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S.A.No.1319 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2024

PRONOUNCED ON : 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1319 of 2011

and

M.P.No.1 of 2011

P.Maheshkumar

...

Appellant

Vs.

1.Padmavathi

2.Selvi

3.Sathish

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 23.06.2010 in A.S.No.132 of 2006 on the file of the I Additional District Court, Coimbatore confirming the judgment and decree dated 19.09.2005 in O.S.No.487 of 1999 on the file of the II Additional Subordinate Judge's Court, Coimbatore.

For Appellants : Mr.C.R.Prasannan
For Respondents : Mr.A.Mohan



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JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 23.06.2010 in A.S.No.132 of 2006, on the file of the I Additional District Court, Coimbatore, confirming the judgment and decree dated 19.09.2005 in O.S.No.487 of 1999 on the file of the II Additional Subordinate Judge's Court, Coimbatore.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The case of the plaintiff, in brief, is that the plaintiff filed the suit for specific performance of Sale Agreement dated 21.05.1998 executed by C.Duraisamy. Plaintiff property was owned by the said Duraisamy. The defendants are the wife and children of him. Since the said Duraisamy died, the suit is filed against the wife and his children. He had agreed to sell the suit property for a sale consideration of Rs.1,15,000/- and received a sum of Rs.1,00,000/- as advance on the date of agreement i.e., on 21.05.1998. Eleven months time was fixed to complete the sale. Since he died without executing the sale deed, the plaintiff filed a suit against the legal heirs of Duraisamy.



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4.The defendants contested the suit, denied the allegations in the plaint and filed a written statement contending that Duraisamy had not executed any agreement for sale. He had received Rs.20,000/- as loan from the father of the plaintiff namely Palanisamy. At that time, Palanisamy obtained signatures in several blank papers and documents at the Registrar Office and got Power of Attorney dated 21.05.1998 on the same day in favour of his brother namely B.Balasubramaniam. Further, the Power of Attorney namely B.Balasubramaniam executed a sale agreement in respect of the suit property in favour of the plaintiff under Document No.1227 of 1998. Therefore, the said document does not bind upon the defendants and pleaded that the defendants are willing to settle the actual borrowed amount by Duraisamy with normal rate of interest. Thus, pleaded to dismiss the suit.

5.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

- “1.வாதி பிராதில் கோரியபடி “ஏற்றதை ஆற்றுக” பரிகாரம் பெறவேண்டியவர் தானா? (அசலின் 4ம் பக்கம் முடிவு)
2. பிரதிவாதிகள் தாவா சொத்தை கிரையம் செய்யாமல் நிரந்தர உறுத்துக்கட்டளை பிறப்பிக்க வேண்டியது தானா?
3. வேறு என்ன பரிகாரம்?”



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6. Before the Trial Court, in support of the plaintiff's case, PW 1 to PW3 were examined and 10 documents were marked as Ex.A.1 to Ex.A.10. On the side of the defendants, 1st defendant herself examined as DW1 and 1 document was marked as Ex.B.1.

7. Upon considering the evidence and documents, the trial Court dismissed the suit and rejected the prayer for specific performance of sale agreement and permanent injunction as claimed by the plaintiff.

8. Aggrieved over the same, the plaintiff had filed A.S.No.132 of 2006, before the I Additional District Judge's Court, Coimbatore. The First Appellate Court, after considering the entire materials and evidence on record confirmed the Judgment and Decree of the trial Court and dismissed the appeal. Aggrieved by the same, the plaintiff has filed the present second appeal.

9. The second appeal has been admitted on the following substantial questions of law:

"(1) Whether in law the Courts below erred in casting the burden of proof of Ex.A1, sale agreement on the plaintiff, even after admitting



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the signature of her husband in it, that too after discharging his burden of proof by examining the attesting witness on his side as held in the judgment reported in 2007 1 CTC Page No.449?

(2) Whether in law the Courts below erred in overlooking that it is for the defendants to prove her plea of coercion especially when an alternate case of loan is pleaded on her side and on failure of the same the plaintiff is entitled to a decree for specific performance as held in the judgment reported in 2005 1 CTC Page No. 753 and 2007 1 CTC Page No.449.

