



WEB COPY



S.A.No.774 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.774 of 2024
and
C.M.P.No.24856 of 2024

Samraj (died)
1.Chinnammal
2.Venkatachalam
3.Ganapathy
4.Parvathi
5.Paramasivam
6.Gowran
7.Raja

... Appellants

Vs

1.Chinnammal
2.Govindasamy

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree order dated 16.10.2023 passed in A.S.No.6 of 2020 on the file of Additional District Judge, Dharmapuri,



S.A.No.774 of 2024

confirming the judgment and decree dated 27.02.2020 passed in O.S.No.232 of 2012 on the file of the Principal Subordinate Judge, Dharmapuri.

For Appellants : Mr.N.Manoharan

JUDGMENT

The appellant has filed this Second Appeal against the Judgment and decree dated 16.10.2023 passed in A.S.No.6 of 2020 on the file of Additional District Judge, Dharmapuri, confirming the judgment and decree dated 27.02.2020 passed in O.S.No.232 of 2012 on the file of the Principal Subordinate Judge, Dharmapuri.

2. Originally, the suit was filed by the sole plaintiff in O.S.No.232 of 2012 on the file of the Principal Subordinate Judge, Dharmapuri, for specific performance in respect of the suit property and also claimed relief



S.A.No.774 of 2024

of partition and to declare the sale deed dated 02.07.2012 as null and void.

The deceased plaintiff had executed a sale deed dated 18.04.2012 in favour of the first defendant viz., Chinnammal by receiving the sale consideration from him and also prayed for partition to divide S.No.223/3 and alleged 93.73 cents out of 145.73 cents and to declare the sale deed dated 02.07.2012 as null and void and for permanent injunction restraining the defendants from creating any encumbrance over the suit property and other reliefs.

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 the first defendant who is the owner of the property had agreed to sell the property for a sum of Rs.4,35,831/- and received an advance of Rs.1,00,000/-. According to him, he had three months time to pay the balance of Rs.3,35,831/- and to convert the sale agreement into a sale deed. He would state that he was ready and willing to perform his part of the contract, but the first defendant not intended to



S.A.No.774 of 2024

sell the property as per term, hence the deceased plaintiff issued a pre-suit notice dated 22.05.2012. After receipt of the pre-suit notice, the first defendant had executed a bogus sale deed dated 02.07.2012 in the name of the second defendant. Therefore, the deceased plaintiff came forward with a suit for relief of specific performance and for preliminary decree of partition and for declaration that sale deed dated 02.07.2012 is null and void and for permanent injunction restraining the defendants from alienating the suit property.

5. The first defendant filed her additional written statement stating that the first defendant executed a registered sale agreement dated 11.01.2011 in favour of the second defendant for 53 cents and second defendant did not come forward to pay any advance amount. The first defendant never sold the the suit property to the second defendant and did not receive any sale consideration. she was ready and willing to execute the sale deed dated 18.04.2012 with the plaintiff and also contended that the second defendant created unregistered Sale Agreement dated 11.01.2011 and the Sale deed dated 02.07.2012 are forged.



S.A.No.774 of 2024

WEB COPY

6. The second defendant filed his written statement as stated above and it was his specific stand that the second defendant purchased suit property from the first defendant by way of Sale Deed dated 02.07.2012. The first defendant executed Sale Agreement dated 11.01.2011 agreed to sell the property for Rs.90,000/- and paid Rs.77,000/- as advance and period was fixed as 20 months and the said agreement was in force. As first defendant did not come forward to execute sale deed, inspite of legal notice dated 11.05.2012, second defendant filed O.S.No.50 of 2012 and the said suit was renumbered as O.S.No.47 of 2012. The first defendant compromised with the second defendant and executed Sale Deed dated 02.07.2012 in favour of the second defendant in respect of the suit property and also handed over the possession of the suit property. Thereafter, the original plaintiff has filed the suit with the help of blank signed stamp paper in which first defendant signed as a security for getting loan of Rs.20,000/- from the original plaintiff.

7. On the side of the plaintiff, he examined himself as PW1 and he



S.A.No.774 of 2024

examined two witnesses as PW2 and PW3 and marked Ex.A1 to Ex.A12.

On the side of the defendants, the first defendant entered the witness box as DW1 and the second defendant as DW3 and they examined three other witnesses as DW2 & DW4 & DW5. On their side, they marked Ex.B1 to Ex.B8.

