



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12 / 08 / 2024

JUDGMENT PRONOUNCED ON : 05 / 11 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.594 OF 2018

R.S.Sekar ... Appellant / Respondent /
Plaintiff

Vs.

1.Saminathan ... 1st Respondent / Appellant /
1st Defendant

2.Sub Registrar
Arni, Arni Town,
Tiruvannamalai District. ... 2nd Respondent / 2nd Respondent /
2nd Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated June 20, 2018 passed in A.S.No.34 of 2017 on the file of Additional District Court (Fast Track Court), Arni, whereby the Judgment and Decree dated August 10, 2012 passed in O.S.No.92 of 2008 on the file of Subordinate Court, Arni, Tiruvannamalai District was reversed.

For Appellant : Mr.A.Gouthaman
For Respondent-1 : Served – No appearance
For Respondent-2 : Mrs.R.Anitha
Special Government Pleader

J U D G M E N T



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This Second Appeal is directed by the unsuccessful plaintiff before the First Appellate Court, assailing the Judgment and Decree dated June 20, 2018 passed in A.S.No. 34 of 2017 on the file of 'Additional District Court (Fast Track Court), Arni' ['First Appellate Court' for short], whereby the Judgment and Decree dated August 10, 2012 passed in O.S.No. 92 of 2008 on the file of 'Subordinate Court, Arni, Tiruvannamalai District' ['Trial Court' for short] was reversed.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

Plaintiff's Case in Brief:

3. In the Plaint it is averred that the first defendant entered into a Sale Agreement on January 17, 2007 with the plaintiff, agreeing to sell his lands measuring roughly 2 Acres in Survey Nos.135/6 and 144/8 at the rate of Rs.1500/- per Cent and accordingly received an advance of Rs.25,000/- as part payment of the total sale consideration. The plaintiff blindly believed the first defendant as to the extent of the said lands. The period of performance was agreed to be within 60 days from the date of



Sale Agreement.

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3.1. Further averred that, later when the plaintiff approached the first defendant expressing his readiness and willingness to pay the remaining sale consideration and called upon him to present the Revenue Records pertaining to the said lands, the first defendant refused to do so. However, the plaintiff got the Revenue Records through some other mode and to his surprise, he learnt that the said lands measure only 1 Acre 36 Cents. Then, the plaintiff along with one Sampath and one Rajendran, approached the first defendant on February 21, 2007 expressing his readiness and willingness to pay the remaining sale consideration for the extent of 1 Acre 36 Cents alone instead of 2 Acres at the agreed rate of Rs.1500/- per Cent. The first defendant responded evasively.

3.2. Though the plaintiff was always ready and willing to perform his part of the Sale Agreement and approached the first defendant multiple times, the first defendant always refused. The first defendant was planning to sell the said lands to third parties. Hence, the Suit for specific performance of the Sale Agreement, and permanent injunction restraining the first defendant from alienating the Suit Property in favour of third



parties as well as restraining the second defendant from registering the Suit Property in favour of anyone else. Also for the alternative relief of refund of advance amount.

First Defendant's Case in Brief:

4. The first defendant filed Written Statement, wherein it is averred that Item No.2 of the Suit Properties was purchased vide Sale Deed dated December 14, 1979 out of sale proceeds of ancestral property. Item No.1 was purchased through Sale Deed dated March 14, 1990 out of joint family funds. Hence, the Suit Properties are joint family properties of the plaintiff, his two sons and two daughters.

4.1. It is further averred that he never executed any such Sale Agreement voluntarily out of free consent. The plaintiff, a realtor, brought the first defendant to thatched shed of one Chandrasekaran, the first defendant's neighbouring land owner, on a false pretext that surveyor has come to survey the neighbouring lands. Then the plaintiff demanded the first defendant to sell the Suit Properties to him, and the first defendant refused. Then plaintiff offered the first defendant a spiked drink which rendered him incapable of comprehension and forcibly obtained his



signature in a white paper whose contents were unknown to him, and thrust him with Rs.25,000/-.

