



WEB COPY



A.S.No.486 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2023

Pronounced on : 05.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**A.S.No.486 of 2018
and
CMP.Nos.3018 & 14917 of 2023 and
12435 & 15508 of 2023**

1.R.Rajathi
2.R.Dharanya
3.R.Deepanraj

... Appellants/Defendants

Versus

S.Kanagarajan ... Respondent/Plaintiff

PRAYER: Appeal is filed under Section 96 r/w Order 41 Rule 1 of Civil Procedure Code to set aside the judgment and decree dated 26.04.2017 made in O.S.No.79 of 2012 on the file of the learned III Additional District Judge, Coimbatore.

For Appellants : Mr.P.Valliappan, Senior Counsel
For Mr.T.K.S.Gandhi
For Respondent : Mr.C.R.Prasanan



A.S.No.486 of 2018

WEB COPY

JUDGMENT

(Judgment was delivered by **R.KALAIMATHI, J.,**)

Challenge is made by the defendants against the judgment and decree passed in O.S.No.79 of 2012 dated 26.04.2017 on the file of III Additional District Court, Coimbatore.

2. The suit was filed for specific performance relating to the suit sale agreement dated 28.08.2011 or in the alternate, for a direction to the defendants to pay a sum of Rs.5,28,127/- together with interest at the rate of 12% per annum on Rs.5,00,000/- being the advance amount paid to the defendants from the date of suit till the date of realisation, besides a charge decree over the suit property.

3. The Trial Court has decreed the suit, directed the defendants to execute and register a sale deed in favour of the plaintiff, as per the sale agreement dated 28.08.2011 and to deliver possession of the suit property, after receiving the balance sale price, granting two months time for registering the sale deed. Aggrieved of the same, defendants are on appeal.

2/19



A.S.No.486 of 2018

4. According to the plaintiff, the suit schedule property belonged to one Tr.E.T.Ramasamy, husband of the 1st defendant and father of the defendants No.2 and 3, as per the sale deed dated 17.09.2003. The plaintiff and the defendants entered into an agreement of sale of suit schedule property for a consideration of Rs.26,25,000/- (Rs.3,75,000/- per cent). Time was fixed at 6 months and the plaintiff paid an advance of Rs.1,00,000/-, at the time of execution of sale agreement. On 04.09.2011, he paid advance amount of Rs.4,00,000/- and endorsement to that effect is made on the second page of sale agreement. The plaintiff further claims that since the defendants failed to execute the sale deed, he caused to issue a legal notice on 17.02.2012. Despite the receipt of notice, the defendants did not respond to his notice. The plaintiff claims that he is always ready and willing to perform his part of the contract. The suit is well withing the limitation.

5. Contending contra, the defendants deny the contents of the plaint and claim that only after the receipt of lawyer notice dated 17.02.2012, the defendants came to know about the alleged sale agreement dated 28.11.2011 entered with the plaintiff. According to the

3/19



A.S.No.486 of 2018

1st defendant, at the time of borrowing a sum of Rs.1,00,000/- from the plaintiff, the plaintiff obtained signatures in the blank papers from her which were utilised to forge the present sale agreement.

6. At trial, the sole plaintiff/Kanagarajan and one Rangasamy S/o. Govindhappa Gowder, who is the attesting witness to suit sale agreement have been examined as PW.1 & PW.2. Ex.A1 to A12 have been marked. Suit sale agreement dated 28.08.2011 – Ex.A2, office copy of the legal notice issued by the plaintiff to the defendants - Ex.A3, payment endorsement made in the Ex.A2 – Ex.A9, copy of the complaint lodged by the 1st defendant with Sirumugai Police Station against the plaintiff and the connected CSR Viz., Ex.A11 & Ex.A12. The 1st defendant Tmt.Rajathi and her supporting witness one Tr.Palanisamy were examined as DW1 & DW2. Ex.B1 to Ex.B4 have been marked.

7. The trial Court has framed the following issues:-

- i. *Whether the suit sale agreement is an outcome of fraud and forgery as claimed by the defendants?*
- ii. *Whether the suit sale agreement is true, valid and binding on the defendants?*



A.S.No.486 of 2018

- iii. *Whether a total sum of Rs.5,00,000/- has been paid by the plaintiff to the defendants as advance amount?*
- iv. *Whether the plaintiff is entitled for the decree of specific performance as claimed?*
- v. *Whether the plaintiffs are entitled for the alternate relief as claimed?*
- vi. *For what other reliefs are entitled for?*

8. The execution of the suit sale agreement was in a stricto sensu, denied by the defendants and so also the receipt of advance amount of Rs.1,00,000/- and additional advance amount of Rs.4,00,000/-.

