

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2015

CORAM :

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.1066 of 2008

M.Subbusamy

.. Appellant/Plaintiff

Vs.

1.R.Karunaiathal
2.R.Senthilnathan
3.R.Subbulakshmi
4.N.Valliathal
5.R.Sivasubramaniam
6.R.Natrajan
7.R.Govindasamy
8.R.Shanmugham
9.R.Durairaj
10.P.Devi

11.P.Krishnaswamy Gounder .. Respondents/Defendants 2,12,
4,5 to 11 & 13.

(Respondents 3 to 11 are given up in this
appeal as they are exparte before the
lower appellate court)

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 14.12.2007 made in A.S.No.8 of 2007 on the file of the Principal District Court, Erode reversing the judgment and decree dated 28.12.2005 made in OS.No.162 of 1998 on the file of the Ist Additional Sub Court, Erode.

For Appellant : Mr.A.K.Kumarasamy
for M/s.P.Kannan Kumar.
For Respondents : Mr.S.Parthasarathy, SC
for Mr.D.Krishna Kumar.

J U D G M E N T

The plaintiff is the appellant herein.

2.The plaintiff has filed the present suit for specific performance of contract of sale agreement dated 27.10.1997 executed by the first defendant for the sale of the suit property belonging to him. According to the plaintiff, the first defendant agreed to sell the property for a sum of Rs.4,08,000/- and received a sum of Rs.3,50,000/- as advance, the balance to be paid was Rs.58,000/-

and the sale has to be completed free from all encumbrances within three years i.e. on or before 27.02.2000 and the said sale agreement was registered and according to the plaintiff, possession was also handed over on the date of the agreement. It is his further case that the plaintiff was always ready and willing to perform his part of the contract, but the first defendant was evading, therefore a notice was issued on 31.01.1998 which was returned refused. Hence, the suit was filed by the plaintiff.

3. Pending suit, the first defendant died and his two wives predeceased him. Therefore the defendants 2 and 3 who are the sisters and the defendants 4 to 11 who are the children of another sister were impleaded as parties to the suit. However, the 12th defendant filed an application to implead him as party, as he claimed the property under a will dated 20.11.1999, allegedly executed by the first defendant, therefore he was impleaded as party. The third defendant died and 13th defendant was impleaded as legal representative of the 3rd defendant.

4. During his lifetime itself, the first defendant filed his written statement denying the execution of the sale agreement and receipt of the alleged sum of Rs.3,50,000/-. According to the first defendant, the plaintiff is the brother of his second wife, named Subbulakshmi and both of his wives predeceased him without bearing any children. The first defendant was mentally very poor and the plaintiff was always greedy and was aiming to grab the property after the death of 2nd wife, Subbulakshmi, and she died on 16.10.1997 by committing suicide. The first defendant was under the custody of the plaintiff as he was depressed. During that time, the plaintiff seemed to have obtained the signature of the defendant and this defendant never intended to sell the property and the sale agreement was obtained by fraud and undue influence. According to the first defendant, the recitals regarding the huge payment of Rs.3,50,000/- out of sale consideration and the three years time to execute the sale would show that the sale agreement was obtained by fraud and the first defendant was also not in sound and disposing state of mind.

5. The 2nd and 3rd defendants filed separate written statement reiterating the stand taken by the first defendant and denied execution of the document. The 12th defendant also denied sale agreement but would project the Will dated 20.11.1999 claiming bequeath of the property, the 13th defendant would also join the other defendants in denying the said registered agreement.

6. Based on the above averments, the trial court framed various triable issues, more particularly framed an issue whether the plaintiff had obtained the sale agreement by fraud and misrepresentation. Apart from this issue, the Will produced by the 12th defendant was also questioned.

7. An appraisal of the oral and documentary evidence, the trial

court was of the view that the burden is on the defendants to disprove the sale agreement as it was obtained by fraud and misrepresentation, which they failed and found the sale agreement, was true and valid. The trial Court has also found that the allegation that the first defendant was of unsound mind was also not proved by the defendants. The trial court has also discussed the fact whether the plaintiff was having enough resource to pay huge sum of Rs.3,50,000/- as advance and found that the plaintiff had enough source to pay the same and thereby decreed the suit. The second and the 12th defendant alone preferred an appeal before the District Judge, Erode in AS.No.8 of 2007.

8.The first appellate court reappreciated the evidence and found that the plaintiff has not approached the Court with clean hands and suppressed the material facts and therefore he is not entitled for discretionary reliefs of specific performance of the agreement. The first appellate court also found that the plaintiff not proved that he had means to pay a huge sum of Rs.3,50,000/- and alleged possession was also not proved. Therefore, the decree was set aside. Aggrieved by which the second appeal is preferred before this court on various grounds and more particularly on the ground; that the sale agreement was a registered agreement and the possession was handed over to the plaintiff; that the second defendant and the 12th defendant have forged a Will dated 20.11.1999 which was not proved in accordance with law; that the defendants have not proved the mental state of the first defendant; and that the first appellate court was wrong on shifting the burden on the plaintiff in proving the sale agreement which is registered.

