
(2017) 10 MAD CK 0119

In the Madras High Court

Case No : 142 of 2017 and C M P No 6444 of 2017

C.Sathyasamuel

APPELLANT

Vs

A.Swaminathan, & Ors.

RESPONDENT

Date of Decision : 12-10-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 9 Rule 13](#)

Citation : (2017) 10 MAD CK 0119

Hon'ble Judges : A.Selvam, P.Kalaiyaran

Bench : DIVISION BENCH

Advocate : A.Selvam, P.Kalaiyaran

Final Decision : Allowed

Judgement

1. This Appeal Suit has been directed against the judgment and decree dated 26.10.2016, passed in O.S.No.140 of 2013, by the Additional District Court, Kanchipuram District at Chengalpattu.

2. The appellant herein, as plaintiff, has instituted O.S.No.140 of 2013, on the file of the trial Court praying to pass a decree of specific performance, in pursuance of the sale agreement, dated 26.11.2006, executed by the defendants in his favour and also praying to declare that Cancellation of Power of Attorney Deed, dated 28.01.2013, is null and void.

3. In the plaint it is averred to the effect that the suit property is the absolute property of the defendants 2 to 9 and they executed a sale agreement dated 26.11.2006, whereby agreed to sell the suit property in favour of the plaintiff. Further, the defendants 2 to 9 have given a Power of Attorney Deed, dated 07.03.2013 in favour of the plaintiff. Since the defendants 2 to 9 have failed to execute a sale deed, after receipt of balance of sale consideration, in favour of the plaintiff and since they cancelled the Power of Attorney Deed, dated 07.03.2013, the present suit has been instituted for the reliefs sought therein.

4. In the written statement filed on the side of the defendants 2 to 9, the material averments made in the plaint are denied and ultimately prayed to dismiss the suit.

5. It is seen from the records that on the side of the plaintiff, evidence has been let in. But the defendants remained ex parte. On the basis of available evidence on record on the side of the plaintiff, the trial Court has decreed the suit in part only in respect of the second relief sought in the plaint. The trial Court has dismissed the suit in respect of the relief of specific performance. Against the judgment and decree passed by the trial Court, the plaintiff, as appellant, has preferred the present appeal suit.

6. The learned counsel appearing for the appellant/plaintiff has contended to the effect that for setting aside the ex-parte decree, on the side of the defendants an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908, has been filed in I.A.No.549 of 2016 and the same is pending and further, the trial Court ought to have proceeded with the suit only under Order 9, since the defendants have remained ex-parte; but the trial Court has passed the judgment on merits and under such circumstances, the judgment and decree passed by the trial Court are liable to be set aside and the suit is liable to be remitted to the file of the trial Court.

7. It is an admitted fact that on the side of the appellant/plaintiff, in the trial Court, both oral and documentary evidence have been let in. But the defendants have remained ex parte. Since the defendants have remained ex-parte, the trial Court ought to have proceeded with the suit only on the basis of provision of Order 9 of the Code of Civil Procedure, 1908. But the trial Court has passed the judgment purely on merits.

8. Further it is seen from the records that on the side of the defendants, an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 has been filed in I.A.No.549 of 2016 so as to set aside the ex-parte decree.

9. Considering the aforesaid factual circumstances, this Court is of the view that the judgment and decree passed by the trial Court are liable to be set aside and O.S.No.140 of 2013 is liable to be remitted to the file of the trial Court. In fine, this Appeal Suit is allowed without costs. The judgment and decree passed in O.S.No.140 of 2013, by the trial Court, are set aside and O.S.No.140 of 2013 is remitted to the file of the trial Court. The Court fee paid on the appeal memorandum is ordered to be refunded forthwith to the appellant/plaintiff.

Connected miscellaneous petition is closed.