

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.10.2017

CORAM

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

**Appeal Suit No.206 of 2009
and
M.P.No.1 of 2015**

1.Mr.R.S.Ponnusamy
2.Mr.P.Vijayakumar
3.Ms.Jamuna Rani

... Appellants

vs.

Mr.T.S.R.Khannaiyann

... Respondent

Appeal suit filed under Section 96 of C.P.C. against the judgment and decree dated 17.04.2008, passed by the Additional District and Sessions Court cum Fast Track Court No.II, Coimbatore.

For Appellants :M/s.Flanchezhiyan
Mr.K.Sanjay Nehaji

For Respondent : Mr.S.Thangavel

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and decree dated 07.04.2008, passed in O.S.No.589 of 2006, by the Additional District Court (Fast Track Court No.II), Coimbatore.

2.The respondent herein, as plaintiff, has instituted

O.S.No.589 of 2006, praying to pass a decree of specific performance in pursuance of the sale agreement dated 06.04.2005, wherein, the present appellants have been shown as defendants.

3.The materials averments made in the plaint are that the defendants 2 and 3 are the children of the first defendant. The first defendant and legal heirs of deceased Ramasamy, viz. Kalaimani and Sivakami have jointly executed a sale agreement, dated 06.04.2005 in favour of the plaintiff, whereby, the sale consideration has been fixed at Rs.80 lakhs. On the date of execution of sale agreement, Rs.5 lakhs has been given as an advance. On 09.06.2005, another sum of Rs.2 lakhs has been given and in aggregation, the plaintiff has paid a sum of Rs.7 lakhs. In the sale agreement, the period for execution of a sale deed has been mentioned as three months. The plaintiff has purchased a portion of the suit property from the legal heirs of deceased Ramasamy, by virtue of a sale deed dated 14.09.2006. The plaintiff has approached the first defendant to execute a sale deed in respect of remaining portion of the suit property, in pursuance of the sale agreement dated 06.04.2005. But the first defendant has evaded in executing a sale deed in favour of the plaintiff and due to that a telegram has been given on 15.12.2006 and even after receipt of the same, the first defendant has not made any attempt to execute

a sale deed in favour of the plaintiff and therefore, a legal notice has been issued on 15.12.2006 to all the defendants and all of them have not received the same. The plaintiff has always been ready and willing to perform his part of the contract. Under such circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the first defendant and adopted by the remaining defendants, it is averred to the effect that the first defendant has not executed any sale agreement in favour of the plaintiff much less on 06.04.2005. It is also equally false to aver that on the date of execution of the sale agreement, the first defendant and legal heirs of deceased Ramasamy, have received a sum of Rs.5 lakhs by way of an advance. It is false to aver that on 09.06.2005, the plaintiff has paid another sum of Rs.2 lakhs. The defendants have not known the transaction alleged to have been entered into between the plaintiff and legal heirs of deceased Ramasamy. It is false to aver that the plaintiff has always been ready and willing to perform his part of the contract and further, the plaintiff is not having sufficient means to perform his part of the contract. Since the first defendant has not executed the suit sale agreement dated 6.4.2005 and thereby received an advance of Rs.5 lakhs, the plaintiff is not

entitled to get the discretionary relief of specific performance and therefore, the suit deserves to be dismissed.

5. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the defendants as appellants.

6. The sum and substance of the case of the plaintiff is that the entire extent of suit Survey Number is the absolute property of the first defendant and legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami and all of them have executed an agreement of sale dated 06.04.2005 in favour of the plaintiff, wherein, the sale consideration has been fixed at Rs.80 lakhs and on the date of the sale agreement, all of them have received a sum of Rs.5 lakhs and subsequently, on 9.06.2005, they have received a sum of Rs.2 lakhs and in aggregation, the plaintiff has paid a sum of Rs.7 lakhs. The plaintiff has purchased the share of heirs of deceased Ramasamy by virtue of a sale deed dated 14.09.2006 and despite of repeated demands made by the plaintiff, the first defendant has evaded in executing a sale deed in favour of the

plaintiff under the guise of getting signatures from defendants 2 and 3 and due to that, a telegram has been issued and even after receipt of the same, the first defendant has not come forward to execute a sale deed in favour of the plaintiff and thereafter, a legal notice has been issued to all the defendants and all of them have not received the same and therefore, the present suit has been instituted for the reliefs sought therein.

7. Even though the written statement filed on the side of the first defendant and adopted by the defendants 2 and 3 looks like a *magnum opus*, the specific contentions put forth in the written statement are that the first defendant has not executed any sale agreement in favour of the plaintiff much less on 06.04.2005. The first defendant as well as the legal heirs of deceased Ramasamy have not received any part of sale consideration and further, on 09.06.2005, the first defendant and legal heirs of deceased Ramasamy have not received Rs.2 lakhs from the plaintiff. The plaintiff has not shown his readiness and willingness from the inception of the alleged sale agreement dated 06.04.2005 and therefore, the plaintiff is not entitled to get discretionary relief of specific performance.