9. Based on the above grounds, while admitting the second appeal this court framed the following substantial questions of law :

1.Whether the lower appellate Court is right in holding that the plaintiff has set up a false case and made an attempt to get a decree, when none of the defendants disputed neither the contents made in the agreement for sale in Ex.A1 nor the signature of the first defendant namely Late Chinnamalai Gounder therein.

2.Whether the lower appellate court is right in holding that the plaintiff has not proved the source of his income when the witnesses P.W.2 and P.W.3 spoke about the plaintiff's sufficient possession of sale consideration and source of income.

3.Whether the lower appellate Court is right in allowing the appeal by reversing the considered judgment and decree of the trial Court when the burden of proof rests on the defendants to prove that the first defendant was not in sound state of mind on the date of execution of Ex.A1 and the defendants failed to prove the same.

10. Heard the rival submissions made on both sides and perused the records.

11.The admitted facts are as follows : the first defendant/Chinnamalai Gounder was the absolute owner of the suit properties; the suit properties are agricultural lands of more than 30acres. Though he had two wives, he died issue less. Obviously the persons who were closely associated with him claim rights in the property. Admittedly the plaintiff is the brother of the second wife, Subbulakshmi of the deceased first defendant and the second wife died in 1997. The first defendant, Chinnamalai Gounder had three sisters i.e, Karunaiathal, the second defendant, Arukathal, the third defendant and Govindathal, the mother of the defendants 4 to 11. The said Govindathal seemed to have filed a suit in OS.No.209 of 1981 against her two sisters and her brother and also against the second wife of said Chinnamalai Gounder. DW1-K.S.Ramasamy Gounder is the husband of Karunaiathal another sister of Chinnamalai Gounder. Admittedly he is also the brother of one Parvathammal who is the first wife of the said Chinnamalai Gounder.

12.The 12th respondent/12th defendant is the brother's son of said Ramasamy Gounder. The said Ramasamy Gounder and Karunaiathal were also issue less. The 12th respondent who is the brother's son of DW1 claims the property of Chinnamalai Gounder through a Will dated 20.11.1999 and the attestors of the Will were also examined in the present suit to prove the same.

13.The above admitted facts would go to show that the plaintiff, the brother of the second wife of Chinnamalai Gounder on one side and DW1, who is the brother of the first wife of the said Chinnamalai Gounder on the other side, are staking their claim of the property of Chinnamalai Gounder. The evidence let in on both sides would show that Chinnamalai Gounder had vast agricultural land and house property and died issue less. The plaintiff is claiming that Chinnamalai Gounder had executed a sale agreement dated 27.10.1997 fixing the sale consideration at Rs.4,08,000/- and received a sum of Rs.3,50,000/- as advance. Though, the suit was filed against the first defendant when he was alive, but hotly contested by DW1 and 12th respondent.

14.Coming to the contentious issues between the parties, this Court has to keep in mind that in a suit for specific performance of sale agreement the initial burden is on the plaintiff to prove the execution of the sale agreement and his readiness and willingness. This Court is also guided by various binding precedents of this Court and Apex court and it is well settled that the relief of Specific performance is a discretionary and equitable remedy and the discretion must be exercised in accordance with reasonable judicial principles.

15.The first defendant while he was alive had filed a written statement denying the execution of the document and he would also state that he was not in a sound disposing state of mind which was taken advantage of by the plaintiff. After his death the Clause-II heirs (i.e,) the sisters and the children of one of the sisters were impleaded as parties and they also claimed that the first

defendant was not in a sound state of mind and he would not have executed a sale agreement. The trial Court shifted the burden on the defendants to prove that the said Chinnamalai Gounder was not in sound state of mind during the relevant period. It was held that the contesting respondents did not prove the same and decreed the suit. On the contrary, the first appellate court shifted the burden on the agreement holder for the execution of the document, payment of almost the entire sale consideration and the state of mind of the vendor. As the plaintiff had also pleaded possession the first appellate Court found that the agreement holder has not proved possession. Ultimately the first appellate Court found that the plaintiff has set up a false case and has not proved the source to pay a huge sum of Rs.3,50,000/- and allowed the appeal filed by the contesting respondents and reversed the finding order of the trial court.

16.Mr.A.K.Kumarasamy appearing for Mr.P.Kannan Kumar, learned counsel for the appellant would submit that the first appellate court was wrong in reversing the well considered judgment of the trial court. The learned counsel for the appellant submitted that the appellant has proved the execution of sale agreement which is a registered document and also the possession by filing the kist receipts etc., The learned counsel would further submit that the contesting respondents have created a Will and they have also not come to the Court with clean hands and the discretionary relief cannot be denied when the contesting party had also suppressed the material facts.

