



S.A.No.1299 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1299 of 2013 &
M.P.No.1 of 2013

T.Martin

... Appellant

-Versus-

1.Panguraj (died)

2.Charles

3.Janqueen

4.Gnanasundaram

5.Motcha Rani

... Respondents

(R2, R3 and R5 are brought on records
as legal heirs of the deceased R1 vide
order of this Court dated 11.11.2021
made in CMP.No.14804 of 2016 in
S.A.No.1299 of 2013)

Appeal filed under Section 100 of C.P.C. against the judgement and
decree of the learned Principal District Judge of Salem dated 06.09.2012 in
A.S.No.54 of 2011 reversing the judgment and decree of the learned
Subordinate Judge of Attur dated 15.09.2006 in O.S.No.88 of 2004.

*For Appellant : Ms.Mathumitha for
Mr.V.Nicholas*

*For Respondents 2, : No appearance
3 & 5*

For Respondent 4 : Mr.R.Babu



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*For Appellant : Ms.Mathumitha for
Mr.V.Nicholas*

R1 died

JUDGEMENT

The present second appeal arises out of the judgment and decree of the learned Principal District Judge at Salem in A.S.No.54 of 2011 dated 06.09.2012 in reversing the judgment and decree of the Subordinate Judge at Attur in O.S.No.88 of 2004 dated 15.09.2006.

2. For the sake of convenience, the parties will be referred to as their ranks in the original suit.

3. The case of the plaintiff is that the suit schedule mentioned property had been bequeathed in favour of one A.Panguraj, the first defendant through a registered Will dated 17.12.1985. The testator was none else than the mother of A.Panguraj viz., one Kanikka Ammal. The second and third defendants are the son and daughter of the first defendant. The first defendant had offered to alienate the property in favour of the plaintiff /T.Martin for Rs.1,80,700/-. On the date on which the sale agreement was written viz., 14.12.2002, he had received a sum of Rs.80,700/-. The period within which the sale agreement



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ought to be converted into a sale deed was three years. This is on account of the fact that the siblings of the first defendant had initiated a suit in O.S.No.17 of 1999 for the purpose of partition and separate possession.

4. According to the plaintiff, he took possession of the property on the date of the agreement itself and was enjoying 1/3rd right in and over the property. The plaintiff further pleaded that by 08.02.2004, he had paid an additional amount of Rs.49,625/- and on 15.10.2004, he paid a further sum of Rs.2,920/- in favour of the Cooperative Bank, in which the first defendant had a loan account. While this was the situation, the defendants 1 to 3 alienated their shares of the property in favour of one Gnanasundaram for a sum of Rs.1,20,000/-. Finding that the defendants were evading the execution of the sale deed, the plaintiff was constrained to file a suit for specific performance.

5. The first defendant entered appearance and took a plea that he never agreed to alienate the property in favour of the plaintiff. He further pleaded that the sale agreement itself is an act of forgery. It was his case that no payment was made under the transaction, nor did he hand over possession of the property as alleged by the plaintiff. Therefore, on this basis, he sought for



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dismissal of the suit.

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6. The subsequent purchaser/Gnanasundaram, who is the fourth defendant filed a separate written statement. He more or less adopted the same stand of the first defendant, but pleaded that he had purchased only 1/4th share of the property from the defendants 1 to 3. He would further state that he is in possession and enjoyment of the property and therefore, the plaintiff is not entitled to the relief of specific performance.

7. On these pleadings, the trial judge framed the following issues:

- “1. தாவாவில் வாதி கோரியபடி 1 முதல் 4 பிரதிவாதிகள் வாதிக்கு கிரயப் பத்திரம் எழுதிக் கொடுக்க கடமைப்பட்டவர்களா?
2. தாவாவில் கோரியபடி வாதிக்கு நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் கிடைக்கக் கூடியதா?
3. வாதிக்கு தாவாவில் கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?”