4.2. The very next day, upon learning about the incident, the sons and daughters of the first defendant intimated the plaintiff that the agreement is void for lack of free consent, and even otherwise, the Suit Properties being joint family properties, the agreement would not bind upon their shares. On such intimation, the plaintiff agreed to accept the advance amount back and directed to give the same to his friend - Pichandi, President of Ariyapady Village. Accordingly, the advance amount was given to Pichandi, but the same was later returned by Pichandi on the pretext that his relationship with the plaintiff has become uncordial. Thereafter, while the first defendant was always ready to repay the advance amount forcibly given to him, the plaintiff was always evasive. In such a scenario, this Suit has been filed mischievously and it is liable to be dismissed.

Second Defendant's Case in Brief:

5. The second defendant filed Written Statement wherein it is averred that the second defendant does not know about the alleged Sale Agreement dated January 17, 2007. Second defendant is not a necessary



party. Further that, it is his statutory duty to register the documents if they are duly presented along with the correct stamp duty and registration fee.

The Suit filed with a prayer to restrain the second defendant's statutory duty is not maintainable and liable to be dismissed.

Trial Court:

6. The Trial Court framed issues and their translated versions are as below:

- “(i) *Whether the plaintiff is entitled to the relief of specific performance?*
- (ii) *Whether the Suit Properties are joint family properties of the plaintiff, his sons and his daughters?*
- (iii) *Whether the Suit is bad for non-joinder of the sons and daughters of the plaintiff?*
- (iv) *Whether the plaintiff spiked the first defendant's drink and obtained signature in the Sale Agreement, as alleged by the first defendant?*
- (v) *Whether the Sale Agreement is valid in law?*
- (vi) *To what other reliefs?”*

6.1. At Trial, on the side of the plaintiff, the plaintiff was examined as P.W.1, one Chandrasekaran was examined as P.W.2, and Ex-A.1 - Sale Agreement was marked. On the side of the first defendant, the first defendant was examined as D.W.1 and Ex-B.1 to Ex-B.3 were



marked. On the side of the second defendant, no witness was examined and no document was marked.

6.2. Upon hearing both sides and considering the oral and documentary evidence, the Trial Court concluded that the Ex-A.1 - Sale Agreement is true and valid; that the Suit Properties are not joint family properties and hence, the Suit is not bad for non-joinder of necessary parties; that the defence of intoxication, coercion and undue influence have not been proved. Accordingly, decreed the Suit for specific performance with costs, impliedly refused the relief of permanent injunction *qua* first defendant and dismissed the Suit for permanent injunction *qua* second defendant.

First Appellate Court:

7. Aggrieved by the Judgment and Decree passed by the Trial Court, the first defendant approached the Principal District Court, Tiruvannamalai by way of an appeal under Section 96 of the Code of Civil Procedure, 1908 in A.S.No.2 of 2014. The said appeal was later transferred to the file of First Appellate Court and renumbered as A.S.No.34 of 2017.



7.1. The First Appellate Court upon hearing both sides and analysing the oral and documentary evidence, concluded that Ex-A.1 - Sale Agreement was obtained under undue influence and hence it is not valid in the eyes of law. Accordingly, it partly-allowed the appeal, set aside the Judgment and Decree of the Trial Court and dismissed the Suit for specific performance, while decreeing the Suit for the alternate relief of return of advance amount along with interest at the rate of 7% from the date of Suit.

Substantial Questions of Law:

8. Aggrieved with the Judgment and Decree of the First Appellate Court, the plaintiff preferred this Second Appeal and the same was admitted on November 20, 2018 on the following Substantial Questions of Law:

"(1) Whether the lower Appellate Court right in reversing the well considered judgment and decree of trial Court, when admittedly the plaintiff averred and proved his readiness and willingness to perform his part of contract as per Section 16(C) of Specific Relief Act?