(3) Whether in law the findings of the Courts below that Ex.A1 should not have been intended for sale due to the loan arrangement, in view of Ex.A5 and Ex.6 especially when the defendants failed to prove the plea of loan, is not perverse as held in the judgment reported in AIR 2003 Mad Page No.305?"

10.The learned counsel appearing for the appellant contended that the First Appellate Court failed to consider the pleadings and evidence on record properly and failed to consider the fact that the 1st defendant admitted the



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signature of her husband Duraisamy in Ex.A.1, Sale Agreement dated

21.05.1998. The alleged loan transaction is not proved by the defendants with sufficient evidence. The failure of the plaintiff to plead about the execution of Power of Attorney by Duraisamy to his brother Balasubramaniam, in pursuance of the Power of Attorney execution of Sale Agreement dated 21.05.1998 is not fatal to the plaintiff's case as Duraisamy died on 12.07.1998.

Therefore, the plaintiff filed the suit based upon the earlier Sale Agreement dated 21.05.1998 (Ex.A.1) executed by the said Duraisamy. If the parties are aware of the issues involved, absence of pleadings will not affect the case. The First Appellate Court erroneously found that the plaintiff is not entitled to the relief of specific performance of the Sale Agreement, without considering the the evidence on record and reiterated the other grounds raised in the grounds of appeal and thus pleaded to allow the second appeal. To support his submission, he relied on the judgment [1987 2 SCC 555] in the case of ***Ram Sarup Gupta (Dead) by LRS Vs. Bishun Narain Inter College and Others.***

11.The learned counsel appearing for the respondents supported the judgment of the trial Court and the First Appellate Court and contended that the plaintiff failed to plead the execution of Power of Attorney dated 21.05.1998 in favour of his brother on the same day of execution of Sale



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Agreement Ex.A.1 by Duraisamy, which was an unregistered Sale Agreement and also subsequently, his brother viz., Power of Attorney executed the Sale Agreement in favour of the plaintiff on 29.05.1998. The plaintiff has not assigned any valid reasons for not disclosing the fact to the Court. The person who does not come to the Court with clean hands, is not entitled to any relief. Therefore, the trial Court and the First Appellate Court had rightly rejected the plaintiff's claim. By entering into registered Sale Agreement subsequent to the earlier agreement dated 21.05.1998 impliedly rescinded and based upon that Sale Agreement, the suit is not maintainable. There is no ground to reverse the concurrent judgment and decree of the trial Court and the First Appellate Court. He further contended that the trial Court and the First Appellate Court had rightly dismissed the suit, there is no ground to interfere with the findings and no substantial question of law is involved in this case. To support his case, he relied on the following judgments reported in,

1. **AIR 1968 SC 1083** in the case of ***Mrs Om Prabha Jain Vs. Abnash Chand and another.***
2. **2017 3 SCC 702** in the case of ***Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar Vs. Chandran and others.***



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3. **2015 3 SCC 49** in the case of *Associate Builders Vs. Delhi*

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4. **2002 3 SCC 634** in the case of *Jai Singh Vs. Shakuntala.*

5. **2010 14 SCC 38** in the case of *Ramjas Foundation and Another Vs.*

Union of India and ors .

6. **MANU/TN/0093/1894** in the case of *Kristamma Naidu and ors Vs.*

Chapa Naidu and ors.

7. **2016 3 SCC 78** in the case of *Damodar Lal Vs. Sohan Devi and ors*

and thus pleaded to dismiss the Appeal.

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.On perusing the records and evidence, it is seen that the suit property originally belonged to Duraisamy, husband of the 1st defendant and father of the defendants 2 and 3, is admitted by both the parties. According to plaintiff, Duraisamy had agreed to sell the plaint schedule property for a sale consideration of Rs.1,15,000/- and executed a Sale Agreement on 21.05.1998



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and received a sum of Rs.1,00,000/- as advance. The balance amount Rs.15,000/- has to be paid. Eleven months time was fixed for completing the transaction. Duraisamy died on 12.07.1998. Hence, the suit is filed against the legal heirs of Duraisamy i.e., his wife and children. Defendants denied the averments of execution of Sale Agreement by Duraisamy on 21.05.1998.

