

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2017
PRONOUNCED ON : 23.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1158 of 2001

1. Krishnan
2. Mahendran (deceased)
3. Valli
4. Kumaresan
5. Vignesh
6. Vijay Appellants/Plaintiff
(Appellants 3 to 6 brought on
record as LRS of the deceased
2nd appellant vide order of Court
dated 15.11.2017 made in
CMP.No.14435 to 14437/2017
in S.A.No.1158 of 2001)

Vs.

1. Sagadevan
2. Venkatesan
3. Nagan
4. Chinnaraji
5. Subburu ... Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 27.02.2001 made in A.S.No.32 of 2000 on the file of the Principal District Court, Dharmapuri at Krishnagiri, reversing the judgment and decree dated 31.03.2000 made in O.S.No.436/1993 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mr.Vadivel Murugan
for Mr.R.G.Narendhiran

For Respondents: Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 27.02.2001 made in A.S.No.32 of 2000 on the file of the Principal District Court, Dharmapuri at Krishnagiri, reversing the judgment and decree dated 31.03.2000 made in O.S.No.436/1993 on the file of the District Munsif Court, Krishnagiri.

2. Parties are referred to as per their rankings in the trial court.

3. Suit for specific performance.

4. The case of the plaintiffs, in brief, is that they and the defendants entered into an oral agreement on 25.01.1993 in respect of the suit property in the presence of Panchayatdars and as per the decision of the Panchayatdars, the agreement arrived at, the plaintiffs are to pay a sum of Rs.5,000/- to the defendants within a period of four months and the defendants should execute a sale deed in respect of the suit property and the time is not the essence of the contract and though the plaintiffs have always been ready and willing to perform their part of the contract, the defendants had been evading to complete the sale transaction. The suit property originally belonged to the father of the plaintiffs Munusamy and he, on account of the illegal and immoral activities, had sold the suit property to another Munusamy and the attempts of the plaintiffs to retrieve the suit property by way of civil suits ended in vain and the civil suits were dismissed and meanwhile, the purchaser Munusamy had sold the suit property to the defendants and consequently, at the intervention of the Panchayatdars on 25.01.1993, the defendants agreed to reconvey the suit property in faovur of the plaintiffs as the suit property was in possession and enjoyment of the plaintiffs and despite the readiness and willingness on the part of the plaintiffs to complete the sale transaction as per the decision of the Panchayatdars and the agreement between the parties, the defendants evaded the completion of the sale transaction and refused to execute the sale deed and hence, the suit for specific performance.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and it is false to state that there was a Panchayat on 25.01.1993 in respect of the dispute relating to the suit property and on the basis of the agreement entered into, the plaintiffs agreed to purchase the suit property from the defendants on the payment of Rs.5,000/- and that, the defendants agreed to reconvey the suit property to the plaintiffs. The defendants never agreed to any such terms as regards the Panchayatdar's plea as put forth by the plaintiffs with reference to the socalled agreement entered into between the parties as regards the sale of the suit property. The suit property had been purchased long back by Munusamy for a valuable consideration and the possession was never retained by the plaintiffs as claimed and the defendants, at no point of time, agreed to reconvey the suit property to the plaintiffs for a sum of Rs.5,000/- as projected by the plaintiffs and hence, the suit

is not maintainable and the same is liable to be dismissed.

6. In support of the plaintiffs' case, PWs 1 to 4 were examined and Exs. A1 to 9 were marked. On the side of the defendants', DW1 was examined and Exs. B1 to 10 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the decree in favour of the plaintiffs as prayed for. Aggrieved over the same, the first appeal was preferred by the defendants and the first appellate Court, on an appraisal of the evidence placed in the matter, was pleased to set aside the judgment and decree of the trial Court and by allowing the appeal preferred by the defendants, thereby, dismissed the suit laid by the plaintiffs. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

“ 1. Whether the lower appellate Court erred in law in reversing the judgment and decree of the trial Court by holding that the plaintiffs have failed to prove the oral agreement in total contra to the admission made by the defendants in respect of the Panchayat where sale consideration was fixed in pursuance of an agreement to sell?

2. Whether the lower appellate Court erred in law in not considering the well considered principle that what is admitted by the other side need not be proved by applying such principle in this case whether the finding of the lower appellate Court that the plaintiffs failed to prove an oral agreement, is sustainable especially in the light of admission made by the defendants in their pleadings and evidence?

3. Whether the lower appellate Court erred in holding that the plaintiffs were not ready and willing to perform the contract in total ignorance of the fact that the suit itself came to be filed within seven days from the cause of action and such conduct of the plaintiffs would go to show their readiness and willingness?”