(2) Whether the lower Appellate Court right in dismissing the suit on the ground that the Court has discretionary power under Section 20 of Specific Relief Act, ignoring the law that the discretion of the Court is not arbitrary but sound and reasonable, guided by the Judicial principles



and capable of correction?

(3) Whether the lower Appellate Court right in dismissing the suit on the ground that the Ex.A1 does not seems to be sale agreement?

(4) Whether the lower Appellate Court right in giving finding that the nature of property is ancestral property of the defendant and the defendant does not have power to enter in to contract, when admittedly the suit is one for specific performance and not for title or partition? "

Arguments:

9. Mr.A.Gouthaman, learned Counsel for the appellant / plaintiff would argue that the first defendant, who pleaded undue influence, has to prove the same. No independent witness was examined in this regard. Nor any evidence was adduced. Referring to first defendant's evidence as D.W.1, he would submit that his own evidence belies his theory of undue influence and his theory of joint family properties. The plaintiff has always been ready and willing to perform his part of the agreement. In fact, the remaining sale consideration has been deposited before the Trial Court after the passing of the Judgment. The Trial Court rightly appreciated the evidence and decreed the Suit for specific performance. The First Appellate Court failed to appreciate the oral



evidence of the first defendant in the right perspective and erred in setting aside the Trial Court's Judgment and Decree. The same is liable to be interfered with. Accordingly, he prayed to allow the Second Appeal and restore the Trial Court's Judgment and Decree.

9.1. He would rely on the following decisions in support of his contentions:

- (i) ***Motilal Jain's Case*** - Judgment of Hon'ble Supreme Court in *Motilal Jain -vs- Smt. Ramdasi Devi and others*, reported in (2000) 3 MLJ 202 (SC);
- (ii) ***Hemalatha's Case*** - Judgment of Hon'ble Supreme Court in *Hemalatha -vs- Kasthuri*, reported in (2023) 10 SCC 725;
- (iii) ***Lakshmi Ammal's Case*** - Judgment of this Court in *Lakshmi Ammal -vs- J.Victor*, reported in (1998) 1 MLJ 740;
- (iv) ***Thilagavathi's Case*** - Judgment of this Court in *Thilagavathi -vs- Subaramaniam*, reported in MANU/TN/0721/2012;
- (v) ***Padma's Case*** - Judgment of this Court in *Padma -vs- C.Nasi*, reported in 2017 (5) CTC 785.



10. Despite sufficient service, and despite the first defendant's name being shown in the cause list continuously on all listings, none appeared on behalf of Respondent No.1 / first defendant.

11. Ms.R.Anitha, Special Government Pleader for Respondent No.2 / second defendant would submit that the second defendant being a statutory authority is obliged to register document if any presented duly stamped and with proper registration fees as per law. Hence, the relief of permanent injunction against the statutory authority is not maintainable. The second defendant is an unnecessary party to the Suit. Moreover, the Trial Court dismissed the Suit *qua* the second defendant and the plaintiff did not prefer any appeal over the said finding. The First Appellate Court also dismissed the Suit *qua* the second defendant. Hence, the said finding has reached finality.

Discussion:

12. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.



Stamp Duty

13. This Court has perused Ex-A.1 - Sale Agreement. It is recorded on a plain white paper and the first defendant has affixed his signature over two Revenue Stamps worth one rupee each. Apart from the first defendant, three witnesses have signed therein. The plaintiff has not signed Ex-A.1. As per Article 5 of Schedule I to the Stamp Act, 1899, Ex-A.1, requires a stamp duty of Rs.20/-. At the time of filing the Suit, stamp duty penalty of Rs.220/- was collected by the Court from the plaintiff and remitted to the treasury. It is 10 times the actual Stamp Duty payable. In view of proviso (a) to Section 35 of the Indian Stamp Act, 1899, the defect *qua* deficit stamp in Ex-A.1 has been cured [See ***Chilakuri Gangulappa -vs- Revenue Divisional Officer***, reported in (2001) 4 SCC 197].