14.The unregistered Sale Agreement dated 21.05.1998 is marked as Ex.A.1. On perusal of the records, it is seen that on the date of Sale Agreement i.e., 21.05.1998 (Ex.A.1), Duraisamy executed a Power of Attorney to plaintiff's brother Balasubramaniam which is marked as Ex.A.5. In pursuance of the said Power of Attorney, Balasubramaniam executed a Sale Agreement to the plaintiff for the very same property by mentioning Ex.A.1 in Ex.A.6 on 29.05.1998. This fact is not disclosed by the plaintiff in the plaint. No reason has been assigned by the plaintiff for not disclosing the fact before the Court. During the time of evidence, it has been disclosed. The necessity and circumstance to give a Power of Attorney to the plaintiff's brother Balasubramaniam on the same day i.e., 21.05.1998 is not explained. Further, the execution of another registered Sale Agreement dated 29.05.1998 (Ex.A.6) by way of registered document with regard to the same property by mentioning Ex.A.1, Sale Agreement dated 21.05.1998 is also not explained. It is seen that



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the suit is filed, not based upon the Sale Agreement executed on 29.05.1998 (Ex.A.6), but based upon the Sale Agreement dated 21.05.1998 (Ex.A.1).

15.Learned counsel for the appellant submitted that since Duraisamy died on 12.07.1998, subsequent to the execution of Power of Attorney dated 21.05.1998 and the Sale Agreement dated 29.05.1998 (Ex.A.6) cannot be executed by the power agent after the death of the Principal. The plaintiff filed the suit based upon the earlier Sale Agreement (Ex.A.1) dated 21.05.1998 executed by Duraisamy. This argument is not an acceptable one. Plaintiff can file suit against the legal heirs of Duraisamy upon the registered Sale Agreement dated 29.05.1998, on that date Duraisamy was alive. Therefore, filing of the suit based upon earlier unregistered Sale Agreement dated 21.05.1998 against the legal heirs of Duraisamy is not maintainable. Since it is impliedly cancelled.

16. It is noticed that, during the cross examination, plaintiff admitted that, subsequent registered Sale Agreement dated 29.05.1998 (Ex.A.6) was executed with an intention to cancel the earlier Sale Agreement executed in Ex.A.1 dated 21.05.1998 and the same was reproduced by the First Appellate Court in Para 16 and 17 of the judgment.

17.For better appreciation, it is reproduced as follows,



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'(16) Yet another circumstances in this case, that Ex.A1 was rescinded by the plaintiff himself by getting a subsequent registered document. Ex.A6. On careful perusal of the Ex.A6 though a reference was made to Ex.A1 in Ex.A6, the advance amount has been varied and further time stipulation to complete the sale agreement is also totally varied. The terms of the contract clearly varied between the parties then the Ex.A1. Ofcourse, Ex.A6 was executed only by the power agent. Merely because the power agent has executed the document, it cannot be said that terms have not been varied, every act of the power agent is an act of the principle. Therefore, when the materials alteration in a subsequent documents and terms also varied in a subsequent document will supersede the earlier document viz.. Ex.A1. Getting Ex.A6 with variation in the agreement and fixing specific time other than the time fixed under Ex.A1 such Ex.A6 contract clearly amounts to novation of the earlier contract. On careful reading of section 62 of the Indian Contract Act, the same reads as follows:-

Effect of novation, rescission and alteration of contract. If the parties to contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. Therefore, it is very clear that if any alteration in the subsequent agreement or new contract would rescind the original contract, the original contract need not be performed.



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In this regard, the evidence of the P.W.1 in the cross-examination when perused, he has categorically admitted as follows:-

