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S.A.No.776 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.776 of 2013

E.Venkatraman

... Appellant/Plaintiff

-Versus-

1.S.Sanjeevi Ammal

2.K.Prabadevi Ammal

3.S.Saravanan

4.S.Sankaran

5.S.Sivakkumar

... Respondents/Defendants

Appeal filed under Section 100 of C.P.C. against the judgement and decree in A.S.No.12 of 2011 dated 08.03.2013 on the file of the Court of the I Additional District and Sessions Judge, Vellore, Vellore District confirming the Judgment and Decree in O.S.No.276 of 1996 dated 08.02.2010 on the file of the Subordinate Judge, Vellore, Vellore District.

For Appellant : Mr.P.Seshadri

For Respondents : Mr.T.M.Hariharan

JUDGEMENT

This second appeal arises out of the judgment and decree of the court of I Additional District and Sessions Judge, Vellore in A.S.No.12 of 2011 dated



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08.03.2013. By virtue of the said judgment and decree, the learned District Judge confirmed the judgment and decree of the learned Subordinate Judge, Vellore in O.S.No.276 of 1996 dated 08.02.2010.

2. O.S.No.276 of 1996 is a suit for specific performance of agreement of sale dated 10.08.1996.

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

4. The case of the plaintiff is that he is a tenant in the suit schedule mentioned property for a monthly rent of Rs.2,000/-. According to him, he entered possession on 21.11.1994 as a tenant. One V.K.Thayamanasamy, a close relative of the first defendant was acting for and on behalf of the first defendant. After having taken possession of the property, the plaintiff was running a lodge in the said premises. According to him, the first defendant who is the owner of the property had agreed to sell the property for a sum of Rs.4,00,025/- and received an advance of Rs.1,00,000/-. According to him, he had six months time to pay the balance of Rs.3,00,025/- and convert the sale agreement into a sale deed. He would state that he was ready and willing to



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perform his part of the contract.

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5. The plaintiff pleaded that the first and second defendants had colluded with each other and fraudulently brought about an agreement of sale dated 18.09.1996 in which the defendants 3 to 5 had been made parties. He would plead that the second defendant was not a bonafide purchaser for value and he would state that he came to know about the transaction only on 27.09.1996, when the defendants 1 and 2 called upon him to attorn the tenancy from the first defendant to the second defendant. The plaintiff issued a reply on 12.10.1996. Since the first defendant had sold the property pending the agreement, he came forward with a suit for specific performance.

6. The first and second defendants entered appearance, but filed their separate pleadings. It is the case of the first defendant that she had never entered into an agreement with the plaintiff. She had specifically stated in Paragraph 7 of her written statement that the execution, genuineness, validity and legality of the alleged agreement were denied. She would plead that the agreement itself is an act of forgery and she had never entered into an agreement with the plaintiff. It was denied that the second defendant was aware of the agreement as there was no valid and binding agreement between the parties.



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7. The second defendant filed her separate written statement as stated above and it was her specific stand that she is a bonafide purchaser for the value of any agreement much less the suit agreement. She took the line of the first defendant and pleaded that the agreement dated 10.08.1996 is a forgery and therefore, not binding on her.

8. On the basis of these pleadings, the learned trial judge framed the following issues:

- “1. வாதி தாவாவில் கோரியபடி வாதிக்கும், 1ம் பிரதிவாதிக்கும், 10.08.1996ல் கிரைய ஒப்பந்தப்பத்திரம் ஏற்பட்டதாக சொல்வது உண்மையா?
2. தாவா சொத்தைப் பொறுத்து 2ம் பிரதிவாதி 1ம் பிரதிவாதியிடமிருந்து 18.09.1996ல் தகுந்த மறுபயனின் போல் நல்லெண்ணத்தின்பாற் கிரையம் பெற்றுள்ளாரா?
3. வாதி தாவாவில் கோரியபடி ஏற்றதனை ஆற்றுதல் பரிகாரமும் சுவாதீன பரிகாரமும் பெறத்தக்கவரா?
4. வாதி அடையும் வேறு பரிகாரம் என்ன?”