8. The trial Court, as mentioned supra, has decreed the suit

as prayed for.

9.The learned counsel appearing for the appellants/defendants has contended to the effect that the suit sale agreement has been marked as Ex.A1. The specific case of the plaintiff is that Ex.A1 has been executed in his favour by the first defendant and legal heirs of deceased Ramasamy viz., Kalaimani and Sivakami. But the specific defence taken on the side of the defendants is that Ex.A1 has not been executed by the first defendant and further, the first defendant has not received any part of sale consideration from the plaintiff and therefore, Ex.A1 is nothing but a concocted document and the plaintiff, with a view to grab the suit property, has instituted the present suit. Even assuming without conceding that the first defendant has executed Ex.A1 along with the legal heirs of deceased Ramasamy, the plaintiff has not shown his readiness and willingness from inception of Ex.A1 and the trial Court, without considering the fact that in Ex.A1, three months time has been fixed for getting a sale deed registered, after paying balance of sale consideration, has erroneously decreed the suit as prayed for and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

10.Per contra, the learned counsel appearing for the respondent/plaintiff has contended that the first defendant and legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami have executed the suit sale agreement dated 6.4.2005 in favour of the plaintiff, whereby, the sale consideration has been fixed at Rs.80 lakhs and on the date of its execution, they received a sum of Rs.5 lakhs and on 09.06.2005, they received another sum of Rs.2 lakhs and in aggregation, they received a sum of Rs.7 lakhs and further, on 14.09.2006, the legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami have jointly executed a registered sale deed in favour of the plaintiff in respect of half share, as mentioned in the suit sale agreement and despite of repeated demands made by the plaintiff, the first defendant has evaded to execute a sale deed and due to that a telegram has been issued and even after receipt of the same, the first defendant has not come forward to execute a sale deed. Under the said circumstances, a legal notice has been issued and even after issuance of the same, the first defendant has not come forward to execute a sale deed in favour of the plaintiff. Under the said circumstances, the present suit has been instituted for the reliefs sought therein. The trial Court, after considering the overall evidence available on record on the side of the plaintiff, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court do not require any

interference.

11. On the basis of divergent submissions made on either side, the Court can easily deduce the following points for determination:

(1) Whether the first defendant and the legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami have executed the suit sale agreement dated 06.04.2005 (Ex.A1) in favour of the plaintiff?

(2) Whether the plaintiff has always been ready and willing to perform his part of the contract in pursuance of the suit sale agreement dated 06.04.2005?

(3) Whether the plaintiff is entitled to get the discretionary relief of specific performance?

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12. The first and foremost contention put forth on the side of the appellants/defendants is that the first defendant and legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami have not at all executed Ex.A1-the suit sale agreement in favour of the plaintiff. Since a specific denial has been taken on the side of the

defendants with regard to execution of Ex.A1, the entire burden lies upon the plaintiff to prove that Ex.A1 is a genuine document.

13. On the side of the plaintiff, he has been examined as P.W.1 and his specific evidence is that on 06.04.2005, the first defendant and legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami, have jointly executed Ex.A1, whereby they agreed to sell suit survey number in his favour and the sale consideration has also been fixed at Rs.80 lakhs and on the date of its execution, they received Rs.5 lakhs and subsequently, on 09.06.2005, they received another sum of Rs.2 lakhs and his further evidence is that from inception of the suit sale agreement, he has always been ready and willing to perform his part of the contract, but the first defendant, despite of best efforts taken by him, has not come forward to execute a sale deed and therefore, the present suit has been instituted.

14. It is seen from the records that in Ex.A1, one Siva Sankar has put his signature as one of the witnesses and he has been examined as P.W.2 and his specific evidence is that the first defendant and legal heirs of deceased Ramasamy have jointly executed the suit sale agreement dated 06.04.2005 in favour of the plaintiff and total consideration has been fixed at Rs.80 lakhs and at

the time of execution of suit sale agreement, they have jointly received a sum of Rs.5 lakhs.

15.From the conjoint reading of the evidence given by P.W.1 and P.W.2, the Court can easily come to a conclusion that on the side of the plaintiff, execution of Ex.A1 and also receipt of Rs.5 lakhs by the executants, on the date of its execution, have been clearly established.

16.Even though a specific stand has been taken on the side of the defendants to the effect that Ex.A1 is nothing but a concocted document, so as to rebut the evidence adduced on the side of the plaintiff, no evidence has been adduced on the side of the defendants. Therefore, it goes without saying that Ex.A1 is a genuine document and the same has been executed by the first defendant along with legal heirs of deceased Ramasamy.

17.The second contention put forth on the side of the appellants/defendants is that in Ex.A1 it has been specifically mentioned that the plaintiff has to pay balance of sale consideration within a period of three months; but the plaintiff has not made any attempt to pay balance of sale consideration and therefore, the plaintiff has failed to show that from the inception of suit sale

agreement, he has been ready and willing to perform his part of the contract, but the trial Court has failed to look into it.