17.The learned counsel for the appellant relied on 2014 (6) CTC 319 - Zarina Siddiqui V. A.Ramalingam alias R.Amarnathan wherein the Supreme Court has held in para 25 as follows :-

"25. It is well settled remedy for Specific Performance is an equitable remedy. The Court while granting Decree of Specific Performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that Court's discretion to grant Decree of Specific Performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles."

18.On contrary, Mr.S.Parthasarathy, learned Senior Counsel appearing for the respondents would submit that the said Chinnamalai Gounder was not in sound state of mind, his mental changes, on and off, was proved by both oral and documentary evidence and the plaintiff, the brother of the second wife, had obtained a document which was denied by the executor himself, therefore the burden is on the plaintiff to prove that the said document was executed and to prove the recitals therein. The learned counsel submitted that huge sum of Rs.3,50,000/- was paid to the vendor and the plaintiff was not able to explain the source for such payment.

19.The learned counsel would further submit that when there is a pleading that the purchaser was put on possession of the

property, the plaintiff ought to have proved such possession and the failure would go to show that he has not approached the Court with clean hands.

20.The learned counsel for the respondents also relied on the decisions reported in -

(i)1993-2-LW 86 - Nallaya Gounder and another V. P.Ramaswamy Gounder (died);

(ii)2003 (1) CTC 355 - Arunachala Mudaliar V. Jayalakshmi Ammal and another; and

(iii)2013 (6) CTC 624 - G.Anbazhagan and another V. G.Manoharan.

21.As already stated, the Clause-II Legal heirs and more particularly the second respondent and her husband and also the 12th respondent would claim the property through a Will and would state that the said Chinnamalai Gounder was mentally ill person. The alleged sale agreement was executed on 27.10.1997, the respondents have filed Ex.B1, a copy of a Plaint filed in OS.No.209 of 1981 in which the sister of Chinnamalai Gounder would also state that Chinnamalai Gounder developed insanity and he had not recovered from the said disease of insanity. She would further state that after the death of his wife the insanity or unsound mind got aggravated. It is further stated that he was incapable of understanding men and matters and he had lost the contractual capacity. There is a specific allegation that he is under the control and protection of KS.Ramasaamy Gounder, DW1 herein. Therefore the unsound mind of said Chinnamalai Gounder was spoken as early as in the year 1981. However, the suit end up with compromise between the parties, wherein Chinnamalai Gounder is also one of the signatories. The said compromise was recorded and final decree was also passed by the competent Court in the year 1995. In 1997 the said Subbulakshmi wife of Chinnamalai Gounder died in an unnatural way. The sale agreement is subsequent to that incident and what prompted that said Chinnamalai Gounder to sell away his entire property was not known.

22.Regarding the circumstances under which Ex.A1 came to be executed, the second wife of the first defendant committed suicide by setting fire on her on 16.10.1997 and the stamp papers for the sale agreement were purchased in the name of the first defendant on 24.10.1997 and the same was prepared on 27.10.1997 and registered on 28.10.1997. PW1 in the course of his cross examination deposed that the sale was negotiated 10 days prior to the execution of the document. That means, the negotiation was held on or about 18.10.1997 i.e, two days after the death of second wife of the first defendant, who was none else than the own sister of the plaintiff. It is hardly believable that when the wife of the first defendant, who was the sister of the plaintiff committed suicide by setting fire on her, the husband and brother of the deceased, negotiated for sale of the property within two days. It is relevant to point out at this juncture that the first defendant already

settled 21 acres of land in favour of his second wife and the same was, as per the admission made by PW1 bequeathed in favour of the plaintiff and his brother under the Will executed by the deceased and is in possession and enjoyment of the plaintiff and his brother. If that is so, as rightly pointed out by the learned senior counsel for the contesting defendant, if that is so, there is absolutely no necessity either for the first defendant or for the plaintiff to negotiate for sale of remaining only property of the first defendant, that too in favour of the person who already got large extent of property through his deceased sister. Thus, the circumstances above mentioned would raise a very serious suspicion about the voluntary execution of Ex.A1 by the first defendant, that too in sound disposing state of mind. Only in this context, the failure of the plaintiff to prove his possession of the property from the date of sale agreement and his failure to prove the source of Rs.3,50,000/- which was according to him paid by way of advance on the date of sale agreement, assume greater significance. \

23.It is also to be noted herein that as per recitals in Ex.A1, the entire property was agreed to be sold for sale consideration of Rs.4,08,000/- and sum of Rs.3,50,000/- was paid in cash as advance. When the vendor's mental state was proved to be not alright, the recitals in the agreement and more particularly sale of the entire properties of Chinnamalai Gounder for Rs.4,08,000/- and the payment of Rs.3,50,000/- as advance by the plaintiff creates suspicion. The time to complete the contract was three years and a specific date in the year 2000 was also fixed. When the plaintiff had paid almost the entire amount except a meager sum, what prevented him to obtain a sale deed within a short span of time is not explained. For payment of balance sum of Rs.58,000/-, three years time has been scheduled and the plaintiff gives a notice in 1998 itself calling upon the vendor to execute the sale.