9. On the side of the plaintiff, he examined himself as PW1 and the attesting witnesses as PW2 to PW4 and marked Ex.A1 to Ex.A13. On the side of the defendants, the first defendant entered the witness box as DW1 and the second defendant as DW2 and they examined two other witnesses as DW3 & DW4. On their side, they marked Ex.B1 to Ex.B17.



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10. The learned trial judge, after a detailed analysis of the oral and documentary evidence filed before him, came to the conclusion that agreement was forgery and in any event, the plaintiff has not proved his readiness and willingness of the agreement.

11. Aggrieved by the same, a regular appeal was preferred before the learned I Additional District and Sessions Judge, Vellore. The learned I Additional District and Session Judge held that the trial court should have compared the disputed signatures under Section 73 with the documents, which fall within the immediate time of the execution of the same and should not have compared it with the documents like Vakalat and the lease agreement dated 21.11.1994 for the purpose of coming to the conclusion that the document is a forgery. However, he went on to dismiss the appeal holding that the second defendant is a bonafide purchaser for value, without due notice of the agreement and hence, the present second appeal.

12. This Court did not admit the second appeal, but had ordered notice regarding admission on 23.09.2013. Thereafter the matter is being listed before me for orders on admission.



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13. Mr.T.M.Hariharan entered appearance on behalf of the respondents. I heard Mr.P.Seshadri and Mr.T.M.Hariharan, in support and in opposition of the appeal.

14. Mr.P.Seshadri would submit that under Order VI Rule 4 of the Code of Civil Procedure, the defendants should have pleaded the vitiating circumstances and the court below fell in error in placing the burden of proof on the plaintiff. He would further plead that the quick manner, in which the sale transaction had been taken place between the first and second defendants shows that it was entered into, only in order to deprive the plaintiff of his rights under the agreement and finally, he would say that the second defendant had not taken any efforts to enquire with the plaintiff as regards his nature of possession in the property and being a tenant in possession as enquiry had not been conducted, the second defendant will not be entitled to get the benefit of Section 19 of the Specific Reliefs Act and the lower appellate court fell in error in exercising its discretion under Section 20 and dismissing the appeal.

15. Mr.T.M.Hariharan would invite my attention to the agreement and would state that the plaintiff had not taken any efforts to have the handwriting



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compared as required under Section 45 of the Indian Evidence Act. As many as 19 differences were pointed out by the trial court. He would further point out that the lower appellate court had come to the conclusion that the agreement is true and genuine, only on account of the fact that the attesting witnesses of the document had been examined. Relying upon the evidence of PW1, he would state that in any event, the plaintiff not having proved his readiness and willingness, he is not entitled to the benefit of specific performance.

16. I have carefully considered the arguments on either side.

17. I need not trouble myself with respect to the aspect on whom the burden of proof lies, when the argument is denied, in a suit for specific performance. This issue has been settled by a judgment of the Supreme Court in the case of ***Thiruvangadam Pillai vs. Navaneethammal and others reported in (2008) 4 SCC 530***. Justice R.V.Raveendran in the said judgment held as follows:

“the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had



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executed the agreement and not on the first defendant to
prove the negative.”

18. The law being clear, I have to see whether the plaintiff has proved the agreement especially when there is a specific and a categorical denial by the first defendant. In the very same judgment, the supreme Court has cautioned the Courts not to indulge any comparison as required under Section 73 as it is a specialised field. It is held that the courts have the power of comparison but it must be used with extreme caution.

19. When I pointed out this position to Mr.P.Seshadri, he would state that I should send the documents viz., Ex.A1 to Ex.A3 for comparison of signatures to the Forensic Laboratory. I am afraid, I cannot accede to the request that has been made by Mr.P.Seshadri. This is for the simple reason that it was the duty of the plaintiff to have this done in the trial court or at least, in the first appellate court. In the second appellate stage, I have to only see whether there is any perversity or illegality in the judgments of the lower court. I cannot convert this court into a trial court, unless exceptional circumstances exist. I do not see any such circumstances in this case.

20. If I were to send the documents for comparison of signatures by



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expert, I would essentially be helping the plaintiff in trying to close the gaps that he had deliberately left out before the trial court as well as the lower appellate court. I also have to take note of the fact that the proceedings had been initiated in the year 1996 and 28 years later, I am not inclined to exercise that power, though in certain circumstances, the second appellate court can always exercise that power. At the earliest point of time, the plaintiff had the opportunity to send the document for forensic expert and he having not done it, I am not willing to assist the person, who had not perform his duty for the last two decades.