Registration

14. Ex-A.1 - Sale Agreement is dated January 17, 2007, that is to say before the commencement of the Registration (Tamil Nadu Amendment) Act, 2012 [Tamil Nadu Act No. 29 of 2012]; the Act came into effect from December 1, 2012. Hence, Ex-A.1 is not a document of which registration is mandatory. Notably, even after the commencement of the aforesaid Act, an unregistered sale agreement affecting immovable



property is admissible in evidence for the purpose of enforcing specific performance under Chapter II of the 'Specific Relief Act, 1963' ['S.R. Act' for short] in view of the proviso to Section 49 of the Registration Act, 1908 [See *Hemalatha's Case (supra)*].

Whether Ex-A.1 is hit by Section 15 (1) (a) of the S.R. Act?

15. The plaintiff has not signed Ex-A.1. To be noted, Ex-A.1 is the original of the Sale Agreement dated January 17, 2007. From a bare reading of Ex-A.1 (*infra*), it would be crystal clear that the first defendant signed and executed Ex-A.1 in favour of the plaintiff and handed it over to the plaintiff. Under Section 15 (1) (a) of the S.R. Act, it is sufficient if the party, against whom the contract is sought to be enforced, has signed it. Hence, the Suit framed based on Ex-A.1, which is signed by the first defendant (against whom it is sought by the plaintiff to be enforced), is not hit by Section 15 (1) (a) and is maintainable [See *Lakshmi Ammal's Case*].

Execution of Ex-A.1

16. The plaintiff in his evidence as P.W.1 has deposed that on January 17, 2007, the first defendant executed Ex-A.1 - Sale Agreement in



his favour in the presence of three witnesses. Ex-A.1 is the original. One of the witnesses, Thiru. Chandrasekaran was examined as P.W.2. To be noted, the first defendant did not deny the execution of Ex-A.1 as well as the receipt of advance amount of Rs.25,000/-. On the other hand, the first defendant contends that the plaintiff spiked his drink in order to get Ex-A.1 executed. In other words, his contention is that Ex-A.1 was obtained under undue influence when he was not in sound mind and therefore, it is void under law. In view of the examination of P.W.2 on the side of the plaintiff, the plaintiff has *prima facie* established the execution of Ex-A.1 and the payment of advance money. Now the onus is upon the first defendant to establish his defence theory.

17. First defendant in his evidence as D.W.1 has admitted that on the date of execution of Ex-A.1, the plaintiff entered into Sale Agreements with 4 of his close relatives / neighbouring land owners, namely Chandrasekar, Kuppan, Masilamani and Mahalingam. In such a scenario, first defendant could have very well examined at least any one of them to prove his theory of spiked drink; but he has failed to do so. According to the first defendant, on the day after executing Ex-A.1, his sons and daughters intimated the plaintiff that the agreement is void for lack of free consent, and even otherwise, the Suit Properties being joint



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family properties, the agreement would not bind upon their shares; the said averment has also not been proved. Further case of the first defendant is that, on such intimation, the plaintiff agreed to accept the advance amount and directed to give the same to his friend - Pichandi, President of Ariyapady Village, and accordingly, the advance amount was given to Pichandi, but the same was later returned by Pichandi on the pretext that his relationship with the plaintiff has become uncordial. The first defendant has not taken any steps to prove this averment also. Though he could have examined the said Pichandi, he did not. There is nothing on record to show that the Suit Properties are joint family properties. On the other hand, first defendant has admitted in his evidence as D.W.1 that the Suit Properties were purchased by him out of his income from sheep rearing. Hence, the theory of joint family properties has also not been proved. In short, there is not even an iota of evidence available on record in support of the defence theory.

