



A.S.No.890 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.11.2023
Pronounced on	31.01.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

A.S.No.890 of 2012

and M.P.No.1 of 2012

- 1.Sanjay Agarwal
- 2.Ashok Kumar
- 3.M.Venkatesh (Died)
- 4.B.K.Prasad
- 5.Lakshmi Venkatesh
- 6.Minor Nithish kumar Venatesh
(Represented by Lakshmi Venkatesh
natural guardian)
- 7.Minor Hansika Venkatesh
(Represented by Lakshmi Venkatesh
natural guardian)

[A3 died, A5 & A7 are brought on record



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as legal heirs of deceased 3rd appellant,
viz., M.Venkatesh vide order of
Court dated 24.08.2023 made in
C.M.P.No.16738 in A.S.No.890 of 2012
(TVTSJ)]

... Appellants/defendants 7 to 10

Versus

1.P.Kumar

Aslam

2. Parahana Behum

3.Paras, Son of late Aslam

4.S.Aswatharamaiah

5.R.Ravindra Nath

6.N.A.Nagaraj Setty

7.C.R.Usha Devi

8.P.S.Balakrishna Setty

... Respondents/Defendants 1 to 6

Prayer : The appeal is filed under Section 96 of Code of Civil Procedure,
against the judgment and decree dated 24.04.2012 made in O.S.No.85 of
2011 on the file of the Principal District Court, Krishnagiri.



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For Appellants : Mr.V.Raghavachari, Senior Counsel

for Ms.V.Srimathi

For RR1 : Mr.V.R.Shanmuganathan

For R2 to R4 : **Formal parties**

For RR5 to R9 : No appearance

JUDGMENT

This appeal is directed against the judgement and decree dated 24.04.2012 in O.S.No.85 of 2011 on the file of the Principal District Court, Krishnagiri.

2. The respondent herein as plaintiff filed a suit in O.S.No.91/2007 on the file of the Principal District Judge, Krishnagiri, for specific performance of an agreement of sale dated 18.02.1998, contending inter alia; that

2.1. The defendants 1 to 6 agreed to sell the suit property for a total sale consideration of Rs.36,36,000/-.

2.2. The respondent/plaintiff and one Aslam entered into a sale agreement on 18.02.1988 with the defendants 1 to 6.



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2.3. That an advance of Rs.5,00,000/- was paid at the time of execution of the agreement.

2.4. That the 3rd defendant received further amount of Rs.5,00,000/- on 16.04.1998.

2.5. That the 3rd defendant again on 10.04.2001 received further amount of Rs.10,00,000/- from the plaintiff.

2.6. That on 02.04.2004 the 3rd defendant further received a sum of Rs.12,00,000/- from the plaintiff.

2.7. That appropriate endorsements were made on the said agreement of sale.

2.8. That on the date of sale agreement itself the defendants 1 to 6 delivered possession of the suit property to the plaintiff.

2.9. In spite of several requests made by the plaintiff the defendants failed to come forward to receive the balance sale consideration of Rs.4,36,000/- and execute a sale deed in favour of the plaintiff.

2.10. The plaintiff has put up a compound wall in the suit property and has also obtained service connection for the sheds put up in the



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suit property.

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2.11. The defendants with ulterior motive created four sale deeds dated 20.01.2006 in order to defraud the plaintiff.

2.12. On 23.01.2006, the defendants 1 to 10 threatened the plaintiff to hand over possession of the suit property to them.

2.13. That however when the plaintiff issued a legal notice on 23.01.2006 the defendants failed to reply even after receipt of the said notice.

2.14. That on 26.01.2006 the defendants attempted to trespass in to the suit property and therefore, the plaintiff was constrained to file a suit in O.S.No.15/2006 for permanent injunction before the District Munsif Court, Krishangiri.

2.15. On 06.02.2007, the aforementioned Aslam died and his legal heirs were impleaded as defendants 11 to 13 in the above suit.

2.16. That therefore, the plaintiff was constrained to file the present suit for specific performance of contract.



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2.17. The 3rd defendant filed a written statement denying that on 10.04.2001 and 02.04.2004 the 3rd defendant received a sum of Rs.10,00,000/- and Rs.12,00,000/- as false.

