

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.10.2016	Pronounced on 18.10.2016
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CORAM**THE HONOURABLE MR. JUSTICE T.RAVINDRAN**

S. A.No.8 of 2011
and
M.P.No.1 of 2011

A.Sankariah

...
/Vs/

Appellant

1.V.Ravichandran

2.V.Vimalakumari

3.Bakyamma @ Bakyalakshmi ...

Respondents

(since the first respondent herein
has been exparte in Appeal suit
notice is not necessary to on him)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the against the judgment and decree dated 16.04.2010 made in A.S.No.1 of 2007 on the file of the Principal District Judge, Krishnagiri, confirming the judgment and decree dated 14.09.2006 passed in O.S.No.200 of 1998 on the file of the Subordinate Judge, Hosur.

For Appellant : Mr.M.V.Krishnan

For Respondents : Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 16.04.2010 made in A.S.No.1 of 2007 on the file of the Principal District Judge, Krishnagiri, confirming the judgement and decree dated 14.09.2006 passed in O.S.No.200 of 1998 on the file of the Sub-ordinate Judge, Hosur.

2. The suit has been laid by the plaintiff / appellant for specific performance.

3. Shorn of unnecessary details, the case of the plaintiff is as follows:

The defendants 1 & 2 are brothers and the third defendant is the sister of the defendants 1 & 2. According to the plaintiff, the defendants have executed a sale agreement in favour of the plaintiff in respect of the suit property on 10.04.1996 for a total sale consideration of Rs.1,50,000/- and received an advance of Rs.1,40,000/- on the date of sale agreement and agreed to sell the suit property in favour of the plaintiff within three years from the date of sale agreement, after receiving the balance sale consideration of

Rs.10,000/-. Though the plaintiff had approached the defendants on many occasions to receive the balance sale consideration and execute the sale deed as per the terms of the sale agreement, the defendants have been evading to comply with their part as mandated in the sale agreement and not come forward to execute the sale deed in favour of the plaintiff. Hence, the plaintiff issued a legal notice to the defendants calling upon them to receive the balance sale consideration and execute the sale deed. The defendants, in response, have issued a reply notice containing false allegations. Pending the suit, the first defendant died and his wife was brought on record as his legal representative and arrayed as fourth defendant. Hence, the suit.

4. The averments contained in the written statement filed by the defendants 3 & 4 are briefly stated as follows:

The suit is not maintainable either in law or on facts. The execution of the sale agreement in respect of the suit property by the defendants, as alleged by the plaintiff, is false and the defendants have not executed the sale agreement in favour of the plaintiff, in respect of the suit property and not received the part of sale consideration on the date of sale agreement. According to the defendants, the sale agreement is a forged and fraudulent document and they have also

contended that in respect of the properties of the family, a panchayat was convened and in the said Panchayat, the signature of the defendants were obtained on blank stamp paper and making use of the same, the plaintiff, at the instigation of the second defendant, V.Ravichandran, has filed a false suit. The third defendant has instituted a partition suit against her brothers claiming partition in the suit property on the basis of the Will executed by her father and therefore, there is no question of the defendants joining together in executing the sale agreement in respect of the suit property. It is also stated that various criminal proceedings are pending between the third defendant on the one part and the plaintiff and second defendant and their men on the other part. In such circumstances, the question of the defendants joining together and executing the sale agreement, in favour of the plaintiff, in respect of the suit property, does not arise. The plaintiff is the brother-in-law of the second defendant and the second defendant, in order to grab the family properties, has instigated the brother-in-law namely, the plaintiff, to institute the false suit. The sale agreement has been created by the plaintiff and the second defendant with the help of their henchmen and therefore, the plaintiff is not entitled to get any relief.

5. The second defendant V.Ravichandran did not contest the suit of the plaintiff and remained ex parte.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs. A1 to 6 were marked. On the side of the defendants, DWs 1 & 2 were examined and Exs.B1 to 19 were marked. CW1 has been examined and Ex.C1 has also been marked.

7. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

8. On a consideration of the oral and documentary evidence, adduced by the respective parties, the trial Court was pleased to dismiss the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred the first appeal and the same has also been dismissed. Consequently, the second appeal has been preferred by the plaintiff.

9. The suit has been laid for specific performance by the plaintiff. The plaintiff is the brother-in-law of the second defendant, who did not contest the suit and remained exparte. Defendants 1 & 2 are brothers

and the third defendant is the sister of defendants 1 & 2. The third defendant is the daughter of late Venkataramiah through his second wife. Pending the suit, the first defendant died and his wife has been brought on record as fourth defendant.

10. The Courts below have rejected the case of the plaintiff on various grounds. Firstly, according to the Courts below, inasmuch as the sale agreement marked as Ex.A5 did not contain the signature of the purchaser viz. the plaintiff and only contains the signature of the alleged vendors, there is no consensus ad idem between the parties in respect of the sale agreement and therefore, the plaintiff is not entitled to get the relief of specific performance.