18. At this juncture, it is useful to refer to a portion of D.W.1's evidence, which is as follows:

“ . . . எனக்கு ஆடு மேய்த்துதான் ஜீவனம். சொந்தமாக ஆடு வாங்கி விருத்தி செய்து அதன் மூலம் ஜீவனம் செய்து வந்தேன். 1975ல் கிரையம் பெற்றேன்.



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பி.வா.சா.ஆ.2 அடிப்படையில் கிரையம் பெற்றேன். இந்த சொத்தை ஆட்டிலிருந்து வந்த வருமானத்தை கொண்டு தான் கிரையம் பெற்றேன். பி.வா.சா.ஆ.3ல் கண்ட சொத்தை கிரையம் பெற்றேன். ஆடு விற்று வந்த சொத்தைக்கொண்டுதான் கிரையம் பெற்றேன். என் பெண்களை கட்டிக்கொடுத்துவிட்டேன். அதற்கு ஆடு விற்றுவந்த வருமானத்தைக்கொண்டு தான் செய்தேன். பி.வா.சா.ஆ.2ல் கண்ட ஒரு அயிட்டிச் சொத்தையும், பி.வா.சா.ஆ.3ல் கண்ட ஒரு அயிட்டிச் சொத்தைதான் அக்ரிமென்ட் போட்டேன். . . . ”

19. This Court, on the basis of the evidence of D.W.1 coupled with the dearth of evidence in support of the defence theory, has no difficulty in concluding that the Suit Properties are separate properties and that first defendant executed Ex-A.1 voluntarily.

Readiness and Willingness

20. In Ex-A.1, lands of extent of roughly 2 Acres in Survey Nos.135/6 and 144/8 was agreed to be sold to the plaintiff by the first defendant at the rate of Rs.1500/- per Cent within 60 days from the date of execution of Ex-A.1. As per Ex-A.1, the period of performance is within 60 days from the execution of Ex-A.1. The plaintiff in his evidence as



P.W.1, has deposed that only after the execution of Ex-A.1 he came to know that the extent of the said lands is only 1 Acre 36 Cents. Further deposed that, thereafter, he along with one Sampath and one Rajendran approached the first defendant and offered to pay the balance sale consideration for the 1 Acre 36 Cents alone instead of 2 Acres. But there is no pre-suit notice in this case and neither the said Sampath nor the said Rajendran has been examined on the side of the plaintiff to prove his readiness and willingness to perform his part of the agreement during the time period for performance. The Original Suit was filed on September 22, 2008, though within the period of limitation, almost 1 ½ years after the expiration of the time period of performance. Willingness is as important as readiness. Admittedly, the plaintiff has the wherewithal, but must also prove his willingness for performance of his part of the agreement. Needless to mention that the plaintiff has to be ready and willing to perform his part of the agreement during the currency of the agreement as well as during the Suit Proceedings completely. This Court is of the view that the plaintiff has not proved his willingness to perform his part of the agreement within the stipulated time for performance viz., 60 days satisfactorily.



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21. The learned Counsel for the plaintiff would rely on *Motilal Jain's Case, Thilagavathi's Case and Padma's Case (supra)* in this regard. There is no quarrel with the law laid down in **those** cases. But they would not come to the aid of the plaintiff owing to the facts and circumstances of the present case.

Whether Ex-A.1 is enforceable for the relief of specific performance?

22. At this point, it is useful to extract the description of property of Ex-A.1 hereunder:

“சொத்து விவரம்

திருவண்ணாமலை மாவட்டம் ஆரணி வட்டம் ஆரணி சார்பதிவை சேர்ந்த அரியப்பாடி கிராமத்தில் வரும் புஞ்சை சர்வே எண் மற்றும் ஜக்பந்தி 135/6, 144/8 ஏழுமலை நிலத்திற்கும், சந்திரசேகர் நிலத்திற்கும் (தெ) சேகர், ராமகிருஷ்ணன் நிலத்திற்கு (மே) குப்பன் நிலத்திற்கு (வ) மகாலிங்கம் மாசிலாமணி சந்திரசேகர் நிலத்திற்கு (கி) இதற்கு மத்தியில் சுமார் 2 ஏக்கர் புஞ்சை நிலம் விக்கிர அக்கிரமெண்ட்டுக்கு உட்பட்டது.”

