



S.A.No.248 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.03.2024

PRONOUNCED ON: 07.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.248 of 2021
and
C.M.P.No.4825 of 2021

K.J.Chandrasekar (Died)

2. Vasantha chandrasekar
A2 is brought on record as Lr's
of the deceased A1 vide court
order dated 14.12.2023 made in
C.M.P.No.1507 of 2022 in
S.A.No.248 of 2021

...Appellant

VS

- 1. K.S.Jayanthkumar**
- 2. N.Jayaraman (died)**
- 3. Revathi**
- 4. Sasirekha**
- 5. S.Poornima**
- 6. Janani**



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(Respondents 5 and 6 are brought on record as LRs of the deceased R2 vide order of Court dated 05.02.2024 made in C.M.P.No.1501 of 2022 in S.A.No.248 of 2021

...Respondents

Prayer : Second Appeal is filed under Section 100 of C.P.C against the judgment and decree of the Principal District Court at Krishnagiri dated 29.03.2019 in A.S.No.12 of 2018 confirming the judgment and decree passed by the Subordinate Judge at Uthangarai dated 19.04.2017 in O.S.No.306 of 2014.

For Appellant : Mr.P.Valliappan, senior counsel
for Mr.N.Loganathan

For Respondents : Mr.P.M.Duraiswamy
3, 5 and 6

For Respondent-4 : Mr.K.Ramesh Kumar

For Respondent-1 : No Appearance

For Respondent-2 : Died



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JUDGEMENT

The unsuccessful plaintiff in a suit for specific performance is the appellant before this Court.

2. Pending the appeal, the appellant had passed away and his legal representative (wife) has been brought on record as the second appellant.

3. The second appeal has not been admitted and only notice was directed to the respondents on 17.03.2021 and the matter had been posted under the caption “adjourned admission”.

4. The short facts which are required for considering the above second appeal are herein below set out.



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Plaintiff's case:

(i) The plaintiff had come forward with a case that the second defendant, who is the owner of the suit schedule property, had on 12.01.2006 executed a Power of Attorney in favour of the first defendant authorizing him to alienate the property and the same was registered on 13.01.2006. The first defendant thereafter entered into an agreement of sale for and on behalf of the second defendant with the plaintiff. The total sale consideration that had been negotiated was a sum of Rs.3,00,000/-. On the date of the execution of the agreement of sale, a sum of Rs.25,000/- was paid as an advance and the time stipulated for paying the balance sale consideration was a period of one year. The agreement stipulated that on the receipt of the balance sale consideration, the sale had to be executed in favour of the plaintiff or his nominee.



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(ii) The plaintiff would further submit that though a period of one year was granted for completing the contract, he had, on 02.12.2006, paid the balance consideration of Rs.2,75,000/- and receiving the said sum, the first defendant had made an endorsement to that effect in the agreement of sale. Though over 3 years had lapsed, the first defendant had not come forward to perform his part of the contract, which constrained the plaintiff to issue a legal notice on 27.08.2010 which was received by the defendants on 28.08.2010. However, the defendants had neither responded to the notice nor complied with the demand made therein. Therefore, the plaintiff had applied for encumbrance certificate on 24.09.2010 and was shocked to learn that the second defendant had gifted the property upon his wife, the third defendant on 19.10.2007 and she, in turn, has sold the property on 06.09.2010 to the fourth defendant. The plaintiff would



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submit that these transactions would not bind by him and he had therefore come forward with the suit in question. Pending the suit, the sole plaintiff had died and his wife was brought on record as the second plaintiff.

5. Written statement of the defendants 2, 3 and 4

(i). The second defendant had filed a written statement, which was adopted by the defendants 3 and 4. The defendants had admitted that the property belonged to the second defendant. He would contend that the first defendant was a money lender. While sanctioning the loan, the first defendant was in the habit of getting the sale agreements or power of attorneys as security for the loan. The second defendant had borrowed a sum of Rs.5,00,000/- and as per the practice, he had executed a promissory note in favour of the first defendant. Thereafter, the second defendant was not in a position to repay the loan with



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interest and he therefore executed an agreement of sale dated 28.10.2002 in respect of the suit property which was then worth over a sum of Rs.10,00,000/-. This document was executed as a security.

