



S.A.No.810 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.810 of 2019

C. Sandirane

S/o. A. Cannane @ A.Kannappan

IAF Officer (Retd)

No.9, Jaya Nagar, First Cross,

Reddiyarpalayam,

Puducherry 605 010

...Appellant

Vs.

1. P. Govinda Gounder

S/o. Ponnappa Gounder

2. P. Kumaraguru

S/o. Ponnappa Gounder

Both are residing at

No.29, Mariamman Koil Street

Agaram Village, Koodapakkam Post

Villianur Commune, Puducherry 605 010

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 05.09.2018 passed in A.S. No.12 of 2016, on the file of the Principal District Court, Puducherry, reversing the



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decree and judgment dated 26.06.2015 passed in O.S.No.12 of 2007, on the file of the Additional Sub Judge, Pondicherry.

For Appellant : Mr.M. Narayanaswamy

For Respondents : Mr.A.Nambirajan and
Joint vakalat for
Mr. K. Venkateswaran

JUDGMENT

The appellant is the plaintiff in O.S. No.12/2007 on the file of the Additional Subordinate Court, Pondicherry, and he filed the said suit for specific performance of contract against the defendants 1 and 2. The suit properties as described in the plaint are as follows:

- 1) Land in R.S. No.42/4 cad Nos. 347 Bis measuring 22 kuzhies of which an undivided two seventh share viz., 6 kuzhies 4 veesams (3,744 square feet) of Ulavaikal village, Villianur Panchayat, Pondicherry.
- 2) Land in R.S. No.42/3 Cad No.349 measuring 44 kuzhies of which an undivided two seventh share viz., 12 kuzhies 8 veesams (7200 square feet) within the boundaries stated in the plaint schedule.



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The total extent of both the items is mentioned as 19 kuzhies (10,944 square feet)

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

3.1. The plaintiff and the defendants entered into an agreement of sale on 06.07.2006 (Ex.A1) in respect of the suit properties. The sale consideration was fixed as Rs.16,500/- per kuzhi. On the date of sale agreement, the defendants received a sum of Rs.9,000/- towards advance. The time fixed for the performance of contract was 90 days . However, the second defendant received a sum of Rs.50,000/- from the plaintiff on 26.12.2006 by way of a cheque and issued a receipt (Ex.A3).

3.2. The defendants promised to hand over the original title



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deeds in respect of the suit properties and execute the sale deed in favour of plaintiff after receiving the balance sale consideration. The defendants also assured the plaintiff that they would obtain necessary relinquishment deeds from the other co-sharers of the suit properties. The extent of land mentioned in the sale agreement is 59 kuzhies 8 veesams.

3.3. Since the defendants could not get the relinquishment deeds from the other co-sharers, the plaintiff agreed to purchase 2/7 share i.e. 19 kuzhies from the defendants. The plaintiff was always ready and willing to perform his part of the contract and also issued a legal notice dated 25.10.2006 (Ex.A2) to the defendants. However, the defendants did not come forward to fulfill their part of the contract as per the sale agreement and hence the suit.

4. The suit was resisted by the defendants on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The suit is also barred by limitation.



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iii. The plaintiff did not pay a sum of Rs.50,000/- towards the sale agreement (Ex.A1).

iv. There is no mention about the co-sharers in the sale agreement Ex.A1. The plaintiff had never shown his readiness and willingness to perform his part of the contract.

5. On the basis of the above pleadings, the trial Court framed the following issues:

- 1) *"Whether it is true that on the insistence of the plaintiff the defendant signed the agreement for sale which reflected the entire property over which the defendant had only 2/7th undivided share?"*
- 2) *Whether the plaintiff has relinquished all his claims against the defendants 1 and 2 in respect of the non performance of their obligations under the sale agreement relating to the five seventh share of the suit property?*
- 3) *Whether it is true that the second defendant received a sum of Rs.50,000/- from the plaintiff and it was not for the advance*



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4) Whether the plaintiff is entitled for specific performance regarding 2/7th share of the defendants?"

6. The plaintiff examined himself and marked Ex.A1 to Ex.A8. The defendants 1 and 2 examined themselves and three other witnesses. However, no documentary evidence was adduced on the side of the defendants.

7. The learned trial court judge on considering the evidence on record decreed the suit in favour of the plaintiff vide her decree and judgment dated 26.06.2015 on the following grounds:

- 1) Though the defendants 1 and 2 agreed to get the release deeds from the co-sharers, failed to get it executed by them.
- 2) on 25.12.2006, the second defendant had received a sum of Rs.50,000/- from the plaintiff towards the sale consideration.
- 3) The sale agreement (Ex.A1) was with regard to the suit properties measuring 59 kuzhies 8 veesams. However, the plaintiff is now



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claiming only 2/7 share in the suit properties as the defendants have not obtained the relinquishment deeds from the other co-sharers.