23. Further, it is pertinent to extract hereunder the Plaintiff description of property:



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“சொத்து விவரம்

தி.மலை மாவட்டம், ஆரணி வட்டம், அரியப்பாடி

கிராமத்தில் புஞ்சை சர்வே எண்கள்

1) புஞ்சை சர்வே எண் 135/6 0.16.0 ஏர். தீர்வை 0.4

2) புஞ்சை சர்வே எண் 144/8 0.39.0 ஏர். தீர்வை 1.02”

24. In a Suit for specific performance, the Suit Property has to be same as the property described in the agreement. The plaintiff cannot describe anything different or contra to the property described in the agreement and seek the relief of specific performance with respect to it. In other words, in a Suit for specific performance, the Suit Properties must match with the subject matter of the agreement. According to the plaintiff, though the property described under Ex-A.1 is of an extent 2 Acre, on enquiry with the concerned Village Administrative Officer, the plaintiff came to know that only an extent of 1 Acre 36 Cents is available in the Suit Survey numbers. Accordingly, he described the Suit Properties as measuring 1 Acre 36 Cents, as opposed to the description of measuring 2 Acres in Ex-A.1. However, there is nothing on record to substantiate the above contention of the plaintiff.



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25. Ex-B.1 is the Sale Deed allegedly pertaining to Item No.1 of the Suit Properties. Perusal of Ex-B.1 would show that it relates to Survey No. 135/5 and other properties, but not Survey No. 135/6 which is the Survey number of Item No.1 Suit Properties. Perusal of Ex-B.2 - Sale Deed would show that it is a Sale Deed pertaining to Item No.2 as alleged. Perusal of Ex-B.3 - Partition Deed would show that it does not pertain to Survey No.135/6 (Item No.1), but to Survey No.135/3 and other properties. In short, there is nothing on record to show the extent of Survey No.135/6 and that it belongs to the first defendant. No document has been produced, nor any witness has been examined. In the absence of proof, the plaintiff cannot vary the extent of property mentioned in the agreement while describing the same in the Suit description of property, and seek the relief of specific performance. Only the Court has the power to direct specific performance in respect of a lesser extent on consideration of the facts and circumstances of the case.

26. At this juncture, this Court deems fit and proper to extract the terms of Ex-A.1 hereunder:

“2007 ஆம் ஆண்டு ஜனவரி 17 ந்தேதி திருவண்ணாமலை



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மாவட்டம் ஆரணி வட்டம் அரியப்பாடி கிராமத்திலிருக்கும் நடேச கவுண்டர் குமாரர் சாமிநாதன் ஆகிய நான் வேலூர் மாவட்டம் வாலாஜா தாலுக்கா ராணிப்பேட்டை டவுன் ரயில்வே நிலையம் 3வது குறுக்குதெருவில் வசிக்கும் ராஜகோபால்கவுண்டர் குமாரர் R.S.சேகர் அவர்களுக்கு நான் என் சுயராஜியமாக சம்பாத்தி நிலத்தை விலைக்கிரையம் பேசி முடிவு செய்த ரூபாய் ஒரு செண்ட் விலை ரூ. 1500க்கு எழுத்தால் ரூபாய் ஆயிரத்து ஐந்து நூறு என முடிவு செய்து சுமார் 2 ஏக்கர் (பஞ்சைய நிலம்) நிலத்தின் சார்பாக இன்று தேதியில் முன் பணமாக ரூபாய் 25,000க்கு எழுத்தால் ரூபாய் இருப்பத்து ஐந்து ஆயிரம் பெற்றுக்கொண்டேன். மீதி பணம் இன்றுமுதல் 60 நாட்களுக்குள் செலுத்தி தங்கள் பெயரில் பதிவு செய்து கொடுக்க சம்பந்தமாக பதிவு செய்ய மறுத்தால் கட்டிய அட்வான்ஸ் தொகை இரட்டிப்பாக கொடுக்க சம்மதிக்கிறேன். அதுபோல் நீர் தவறும் பட்சத்தில் கட்டிய அட்வான்ஸ் தொகை இழக்க நேரிடும். இந்தபடிக்கு என் முழு மன சம்பத்திஉடன் எழுதிக்கொடுத்த விக்கிர அக்கிரமெண்ட் இதுவே ஆகும்."