9. The suit is laid by the plaintiffs for the relief of specific performance on the basis of an oral agreement said to have been entered into between the plaintiffs and the defendants in the presence of Panchayatdars on 25.01.1993. It is found from the materials placed that originally the suit property belonged to the plaintiffs' grandfather and the same had been sold by the plaintiffs' father to one Munusamy and it is further found that the above said purchaser Munusamy had sold the suit property in favour of the defendants and further from the materials placed, it is seen that the attempts made by the plaintiffs' father and thereafter, by the plaintiffs to get back the suit property by way of filing the suits in O.S.No.451 of 1979 and O.S.No.582 of 1986 had ended in vain and it has been admitted by the plaintiffs that they had failed in those suit proceedings. It is thus seen that the case of the plaintiffs that the suit property had been alienated by the plaintiffs' father on account of his illegal and immoral activities, as such, to one Munusamy had not been accepted in the above said suit proceedings and it had been held that the sale transaction effected by the plaintiffs' father had been made for a valuable consideration and accordingly, it is seen that the plaintiffs had not been successful in retrieving the suit property by way of filing the above said suits.

10. It is the case of the plaintiffs that inasmuch as the suit property continue to remain in their possession and accordingly, at the intervention of the panchayat members, an agreement was entered into between the plaintiffs and the defendants on 25.01.1993, whereunder, the defendants had agreed to reconvey the suit property to the plaintiffs on receiving a sum of Rs.5,000/- and based on the above said determination of the Panchayat, according to the plaintiffs, though they were ready to part with the payment of Rs.5,000/- to the defendants and get the sale conveyance from them, it is alleged that the defendants were not ready to receive the amount and execute the sale deed and hence, according to the plaintiffs, they had been necessitated to institute the suit for specific performance.

11. The defendants had vehemently disputed the oral agreement pleaded by the plaintiffs, which is said to have been taken place as out come of the Panchayatdars decision on 25.01.1993 and according to the defendants, they had never, at any point of time, agreed to convey the suit property to the plaintiffs as alleged in the plaint and also denied the contention of the plaintiffs that they are in possession and enjoyment of the suit property and thus, contended that the plaintiffs, without any cause of action, had laid the suit and hence, the suit is liable to be dismissed.

12. Inasmuch as the plaintiffs had pleaded the oral agreement for seeking the relief of specific performance and as the same had been stoutly denied by the defendants, as rightly determined by the first appellate Court, the onus is heavy upon the plaintiffs to establish the oral agreement as pleaded by them and that apart, the plaintiffs have also to establish their readiness and willingness to complete the sale transaction right from the above said alleged oral agreement. As adverted above, the suit proceedings levied by the plaintiffs for retrieving the suit property had ended in vain. Therefore, it is seen that the far-fetched theory projected by the plaintiffs that even thereafter the defendants agreed to sell the suit property to the plaintiffs for a sum of Rs.5,000/- as such cannot be countenanced. It is the case of the plaintiffs that the above said agreement had been arrived at the Panchayat held on 25.01.1993 based on the decision of the panchayatdars. However, as rightly determined by the first appellate Court, the decision of the panchayat would not constitute the essential features of the contract viz., the offer and acceptance being sine qua non for the completion of a valid contract either oral or in writing and the decision of the panchayat not being the essential factor for the completion of the contract and in such view of the matter, when there is no material placed on behalf of the plaintiffs to establish the plea of oral agreement said to have been entered into on 25.01.1993 based on the panchayat decision, it is seen that as rightly determined by the first appellate Court, the oral agreement projected by the plaintiffs cannot be accepted in any manner. If really, according to the plaintiffs, the parties had agreed to exchange the suit property by way of a sale transaction, they would have endeavoured to execute the panchayat muchalica with reference to the same and if that had been done as rightly pointed out, there would have some credence to the case of the plaintiffs as put forth by them. However, to show that everything has been done orally that to after the failure of the plaintiffs for retrieving the suit property by way of the suit proceedings above referred to, as rightly determined by the first appellate Court, the plaintiffs' case cannot at all be believed and accepted in any manner. From the mere oral testimony of one of the Panchayatdars examined as PW4, it cannot be safely concluded that a valid contract had been entered into between the plaintiffs and the defendants with reference to the sale of the suit property as put forth by the plaintiffs. As pointed out by the first appellate Court the said case of the plaintiffs and also as spoken to by PW4 has been seriously resisted by the first defendant, who was examined as DW1 on behalf of the defendants. It is thus found that the basic case of the plaintiffs that there had been an oral agreement between the parties concerned for the sale of the suit property, not having been established and the oral agreement also not established to have emanated on the basis of the offer

and acceptance between the parties concerned, which are basis for the conclusion of a valid contract, it is seen that the first appellate Court, has rightly disbelieved the oral agreement projected by the plaintiffs.