“215, 98ம் தேதியன்ற எனக்கு துரைசாமி அறிமுகமானார். நான் 90% கிரையத் தொகையை அவர் செலுத்திவிட்டபடியால் பெரியோர் சொன்ன அறிவுரையின்படி பவர் பத்திரம் எழுதி வாங்கிக்கொண்டேன். இந்த விவரங்களை பிராதில் சொல்லவில்லையென்றால் அதுபற்றி எனக்குத் தெரியாது. ஏற்கனவே கிரய ஒப்பந்தத்திற்கு வலுச்சேக்க பவர் பத்திரம் வாங்கினேன் என்றால் சரிதான். (அசலின் 10ம் பக்கம் முடிவு) துரைசாமியுடன் நான் செய்து கொண்ட ஒப்பந்தத்தை ரத்து செய்யும் நோக்கத்துடன் என் அண்ணனிடம் மீண்டும் ரூ.10000த்தைக் கொடுத்து புதிய ஒப்பந்தம் போட்டேன் என்றால் சரிதான். இரண்டாவதாக 29.05.98ம் தேதியன்று செய்து கொண்ட ஒப்பந்தத்தின்பேரில் இந்த வழக்கு தாக்கல் செய்யவில்லை. நான் என் அண்ணனிடம் புதிதாக ஒரு கிரய ஒப்பந்தம் செய்தேன். பதிவு செய்யப்பட்டது தான், அதன் அடிப்படையில் வழக்கு போடச் சொல்லி வழக்குரைனரிடம் கொடுத்திருந்தேன். வழக்கு போட்ட விவரம் தெரியாது.”

17) From the above admission clearly show that Ex.A6 subsequent sale agreement was executed with intention to rescind the Ex. A1 agreement. As already pointed out, there is variation in the advance amount, and the time stipulation to complete the sale in the subsequent agreement. Therefore, the above Ex.A6 certainly amounts to novation of the original contract. The suit is not filed on the basis of Ex. A6 subsequent agreement. Whereas, in entire plaint pleadings, plaintiff has totally suppressed all these materials facts, and he has not come to the court with clean hands. Only for the first time, in evidence he has given explanation for the registered



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documents. Therefore, his evidence cannot be given much importance in that aspect. P.W.2 Shanmugam was examined as if he has received Rs. 70000/- from Duraisami and handed over Ex. A4 title deed. Even taking into consideration of his evidence that he has paid the loan amount to Duraisami, which was subsequently repaid by said Duraisamy, the same will not help the plaintiff in any manner, in proving this case, for specific performance. P.N.3 also examined to prove the Ex.A1 agreement. Even assuming that Ex.A1 was properly executed that itself cannot be a ground to grant a relief of specific performance. In view of the subsequent documents, and also suppression of facts by the plaintiff, besides, improbabilities found in the plaintiff's case about the sale agreement."

18.This evidence of plaintiff exposes the fact that, the earlier Agreement in Ex.A.1 dated 21.05.1998 was cancelled by substituting registered Sale Agreement dated 29.05.1998 (Ex.A6) for the very same property.

19.Now, I have to consider the defense placed by the defendants that there is no intention to Duraisamy to sell the suit property to the plaintiff's father. Duraisamy during his life time requested the plaintiff's father to arrange a loan for a sum of Rs.20,000/- for interest. For that purpose, plaintiff's father took Duraisamy to Sub-Registrar's Office and got signatures in several blank papers and got an unregistered Sale Agreement on 21.05.1998 and also on the



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very same day, got a Power of Attorney in favour of his brother

Balasubramaniam, which is evidenced by Ex.A.1 and Ex.A.5.

20.From the overall reading of the evidence and pleadings, it is noticed that the plaintiff suppressed the material fact of execution of registered Power of Attorney in his brother's name Balasubramaniam and unregistered Sale Agreement (Ex.A.1) on 21.05.1998 and on the same date, which is evidenced by Ex.A.5. Thereafter, in pursuance of Ex.A5, he got registered Sale Agreement Ex.A.6 for the very same property by mentioning in Ex.A.1 Sale Agreement. It shows that, all these papers were obtained from Duraisamy as security for the loan transaction. No doubt the plaintiff does not come to Court with clean hands. Therefore, the trial Court and the First Appellate Court had rightly held that the plaintiff is not entitled to any relief.

21.Therefore, the findings of the trial Court and the First Appellate Court stem out of evidence on record. The findings are based on evidence and they are not perverse. There is no ground for reversing the findings recorded by the trial Court and the First Appellate Court on the issue whether the plaintiff is entitled to specific performance of the Sale Agreement as claimed by him. There is no merit in the Second Appeal. The substantial questions of law formulated in the second appeal are accordingly answered.



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22. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

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Index : Yes/No

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Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1. The I Additional District Court, Coimbatore

2.The II Additional Subordinate Judge's Court, Coimbatore.



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.1319 of 2011

10.07.2024