21. Now turning to the point of Order VI Rule 4, Mr.P.Seshadri would submit that since the defendants have denied the agreement, the burden is on them to disprove the same. He would rely upon Order VI rule 4 of the Code of Civil Procedure and point out that there are no specific pleadings in the written statement in order to substantiate the circumstances pleaded therein. Order VI Rule 4 would apply in a situation, where the person pleads fraud, undue influence, coercion or misrepresentation or the like. Order VI Rule 4 contemplates that the parties had entered into the agreement, but pleads vitiating circumstance before the court in order to substantiate that the agreement cannot be enforced by the court. But the case on hand is different.



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22. The first defendant specifically denies the agreement itself. Order VI Rule 4 does not apply to such a situation. It applies only when the parties concede to the agreement but plead circumstances which will lead the court not to enforce it. The present case on hand being so fundamentally different, I have to necessarily turn down the argument of Mr.P.Seshadri that Order VI Rule 4 applies.

23. In a suit for specific performance, one of the most fundamental thing is that the court has to see whether the plaintiff has pleaded and proved the readiness and willingness on his part.

24. Insofar as the pleading is concerned, I do not find any lacuna. The plaintiff has even in the suit notice stated that he is ready and willing and as seen in such kind of suits, has parroted the same even in the plaint. However, as pointed out by Mr.T.M.Hariharan, the plaintiff has conceded in his evidence as follows:

“நான் வருமான வரி கட்டுவது கிடையாது. நான் தாவா கட்டிடத்தில் லாட்ஜங் நடத்துகிறேன் வேறு தொழில் எதுவும் கிடையாது. எனக்கு 10.8.1996ல் பணம் ரூ.1,00,000/- இருந்தது என்று காட்டுவதற்கு எந்தவிதமான ஆதாரமும் இல்லை. 10.8.1996ல் எனக்கு ரூ.1,00,000/- கூரமானம் வரக்கூடிய எந்த விதமான வாய்ப்புகள் எதுவும் இல்லை.”



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Further he has also stated as follows:

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“ ஏ.2 தேதியில் இருந்து இன்றைய தேதி வரை ரூ.4,00,025/- என்னிடம் உள்ளது என்று காண்பிக்க ஆதாரம் எதுவும் இல்லை.”

25. These two evidence shows that the plaintiff has not proved that he had the financial capacity to convert the agreement into a sale deed. When this was pointed out to Mr.P.Seshadri, he would submit that the plaintiff need not jingle the coins or deposit the amount into the court. The position as pleaded by Mr.P.Seshadri is absolutely right. For the purpose of Section 16(c) of the Specific Relief Act, it is not essential for the plaintiff to actually tender the defendants or deposit the money into the court., unless the court so directs. However, this does not take away the duty of the plaintiff to show that he had the financial capacity for the purpose of proving his readiness.

26. When the specific statement of PW1/ the plaintiff that he did not have the funds, the factum that he did not deposit the amount pales into insignificance. While the plea exists, the proof is lacking. If either one is lacking in a case for specific performance, the court has no other option than to reject the case.



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27. I find that the trial court has gone through the issues and found that the plaintiff is not ready and willing to perform his part. However, the lower appellate court have not touched upon this issue.

28. Therefore, in the light of the above discussions, I am not inclined to admit the appeal on the substantial questions of law suggested by Mr.P.Seshadri. In other words, **the second appeal is dismissed** at the admission stage itself.

29. In fine, the judgment and decree of the court of the I Additional District and Sessions Judge, Vellore in A.S.No.12 of 2011 dated 08.03.2013 in confirming the judgment and decree of the court of Subordinate Judge, Vellore in O.S.No.276 of 1996 dated 08.02.2010 stands confirmed. No costs.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order



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To

- 1.The I Additional District and Sessions Judge, Vellore, Vellore District
- 2.The Subordinate Judge, Vellore, Vellore District.



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V.LAKSHMINARAYANAN, J.

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