(Emphasis supplied)

27. Bare reading of Ex-A.1 would show that if the plaintiff fails to perform his part of the agreement within the duration of performance viz., 60 days from the date of execution, the consequence is forfeiture of the advance money by the plaintiff. On the other hand, if the first defendant fails to perform his part of the contract within the duration



of performance, the consequence is that he'll be bound to repay two times the advance amount as penalty. As per the terms of Ex-A.1, there is no remedy of execution of Sale Deed in favour of the plaintiff through Court available, in case of default on the side of the first defendant. In such a scenario, this Court is of the view that in case of first defendant's default, the remedy available to the plaintiff is only to recover two times the advance amount from first defendant as per the terms of Ex-A.1. Only that remedy can be enforced under the S.R. Act by the plaintiff, provided he *inter alia* proves his readiness and willingness to perform his part of the agreement throughout up to the date of decree. In this case, as narrated *supra*, the plaintiff has not satisfactorily proved his willingness to perform his part of the agreement during the period of performance. Hence, the plaintiff is not entitled to any relief of specific performance, be it either the execution of Sale Deed as prayed for, or the return of two times the advance amount as per the terms of Ex-A.1.

28. However, the first defendant has admitted the receipt of Rs.25,000/- as advance money. If the plaintiff is not entitled to the alternate relief of return of advance money, it would be unjust enrichment. Hence, this Court is of the view that the first defendant shall return the



advance money viz., Rs.25,000/- along with interest at the rate of 12% from the date of Suit till the date of this Judgment.

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29. Perusal of records show that the plaintiff has deposited Rs.1,79,000/- as remaining sale consideration before Trial Court. He shall be entitled to withdraw the same with accrued interest, if any thereon. It appears that that the first defendant has also deposited a sum of Rs.25,000/- before the Trial Court. If so, he shall not be permitted to withdraw the same (including accrued interest if any thereon) until satisfaction of the relief of return of advance amount granted by this Court in favour of the plaintiff.

Conclusion:

30. In view of the foregoing narrative, this Court is of the view that the plaintiff has not proved his willingness satisfactorily; that the First Appellate Court rightly exercised its discretionary power, allowed the appeal and dismissed the Suit; that Ex-A.1 is a proper Sale Agreement; that the First Appellate Court is not justifiable in its finding that the Suit Properties are ancestral properties of the first defendant. The Substantial



Questions of Law are answered accordingly.

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31. Resultantly, the Second Appeal is partly-allowed with costs in the following terms:

- (a)** As narrated above, the plaintiff is entitled to return of the advance money *viz.*, Rs.25,000/- (Rupees Twenty Five Thousand only), along with simple interest at the rate of 12% from the date of Suit till the date of this Judgment and post decree interest at the rate of 6% per annum;
- (b)** Connected Civil Miscellaneous Petition *viz.*, C.M.P.No.17999 of 2018 was already dismissed on November 20, 2018. However, erroneously it was listed along with this Second Appeal as a connected matter as if it is alive. Registry is directed to make necessary entries in the records concerned.

05 / 11 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes



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S.A.No.594 of 2018

R. SAKTHIVEL, J.

TK

To

- 1.The Additional District Court
(Fast Track Court)
Arni, Tiruvannamalai District.
- 2.The Subordinate Court
Arni, Tiruvannamalai District.

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.594 OF 2018

05 / 11 / 2024