11. It is argued by the learned counsel appearing for the appellant that the Courts below have erred in holding that in the absence of signature of the purchaser in the sale agreement, the same would be invalid. According to the learned counsel for the appellant, the absence of the signature of the purchaser in the sale agreement, would not vitiate the document and if the document is executed by the owners of the property, the purchaser is entitled to file the suit for specific performance based upon such document. In support of the

above the proposition of law, the learned counsel for the appellant relied on the decision reported in **(2014) 2 MLJ 18 (Muthukrishna Gounder Vs. Gowri and Others)**.

12. As rightly argued by the learned counsel for the appellant, following the above decision, it could be seen that even in the absence of signature of the purchaser, if the document is executed by the owner of the property, the purchaser is entitled to file a suit for Specific Performance. In the light of the above facts, it could be seen that the Courts below have erred in holding that the plaintiff would not be entitled to obtain the relief of Specific Performance on the footing that he had not signed the sale agreement marked as Ex.A5. As far as the above proposition of law, the learned counsel for the respondent has not put forth any objection.

13. Secondly, the learned counsel for the appellant contended that the judgment of the appellate Court has to be set aside as it does not comply with the provisions of Order 41 Rule 31 CPC.

14. It is argued that the Lower Appellate Court has not formulated the points for determination while disposing of the first appeal and therefore, on the said ground alone, the matter has to be remanded back to the Lower Appellate Court for fresh consideration. In support of the above contention, he relied upon the decisions reported in **(2010) 13 Supreme Court Cases 530 (B.V.Nagesh and another Vs. H.V.Sreenivasa Murthy) and 2014 SAR (Civil) 1087 (A.M.Sangappa @ Sangappa Vs.Sangondeppa and Another).**

15. On the other hand, countering the above submission, it is argued by the learned counsel for the respondents that as per Section 99 of Code of Civil Procedure, no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. Therefore, according to the learned counsel for the respondents, inasmuch as the lower Court, though has not specifically formulated the points for determination in the first appeal, however, it considered

the case of the respective parties in detail giving sound and cogent reasons and accordingly, disposed of the appeal. Therefore, it is stated that the judgment of the Lower Appellate Court does not require any interference on the above ground.

16. A perusal of the judgment of the Lower Appellate Court would go to disclose that even though the Lower Appellate Court had not specifically formulated the points for determination, in para 7, it has formulated the point for determination as to whether the judgment and decree of the trial court is liable to be set aside, for the reasons urged by the appellant and discussed in detail, all the issues put forth by the respective parties and accordingly, disposed of the first appeal by answering all the issues. In the above said circumstances, it could be seen that the First Appellate Court has formulated the main point for determination in the appeal and accordingly, disposed of the appeal. Therefore, to contend that the First Appellate Court has not formulated any point for determination, while disposing of the appeal, does not stand scrutiny, in the eyes of law.

17. I am hence unable to place acceptance on the contention of the learned counsel for the appellant that the judgment of the Lower

Appellate Court is vitiated for non framing any point for determination while disposing of the appeal. As rightly argued by the learned counsel for the respondents, the matter should not be remanded by reversing the decree on the footing that some irregularity has occurred in the proceedings of the Lower Appellate Court as it could be seen that the same had not affected the merits of the case, in any manner, as found above. It could be seen that the Lower Appellate Court has indeed formulated the main point for determination, though it had not formulated the points for determination in detail, but answered all the points at issue in length. In such circumstances, as rightly argued by the learned counsel for the respondents, the decisions relied on by the learned counsel for the appellant are not applicable to the facts and circumstances of the present case.

18. Thirdly, it is argued by the learned counsel for the appellant that the defendants have not disputed the readiness and willingness on the part of the plaintiff to pay the balance sale consideration and execute the sale deed. In such circumstances, the plaintiff has deposited the balance sale consideration in the Court, which fact having not been disputed, the plaintiff should have been granted the decree for specific performance as claimed. In this connection, the

learned counsel for the appellant relied upon the decision reported in ***(2000) 6 Supreme Court Cases 420 (Motilal Jain Vs. Ramdasi Devi (SMT) And Others.***

19. On the other hand, it is argued by the learned counsel for the respondents that the plaintiff has not established his readiness and willingness on his part to complete the sale transaction as mandated in the sale agreement.

20. Be that as it may, insofar as the present case is concerned, on going through the evidence available, both oral and documentary evidence adduced, it could be seen that the plaintiff would not be entitled to obtain the relief of specific performance for the following reasons:

(i) As per Section 20 of The Specific Relief Act, 1963, the jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; no doubt, the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles.