2.18. The 3rd defendant also denied that the suit property was never handed over to the plaintiff and the plaintiff and one Aslam did not put up any compound wall in the suit property. He would submit that in S.No.564, the defendants 7 to 10 alone have put up a small shed.

2.19. The 3rd defendant also denied the allegation that the defendants 1 to 10 on 23.01.2006 attempted to forcible possession of the suit property.

3.The plaintiff filed the suit in O.S.No.15/2006 by suppressing the fact about the issuance of legal notice dated 14.11.2005 by the defendants 1 to 10 in favour of the plaintiff and Aslam and also about the paper publication with regard to sale of the suit property. The trial Court has conducted a joint trial of the suits in O.S.No.91/2007 and O.S.No.85/2011(old No.15/2006).



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4.The trial Court framed the following issues in

O.S.No.85/2011 based on the above pleadings :

1. கீழ்க்கண்ட சொத்து வாதியின் தவித்த அனுபவித்திலும், சுவாதீனத்திலும் உள்ளதா?
2. கீழ்க்கண்ட சொத்தினை பிரதிவாதிகள் விற்கிரயம் செய்ய எத்தனிக்கின்றனரா?
3. வாதிகள் கோரியுள்ளவாறு நிரந்தர உறுத்துக் கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
4. வாதிகளுக்கு கிடைக்கக் கூடிய இதர பரிகாரங்கள் என்ன?

And the trial Court framed the following issues in

O.S.No.91/2007 based on the above pleadings :

1. 18.02.1998 தேதியிட்ட ஒப்பந்தம் 5-ம் பிரதிவாதியைக் கட்டுப்படுத்துமா?
2. வாதி ஒப்பந்தப்பத்திரத்தில் உள்ள மேற்குறிப்புகளை போலியாகத் தயார் செய்துள்ளாரா?



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3. சொத்து மாற்றுரிமைச் சட்டம் பிரிவு 53-ஏ-ன்படி இடைக்கால மற்றும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பிறப்பிக்க இயலாதா?
4. 7 முதல் 10 பிரதிவாதிகள் நல்லெண்ணத்தின்பாற்பட்ட உரிமையாளர்களா?
5. 1 முதல் 6 பிரதிவாதிகள் வாதிக்கும், அஸ்லாம் என்பவருக்கும் அனுப்பிய 14.11.2005 தேதியிட்ட சட்ட அறிவிப்பை வாதி வேண்டுமென்றே மறைத்துள்ளாரா?
6. இவ்வழக்கு, உரிமை வழக்கு விசாரணை முறைச் சட்டம், கட்டளை 2, விதி 2-ன் கீழ் பாதிக்கப்பட்டுள்ளதா?
7. வாதி தனக்குள்ள ஒப்பந்தத்தை நிறைவேற்ற தயாராக உள்ளாரா?
8. வாதி வழக்குரையில் கோரியபடி ஏற்றதை ஆற்றுக பரிகாரம் பெற உரிமை உடையவரா?
9. வாதி வழக்குரையில் கோரியபடி நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற உரிமை உடையவரா?
10. 5-ம் பிரதிவாதி இவ்வழக்கிற்கு அவசியமற்ற தரப்பினரா?
11. வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரம் என்ன?

5. After trial, the trial Court passed a judgment and decree



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dated 24.04.2012 in O.S.No.91/2007 holding that the plaintiff is not entitled for a decree of specific performance and dismissed the above suit. However, in O.S.No.91/2007, the trial Court granted the relief of permanent injunction against the defendants restraining them from interfering in the peaceful possession and enjoyment in the suit property by the plaintiff and declined to grant any relief with regard to restraining the defendants from alienating the suit properties to any other third persons.