(ii) Meanwhile, the villagers approached the second defendant and requested him to sell his lands comprised in S.Nos.76/3 and 76/4 for constructing a hospital. Pursuant to the same, the second defendant has received a sum of Rs.7,50,000/- from them and had also contributed a sum of Rs.50,000/- which was given to the first defendant and cancelled the sale agreement dated 28.10.2002 by registered cancellation deed dated 12.01.2006. Thereafter, as security for the remaining amount of loan obtained payable to the first defendant, the second defendant executed a general power of attorney in favour of the first defendant in respect of the suit properties. The second defendant would submit that he had no intention to alienate his



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property and the same has been offered only as a security for the loan.

(iii) It is the case of the second defendant that in the year 2006, the entire borrowing made by him from the first defendant had been paid off. Thereafter, when the second defendant came to know that the first defendant was attempting to sell the property using the Power of Attorney, he had cancelled the power of attorney vide a registered cancellation deed dated 16.10.2007 and within 3 days, he had executed a settlement deed in favour of his wife, the third defendant herein. Meanwhile, the first defendant who received the entire amounts from the second defendant had proceeded to file a suit O.S.No.51 of 2010 on the file of the Principal District Court, Dharmapuri using the blank promissory notes executed and handed over by the second defendant. The first defendant had unsuccessfully attempted to attach the suit property before judgment. The first defendant therefore had set up his



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brother, the sole plaintiff to file a suit by using the signatures affixed by the second defendant on the blank stamp papers. The second defendant had also pleaded that the suit was highly barred by limitation as it has been filed 4 ½ years after the alleged payment of money.

6. Written statement of the 1st defendant:

The first defendant had filed a written statement *inter-alia* admitting that the suit property belonged to the second defendant and also admitting the power of attorney and the sale agreement. The first defendant denied the allegations made by the plaintiff that he had no intention to execute a sale deed. The first defendant further went on to submit that whenever the plaintiff had approached him to complete the transaction, he had demanded the second defendant to hand over the original documents which the second defendant did not comply with and therefore, the first defendant could not execute the sale deed. The



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first defendant had gone to state that the contents of the written statement of the defendants 2, 3 and 4 are totally false. Further, the first defendant would submit that the second defendant had gifted the properties subject matter of the sale agreement to the Government for construction of the hospital. The first defendant was not in a position to execute the sale agreement and therefore, they had cancelled it on 12.01.2006. Thereafter, on the very same day, the second defendant appears to have executed a power of attorney in favour of the first defendant. On 16.10.2007, this power of attorney was cancelled by way of a cancellation deed. The first defendant would submit that he has not been made aware of the cancellation of the power of attorney. It is also their contention that there is no connection between O.S.No.51 of 2010 filed by the wife of the first defendant against the second defendant and the instant suit. Therefore, he prayed that the suit has to be dismissed with costs.



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7. Written statement of the 4th defendant:

The fourth defendant had filed an additional written statement *inter-alia* contending that the sale agreement dated 30.03.2006 has expired and the plaintiff was not entitled to the specific performance. The suit has been filed 4 years after the execution of the agreement of sale. The fourth defendant would further submit that no conveyance deed has been executed within the period of one year as specified in the sale agreement. The fourth defendant would submit that the suit property no longer belongs to the defendants 1 and 2. That apart, the plaintiff has not sought to declare the sale deed executed in favour of the fourth defendant as null and void. The suit therefore deserves to be dismissed as against the fourth defendant.

8. Additional written statement of the 2nd defendant:

The second defendant had filed an additional written statement,



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which was adopted by the third defendant in which the second defendant had contended that when the suit was filed in the year 2010, a claim was not made against all the defendants. The plaintiff, even when filing the suit originally, was aware about the gift settlement deed in favour of the third defendant and that the third defendant has sold the property in favour of the fourth defendant. Despite the fact that the cause of action had arisen even much prior to the filing of the suit and despite knowing the same, the plaintiff has chosen not to make a claim against the defendants 3 and 4. Now, five years after filing of the suit, by way of an amendment, the plaintiff has sought to implead the defendants 3 and 4 and amend the prayer to include the prayer against the defendants 3 and 4. Therefore, it is barred by limitation. Further, the plaintiff has not sought for any relief against the gift deed dated 19.10.2007 and the sale deed dated 06.09.2010. On this ground also, the suit is liable to be dismissed.