9. Mr.P.Valliappan, the learned Senior counsel, appearing for the appellants/defendants, would vehemently contend that execution of sale agreement/Ex.A2 was specifically denied by the defendants and it was only a loan transaction for Rs.1,00,000/-. PW.1 has not shown the said payment of Rs.5,00,000/- to the defendants in his income tax returns, would indicate the fact that the money was not paid by the plaintiff and it is his argument that, except the alleged sale agreement, no other document of title was shown to have been delivered to the respondent by the appellants in part performance, would go to show that it was a false case projected by the plaintiff. He would stress upon the fact that the

5/19



A.S.No.486 of 2018

plaintiff cannot deny the fact that an extent of 10 $\frac{3}{4}$ cents land is available and the exact extent of 7 cents is not clearly mentioned with boundaries in the sale agreement, which can never be easily identified, would be fatal to the plaintiff's case. To buttress his arguments, following judgements were referred to,

- I. *Shafiqur Rehman Khan and Anr. Vs. Mohammad Jahan Begum and ors.*, reported in (1982) 2 SCC 456.
- II. *Nahar Singh Vs Harnak Singh and Ors.*, reported in (1996) 6 SCC 699.
- III. *Pawan Kumar Dutt and Anr. Vs. Shakuntala Devi and Ors.*, reported in (2010) 15 SCC 601.
- IV. *N.Sundaramurthy and Ors. Vs. Suseeladevi and Ors.*, reported in AIR 2017 MADRAS 250.

10. Per contra, Mr.C.R.Prasanan, learned counsel appearing for the respondent/plaintiff would strenuously contend that he entered into an agreement for sale with the legal heirs of Tr.E.T.Ramasamy on 28.08.2011 for a sale consideration of Rs.26,25,000/- (Rs.3,75,000/- per cent), in respect of the property as described below:-

“கோயமுத்துர் ரிட்டு மேட்டுபாளையம் சப்ரிட்டு மேட்டுபாளையம்
வட்டம் பள்ளேபாளையம் கிராமம் பட்டா எண் 1057ன் படி
தாக்கலான க.ச.754/சு1 நெ.பு.உறக்.101.0க்கு ஏக்.2.50



A.S.No.486 of 2018

விஸ்தீரணமுள்ள பூமியில் சுமார் ஏக் 0.07 சென்ட்
விஸ்தீரணமுள்ள காலி ஜாகாவிற்கு செக்குபந்தியும் அளவும்
விபரமும்.

சக்தி டு மேட்டுபாளையம் மெயின் ரோட்டுக்கும் -கிழக்கு

இன்டியன் ஆயில் பெட்ரோல் பங்குக்கும் -வடக்கு

காங்கரீட் ரோட்டுக்கும் -தெற்கு

E.T. ராஜப்பன் பூமிக்கும் பைப் லைன் செல்லும் இடத்திற்கும் -
மேற்கு

இதன் மத்தியில் சுமார் ஏக்.0.07 சென்ட் விஸ்தீரணமுள்ள
காலி ஜாகா பூராவும் சகிதம், மேற்படி காலி ஜாகாவில்
பெறப்பட்டுள்ள மின்சார இணைப்பும் அதன் ஓயரிங் மீட்டர்
டிபாசிட் அதன் சாதனங்களும் சகிதம். மேற்படி ஜாகாவிற்கு போக
வர உண்டான மாழில் வழி நடை பாத்தியங்கள் சகிதம். மேற்படி
சொத்து பள்ளேபாளையம் கிராமம் பஞ்சாயத்து போர்டு
எல்லைக்குட்பட்டது.”

11. It is his further argument that the suit property is a part of triangle portion shown on the right hand top corner of the FMB. There was no plea raised in the written statement that the suit property measures $10 \frac{3}{4}$ cents and that the suit agreement itself is not enforceable as the suit property was not identifiable, there was no occasion for the trial court to frame issues on this aspect. He would further submit that the suit property has definite boundaries and whether, upon holding an agreement as true and genuine, can a decree be refused on the ground



A.S.No.486 of 2018

that suit property measures more than 7 cents as found in the suit agreement.

12. He would strengthen his argument by referring to the citation in ***Zarina Siddiqui vs A.Ramalingam @ R.Amarnathan*** reported in 2015 1 SCC (705), wherein the Apex Court has held that conduct of the parties must be considered. Parties must come before the Court with clean hands. If the defendants suppressed the material facts and made distorted statements, then discretion cannot be exercised in favour of the defendants by refusing to grant specific performance.