6. Aggrieved by this, the defendants 7 to 10 are before this Court as appellants.

7 . The learned counsel appearing for the appellants/defendants 7 to 10 would content that having dismissed the suit with regard to specific performance, the trial Court was totally unjustified in decreeing the suit for specific performance. He would further submit that the appellants herein are bonafide purchaser for value and having held that the plaintiff is not entitled for specific performance, the findings of the trial Court with regard to issue No.4 against the appellants herein is erroneous. The trial Court failed to take



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note of the fact that under Ex.A.1 sale agreement, nothing is mentioned about handing over possession of the property to the plaintiff. Under such circumstances, the trial Court should have held that the possession continued to be with the owner of the property. He would further content that when the relief of specific performance is denied, granting a relief of injunction until such time he is dispossessed in a manner known to law is wholly without justification. In a suit for permanent injunction, the burden is on the plaintiff to prove his possession. Whereas, the trial Court has erroneously shifted the burden upon the defendants to establish his possession is unsustainable. Hence, the judgment and decree of the trial Court in O.S.No.85/11 dated 24.04.2012 is liable to be set aside.

8.On the other hand, the learned counsel appearing for the 1st respondent would submit that the Court may order for return of advance amount to the plaintiff in the interest of justice.

9.Heard on both sides and records perused.

10.Admittedly, the suit in O.S.No.91 of 2007 was filed by the



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plaintiff for specific performance of contract entered between the plaintiff and one Aslam with the defendants 1 to 6. The trial Court has declined to grant the relief of specific performance in favour of the plaintiff. However, the plaintiff has not preferred any appeal against the judgment and decree passed in O.S.No.91 of 2007. In the suit in O.S.No.85/2011 filed by the plaintiff, the trial Court has granted the relief of permanent injunction restraining the defendants from interfering in the peaceful possession and enjoyment of the plaintiff in the suit property.

11. Aggrieved by this, the defendants 7 to 10 who are the purchasers of the suit property preferred the present appeal.

12. On perusal of the judgment of the trial Court, there is a categorical finding that the plaintiff is not entitled for the relief of specific performance. The above findings of the trial Court is not challenged by the plaintiff. No appeal is preferred by the plaintiff against the judgement and decree passed in O.S.No.91/2007.



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13. On the other hand, the defendants 7 to 10 have preferred the present appeal assailing the judgement and decree passed in O.S.No.85/2011 in which the trial Court has granted the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. The specific contention of the appellants is that when the trial Court declined the relief of specific performance ought not to have granted the relief of permanent injunction. The further contention is that the plaintiff is not in possession of the suit property. Therefore, it has to be considered whether possession was with the plaintiff after entering into the sale agreement. On perusal of oral and documentary evidence let in by the plaintiff it is found that the plaintiff failed to point out as to when he was put in to possession of the property. Though the plaintiff would content that he had put up the compound wall and two sheds in the suit property, the same is not proved by the plaintiff. There is no proof of cost incurred by the plaintiff for putting up the above constructions. Therefore, the contention of the plaintiff that he has put up construction in the suit property is clearly unacceptable. The testimonies of



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the defendants' side witnesses examined as D.W.1 and D.W.2 clearly goes to show that the plaintiff was never in possession of the aforesaid land.

Moreover, if the agreement of sale is coupled with possession, it requires stamp duty and stamp duty has to be paid as per schedule 1-A of Article 47 A of the Stamp Act. Furthermore, Ex.A.1 Sale agreement does not speak of possession having been handed over to the plaintiff. Under such circumstances, the Court below should not have held that the plaintiff is in possession of the suit property. It is settled law that, in a suit for permanent injunction, the burden is on the plaintiff to establish his possession in the property. However, the trial Court erroneously shifted the burden upon the defendants to establish their possession in the property. The trial Court ought to have seen that the plaintiff had filed the suit seeking the relief of injunction and the said suit is subject to the suit filed for specific performance. Therefore, when the relief of specific performance is denied, granting a relief of injunction until such time he is disposed in a manner known to law, is wholly without justification.

14.For the above mentioned reason, this Appeal suit is allowed.



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The judgment and decree passed by the trial Court in O.S.No.,85 /2011 granting permanent injunction restraining the defendants from interfering with the plaintiff peaceful possession and enjoyment of the suit property is set aside. No cost. Consequently, connected miscellaneous petition is closed.

31.01.2024

vsn

Index:Yes/No

Speaking Order : Yes/No

To

1.The Principal District Judge, Krishnagiri.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

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and

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