- 4) The plaintiff has also shown his readiness and willingness to perform his part of the contract by issuing a legal notice on 25.10.2006 (Ex.A2).
- 5) The defendants did not perform their part of the contract by getting the relinquishment deeds from their sisters and had also clandestinely sold 5/7 share to third parties through their uncle Ganesan.

8. Aggrieved over the decree and judgment passed by the trial court judge, the defendants filed an appeal in A.S.No.12/2016, before the Principal District Court, Puducherry. The learned Principal District Judge, Puducherry, after analysing the oral and documentary evidence on record, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 05.09.2018 on the following grounds:

- i. There is no recital in the sale agreement (Ex.A1) with regard to



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- ii. The time fixed for performance of contract was ninety days and the plaintiff, after the expiry of ninety days, had issued the first notice to the defendants stating that he was ready and willing to perform his part of the contract. Thus the plaintiff has not shown his readiness and willingness throughout the subsistence of contract.
- iii. The plaintiff has not explained as to who are all the other co-sharers and how the defendants are entitled to 2/7 share in the suit properties.
- iv. As per the title deeds, the actual extent of land on ground is 67 kuzhies whereas the sale agreement (Ex.A1) mentions only 59 kuzhies 8 veesams.
- v. The plaintiff has sought for specific performance with regard to 2/7 share in the total extent of 67 kuzhies, when the agreement itself speaks about 59 kuzhies 8 veesams.

9. Aggrieved over the decree and judgment passed by the first



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appellate court, the present second appeal is filed by the plaintiff.

10. The second appeal was admitted by this Court on the following substantial questions of law:

1) Whether the lower appellate court is right in refusing to grant the relief of specific performance in respect of the suit property on the ground that the respondents are having only limited share in the suit property overlooking the fact that the appellant has filed the suit for specific performance only for the respondents 2/7-th share alone?

2) Whether the lower appellate court is right in rejecting the relief of specific performance in favour of the appellant, even though it has been clearly found that the respondents have admitted the sale agreement Exhibit A1 and received a sum of Rs.59,000/- in pursuance of the sale agreement?

11. Heard Mr.M. Narayanaswamy, learned counsel appearing for the appellant and Mr.A.Nambirajan, learned counsel appearing for



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12. The plaintiff and the defendants 1 and 2 entered into an agreement of sale dated 06.07.2006 (Ex.A1) in respect of the properties in Rs.No.42/3 and 42/4 of Ulavaikal village, Villianur Panchayat, Pondicherry, measuring 59 kuzhies 8 veesams. The sale consideration was fixed as Rs.16,500/- per kuzhi. The plaintiff paid a sum of Rs.9,000/- on the date on the date of agreement of sale. The time fixed for performance of the contract was ninety days from the date of sale agreement (Ex.A1). However, the plaintiff had issued the first legal notice to the defendants only on 25.10.2006 (Ex.A2). This is after the expiry of ninety days period mentioned in the sale agreement (Ex.A1). The legal notice was not served on the defendants as is seen from the returned covers Ex.A3 and Ex.A4. In the notice, the plaintiff had requested the defendants to get the release deeds executed from their sisters, who are the co-sharers of the properties mentioned in the agreement (Ex.A1), and to execute the sale deed. It is pertinent to point out that there is no recital to this effect in Ex.A1. For better



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understanding, the relevant portion in Ex.A1 sale deed is extracted hereunder:

“இன்று தேதியிலிருந்து 90 நாள் காலக்கெடுவிற்குள் சொத்துக்குறிய மூலப்பத்திரங்கள், கிரய ஓரிஜினல் பத்திரங்கள், வில்லங்க சான்றிதழ், பட்டா காப்பி ஆகியவைகளுடன் சொத்தை சர்வ வில்லங்க சுத்தியாய் 1-வது நபர்கள் 2-வது நபருக்கோ அல்லது அவர் குறப்பிடும் வேறு நபர்களுக்கோ கிரயம் செய்து தர முன்வரும்போது 2-வது நபர் இன்று தேதியில் 1-வது நபர்களிடம் கொடுத்திருக்கும் அட்வான்ஸ் தொகை போக பாக்கி கிரயத் தொகையை செலுத்தி தன் செலவில் கிரயப்பத்திரம் தயார் செய்து கிரயம் செய்துகொள்ள வேண்டியது. நிலத்தினை சமபடுத்திக்கொள்ளவும், அளந்து கல்போடவும், பாதைகளை சீர்படுத்தி அமைத்துக் கொள்ளவும் நிலத்தினை அபிவிருத்தி செய்யவும் 1-வது நபர்கள் 2-வது நபருக்கு சம்மதம் தருகிறார்கள். மேற்குறிப்பிட்ட கெடுவிற்கும் 2-வது நபர் சொத்தைக் கிரயம் செய்து கொள்ளத் தயாராக இருந்தும், 1-வது நபர் கிரயம் செய்து கொடுக்கத் தவறினால் 2-வது நபர் நீதி நடவடிக்கை மூலம் தீர்மானம் பெற்று கீழ்க்கண்ட