8. The learned trial judge, after analysing the oral and documentary evidence filed before him, came to the conclusion that sale agreement was forgery and in any event, the suit was dismissed in respect of all other reliefs, however, the trial Court held that the first defendant should pay for refund of twice the advance amount of Rs.2,00,000/- with interest at the rate of 12% p.a.from the date of suit till the date of decree and thereafter interest at the rate of 6% p.a. as per the default clause.

9. Aggrieved by the same, the sole plaintiff has preferred A.S.No.6 of 2020 on the file of the learned Additional District Judge, Dharmapuri and the same was dismissed on 16.10.2023. During pendency of the said appeal, sole appellant died and the legal heirs of the deceased plaintiff were



S.A.No.774 of 2024

brought on record as the appellants. The learned Additional District Judge, Dharmapuri held that it was proved that the deceased plaintiff and the first defendant have entered into the suit agreement to defeat rights of the second defendant, hence the sole plaintiff/ now legal heirs/appellants were not entitled to relief of specific performance.

10. The learned counsel for the appellant argued that the Court below failed to appreciate the evidence on the side of the plaintiff, who establish his case through oral and documentary evidence, the same was not properly appreciated. He would also submit that no issue was framed by the trial Court in respect of readiness and willingness which is mandatory for the relief of specific performance and the decree granted by the Court below is erroneous and liable to be set aside.

11. Further, the learned counsel for the appellant would also submit that the first defendant bound to execute sale agreement in favour of the plaintiff in respect of the suit property by receiving balance amount, the fact remains that before filing the suit, the first defendant sold the suit property



S.A.No.774 of 2024

to the second defendant for valid sale consideration but the trial Court has not appreciated properly recitals of the sale agreement which discloses Sale Agreement – Ex.A1 entered between the plaintiff and the first defendant, as per terms after receiving the balance amount within a period of three months he has to execute the sale deed and plaintiff expressed his readiness that determined failed to comply the term, hence, he approached the Court and proved his case, inspite of that the first defendant had not execute the sale deed and therefore he should refund twice the advance amount which was refused by Court below and the same is unjust and liable to be set aside.

12. The learned counsel for the appellant further submits that between the first defendant and the plaintiff there is alleged sale agreement relying Ex.B1 and Sale Deed- Ex.B3 dated 11.01.2011 is created in order to defeat he claims of the plaintiff and based on the suit O.S.No.47 of 2012 filed by them which entered into by way of compromise also collusion in nature, but it was not properly appreciated by the court below.



S.A.No.774 of 2024

13. Heard the learned counsel for the appellant and also perused the Judgments of both the Courts below.

14. As per Ex.A1- Sale Agreement filed by the plaintiffs, wherein it has been held as under :-

“ 8. வாதி தரப்பில் தாக்கல் செய்யப்பட்டுள்ள ஆவணங்களில் வா.சா.ஆ.1 ஒப்பந்த பத்திரத்தை உற்று நோக்கும்பொழுது அதில் வாதி மற்றும் 1ம் பிரதிவாதிக்கும் இடையே வழக்கு சொத்து பொறுத்து கிரயம் பெறுவது குறித்து எழுதப்பட்டுள்ளது. அதில் 1 இலக்கமிட்டவர் 1ம் பிரதிவாதியானவர் 2ம் இலக்கமிட்டவர் வாதியாவார். மேற்படி விற்கிரய ஒப்பந்த பத்திரத்தில் உள்ள முக்கிய சரத்துக்கள் ஒப்பந்த பத்திரத்தில் 1 இலக்கமிட்டவருக்கு பாத்தியப்பட்ட நிலத்தை 2 லக்கமிட்டவருக்கு ஒரு செண்டு ரூ.4700/- மூபலகு ரூபாய் நான்கு ஆயிரத்து ஏழுநூறுகள் மட்டும் விலைபேசி இன்று முன்பணமாக அட்வான்ஸ் ரூ.1,00,000/- க்கு மூபலகு ரூபாய் ஒரு இலட்சம் மட்டும் 1 லக்கமிட்டவரால் நான் பெற்றுக்கொண்டேன் என்றும், மீதித் தொகையை 2 இலக்கமிட்டவர் இன்று முதல் 3 மூன்று மாத வாய்தாவில் பணத்தை செலுத்திவிட்டு இந்நிலத்தை கிரயம் செய்துகொள்ள வேண்டியது என்றும், இவ்வாறு கிரயம் செய்யும் தருவாயில் இந்நிலத்தில் ஏதேனும் வில்லங்கம் ஏற்படின் 1 லக்கமிட்டவர் தன் சொந்தபொருப்பில் தீர்த்துக்கொடுக்க கடமைப்பட்டவர் என்றும் இந்த வாய்தாப்படி 2 இலக்கமிட்டவர் இந்நிலத்தை



