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S.A.No.696 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.10.2023**

CORAM:

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

S.A.696 of 2023
and
C.M.P.No.22059 of 2023

K.Paramasivam

... Appellant

Vs.

1.Chandra,
2.Raja,
3.Irusa Gounder,
4.Lakshmi.

... Respondents

Prayer:- This Second Appeal is filed under Section 100 of Code of Civil Procedure Code,1908, to set aside the judgement and decree dated 29.07.2019 in A.S.No.64 of 2017 on the file of the Principal Subordinate Court, Salem confirming the judgement and decree dated 19.04.2017 in O.S.No.527 of 2014 on the file of the Principal District Munsif Court, Salem.

For Appellant : Mr.D.Sivakumaran

For Respondents : No appearance



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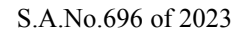
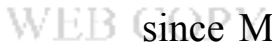
JUDGMENT

The plaintiff who is unsuccessful in challenging the judgment and decree in O.S.No.527 of 2014 of the Principal District Munsif Court, Salem before the Principal Subordinate Court, Salem in A.S.No. 64 of 2017, is the appellant before this Court.

2. For the ease of understanding, the parties are referred to in the same array as before the Trial Court.

FACTS OF THE CASE:

3. The plaintiff has filed the above suit for specific performance of sale agreement dated 03.09.2005. It is the case of the plaintiff that on 03.09.2005, he had entered into an agreement of sale with one Muthusamy to purchase the suit schedule property for a total sale consideration of Rs.54,000/-. It is his further case that on the said date, a sum of Rs.25,000/- was paid as advance and the balance of Rs.29,000/- was to be



4. Unfortunately, Muthusamy passed away on 06.10.2006 and the plaintiff requested the defendants to execute the sale deed in respect of the suit property. On 01.05.2014, the plaintiff had contacted the defendants. However, they refused to execute the sale deed stating that the agreement entered into by Muthusamy would not be binding upon them. The plaintiff therefore, has come forward with the suit in question.



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5. The plaintiff has filed the suit in respect of an extent of 18 cents in Kothanoor Village, Salem District, which, as per the suit schedule was bounded on the east by odai and etteri, south by Nallakannu's land, west by Paramasivam and Vadivel lands and north by the ridge in the vacant site left out by Paramasivam and the old mandapam.

6. The defendants, on entering appearance, had filed a written statement *inter alia* contending that the defendants are not residing at Kothanoor village and they were forcefully driven out from the village by one Arayee, W/o Ammasi, Planisamy, S/o.Kanda Gounder and Thailan S/o.Ramasamy as early as in 1993 itself. The defendants who originally shifted to Arapakkam in Kancheepuram, have returned for eking out their livelihood to Seergapadi Village at Salem. The written statement filed by the first defendant was adopted by the defendants 2 to 4.

7. The defendants would submit that Muthusamy was an alcoholic



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and taking advantage of his intoxicated stage, the plaintiff and others obtained his signature in several blank papers and have instituted several suits. With these forged documents, the plaintiff has instituted several suits for specific performance. It is the case of the defendants that no consideration has been paid under these agreements and all of them were obtained by force and undue influence by taking advantage of the said Muthusamy's alcoholic condition.

8. It is further contended that Muthusamy had registered a Will as early as on 02.05.1988, in favour of his minor son/second defendant in respect of 2.01 acres of land, comprised in Survey Nos.69/4, 69/10, 70/3 and 70/13 at Kothanoor village. The specific case of the defendants is that the said plaintiff and others are in unauthorised occupation of the properties of the defendants. The defendants would further submit that the signatures in the endorsements in the sale agreement dated 16.08.2006 and 20.09.2006 had not been executed by Muthusamy and they were forged and fabricated documents. That apart, the plaintiff had never approached



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the defendants for executing the sale deed. Moreover, the notices which the plaintiff alleged that he had issued, have been issued to the defendants' address at Kothanoor village, from which, they have left as early as in the year 1993 and this fact is also known to the plaintiff. Therefore, deliberately, the notices have been sent to the address in which the defendants do not live. The plaintiff had also filed the suit in O.S.No.974 of 2014 with similar allegations and the summons were sent to the defendants' address at Kothanoor village. They have received intimation of the same and when they attempted to take the summons from the Post Office, the Postman insisted upon the defendants to produce the proof of their Kothanoor address and therefore, no proper service had been taken upon the defendants. The defendants would submit that there is no cause of action in filing the suit and the suit is liable to be dismissed.