13. The period for completion of the sale was fixed at six months. He would further contend that, an advance amount of Rs.1,00,000/- was paid and on 04.09.2012, defendants received an additional advance amount of Rs.4,00,000/- and necessary endorsement on the second page of the original sale agreement, was made by the defendants. It is his further argument that, an amount of Rs.21,25,000/- is payable by him as a balance sale consideration. The plaintiff claims that, he is always ready and willing to perform his part of contract and the defendants postponed

8/19



A.S.No.486 of 2018

the execution of sale deed. Despite the receipt of legal notice, as the defendants did not come forward to execute the sale deed, he filed a suit for specific performance.

14. Heard the arguments of learned Senior Counsel Mr.P.Valliappan appearing for the appellants and Mr.C.R.Prasanan, learned counsel appearing for the respondent.

15. The points for considerations are:

- (i) Whether the suit sale agreement is a true and valid document.
- (ii) Whether the plaintiff was ever ready and willing to perform his part of the contract.
- (iii) In view of the non compliance of provisions of CPC Viz., Order 7 Rule 3, whether the plaintiff cannot be granted the relief of specific performance.

Point Nos.1 to 3:

16. Apart from the evidence of PW.1, attesting witness to the sale agreement, one Tr.G.Rangasamy S/o. Govindhappa (PW.2) has spoken about the details of finalizing the terms of sale and the execution of the



A.S.No.486 of 2018

sale agreement by the defendants in favour of the plaintiff. His evidence was not assailed in the cross examination. Apart from the said oral evidence, Ex.A12 & A11, namely copy of the complaint lodged by the 1st defendant/Tmt.Rajathi Ramasamy and the relevant CSR were marked through Tmt.Rajathi, during her cross examination. It is pertinent to note that the said copy of the complaint was obtained by the plaintiff under Right to Information Act. In her complaint (Ex.A11), she has stated that,

“....எனது கணவர் இறந்துவிட்டார். அந்த இடத்தை விற்க எண்ணி சிறுமுகையில் வசிக்கும் சுப்பையகவுடர் மகன் கனகராஜ் என்பவருக்கு 7 சென்ட் இடத்தை கொடுக்க அட்வான்ஸ் 5 லட்சம் வாங்கியுள்ளேன். 6 மாத கெடு வைத்திருந்தார்....
நேற்றுவரை அவர் என்னிடம் இதுபற்றி பேச வரவில்லை. இருந்து நான் தரும் இடத்தை விட்டுவிட்டு இப்போது வேறு இடத்தை காண்பித்து அந்த இடம் தான் வேண்டும் என்று என்னை அடிக்கடி போனிலும், நேரிலும் டார்ச்சர் செய்கிறார்.....”

Therefore, the claim of the defendants to the effect that the defendants did not execute the sale agreement, they did not receive the advance amount and plaintiff was not ready and willing to perform his part of the contract are totally belied by the contents of Ex.A11/police complaint lodged by the 1st defendant.



A.S.No.486 of 2018

17. In view of the strong case made out by the plaintiff, the case setup by the defendants to the effect that, suit sale agreement was executed as a security for the loan falls on the ground. Brother of the 1st defendant, Tr.N.Palanisamy S/o. Nanjumda Gowder, who is examined as DW.2, though has supported the case of his sister 1st defendant, his evidence has not added any strength to the case of the defendants.

18. More so, period for performance is fixed as six months. The date of agreement is 28.08.2011. Therefore, six months period ends on 27.02.2012. The suit was laid on 02.03.2012. As per Ex.A3 office copy of Legal Notice, the plaintiff has issued a legal notice to the defendants on 17.02.2012 itself, calling upon the defendants to receive the remaining sale consideration for execution of sale deed, well within the six months time. In a suit for specific performance, law is well settled that the plaintiff need not jingle coins to prove the fact that, he is financially sound to make the payment.

19. Mr.P.Valliappan, the learned Senior counsel appearing for the appellants/defendants would submit that even for argument sake, if the

11/19



A.S.No.486 of 2018

judgment is confirmed, the plaintiff will not be in a position to carve out 7 cents out of 10 $\frac{3}{4}$ cents land.

WEB COPY

20. Mr.C.R.Prasanan, the learned counsel for the plaintiff would rather submit that as per the boundaries and extent details found in the suit sale agreement, the plaintiff would get the possession.

21. An interim application has been filed by the respondent/plaintiff under Order 41 Rule 27 C.P.C., wherein it is claimed that the suit property measures 10 $\frac{3}{4}$ cents. Though the same is not disclosed in the written statement, it was further claimed that only after the execution of sale agreement, the suit property was measured by the Firka surveyor and it was found that the extent of the property is not 7 cents and 10 $\frac{3}{4}$ cents. For that, the following documents are necessary for deciding the issue,

- i. Sale deed executed by E.T.Ramasamy in favour of M/s. Indian Oil Corporation limited in respect of lands in S.F.No.754/C2 of Bellapalayam Village dated 09.06.2005.



