



S.A.No.1806 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1806 of 2002

K.Sampath Rangan

... Appellant

-VS-

1.Immanuvel

2.Arokiasamy

3.Arul Udaiyar

4.Panneerselvam

5.Antonysamy

6.Arokiasamy @ Durairaj

7.Lourdusamy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 31.08.2001, passed in A.S.No.3 of 2001 on the file of Sub-Court, Thanjavur, confirming the judgment and decree, dated 29.10.1997, passed in O.S.No.480 of 1996 on the file of District Munsif Court, Thanjavur.



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For Appellant : Mr.V.M.Balamohan Thambi
for Mr.M.Sudhakar

For Respondent 1 : Mr.P.Ganapathi Subramanian

For Respondent 2 : Mr.A.Senthilkumar

For Respondents 3 & 4 : Mr.D.Srinivasaraghavan

For Respondent 7 : Mr.S.Muniyandi

Respondents 5 & 6 : Dismissed

JUDGMENT

The seventh defendant in the suit is the appellant. The first respondent/plaintiff filed a suit for specific performance of suit sale agreement, dated 11.01.1991, entered into between the plaintiff and the defendants 1 to 4. The suit was decreed by the trial Court by directing the defendants 1 to 6 to execute the sale deed, as prayed for. Aggrieved by the silence in the decree with regard to a direction to seventh defendant to execute the sale deed, the plaintiff preferred an appeal in A.S.No.64 of 1999 on the file of Sub-Court, Thanjavur. Aggrieved by the decree granted for specific performance, the seventh defendant filed A.S.No.3 of 2001 on the file of the same Court i.e., Sub-Court, Thanjavur. The first appellate Court dismissed



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the appeal filed by the seventh defendant and allowed the appeal filed by the plaintiff directing the seventh defendant to join with other defendants for execution of sale deed in favour of the plaintiff. Aggrieved by the same, the seventh defendant has come by way of this Second Appeal.

2. According to the first respondent/plaintiff, the suit property belonged to defendants 4 to 6. They entered into an agreement with defendants 1 to 3 for sale of the suit property on 30.01.1988. The defendants 1 to 3 were given possession of the property and they were also given power to enter into a sale agreement with third parties and also to receive advance. The first defendant approached the plaintiff and entered into a sale agreement on 11.01.1991 for sale of the suit property, namely, 2 plots for a value of Rs.20,000/-. The plaintiff paid advance of Rs.18,000/- on the date of agreement and agreed to pay the balance amount at the time of registration. The plaintiff also claimed that possession was handed over to him on the date of agreement. It was further claimed that in spite of repeated demands, the defendants evaded completion of the suit sale transaction. The plaintiff also acquired knowledge about the agreement between the seventh defendant and the defendants 1 to 6 with regard to the suit property. Therefore, the plaintiff was constrained to file a suit for specific performance of the sale agreement, dated 11.01.1991.



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3. The appellant/seventh defendant filed a written statement and denied the suit sale agreement as a concocted document. He also claimed that he was the bonafide purchaser of the suit property for value without notice of suit sale agreement.

4. Before the trial Court, the plaintiff was examined as P.W.1 and 6 documents were marked on his side as Exs.A-1 to A-6. The first and the sixth defendants were examined as D.Ws.1 and 2 and the seventh defendant was examined as D.W.3. On behalf of the defendants, 13 documents were marked as Exs.B-1 to B-13.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit sale agreement was a genuine document. The trial Court also rendered a finding that the seventh defendant was not a bonafide purchaser for value and consequently decreed the suit. However, the decree drafted by the trial Court was silent about the seventh defendant. The direction was issued only for the defendants 1 to 6 and there was no direction for the seventh defendant to execute the sale agreement along with the defendants 1 to 6. Hence, the plaintiff filed an appeal in A.S.No.64 of 1999 in so far as the decree was against the seventh defendant. The seventh defendant also filed a separate appeal in A.S.No.3 of 2001. Both the appeals were heard together by the first



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appellate Court. The first appellate Court confirmed the findings of the trial Court that the seventh defendant was not a bonafide purchaser for value and dismissed the appeal filed by the appellant/seventh defendant. The first appellate Court allowed the appeal filed by the plaintiff and directed the seventh defendant also to join the defendants 1 to 6 and execute sale deed in favour of the plaintiff. Aggrieved by the same, the seventh defendant preferred this Second Appeal.