13. If really, they had been an oral agreement between the parties concerned as regards the completion of the sale transaction of the suit property, as projected by the plaintiffs, as rightly determined by the first appellate Court and if really, the plaintiffs had been ready and willing to part with the sale consideration and the defendants had refused to receive the same and execute the sale deed, there would have been exchange of notices between the parties and as regards the readiness and willingness on the part of the plaintiffs to complete the sale transaction, pursuant to so called oral agreement, not borne out by acceptable and reliable evidence, it is seen that the first appellate Court has also rightly held that the plaintiffs have failed to establish the readiness and willingness on their part to complete so called oral agreement.

14. In any event, as rightly determined by the first appellate Court, the plaintiffs have miserably failed to establish that they had been a valid oral agreement between the parties as regards the sale of the suit property and in such view of the matter, it is seen that the plaintiffs are not entitled to obtain the equitable relief of specific performance.

15. In view of the above position, it is found that the plaintiffs have miserably failed to establish the oral agreement in toto and the contention of the plaintiffs that the defendants had admitted the oral agreement cannot be accepted in any manner, considering the materials placed in the matter and the plaintiffs have also miserably failed to establish their readiness and willingness to complete the sale transaction on the basis of the so called oral agreement and in such view of the matter, the substantial questions of law formulated for consideration in this second appeal are answered against the plaintiffs and in favour of the defendants.

16. The counsel for the defendants in support of his submissions placed reliance upon the decisions reported in 2002 (3) CTC 462 (Kumari Anandan Vs. Dr.T.Balamukunda Rao (died) and 3 others, 2001 (3) CTC 408 (Karvannan Vs. Gopal Padayachi) and the judgment of this Court dated 18.10.2016 passed in S.A.No.8 of 2001 (A.Sankariah Vs. V.Ravichandran and two others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

17. In conclusion, the second appeal fails and is,

accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

sms

To

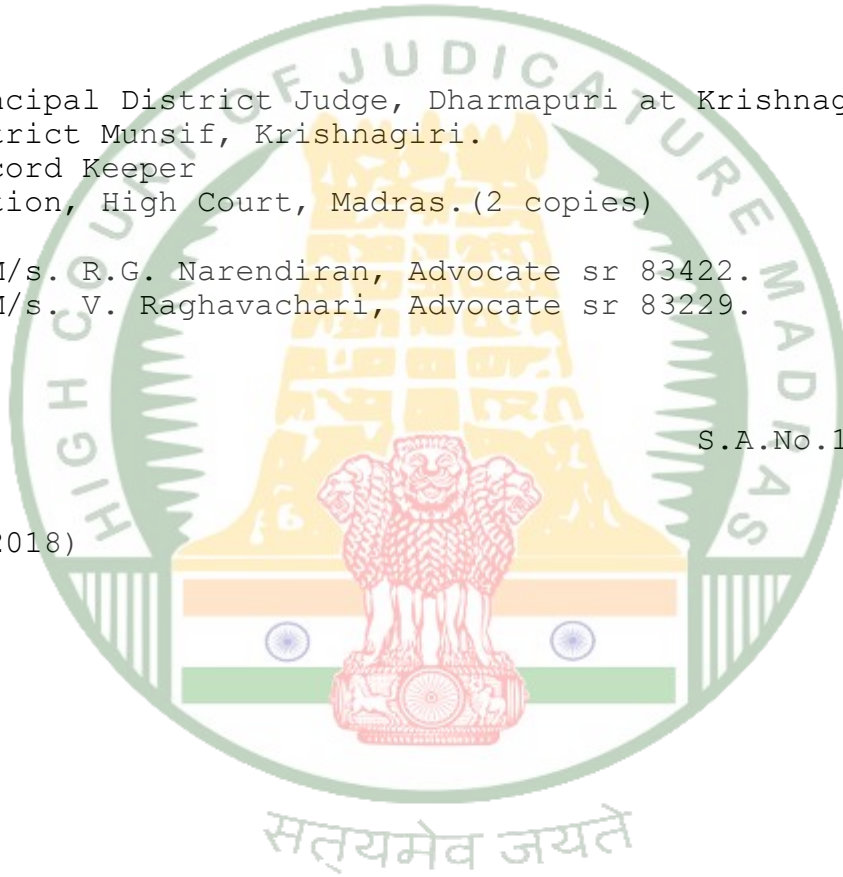
1. The Principal District Judge, Dharmapuri at Krishnagiri,
2. The District Munsif, Krishnagiri.
3. The Record Keeper
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+1 CC to M/s. R.G. Narendiran, Advocate sr 83422.

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NRI (CO)
SP (19/01/2018)



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