(ii) The sale agreement is dated 10.04.1996. It is not disputed that the plaintiff is the brother-in-law of the second defendant, who is not contesting the suit. Now, according to the contesting defendants, it is only at the instigation of the second defendant, the plaintiff has filed the present suit for Specific Performance by creating the sale agreement on the basis of the signature obtained in blank stamp paper at the time of Panchayat convened in connection with the family properties. As seen earlier, the second defendant remained *exparte*. The relationship between the plaintiff and the second defendant is not disputed.

(iii). The evidence adduced in the case discloses further that the third defendant has filed O.S.No.335 of 1996 against her brothers claiming partition in the family properties on the basis of the Will alleged to have been executed by her deceased father. Therefore, it could be seen that civil suit has been laid in respect of the family properties in the year 1996 by the third respondent against her brothers. In such circumstances, to contend that the brothers and the third respondent had

joined together and agreed to sell the suit properties in favour of the plaintiff under the sale agreement dated 10.04.1996 cannot be readily accepted. Therefore, the very fact that a civil suit is pending in respect of the family properties between the brothers and sister would be an indicator to hold that the sale agreement may not be a true document as projected by the plaintiff.

(iv) In order to establish the genuineness of the sale agreement, the plaintiff has chosen to examine one of the attestors as PW2. A perusal of the evidence of PW2 would go to show that the second defendant had married the sister of the plaintiff. PW2 and the plaintiff had married sisters. Therefore, the plaintiff, the second defendant and PW2 being close relatives, as rightly contended, PW2 is an interested witness and his evidence can be accepted only with a pinch of salt.

(v) That apart, there are several criminal proceedings pending between the third defendant on the one part and the plaintiff and the second defendant and their men on the other part and in respect of the such criminal proceedings, it has been admitted by PW2 that

he has tendered evidence in favour of the plaintiff and the second defendant in the criminal proceedings. In such circumstances, as rightly held by the Courts below, PW2 being an interested witness, his evidence may not be safely relied upon to hold that the sale agreement is a genuine document and has come to existence as projected by the plaintiff.

(vi) The sale agreement is dated 10.04.1996, which has been engrossed in the stamp paper dated 08.01.1996, purchased in the name of third defendant. Therefore, it could be seen that three months thereafter, the sale agreement has come into existence. At that point of time, admittedly, on account of enmity between the parties concerned, civil suit and criminal proceedings are pending. Therefore, a grave suspicion arises as to whether the sale agreement would be a genuine document as put forth by the plaintiff.

(vii). Further, the sale agreement does not contain the description of the suit property in its entirety. It is admitted that there are about 13 Coconut trees, Pump set, Well and House in the suit property. However, the sale agreement contains description of suit property

in a very vague manner without giving the description in its entirety and that would raise serious doubts regarding the genuineness of the document.

(viii) A perusal of Ex.A5 would go to disclose that it is closely written and not written in the normal course. This kindles a doubt whether Ex.A5 would have been written so as to adjust with the signature of the defendants having been obtained in blank stamp papers of the Panchayat as alleged by the defendants.

(ix). It is the specific case of the defendants that the sale agreement is a forged document and the plaintiff is not entitled to get any relief based upon the said document. The discussion above would go to reveal that the sale agreement would not have come into existence in the normal circumstances. There are various suspicious situations, as narrated above, surrounding the sale agreement. In such circumstances, the plaintiff has not established that the sale agreement is a genuine document. Considering the suspicious factors revolving around the sale agreement, I am unable to place any credence on the sale agreement and to come to the conclusion that

based upon such document, the plaintiff would be entitled to get the relief of specific performance.

21. It is argued by the learned counsel for the appellant that the plaintiff has established that the signature found in the sale agreement is that of the defendants and therefore, on the basis of the same, when the defendants have not put forth any acceptable case to hold that the sale agreement is a forged document, according to him, the appellant's case merits acceptance.

22. However, the above contention does not merit consideration. In the light of the suspicious situations surrounding the sale agreement, particularly, when serious civil disputes are pending between the parties, in respect of the family properties, including the suit property and also, various criminal proceedings are pending between the third defendant on the one part and plaintiff and the second defendant and their men on the other part and other suspicious elements surrounding the sale agreement, in my considered opinion, invocation of Section 20 of the Special Relief Act has to be made and considering the conduct of the parties, at the time of entering the contract and other circumstances, surrounding the sale

agreement, as discussed above, would give the plaintiff an unfair advantage over the defendants, I hold that the plaintiff is not entitled to obtain the decree of specific performance based upon the sale agreement projected in the case.

In the light of the above discussions, I do not find any substantial question of law involved in the second appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2016

Index : Yes/No
Internet:Yes/No
sms

To

1. The Principal District Judge,
Krishnagiri.
2. The Subordinate Judge,
Hosur.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.8 of 2011

18.10.2016