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9. Trial Court:

(i) The learned Subordinate Judge, Uthanagarai had originally framed the following issues:

1. வாதி தாவா சொத்தை கிரையம் செய்துக்கொள்ள எப்போதும் தயாராகவும் விருப்பத்துடனும் இருந்த காரணத்தால் தாவா சொத்து குறித்து வாதி கோரியுள்ள ஏற்றதை ஆற்றுக பரிகாரமும், அதன் பேரில் தாவா சொத்தின் சுவாதீனமும் வாதிக்குக் கிடைக்கத்தக்கதா?

2. வாதியும் 1வது பிரதிவாதியும் கூட்டு சேர்ந்து மோசடியாக இந்த தாவாவை தாக்கல் செய்துள்ளதாகச் சொல்லும் 2வது பிரதிவாதியின் கூற்று சரியா?



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Thereafter, on 05.03.2016 had framed the additional issues:

1. 3,4 பிரதிவாதிகளுக்கு எதிராக பரிகாரம் கோரி
வாதி வழக்குரையை திருத்தப்பாடு செய்துள்ளது
உரிமையியல் நடைமுறைச்சட்டம் ஆர்டர் 2 ரூல்
2ம்படி தடை செய்யப்பட்டுள்ளது என்ற 2,3
பிரதிவாதிகளின் கூற்று சரியா?
2. வாதி தாக்கல் செய்துள்ள தாவா
காலவரையறைச் சட்டத்தால் பாதிக்கப்பட்டுள்ளது
என்ற 2,3 பிரதிவாதிகளின் கூற்று சரியா?
3. வாதி வழக்கில் குறிப்பிட்டுள்ள 19.10.2007
தானப்பத்திரம் மற்றும் 6.9.2010 தேதிய
கிரையப்பத்திரம் ஆகியவை குறித்து எவ்வித
பரிகாரமும் கோராமல் உள்ள நிலையில் வாதி
தாவாவில் கோரியுள்ள பரிகாரம் வாதிக்குக்



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கிடைக்கத்தக்கதல்ல என்ற 2,3 பிரதிவாதிகளின்

கூற்று சரியா?

(ii) The plaintiff had examined himself as P.W1 and one Vadivelan was examined as P.W2. Exs.A1 to A7 were marked on the side of the plaintiff. The defendants had examined the second defendant as D.W1, the fourth defendant as D.W2 and one Murugan as D.W3 and marked Exs.B1 to B15.

(iii) On hearing the arguments, perusing the pleadings and evidence, the trial Court had proceeded to dismiss the suit with costs against the plaintiff. Aggrieved by the said judgment and decree, the plaintiff had filed A.S.No.12 of 2018 on the file of the Principal District Court, Krishnagiri.



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10. Lower Appellate Court:

The learned Principal District Judge, Krishnagiri also concurred with the finding of the trial Court and dismissed the appeal. It is aggrieved by this concurrent judgment and decree that the plaintiff is before this Court.

11. Submissions of the learned counsel for the appellant:

(i) Mr.P.Valliappan, learned senior counsel, who made his submissions on behalf of the appellant, would primarily rest his argument on the contention that the second defendant has admitted the execution of the agreement of sale and the endorsement. He would submit that the Courts below have totally overlooked the fact that the entire sale consideration had been paid even as early as on 02.12.2006 and therefore, the finding of the Courts below that the plaintiff was not ready and willing to proceed with the execution of the sale deed is



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without any legal basis. He would further argue that there is no legal presumption that time was the essence of the contract, though a time schedule had been specified for executing the sale deed in the agreement of sale. The parties had not intended that the time would be the essence of the contract, which is evident from their conduct. The endorsement in Ex.A2 would clearly prove the same. He would submit that the plaintiff, by paying the balance sale consideration much before the time agreed upon, has proved his readiness and willingness to go ahead with the sale deed and it is the defendants who have not come forward to complete the transaction. He would rely upon the judgment reported in *2018(2) MWN (Civil) 682 [A.G.Venkatachalam Vs. P.Ganesan]* and would refer to paragraph 21 therein in support of his argument that once the plaintiff has proved his readiness and willingness and also proved the fact that the entire sale consideration has been paid, the subsequent sale during the subsistence of the



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agreement of sale is not binding on the plaintiff and there is no necessity for the plaintiff to seek a cancellation of the deed or seek to have it set aside. He would submit that the defendants 2 to 4, by their conduct, has clearly showed their *malafides* and the fact that their only intention was to remove the property from out of the reach of the plaintiff.

