



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.642 of 2013

Mannathan @ Manogar

.. Appellant

vs.

1.Venugopala Krishnan

2. Chandra

3. Samikannu

..Respondents

Second Appeal filed under Section 100 of CPC against the judgment and decree dated 02.07.2012 in A.S.No.3 of 2010 on the file of the Subordinate Judge, Gingee reversing the judgment and decree of the trial Court dated 19.10.2009 in O.S.No.144 of 1998 on the file of the Principal District Munsif Court, Gingee.

For Appellant : Ms.Gayathri
for Mr.P.B.Ramanujam

For Respondents : Mr.Ravi Paul
for Mr.T.Jayalakshmi
of M/s.Paul and Paul (Law Firm)



ORDER

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The present second appeal arises out of the judgment and decree of the Court of Sub-ordinate Judge at Gingee in A.S.No.3 of 2010 dated 02.07.2012 reversing the judgment and decree of the Court of the Principal District Munsif at Gingee in O.S.No.144 of 1998 dated 19.10.2009.

2. O.S.No.144 of 1998 is a suit for specific performance of an agreement of sale. The case of the plaintiff is that the property belonged to one Natesa Gounder. Natesa Gounder had one son and two daughters. His only son was named Samikannu who is the third defendant in the suit. The first daughter is one Chandra and second daughter is Muthulakshmi. Muthulakshmi's husband is one Ramar. From the wedlock between Muthulakshmi and Ramar, a male child by name Mananathan @ Manohar was born, who is the plaintiff in the suit. The second defendant namely one Chandra is the wife of Samikannu, and the third defendant Venugopala Krishnan is the son born to Chandra and Samikannu.

3. The plaintiff pleaded that Samikannu had executed a sale deed under Ex.A1 for a sum of Rs.10,000/-. As the third defendant obstructed



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the registration, the document could not be registered. After having obstructed the registration, the third defendant immediately filed a suit in O.S.No.266 of 1996 on the file of District Munsif Court at Gingee seeking for an injunction restraining Natesa Gounder from alienating the property and for partition of the property by two equal halves and allotting half share to him

4. In the said suit, *ad interim* injunction was granted and finally the suit was dismissed for default on 24.02.1997. In the meantime, while the injunction was in operation against Natesa Gounder, the first defendant Venugopala Krishnan procured a sale deed from Natesa Gounder for a sum of Rs.10,000/-. The said Venugopala Krishnan being a minor during the relevant time, he was represented by his mother and natural guardian Chandra. As the purchase has been made with the knowledge of the sale agreement between the plaintiff and Natesa Gounder, the plaintiff impleaded the subsequent purchaser of the property Venugopala Krishnan, his mother and natural guardian Chandra and also the maternal uncle Samikannu.

5. The defendants entered appearance and filed a written statement denying the fact that Natesa Gounder had executed the document on 27.07.1996 in favour of the plaintiff. They pleaded that the document



has been brought forth by forgery and no relief of specific relief can be granted on the basis of a forged document. The sheet anchor of this case is that the property is not the self-acquisition of Natesa Gounder but is an ancestral property of joint family consisting of Natesa Gounder, Samikannu and Venugopala Krishnan..

6. On the basis of these pleadings, the learned trial Judge framed the following issues:

“1.வாதிக்கு நலேச கவுண்டர் 27.07.1996 தேதியிட்டு எழுதிக்கொடுத்துள்ள கிரைய ஆவணம் செல்லத்தக்கதா?

2.வழக்கு சொத்து நலேச கவுண்டர் மற்றும் முன்றாம் பிரதிவாதி அடங்கிய கூட்டுக்குடும்ப சொத்தா? நலேச கவுண்டர் எழுதிக்கொடுத்ததான 27.07.1996 தேதியிட்ட ஆவணம் பிரதிவாதிகளை கட்டுப்படுத்தக்கூடியதா?

3. நலேச கவுண்டர் 30.01.97 தேதியிட்ட முதல் பிரதிவாதிக்கு ஏற்படுத்தியதான கிரையம் செல்லத்தக்கதா?

4. வழக்கு இரண்டாவது அயிட்ட சொத்து விவரம் முதல் பிரதிவாதியின் கிரைய ஆவணத்தில் தவறான புல எண் குறிப்பிடப்பட்டு விட்டதா? வழக்கு இரண்டாவது அயிட்ட சொத்தில் 33 சென்ட் முதல் பிரதிவாதிக்கு பாத்தியமனதா?

5. வாதி கட்டாயப்பதிவுக்கு வழக்கு செய்வது



கால ஓட்டத்தால் தடை செய்யப்பட்டுள்ள நிலையில்
ஆற்றுகை பரிகாரம் வேண்டி வழக்கு தாக்கல்
செய்திருப்பது ஏற்படையதா?

6, வாதிக்கு கிடைக்கூடிய பரிகாரம் என்ன?”

7. On the side of the plaintiff, he examined PWs 1 to 4 and marked Exs.A1 to A12. DW1 to DW4 were examined on the side of the defendants and Exs.B1 to B12 were marked.