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சொத்தை கோர்ட் மூலம் கிரயம் பெற்றுக் கொள்ள
வேண்டியது.”

Therefore, it is seen that getting the release deeds from the co-sharers is not a condition precedent for getting the sale deed executed in favour of the plaintiff. It is also pertinent to point out that the plaintiff has not mentioned as to who are the other co-sharers.

12.1. It was admitted by both parties that as per the title deed, the total extent of land is 67 kuzhies. However, the plaintiff and the defendants have entered into the agreement (Ex.A1) only with regard to 59 kuzhies 8 veesams. The plaintiff in the plaint had sought specific performance of contract in respect of 2/7 share in the total extent of 67 kuzhies. When the agreement itself speaks about 59 kuzhies 8 veesams, it is not known as to how the plaintiff is seeking for specific performance of contract in respect of 2/7 share in 67 kuzhies. As already observed, the plaintiff has not also mentioned the names of the other sharers and



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has not also explained as to how the defendants 1 and 2 would be getting 2/7 share.

12.2. The time for completing the contract was fixed as ninety days in Ex.A1 sale agreement. As already observed securing release deeds from the co-sharers was not the condition precedent for executing the sale deed. In fact, there is no recital that the properties mentioned in Ex.A1 belong to other co-sharers also. In any event, the plaintiff has issued the legal notice only after the expiry of ninety days. Thus, the plaintiff has not shown his readiness and willingness to perform his part of the contract. The balance sale consideration was not also deposited at the time of filing the suit by the plaintiff to show his readiness. The learned counsel for the appellant/plaintiff contended that, after the issuance of legal notice (Ex.A2), the defendants received a sum of Rs.50,000/- by way of a cheque as is seen from Ex.A3 receipt. He would therefore contend that time was not the essence of contract and therefore, it has to be held that the plaintiff was ready and willing to perform his part of the contract.



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12.3. A perusal of the evidence of the plaintiff shows that the plaintiff knew that the properties mentioned in Ex.A1 do not absolutely belong to the defendants and that there are other co-sharers. Despite this fact, the plaintiff has entered into an agreement of sale with the defendants in respect of the properties measuring 57 kuzhies 8 veesams. Both the plaintiff and the defendants did not make a mention in Ex.A1 that there are other co-sharers. Only in the suit notice (Ex.A2), the plaintiff has requested the defendants to get the release deeds executed by the other co-sharers. This notice was issued after the expiry of ninety days period mentioned in the sale agreement. In the circumstances, it cannot be stated that the plaintiff was always ready and willing to perform his part of the contract. In any event, as already observed, the plaintiff has not established how the defendants 1 and 2 are entitled to 2/7 share in the total extent of 67 kuzhies. Thus the plaintiff has not proved any of his contentions in the plaint. The first appellate court had infact analysed all these aspects in its well reasoned judgment. Therefore, the substantial questions of law are answered accordingly.



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13. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 05.09.2018 passed in A.S. No.12 of 2016, on the file of the Principal District Judge at Puducherry, is upheld.
- iii. The decree and judgment dated 26.06.2015 passed in O.S.No.12 of 2007, on the file of the Additional Sub Judge, Pondicherry, is set aside.
- iv. The suit in O.S.No.12 of 2007, on the file of the Additional Sub Judge, Pondicherry, is dismissed.

21.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. The Principal District Judge, Puducherry
2. The Additional Sub Judge, Pondicherry.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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R.HEMALATHA, J.

Today, the matter has been listed under the caption 'for being mentioned'.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the Respondents.

3. It appears that in the result portion, clause numbers (iii) and (iv) have been typed inadvertently. Hence, from Paragraph number 13, clause numbers (iii) and (iv) alone shall be deleted and all other aspects shall remain intact.

4. Registry is directed to issue fresh order copy after deleting the above portions in the Judgment made in S.A.No.810 of 2019, dated 21.12.2024.



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27.01.2025