(ii) The further argument advanced by the learned senior counsel was that the suit is not barred by limitation inasmuch as the latter portion of Article 54 of the Limitation Act stipulates that the limitation for filing a suit for specific performance is 3 years 'from the date fixed for performance or where no date is fixed, when the plaintiff has noticed that the performance is refused. The learned senior counsel would submit that time is not the essence of the contract. The limitation would start from the date on which the first defendant had



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refused to proceed with the contract. He would submit that in the instant case, it is only in the written statement that the refusal has been categorically made and therefore, the defense of limitation cannot be pleaded by defendants 2 to 4. He would rely upon the judgment of the Hon'ble Supreme Court reported in **2020(1) MWN(Civil) 348 SC [R.Lakshmikantham Vs. Devaraji]** where the Hon'ble Supreme Court has held that where the suit is filed for specific performance within the period of limitation, the delay in filing of the suit cannot be held against the plaintiff. He would also rely upon the judgment of a Division Bench of this Court reported in **2019 (4) CTC 385 [Dr.B.R.Shankar Vs. B.R.Srinivasa Rao]** in support of his proposition that unless the revocation of power of attorney has been brought to the notice of the power agent, curbing the powers of the power agent will not be effective.



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12. Submissions of the learned counsel for respondents 3, 5 and 6:

(i) Per contra Mr.P.M.Duraiswamy, learned counsel appearing for the respondents 3, 5 and 6 would primarily submit that the suit is barred by limitation. Even according to the plaintiff, the entire sale consideration had been paid even as early as on 02.12.2006. However, till 2010, no steps had been taken on behalf of the plaintiff to either make a demand for executing the sale deed or instituting the suit. Further, the plaintiff was not even put in possession of the property. Even under Ex.A2-Endorsement, there is a clear acknowledgement that the possession would be handed over when the sale deed has been executed. Therefore, if the plaintiff had really entered into an agreement of sale, he would have immediately taken steps to get the sale deed executed. The learned counsel would submit that the agreement of sale was not entered with the intent of selling the property, as evident from the fact that the second defendant had



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borrowed a sum of Rs.5,00,000/- from the first defendant and had executed a promissory note in his favour. Thereafter, the sale agreement dated 28.10.2002 -Ex.A8 had been entered into by the second defendant in favour of the first defendant as the second defendant was not in a position to repay the loan with interest. This sale agreement has been cancelled on 12.01.2006 and that at the time of borrowing the money, the second defendant had executed blank promissory notes and signed blank stamp papers in favour of the first defendant. These documents have been used by the first defendant to create a promissory note dated 30.09.2007 in favour of his wife, Rajeswari. The said Rajeshwari had instituted a suit O.S.No.51 of 2010 on the file of the Principal District Court, Dharmapuri against the second defendant for the recovery of a sum of Rs.12,04,000/- together with interest and in this suit, the first defendant's wife has taken out an application for attachment before judgment of the suit property. He



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would submit that therefore, this itself would go to show that the second defendant had not intended to alienate the property in favour of the plaintiff. That apart, the first defendant is none else than the paternal uncle of the plaintiff. This factum had been stated by P.W2.

(ii) The learned counsel would further submit that the first defendant has chosen not to enter the box to prove the plaintiff's case. He would submit that though the plaintiff was aware about the gift settlement deed in favour of the third defendant and subsequent sale by the third defendant in favour of the fourth defendant, steps have not been taken to implead them as defendants when the suit was initially instituted. They have been impleaded only in the year 2015 and therefore, the relief is clearly barred as against defendants 3 and 7. Another point which clearly shows that the suit is barred by limitation is the admission of P.W1 that he was aware about the cancellation of



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the power executed by the second defendant in favour of the first defendant as early in the year 2007 which clearly indicated that the second defendant had no intention to proceed with the agreement of sale. Therefore, even from the date of knowledge, the suit was filed beyond the limitation. He would therefore submit that the Courts below have rightly analyzed the evidence and have dismissed the suit.

