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S.A.No.697 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

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

S.A.No.697 of 2023
and
C.M.P.No.22068 of 2023

K.Paramasivam

... Appellant

Vs.

1.Chandra,
2.Raja,
3.Palanisamy,
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.91 of 2017 on the file of the Principal Subordinate Court, Salem confirming the judgement and decree dated 19.04.2017 in O.S.No.971 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.971 of 2014 of the Principal District Munsif Court, Salem before the Principal Subordinate Court, Salem in A.S.No.91 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 30.01.1997. It is the case of the plaintiff that on 30.01.1997, he had entered into an agreement of sale with one Muthusamy to purchase the suit schedule property for a total sale consideration of Rs.75,000/-. It is his further case that on the said date a sum of Rs.40,000/- was paid as advance and the balance of Rs.35,000/- was to be paid within a period of one year. The sale agreement was executed on the same day in



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the presence of the witnesses. It is further case of the plaintiff that since Muthusamy had fallen ill, on 25.01.1998 he had requested the plaintiff to pay the balance sale consideration in order to meet his medical expenses. On the same day, the plaintiff had paid the balance sale consideration and Muthusamy had also handed over the possession of the property to the plaintiff and agreed to execute the sale deed as and when required by the plaintiff and an endorsement was made on the reverse of the promissory note on 25.01.1998.

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 1.11.2014, the plaintiff had contacted the defendants. However, they refused to execute the sale deed. The plaintiff therefore, has come forward with the suit in question.

5. The plaintiff has filed the suit in respect of an extent of 0.10.0 Hectare (i.e) 0.25 cents in Kothanoor Village, Salem District, which, as



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per the suit schedule, was bounded on the west by Kalavaikaduputhur Road and Kaliyammal Temple, north by Perumampatti Panchayat Office building and Govindaraj's house and south and east by the lands owned by one Paramasivam.

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 were originally shifted to Arapakkam in Kancheepuram, have returned for 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 and taking advantage of his intoxicated stage, the plaintiff and others obtained signature in several blank papers and have instituted several



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suits. It would further submit that the signature in the sale agreement dated 30.01.1997 and the endorsement dated 25.01.1998 are forged and fabricated documents. 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 stage.

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 30.01.1997 and 25.01.1998 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 filed the suits in O.S.No.527 of 2014, O.S.No.148 of 2015 and O.S.No.225 of 2015 with similar allegations and the summonses 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 Judge, Salem, has framed



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the following issues:

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“(1) வாதியிடம் இறந்துபோன முத்துசாமி 1998-ம் ஆண்டே தாவா சொத்தின் சுவாதீனத்தை ஒப்படைத்து விட்டதாக வாதி கூறியிருப்பது உண்மையா? சட்டப்படி ஏற்றுக் கொள்ள கூடியதா?

(2) இவ்வழக்கு காலவரையால் பாதிக்கப்படுவதாக பிரதிவாதிகள் கூறியிருப்பது ஏற்புடையதா?

(3) முத்துசாமியின் முதல் மனைவி பெரியக்காள் என்பவர் இவ்வழக்கின் தரப்பினராக சேர்க்கவில்லை என்பதால் இவ்வழக்கு பாதிக்கப்படுகிறதா?

(4) வாதி கோரியுள்ளவாறு ஏற்றதை ஆற்றுக பரிகாரம் பெற அருகதையுடையவரா?

(5) வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் யாது?”

10. The plaintiff had examined himself as P.W.1 and one Kumarasamy as P.W.2 and Exs.A1 to A38 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 and Exs.B1 to B9 were marked. The learned Judge on an elaborate consideration of both documentary and oral evidences, came to the conclusion that Exs.A2 and A3 are created documents. The Trial Court has arrived to this finding, by taking note of the evidence of P.W.2 who has been examined as attestor of the



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promissory note and made two endorsements thereon. This witness, in his cross-examination, would submit that he has affixed all the two signatures on a single day, which would go a long way to prove that the documents in question is a fabricated one. Hence, the learned Judge had dismissed the suit by stating that the plaintiff has not proved his case and it is therefore, not entitled to relief for specific performance. The learned Judge has also observed that the suit is hopelessly barred by limitation and that the plaintiff is not in possession and enjoyment of the suit property. Taking note of the fact that the agreement which was executed in the year 1997, 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.

11. Eventually, the learned Judge had dismissed the suit.

12. Challenging the said judgement and decree, the plaintiff had filed A.S.No.91 of 2017 on the file of the Principal Subordinate Court,



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Salem. The learned Principal Subordinate Court, Salem had also confirmed the judgement and decree passed by the trial Court and dismissed the appeal, as against which, the plaintiff is before this Court.

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

14. The plaintiff who claims that the agreement which was executed in the year 1998, 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 25.01.1998.

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



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avoided the same. This statement has not been proved by the plaintiff, particularly, when it has been specifically denied by the defendants.

Therefore, the suit for specific performance is definitely barred by limitation. Both the Courts below had concluded from the evidence of P.W.2, it is clear that the endorsement which has been marked as Ex.A3 could not have been executed in the year 1998, since the witness in O.S.No.225 of 2015 would state that the agreement of sale in that suit as well as Ex.A2 in the present suit have been signed at the same time. Therefore, the signatures could have been obtained only on 14.12.2005 or 05.06.2006. Therefore, the evidence of P.W.2 cannot be relied upon and it is clear that the sale deed and the endorsements are all fabricated. I see no reason to upset these findings of this Courts below. The appellant has not made out any questions of law warranting the suit.

In the result, the Second Appeal is dismissed. Consequently, connected C.M.Ps are closed. No costs.

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Index : Yes/No

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Speaking order/non-speaking order
apd/ssa

To

1. Principal Subordinate Judge,
Salem.
- 2.The Principal District Munsif,
Salem.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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