24.The recitals in Ex.A1 would further go to show that free from all encumbrances, the sale deed has to be executed. The encumbrances was also not specified. The plaintiff claims possession under the sale agreement. He had also produced certain documents before the trial court which are marked as Exs.A6 to A9. These documents are in the name of Chinnamalai Gounder and there is no evidence to show that the plaintiff had taken possession of agricultural lands and cultivating the same. If he is cultivating the agricultural land the chitta, adangal would show the name of the person who is cultivating and in possession of the land.

25.The plaintiff's plea that the possession was handed over to him on the date of agreement, is also falsified by the fact that one Shanmugasundaram claiming himself to be the cultivating tenant, filed a suit in OS.236/1998 against the first defendant and the plaintiff for bare injunction and obtained interim injunction in IA.748/98. The learned senior counsel for the contesting defendant has also drawn the attention of this court to the existence of house property in the suit land and the omission to mention the same in Ex.A1. It is further argued by the learned senior counsel for the contesting defendant that the suppression of interim

injunction granted in favour of Shanmugasundaram in the suit filed by him and suppression of house property in Ex.A1 would show that the plaintiff has not come to court with clean hands, as such, he is dis-entitled to claim discretionary relief of specific performance.

26. When a vendor denied a registered sale agreement, the initial burden will be on the agreement holder to prove under what circumstances the agreement was executed and the recitals thereon. Of course, the plaintiff had examined two witnesses to speak about the execution of the sale agreement.

27. As observed earlier, obviously Chinnamalai Gounder though married twice had no issues. His mental state seems to be not alright, this fact was disclosed even 16 years before the sale agreement. During the pendency of this suit, the said Chinnamalai Gounder was treated for mental illness and documents Exs.B6 to B8 have been filed. Therefore, now it has become the burden of the agreement holder to prove that the vendor was in sound state of mind at the time of execution of the document, he had source to for making a payment of Rs.3,50,000/- and he was put on possession on the property. Under these circumstances, two persons one is brother of first wife and the other is brother of the second wife are contesting for the holding of the properties. The Clause-II heirs' i.e, the sisters and the children of a sister, though denied the sale agreement, did not participate actively either in the trial or in the appeal. DW1 the husband of one of the sisters who also happened to be the brother in law of Chinnamalai Gounder had come up with a Will said to have been executed in favour of his brother's son, the 12th respondent.

28. The other two witnesses were also examined to prove the Will, but the suit is for specific performance of a contract of sale agreement and not in respect of the Will.

29. Though the other defendants have not contested the suit, the first defendant Chinnamalai Gounder himself denied the execution of sale agreement and about his mental state. The other defendants have also stated the same thing in their written statement and DW1 the husband of one of the defendant had gone into the witness box to deny the sale agreement, therefore, it cannot be said that none of the defendants disputed neither the contents made in the agreement of sale nor the signature of the first defendant. In fact, the signature was not disputed but the mental condition of the signatory was alone disputed.

30. When there is no necessity for Chinnamalai Gounder to sell away the property and when the source of income for the plaintiff to pay a huge sum of Rs.3,50,000/- in 1997 becomes an issue, the evidence of PW2 and PW3 to speak about the means of the plaintiff is not enough. Apart from this, the mental state of the Chinnamalai Gounder was disclosed as early as 1981 in a proceedings before the Court and when the respondents were able to file documentary proof for treatment, pending suit, the burden shifts on to the plaintiff to prove under what circumstances the said

Chinnamalai Gounder entered into the sale agreement that too with his own brother in law and the plaintiff has not satisfactorily discharged such burden cast on him.

31.As stated, the relief of specific performance is an equitable relief and when the plaintiff has not come to the court with true facts and when the mental state of the vendor at the time of execution of sale agreement was not alright and the possession could not be proved by the plaintiff, the first appellate court was right in reversing the judgment of the trial court. The substantial questions of law are hence answered against the plaintiff/appellant.

32.In the result, the second appeal is dismissed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

The Principal District Judge, Erode.

The Ist Additional Subordinate Judge, Erode.

Copy to:

The Section Officer,

VR Section, High Court, Madras

+1 cc to Mr.D.Krishnakumar, Advocate, sr.47971

+1 cc to Mr.P.Kannankumar, Advocate, sr.48839

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