A.S.No.486 of 2018

- ii. Rectification Deed executed by E.T.Ramasamy in favour of M/s. Indian Oil Corporation limited in respect of lands in S.F.No.754/C2 of Bellapalayam Village dated 23.04.2007.
- iii. FMB in respect of lands in S.F.No.754 of Bellapalayam Village, is taken from online dated 09.07.2023.

WEB COPY

22. The said application was strongly resisted by the appellants' side stating that, in order to divert the main case of the plaintiff, these documents have been filed and prayed to dismiss the petition.

23. The first two documents are sale deed and rectification deed executed by the husband of the 1st defendant Viz., E.T.Ramasamy, in respect of S.F.No.754/C2, which is a property situated to the north of the suit property. The third document is the copy of the FMB relating to S.F.No.754. Ultimately, no prejudice will be caused if these documents are received in evidence. The reason being that, in order to explain the topography details alone, these documents have been filed. Therefore, in order to decide the lis, this will be certainly helpful to the Court. Therefore, the documents are ordered to be received in evidence and marked as Ex.A13, Ex.A14 & Ex.A15, respectively.



A.S.No.486 of 2018

WEB COPY

24. The well established principle of law is that the plaint shall disclose the identity of the suit property without any ambiguity. The plaintiff himself admits that, after execution of sale agreement, when he sought to measure the suit property with the help of Firkar surveyor, he came to know that the extent of the suit property is 10 $\frac{3}{4}$ cents and not 7 cents. As per Ex.P.15, FMB, suit property is situate to the west of pipeline that runs north-south.

25. Order 7 Rule 3 and Order 20 Rule 9 of C.P.C., both the provisions mandate that the plaint shall contain the clear identity of the suit property. Order 7 Rule 3 are extracted here under:-

“Order 7 Rule 3:- Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identity it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

26. Even upon the careful perusal of the description of the property found in the plaint, we have no reasons to find fault on the details of the property. However, it is contended that extent of suit survey

14/19



A.S.No.486 of 2018

number is 10 $\frac{3}{4}$ cents. This is made clear through Ex.A15, FMB sketch pertaining to S.F.No.754.

27. Therefore, to put it in a nut shell, the extent of suit property is 7 cents. The plaintiff claims that after execution of sale agreement, he got the suit property measured through Firka surveyor and found out that the extent of the suit property is not 7 cents and 10 $\frac{3}{4}$ cents.

28. In ***Pawan Kumar Dutt and Anr. Vs. Shakuntala Devi and Ors.*** reported in (2010) 15 SCC 601, the Hon'ble Supreme Court held that, if the parcel of land was not identified, not ascertainable then the contract cannot be enforced.

29. Therefore, we are of the considered opinion that it is extremely difficult to identify the suit property. When the property is not capable of being identified, then the suit has to fail. The agreement should contain specific boundary details to this effect. The boundaries found in the suit sale agreement Ex.A4 in the plaint relates to the 10 $\frac{3}{4}$ cents and not for 7 cents.

15/19



A.S.No.486 of 2018

WEB COPY

30. It is a common understanding that the Courts are not expected to pass a judgment which is incapable of being enforced. In this case also, the suit sale agreement and the plaint suffer from the said defect, which cannot be cured. Therefore, based on the above said observations and discussions, we are of the considered view that even if the suit is decreed, the plaintiff will not be in a position to execute the decree. Therefore, for the above said defect, the suit has to necessarily fail.

31. In the result, the appeal stands allowed and the judgment and decree passed by the trial Court in OS.No.79 of 2012 on the file of the learned III Additional District Judge, Coimbatore stands set aside. As the main relief is refused, as an alternate, plaintiff is entitled for alternate relief of return of advance amount of Rs.5 Lakhs at the rate of 12% p.a., from the date of agreement till the date of filing of suit, at the rate of 9% p.a., from the date of filing of suit till to-day and thereafter, at 6% p.a. There is no orders as to costs. Connected miscellaneous petitions are closed.



WEB COPY



A.S.No.486 of 2018

[R.S.M. J.,] [R.K.M., J.,]

05.09.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral citations: Yes/No
mpl/ssn

To
1. The III Additional District Judge,
Coimbatore.



WEB COPY



A.S.No.486 of 2018



WEB COPY



A.S.No.486 of 2018

R.SUBRAMANIAN, J.,
and
R.KALAIMATHI, J.,

mpl/ssn

Pre-delivery judgment in
A.S.No.486 of 2018
and
CMP.Nos.3018 & 14917 of 2023 and
12435 & 15508 of 2023

05.09.2023