TRIAL COURT:

9. The learned Principal District Munsif, Salem, has framed the following issues:



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- “(1) வாதியிடம் இறந்துபோன முத்துசாமி 2006-ம் ஆண்டே தாவா சொத்தின் சுவாதீனத்தை ஒப்படைத்து விட்டதாக வாதி கூறியிருப்பது உண்மையா? சட்டப்படி ஏற்றுக் கொள்ள கூடியதா?
- (2) இவ்வழக்கு காலவரையால் பாதிக்க படுவதாக பிரதிவாதிகள் கூறியிருப்பது ஏற்புடையதா?
- (3) முத்துசாமியின் முதல் மனைவி பெரியக்காள் மற்றும் இதர நபர்களை இவ்வழக்கின் தரப்பினராக சேர்க்கவில்லை என்பதால் இவ்வழக்கு பாதிக்கப்படுகிறதா?
- (4) வாதி கோரியுள்ளவாறு ஏற்றதை ஆற்றுக பரிகாரம் பெற அருகதையுடையவரா?
- (5) வாதிக்குகிடைக்கக்கூடிய இதர பரிகாரம் யாது?”

10. The plaintiff had examined himself as P.W.1 and one Panneerselvam as P.W.2 and Exs.A1 to A3 were marked. On the side of the defendants, the first defendant had examined herself as D.W.1 and one Elumalai was examined as D.W.2.

11. The learned Judge on an elaborate consideration of both the documentary and oral evidence, came to the conclusion that the Exs.A1



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and A3 are created documents. The Trial Court below has arrived at the findings by taking note of the evidence of P.W.2, who has been examined as attester of the promissory note and made two endorsements thereon. This witness, in his cross-examination, would submit that he has affixed all the three signatures on a single day, which would go a long way to prove that the documents in question is a fabricated one. The learned Judge has also observed that the plaintiff is not in possession of the property and that apart has also observed that the suit is barred by limitation, taking note of the fact that the agreement which was executed in the year 2005, is sought to be enforced in the year 2014 and there is no explanation as to why the plaintiff has not filed the suit before the death of the said Muthusamy. Eventually, the learned Judge dismissed the suit.

12. Aggrieved by the same, the plaintiff had filed A.S.No.64 of 2017 on the file of the Principal Subordinate Court, Salem. The learned Principal Subordinate Judge, Salem has also confirmed the judgement and decree passed by the trial Court and dismissed the appeal, as against



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which, the plaintiff is now before this Court.

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13. Heard the learned counsel for the appellant and perused the materials available on record.

14. The plaintiff who claims that the agreement was executed in the year 2005, has approached the Court only in the year 2014 and there is absolutely no explanation for this delay. Further, according to the plaintiff's case, the final payment was made on 20.09.2006.

15. However, the sale deed has not been executed and it is nearly thereafter Muthusamy had died. The plaintiff has not explained why he has not filed the suit during the life time of Muthusamy. Further, Muthusamy had died as early as on 06.10.2006 and though the plaintiff has requested the defendants to execute the sale deed in his favour, the defendants have avoided the same. This statement has not been proved by the plaintiff, particularly, when it has been specifically denied by the defendants.



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Therefore, the suit for specific performance is definitely barred by limitation. Both the Courts below relied upon the evidence of P.W.2 and came to the conclusion that the promissory note and the endorsements therein that Exs.A1 to A3 are fabricated documents.

16. I see no reason to upset these findings of the Courts below. The appellant has not made out any questions of law warranting the suit.

In the result, this Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

09.10.2023

Index : Yes/No
Speaking order/non-speaking order
apd/ssa

To

1. Principal Subordinate Judge,
Salem.

2.The Principal District Munsif,

10/12



Salem.



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3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

apd/ssa

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and

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