கிரயம் செய்ய தவறினால் அட்வான்ஸ் பணத்தை இழக்க நேரிட்டவர் என்றும், 1ம் லக்கமிட்டவர் இந்நிலத்தை கிரயம் செய்துதர மறுத்தால் அட்வான்ஸ் தொகையுடன் இரட்டிப்பு தொகையான ரூ.2,00,000/- மூபலகு ரூபாய் இரண்டு லட்சம் கட்ட கடமைப்பட்டவர் என்றும் நாங்கள் எழுதிக்கொண்டும் 1ம் விற்பனை ஒப்பந்த அக்ரிமெண்ட் பத்திரம் சரி என்று இதன் மூலம் உறுதி கூறுகிறோம்.”

15. Before the Trial Court, for D1 and D2 same counsel appeared later changed the counsel. In the Additional written statement, D1 claims that by misrepresentation D2 got Sale deed from her. But during trial, she admits that she received consideration from D2 and executed sale deed contra to her written statement.

16. Considering the facts and circumstances of this case, the legal heirs of the deceased plaintiff claimed that original plaintiff entered into unregistered Sale Agreement dated 18.04.2012 with the first defendant who agreed to sell the suit property for a sum of Rs.4700/- per cent was fixed and the plaintiff paid a sum of Rs.1,00,000/- to the first defendant, first defendant executed Sale Agreement dated 18.04.2012 in favour of the



S.A.No.774 of 2024

plaintiff and the balance amount has to be paid within three months from the date of sale agreement, if term not complied by the first defendant, there is default clause, accordingly plaintiff entitled to receive twice the advance amount.

17. On a perusal of the Judgment of the Court below, in Ex.A.1, it clearly shows that as per default clause, if the first defendant has refused to execute the sale deed, he should pay only refund of twice the advance amount to the plaintiff and there is no terms to approach civil forum to get sale deed executed by the plaintiff.

18. Therefore, as per the agreement in the instant case, if the first defendant failed to comply the terms of sale agreement, she is entitled to receive the refund of twice the advance amount of Rs.2,00,000- and in case of failure, to comply the default clause, the first defendant shall approach the Civil forum. The court below rightly appreciated the documents and dismissed the plaintiff's claim stating that she is entitled to only refund of twice the advance amount along with interest since first defendant failed to



S.A.No.774 of 2024

comply the terms.

WEB COPY

19. In such circumstances, the plaintiff is entitled to receive the refund of twice the advance amount payable by the first defendant. Therefore, readiness and willingness does not arise in the instant case. Hence, the objection raised by the learned counsel for the appellant that the issues was not properly framed in respect of readiness and willings of the plaintiff by the court below is unsustainable one. Moreover, the individual witnesses relied by the plaintiff also not supported the case of the plaintiff and the said contradiction was rightly appreciated by the Court below. The alleged collusion between defendants need not be discussed as the plaintiff fails to prove his case. Indeed evidence reveals, D1 executed Sale Deed in favour of D2 on receiving consideration after the stipulated period. Therefore, the plaintiff is entitled to receive the refund of twice the advance amount as per default clause granted by the Court below.

20. Therefore, findings of both the courts below needs no interference and the present appeal stands dismissed. The first defendant is

12\14



S.A.No.774 of 2024

directed to refund of twice the advance amount of Rs.2,00,000/- along with interest at the rate of 12% p.a. from the date of decree till the date of realisation and thereafter 6% interest, within a period of three months from the date of receipt of a copy of this order. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

12.11.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

kkd

To

1. The Additional District Judge, Dharmapuri,
2. The Principal Subordinate Judge, Dharmapuri.
3. The Section Officer, VR Section, High Court of Madras.



WEB COPY



S.A.No.774 of 2024

T.V.THAMILSELVI, J.

k kd

S.A.No.774 of 2024

12.11.2024

14\14