13. Heard the respective learned counsels and perused the materials available on record.

13. Discussions:

(i) The plaintiff, as per his statement, has paid the entire sale consideration on 02.12.2006. In his cross examination as P.W1, the plaintiff has admitted that he has not called upon the first defendant or the second defendant to come forward to complete the transaction. The



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plaintiff has further admitted that prior to the purchase of the property, he has not verified the revenue records, the documents of title or the encumbrance certificate and has only taken note of the power deed. The defendants had taken a plea that the plaintiff did not have the wherewithal to purchase the suit property. To this, the plaintiff as P.W1 would submit that he owns 25 acres of land however he is unable to give details like the survey number in which these properties are situate, the extent of the survey numbers etc., Even according to his statement, the properties were yielding an income of Rs.3,00,000/- per year. The plaintiff, in his cross examination, had stated that he had paid the balance sale consideration in cash when he visited the first defendant 3 months after the agreement. Thereafter, he corrects himself and stated that the money was given after 9 months on 03.12.2006. The endorsement that has been made is dated 02.12.2006. Neither in his legal notice-Ex.A4 nor in his plaint has the plaintiff



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given reasons as to why he had not made any demand for the execution of the sale deed. However, in his evidence, he attempts to fill up this lacunae by stating that when he had asked the first defendant, the first defendant had asked him to wait till the original documents were received from the second defendant. Therefore, readiness and willingness to proceed with the execution of the sale deed is lacking more particularly when the second defendant has denied receipt of the money. The plaintiff has examined the second defendant to prove Ex.A2-endorsement. P.W2 is a person who is well known to the plaintiff as well as the first defendant for over 15 years. In his cross examination, he would submit that the endorsement had been executed on a 10 rupee stamp paper and two 10 rupee stamp papers were purchased by the plaintiff. Therefore, he has clearly stated that his signatures had been obtained on a 10 rupee stamp paper. However, on a perusal of Ex.A2, it would clearly show that it is an endorsement



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made on the reverse side of one of the sheets of the agreement of sale-Ex.A1 and not of a Rs.10/- stamp paper. Therefore, P.W2s admission cannot be relied upon. The appellate Court has considered the above factor. In addition to this, the admission of PW.1 that he was aware about the cancellation of the agreement of sale in the year 2007 itself clearly shows that neither was the agreement of sale intended to be acted upon as an agreement of sale nor was the balance sale consideration of Rs.2,75,000/- paid under the endorsement-Ex.A8. The silence for over 4 years clearly proves the above. Therefore, on this ground also the readiness and willingness have not been proved by the plaintiff.

(ii) The judgments that have been relied upon by the learned senior counsel for the appellant will not apply to the facts of the instant case. In the judgment reported in **2010 (1) MWN (Civil) 49**



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(*Mad*), the plaintiff therein had been put in possession of the property whereas in the instant case, possession was not handed over and in the endorsement-Ex.A2, it has been clearly stated that the possession would be handed over only at the time of execution of the sale deed. The reliance on the latter portion of Article 54 of the Limitation Act cannot be countenanced for the simple reason that the plaintiff was aware about the cancellation of the Power of Attorney executed by the second defendant in favour of the first defendant in the year 2007 itself. The delay of over 4 years from the date of the agreement and nearly 3 years from the date of knowledge about the cancellation of the Power of Attorney has not been explained. The cancellation of the power is a clear indication of the refusal on the part of the second defendant. The payment of the balance sale consideration to the second defendant has also not been proved. Therefore, the plaintiff not having proved payment of the balance sale consideration and not



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having been put in possession of the property is bound to prove his readiness and willingness from the date of the agreement. Such proof is absent and therefore, the findings of the Courts below that the plaintiff was not ready and willing has to necessarily be upheld.

(iii) Further, the plaintiff was very much aware about the settlement deed in favour of the third defendant even prior to the filing of the suit and the subsequent sale in favour of the fourth defendant. However, the plaintiff has not chosen to implead the defendants 3 and 4 and has also not sought any relief against them. He has chosen to implead them only in the year 2015. The fourth defendant was put in possession pursuant to the sale and she has also got the revenue records mutated in her name and has been in possession and enjoyment of the property ever since the purchase. The plaintiff has not sought for either recovery of possession nor set aside the sale deed. Therefore, on



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this ground also, the Courts below have non suited the plaintiff. No substantial question of law has been made out by the plaintiff and consequently, the second appeal is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

07.06.2024

Index : Yes/No

Speaking order/non-speaking order

srn

To

1. The Principal District Court, Krishnagiri
2. The Subordinate Judge at Uthangarai
3. The Section Officer, VR.Section, High Court, Chennai.

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and

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