8. On the side of the plaintiff, five witnesses were examined and Ex.A1 to Ex.A16 were marked. On the side of the defendants, four witnesses were examined and seven documents were marked.

9. The learned trial judge compared the signatures by himself and came



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to the conclusion that the agreement is true and genuine, but did not return any findings on the readiness and willingness of the plaintiff. Yet he decreed the suit as prayed for. Aggrieved by the same, the first defendant preferred an appeal before the learned Principal District Judge, Salem in A.S.No.54 of 2011.

10. The learned Principal District Judge, Salem after a detailed analysis of the records, came to the conclusion that the agreement had not been proved and that the plaintiff is not entitled to the relief of Specific Performance and consequently, allowed the appeal. Against the reversal of the decree, the plaintiff is on appeal before this Court.

11. On 06.12.2013, the second appeal was admitted on the following substantial questions of law:

“1. When the plaintiff has established the execution of the suit agreement by the first defendant in his favour by examining the attesor including the brother of the first defendant himself, the burden shifted on the first defendant to establish that he did not execute the said agreement whether the lower Appellate Court is correct in



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not granting the relief of specific performance to the plaintiff contrary to the materials on record?

2. Whether the plaintiff could not be expected to have the documents containing the admitted signatures of the first defendant it is for the first defendant who is disputing his signature in the suit agreement to produce the documents containing his admitted signature so as to enable the plaintiff to take steps to send the said documents to the opinion of an handwriting experts whether the lower Appellate Court is correct in holding that the plaintiff did not prove the execution of the suit agreement which is contrary to law?"

12. Heard Ms.S.Madhumitha for Mr.V.Nicholas for the appellant and Mr.R.Babu for the fourth respondent. Both of them had made elaborate submissions reiterating their respective cases.

13. It has been settled by the Supreme Court in ***Thiruvengadam Pillai vs. Navaneethammal and another, (2008) 4 SCC 530***, that where there has been a denial of the agreement of sale, the burden is on the plaintiff to take steps in order to prove the document on the basis of which he wants the court to grant a decree. This procedure had not been followed in the present case.



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14. Apart from that, I find that the agreement had been entered into on 14.12.2002, but no steps had been taken by the plaintiff during the period of one year and two months in order to convert the sale agreement into a sale deed. There is absolutely no explanation from 14.12.2002 to 18.02.2004 as to what the plaintiff was doing towards his readiness and willingness as required by law.

15. In a suit for specific performance, the plaintiff should, at all points of time, be ready and willing to convert the sale agreement into a sale deed. The pendency of the suit cited by the parties is not the reason for the purpose of not showing his readiness and willingness. Therefore, I am inclined to confirm the judgment and decree of the learned Principal District Judge, Salem denying the plea of specific performance. Having said this, I cannot be insensitive to the fact that the plaintiff had paid a sum of Rs.1,62,000/- by the time, he presented the plaint.

16. Comparison of the signatures as done by the trial judge was also



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undertaken by me and I find that the plaintiff's signature as well as the first defendant's signature are found therein. They tally with the signatures that have been produced by the respective parties in the records. Consequently, I am inclined to grant a decree for recovery of money of Rs.1,62,000/- together with interest at the rate of 6% per annum. Till such repayment, there shall be a charge over the property to the extent of the share purchased by the fourth defendant.

17. In fine, S.A.No1299 of 2013 stands **partly allowed**. The judgment and decree of the court of Principal District Judge, Salem in A.S.No.54 of 2011 dated 06.09.2012 in dismissing the suit in O.S.No.88 of 2004 dated 15.09.2006 stands partly modified. The denial of relief of specific performance shall stand confirmed. There shall be a decree for return of advance amount to an extent of Rs.1,62,000/- together with interest at the rate of 6% per annum from 15.10.2004 till the date of repayment. There shall be a charge over the property till the amount is repaid. Consequently, connected miscellaneous petition is closed. No costs.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Principal District Judge of Salem

2.The Subordinate Judge of Attur



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V.LAKSHMINARAYANAN, J.

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