18.At this juncture, the Court has to look into the sale deed dated 14.09.2006.

19.It has already been pointed out that Ex.A1 has been jointly executed by the first defendant and legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami. The legal heirs of deceased Ramasamy, viz., Kalaimani and Sivakami have executed a sale deed, dated 14.09.2006, in respect of their half share, in favour of the plaintiff. Since the legal heirs of deceased Ramasamy, viz, Kalaimani and Sivakami have executed a sale deed in favour of the plaintiff on 14.09.2006, the Court can easily come to a conclusion that the plaintiff, in pursuance of Ex.A1, has purchased half share of suit survey number from the legal heirs of deceased Ramasamy and that itself shows the readiness and willingness of the plaintiff to purchase the remaining portion of suit survey number from the first defendant and further on 15.12.2006, the plaintiff has issued a telegram, wherein also it has been specifically mentioned about the readiness and willingness of the plaintiff. But even after receipt of the said telegram, the first defendant has not given any reply and further, on 15.12.2006, the plaintiff has issued

a legal notice to all the defendants, but they have not received the same. Further, on the side of the plaintiff, various documents have been filed so as to establish that he is having sufficient means to pay balance of sale consideration. Therefore, in the light of the discussion made earlier, it is needless to say that from inception of Ex.A1, the plaintiff has always been ready and willing to perform his part of the contract.

20.As taunted earlier, even though on the side of the defendants a lengthy written statement has been filed for the purpose of proving the averments mentioned therein and also for the purpose of disproving the case of the plaintiff, no attempt has been made on the side of the defendants by way of adducing either oral or documentary evidence. Under the said circumstances, the second contention put forth on the side of the appellants/defendants also goes out without merit.

21.Even at the risk of repetition, the Court would like to point out that on the side of the plaintiff, *quantum sufficit* and *quantum placit* evidence is available for the purpose of proving the genuineness of Ex.A1 and also readiness and willingness on the part of the plaintiff from the inception of Ex.A1. Therefore, viewing from any angle, the contentions put forth on the side of the

appellants/defendants cannot be accepted.

22.The trial Court, after evaluating the available evidence on record, has rightly decreed the suit. In view of the discussion made earlier, this Court has not found any error nor illegality in the judgment and decree passed by the trial Court and altogether the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.589 of 2006, by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

(A.S.J.)

(P.K.J.)

11.10.2017

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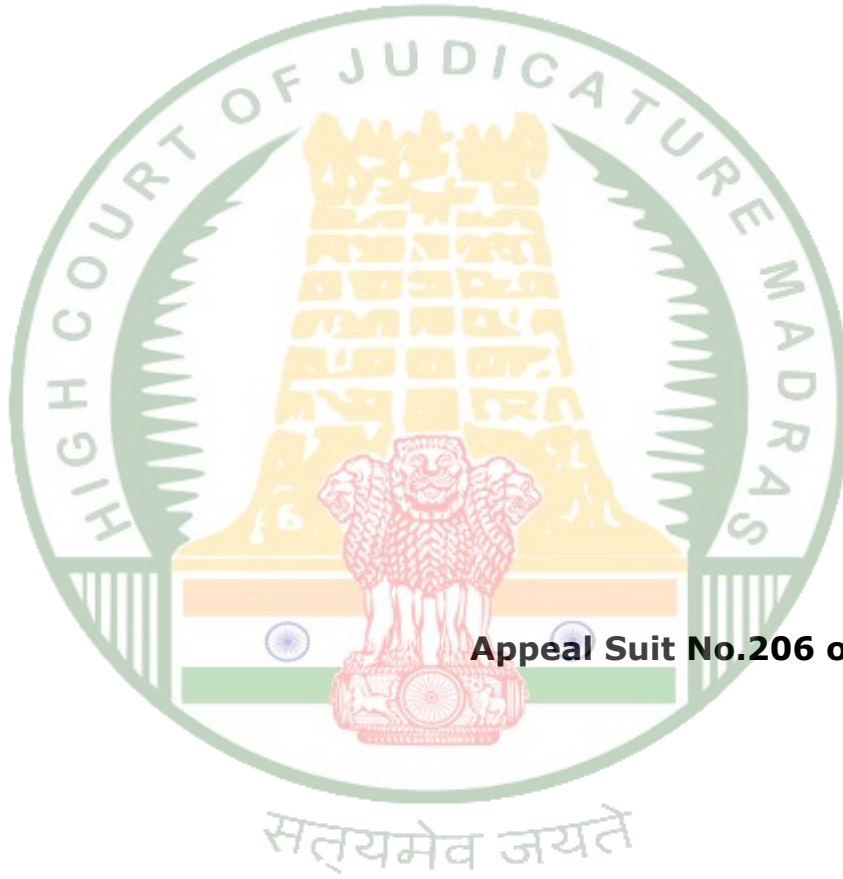
To

The Additional District and Sessions Court
cum Fast Track Court No,II, Coimbatore.

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**A.SELVAM,J.
and
P.KALAIYARASAN,J.**

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