1996 on the file of the 2nd Additional Sub Court, Madurai. The said suit was filed seeking specific performance of an agreement of sale executed by the 1st defendant. The 2nd defendant in the said suit is the subsequent purchaser of the suit property. During the pendency of the suit, the 1st defendant passed away. However, the plaintiff/appellant failed to take steps to bring on record the legal representatives of the deceased 1st defendant during the pendency of the suit. However, the learned trial Court decreed the suit in favour of the plaintiff ordering specific performance. Aggrieved by the said judgment and decree dated 15.04.2005, the respondent herein filed first appeal in A.S.No.38 of 2005 on the file of the Principal District Court, Madurai. The learned Principal District Judge, reversed the judgment and decree passed by the learned trial Court by a judgment and decree dated 13.04.2006. Aggrieved by the said judgment and decree in A.S.No.38 of 2005, the present second appeal is filed.



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2. The learned lower appellate Court has taken into consideration the fact that in spite of the death of the 1st defendant, who executed the agreement of sale, which was the subject matter of suit, died during the pendency of the suit and his legal representatives were not brought on record, and thereby declared the entire suit abated and accordingly, allowed the appeal filed by the 1st respondent herein.

3. This Court, after having heard the learned counsel on either side, *prima facie* concurred with the finding of the learned lower appellate Court to the extent of the suit being abated consequent upon the death of the 1st defendant and on the failure of the plaintiff to take steps to bring on record the legal representatives of the deceased 1st defendant and passed the following order on 05.01.2024:

“This is the case where the suit for specific performance was filed against two defendants, the first being the person who entered into an agreement with the plaintiff and the second defendant being the subsequent purchaser. Defendant No.1 died during the



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pendency of the suit, but his legal representatives were not brought on record. But the suit was decreed, which was reversed in first appeal. As against that, the present second appeal is filed, to which neither the 1st defendant, who entered into agreement with the plaintiff/appellant, nor his legal representatives are parties. In the absence of the person, who executed the agreement, which is the subject matter of suit for specific performance being on record, in the considered view of this Court, this Second Appeal is totally incompetent and liable to be rejected and dismissed on that ground alone. However, considering the request made on behalf of the learned counsel for the appellant, post the second appeal finally on 08.01.2024.”

4. Thereafter, though the matter underwent adjournments on two occasions, the learned counsel for the appellant failed to convince this Court as to how the second appeal is maintainable seeking specific performance of an agreement of sale, in the absence of an executant of a suit agreement of sale being on record. There is nothing brought to notice of this Court to differ from the *prima facie* view taken by this Court on 05.01.2024 as



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extracted above and this Court does not find any substantial question of law warranting interference of this Court under Section 100 of Code of Civil Procedure.

5. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.01.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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MUMMINENI SUDHEER KUMAR, J.

ABR

To

- 1.The Principal District Judge,
Madurai.
- 2.The 2nd Additional Subordinate Judge,
Madurai.

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11.01.2024