8. On the basis of the oral and documentary evidence let in before him, the learned trial Judge came to the conclusion that agreement of sale stands proved and consequently decreed the suit as prayed for.

8. Aggrieved by the same, a regular appeal had been preferred before the learned Subordinate Judge, Gingee. In and by way of judgment dated 02.07.2012, the appeal was allowed and the suit for specific performance stood dismissed. Against the reversal findings, the present second appeal has been filed.

9. This Court did not admit the second appeal but ordered notice regarding admission on 02.08.2013. On service of notice, M/s.Paul and Paul (Law Firm) entered appearance for the respondents. Today, I heard Ms.R.V.Gayathree for the appellant and Mr.Ravi Paul, Senior counsel for M/s.Paul and Paul (Law Firm) for the respondents.



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10. Ms.R.V.Gayathree, would contend that the execution of the document had been admitted by virtue of reading Exs. A3 and A4. In fact, she would say that the purchase made by Venugopala Krishnan under Ex.B4 is hit by *lis pendens* and she has proved her readiness by virtue of the fact that her client was present before the Sub-Registrar's Office for registration along with Natesa Gounder and it was due to the intervention of the third defendant that the sale deed could not be registered. She would also point out that the so called possession of the first defendant Venugopala Krishnan which was sought to be proved under Exs.B5 to B12 are all after suit documents and therefore, she sought for reversal of the decree of the lower Appellate Court.

11. She would specifically draw my attention to the judgment of the lower Appellate Court stating that it had mis-appreciated the case of the plaintiff and held that since the defendants were not signatories to the document, a suit for specific performance is not maintainable. She would also point out that the plaintiff had immediately come forward with the present suit after the dismissal of the suit filed in O.S.No.266 of 1996 and therefore, the Court below had committed an error in placing delay at his door steps. She would further state that the finding that there was no concluded contract is erroneous. She would state that since the factum



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that the presence of Natesa Gounder and plaintiff at the Sub-Registrar Office is admitted, it shows that there had been a concluded contract in pursuance of which Natesa Gounder came over to the Sub-Registrar Office for the purpose of registration.

12. Countering this argument Mr.Ravi Paul would argue that being an ancestral property, the presence of daughters Chandra and Muthulakshmi is essential to the suit. He would further submit that nature of the property being ancestral, Natesa Gounder could not have executed the document on his own. He would plead, if the suit is decreed, it will affect the rights of Samikannu as well as Venugopala Krishnan because they will be forced to convey the entire extent of the property and consequently, it will have an effect on the individual rights of Samikannu and Venugopala Krishnan.

13. He would point out that there are suspicious circumstances behind the execution of the sale deed because as early as in 1962, the property which is the subject matter of Ex.A1 had already been sold by Natesa Gounder in favour of a third party. He would also draw my attention to Ex.A7 and the memo that were filed in response to Exs.A10 and A11 to say that none of these documents refer to Ex.A1 and therefore, it is possible that Ex.A1 could have been a created document.



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14. He would further point out that the discrepancies is in the execution of the document itself. He would point out that in his evidence, PW1 has stated that the sale deed had been executed in Gingee whereas PW2 had stated that it was executed in Padipallam village in Gingee Taluk. He would further state that the proof of consideration under Ex.A1 varies from the oral evidence that has been let in by PW1 to PW3 and finally he would state that there is no explanation as to why the suit for specific performance was not filed immediately after the date of dismissal of O.S.No.266 of 1996 on 24.02.1997, till the death of Natesa Gounder in June 1997 and even thereafter for a period of eight months. He would draw my attention to the fact that the plaint was presented only on 06.04.1998 and therefore, he would plead that the suit for specific performance in any event does not require any consideration.

15. I carefully considered the arguments of either side.

16. Insofar as the first plea that proper and necessary parties have not been impleaded, I have to point out that no plea had been taken in the written statement or in the regular appeal but it has been taken for the first time before this second Appellate Court. Under Order I Rule 13 of CPC, the plea that non-impleading of proper and necessary parties has to be taken at the earliest available opportunity and in case it was not done,



it is deemed to have been waived. Therefore, I am not willing to throw out the suit on the ground of non-impleading of necessary parties.

17. Insofar as the nature of the property is concerned, the suit for specific performance continues to be one, to enforce an agreement. In such a suit, the question of probing into the title of the property is alien. I am not impressed with the argument that in case Samikannu had been impleaded as a party, he would loose his right over the property. Samikannu, as rightly argued by Ms.Gayathri, had been impleaded only as representative of the estate of the deceased Natesa Gounder and Venugopala Krishnan being a purchaser subsequent to the agreement dated 27.07.1996, he had been impleaded as a party. I agree with the submission that Samikannu does not represent himself in such a suit but only represents the interest of his deceased father Natesa Gounder. Therefore, by virtue of the fact that he had been impleaded as a defendant in the suit does not mean that he will loose his independent right of claiming his entitlement in a regular suit for partition.