6. At the time of admission, this Court formulated the following substantial question of law, by an order, dated 19.12.2002 :

"Whether the decree for specific performance could be sustained in the absence of any finding that the appellant is not a bonafide purchaser for value without notice ?"

7. The learned counsel appearing for the appellant submitted that absolutely there is no evidence available on record to suggest that the seventh defendant had knowledge about the suit sale agreement before purchase and, therefore, the findings rendered by the Courts below that the seventh defendant was not a bonafide purchaser for value is without any evidence.



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8. A perusal of judgments by Courts below would indicate that there is a categorical finding that appellant/D7 was not a bonafide purchaser for value. Hence, the question of law framed at the time of admission is re-framed as follows, on the basis of arguments made by learned counsel for the appellant.

"Whether the finding of the Courts below that appellant/D7 is not a bonafide purchaser for value is legally sustainable ?"

9. The learned counsel appearing for the respondents submitted that the Courts below, based on the evidence of P.W.1 and the contradictions in the evidences of D.Ws.2 and 3, came to the conclusion that the seventh defendant was a bonafide purchaser for value and the said finding need not be interfered with. The learned counsel also submitted that challenging the decree passed by the first appellate Court allowing the appeal filed by the plaintiff in A.S.No.64 of 1999, the seventh defendant has not filed any second appeal and, therefore, the findings rendered by the first appellate Court in A.S.No.64 of 1999 would operate as res judicata.

10. It is seen from the records that challenging the judgment and the decree passed by the trial Court, separate appeals were filed by the



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WEB COURT plaintiff as well as the seventh defendant and the same were numbered as A.S.Nos.64 of 1999 and 3 of 2001. Both the appeals were heard together and the first appellate Court framed the following points for consideration in both the appeals :

□1. அசல் எண்.480/96 வழக்கில் கீழமை நீதிமன்றம் வழங்கிய தீர்ப்பு மற்றும் தீர்ப்பாணையும் ரத்து செய்யப்பட வேண்டிய ஒன்றா?

2. 4, 5, 6 பிரதிவாதிகள் மட்டுமே தாவா 2வது அயிட்ட சொத்தை வாதிக்கு கிரயம் செய்து கிரயப் பத்திரம் எழுதித் தர வேண்டுமென்று மேற்படி தீர்ப்பில் கீழமை நீதிமன்றம் செய்த முடிவு சரியானதா? அல்லது மேல்முறையீட்டு வழக்கு எண்.64/99ன் மேல்முறையீட்டாளர் கோருகின்றபடி 4, 5, 6 பிரதிவாதிகளுடன் 7ம் பிரதிவாதி சேர்ந்து கூட்டாக தாவா 2வது அயிட்ட சொத்தை வாதிக்கு கிரயப் பத்திரம் செய்து கொடுக்கப்பட வேண்டுமா? □

11. The first appellate Court, on re-appreciation of evidence available on record, affirmed the findings of trial Court that the seventh defendant was not a bonafide purchaser for value and directed him to join other defendants in execution of sale deed in favour of the plaintiff. That finding rendered by the first appellate Court is inextricably mixed up with the findings in the appeal filed by the plaintiff. Therefore, without filing an appeal challenging the decree passed in A.S.No.64 of 1999, the seventh defendant is not entitled to challenge the said finding in the second appeal filed against the



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dismissal of his first appeal in A.S.No.3 of 2001. Since the finding in A.S.No. 64 of 1999 has already attained finality, the same will operate as res judicata against the maintainability of this Second Appeal. Therefore, as rightly contended by the learned counsel for the respondents, the Second Appeal is barred by res judicata and the appellant is not entitled to canvass the correctness of the findings rendered by the first appellate Court that he was not a bonafide purchaser for value.

12. In view of the discussion made earlier, the substantial question of law, taken up for consideration, is answered against the appellant and the Second Appeal stands dismissed. No costs. Consequently, the connected C.M.P.(MD) No.15259 of 2002 is closed.

31.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Subordinate Judge,
Thanjavur.
- 2.District Munsif,
Thanjavur.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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