18. Furthermore, from the argument of Mr.Ravi Paul that a perusal of Ex.A1 would show that the property is ancestral in nature also does not assist him as the judgment of this Court in ***Ramasamy Gounder and others Vs. Chinnapillai and Others*** reported in ***2022 SCC OnLine Mad***



2398 has specifically held that the mere fact that the document shows that the property is ancestral does not conclude that the property is having such character. In fact, no evidence had been let in by the defendant in order to substantiate that the property is an ancestral property. Suffice it to say whether it is ancestral or self-acquired property can be gone into in a separate suit for partition and not in this suit for specific performance. I am to reiterate that an issue of title is alien for the suit for specific performance. It will not only increase the scope of the suit but would also end in embarrassment of the trial.

19. Qua the argument that the document had not been executed by Natesa Gounder, the defendants would rely upon the fact that the portion of the property which is the subject matter of this suit had already been alienated in the year 1962. Mr.Natesa Gounder, at the time of execution of the document, was about 80 year old and it is possible that he would not have remembered the alienation made by him. Nonetheless, as already pointed out, in a suit for specific performance, I am not concerned with title, therefore that issue need not be agitated here.

20. With regard to Exs.A11 and A12 not speaking about the suit agreement under Ex.A1, I have to state that Ex.A10 is a memo seeking withdrawal of the suit and Ex.A11 is the counter that had been filed to



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the same. In these two documents, the fact that the suit agreement was not spoken to does not create a doubt in my mind. One was a memo seeking withdrawal and other was an objection that has been given to the same. In fact, in this country I presume the law in other common law jurisdiction to be the same, it is that a person is entitled to present a suit and abandon it at his choice. The defendant is not entitled to oppose withdrawal and if at all he objects to the same, all that he would be entitled to is costs as may be determined by the Court.

21. Insofar as Ex.A7 is concerned, it does throw a doubt as to the veracity and genuineness of Ex.A1. This is because Ex.A7 is the suit notice and it does not speak about the suit agreement dated 27.07.1996. Even if I were to ignore the fact that for a suit for specific performance a pre-suit notice is not essential, there is still one big burden that appellant/plaintiff would have to get over. Insofar as the consideration is concerned, a reading of Ex.A1 shows that Rs.10,000/- had been allegedly received by Natesa Gounder for the purpose of his treatment at hospitals. However, PW1 in the witness box has categorically stated that Natesa Gounder had demanded the money and it had been paid on the same day. This variation in the payment of consideration becomes larger when the evidence of PW2 is seen. PW2 has clearly stated that the



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amounts were paid on different dates. This contradiction between PW1 and PW2 remains unexplained.

22. If I were to ignore the aspect of consideration as was vehemently contended by Ms.Gayathri, the point which still remains is, she has not explained the delay in presentation of the plaint. The agreement is dated 27.07.1996. It is her case that it was on that day that she was prevented from registering the document. Even if I were to assume that from 27.07.1996 a confusion prevailed on account of the objection raised by the third defendant and he immediately filed the suit in O.S.No.266 of 1996 and obtained injunction, the injunction stood vacated on 24.02.1997. In fact, even thereafter, the plaintiff could have gone for compulsory registration as Samikannu was still alive till June of 1997. Even after the death of Samikannu, the plaintiff did not approach the Court immediately. The suit was filed only on 06.04.1998. There is no explanation as to why the plaintiff did not approach the Court during the life time of Natesa Gounder but waited till the octogenarian to pass on and filed the suit only in April of 1998 nearly after a period of 10 months after his death.



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23. In a suit for specific performance, there are two aspects which had to be considered by the Court. One is, the aspect of readiness and the other is the aspect of willingness. Even if I were to agree with Ms.Gayathri that since he had paid a sum of Rs.10,000/- to Natesa Gounder, the plaintiff had fulfilled his part of the contract with respect to financial ability, the point on her client's willingness to convert the sale agreement into a sale deed looms large. The explanation not having been properly given to the Court, I am not in a position to grant the decree as prayed for by the plaintiff.

24. Consequently, S.A.No.642 of 2013 stands dismissed certainly not for the reasons given by the learned Subordinate Judge at Gingee with which I am not in agreement at all, but for the reasons set forth above regarding delay and want of explanation on consideration set forth above. I might differ with the reasons but the result is one and the same.

25 In fine, Second appeal is dismissed. The judgment and decree of Subordinate Judge at Gingee in A.S.No.3 of 2010 dated 02.07.2012 in reversing the judgment and decree of Court of Principal District Munsif at Gingee in O.S.No.144 of 1998 dated 19.10.2009 stands confirmed.



Since the parties debated on interesting questions of law and since the parties are closely related, I am not imposing costs.

07.03.2024

Index: Yes/No
Neutral Citation: Yes/No
gpa



To

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1. The Subordinate Judge
Gingee
2. The Principal District Munsif
Gingee
3. The Section Officer, V.R. Section,
High Court, Madras.



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V. LAKSHMINARAYANAN, J.

gpa

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