



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2017

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THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD) No.29 of 2014

A.Reeta Mary .. Appellant/Appellant/Plaintiff

Vs.

1. Raju
2. Dharani
3. Gowri
4. Minor Gayathri
5. Minor Kapil Dev

(Minor respondents are represented by their Guardian and mother Gowri, the 3rd respondent)

6. Mookammal
7. Govindaraj
8. Kulanthai Ammal
9. Selvi

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Additional Subordinate Judge, Thanjavur, dated 04.08.2011 passed in A.S.No.38 of 2008 confirming the decree and judgment of the District Munsif Court, Thanjavur dated 31.03.2008 passed in O.S.No.421 of 2004.

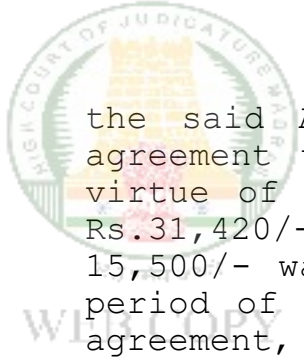
For Appellant : Mr.P.Sesubalan Raja

For Respondents : Mr.M.P.Senthil

JUDGMENT

The plaintiff having failed in her attempt to get a decree for Specific Performance, has preferred the above Second Appeal.

2.The case of the plaintiff is that one Ammakannu Ammal was the owner of the suit property, having purchased the same under a registered Sale Deed dated 13.06.1970. She had two sons, namely, Kaliyaperumal and Govindaraj. Ammakannu Ammal died in the year 2000 and the said Kaliyaperumal predeceased her. Kaliyaperumal's wife and the other son Govindaraj are added as defendants in the suit. The defendants 1 and 2 are the sons of the deceased Kaliyaperumal. The defendants 1 and 2 have earlier filed a suit in O.S.No.100/2002 on the file of the District Munsif, Tanjore, against the plaintiff herein and her husband for permanent injunction. It is stated that



the said Ammakannu Ammal, during her life time entered into an agreement to sell the suit property in favour of the plaintiff by virtue of an unregistered agreement dated 13.04.1996 for a sum of Rs.31,420/- and on the date of the said agreement itself, Rs. 15,500/- was paid as advance, the balance has to be paid within a period of three years and got the sale executed. Pursuant to the agreement, it is stated that the possession was also handed over to the plaintiff. It is a clear case of the plaintiff that ever since from the date of the agreement, the plaintiff was in possession of the suit property. It is stated that again, on 02.10.1996, the plaintiff had paid a further sum of Rs.15,500/- and the vendor Ammakannu Ammal also had made an endorsement for having received the said sum. Therefore, excepting a sum of Rs.420/- the entire sale consideration has been paid. As the plaintiff was ready and willing to perform her part of contract, the suit has been filed for specific performance.

3. The suit was resisted by the defendants denying all the facts averred in support of the case of the plaintiff in the suit. The title of Ammakannu Ammal is admitted by the defendants. It is further stated that there was no necessity for the said Ammakannu Ammal to sell the property in favour of the plaintiff and that too, by entering into a Sale Agreement which is unregistered. It is also stated that after the plaintiff had parted with almost the entire sale consideration, excepting a sum of Rs.420/-, there need not be a time period of 3 years for execution of the sale deed as alleged in the plaint and the plaintiff has never put in possession and she was not in possession of the property pursuant to the agreement. Therefore, prayed for dismissal of the suit.

4. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, 2 witnesses were examined as P.W.1 and P.W.2 and as many as 9 documents have been exhibited as Ex.A1 to Ex.A.9. On the side of the defendant, no witness was examined and no document was marked. After considering the facts and the evidence, the courts below have concurrently held that the agreement as alleged by the plaintiff is not proved and dismissed the suit. Aggrieved by the same, the above appeal is filed.

5. At the time of filing of the appeal, the following Substantial questions of law were framed:

"1. Whether the courts below were perverse or unreasonable in appreciating evidence and giving finding in favour of the respondents?

2. Whether the Sale Agreement dated 13.04.1996 is invalid because of the deficiencies pointed out by the courts below?

3. Whether the First Appellate Court has erred in rejecting the opinion of the expert on a wrong assumption?



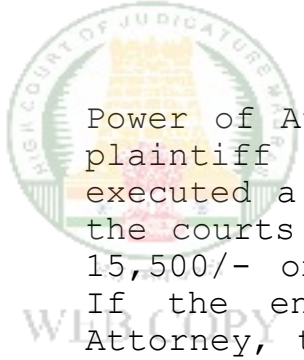
4. Whether the First Appellate Court has erred in rejecting the opinion of the expert in the absence of any attempt to get clarification from him regarding the method adopted by him to compare the finger prints?

5. To what relief the appellant is entitled for?"

6. The learned Counsel for the plaintiff/appellant contended that the courts below had not considered Ex.A.1 in its proper perspective and the reasoning given by the courts below are unacceptable with respect to the validity of the same. First of all, the plaintiff, who has filed the suit, has not entered into the witness box. Only her husband was examined as P.W.1 on her behalf. P.W.1 has categorically admitted that the defendants 1 and 2 had filed a suit in O.S.No.100/2002 for permanent injunction against the plaintiff and her husband and obtained an order of interim injunction against them not to disturb their possession. The said fact would go to prove that the defendants are in possession of the suit property and not as alleged by the plaintiff that she was put in possession pursuant to the sale agreement.

7. While considering whether the Sale Agreement dated 13.04.1996 is valid or not, P.W.1 has stated that the said Ammakannu Ammal had agreed to sell the property in the name of his wife for a sum of Rs.31,420/- and received Rs.15,500/- as advance. The plaintiff also has produced a certified copy of the document of title in favour of her vendor Ammakannu Ammal dated 13.06.1970 and also produced Kist Receipts as Ex.A.4, 5 and 6. The Sale Agreement is contested by the defendants mainly on the ground that the same was forged. Admittedly, the Sale Agreement was of the year 1996, whereas the stamp paper on which the sale deed was written was purchased in 1989. The sale agreement has been executed on a Stamp Paper which was purchased seven years prior to the date of the alleged agreement. P.W.1 also specifically admitted that no notice was sent during the life time of the said Ammakannu Ammal demanding the execution of the sale deed. Ammakannu Ammal died in the year 2000. If only, the sale deed was executed in the year 1996 and the executant was alive till 2000, there is no convincing reason given by P.W.1 for not issuing notice or even filing a suit during the life time of the said Ammakannu Ammal.

8. The second aspect on which the courts below have rejected the claim of the plaintiff is that the entire sale consideration agreed on the Sale Agreement Ex.A.1 excepting a sum of Rs.420/- has been paid to the defendants i.e. Rs.15,500/- was paid on 13.04.1996 on the date of agreement and subsequently, on 02.10.1996 another sum of Rs.15,500/- was paid. It is also alleged that the receipt of the amount was acknowledged by the said Ammakannu Ammal on Ex.A1 itself. Not stopping with that, the plaintiff has stated that on the date of acknowledgment, the said agreement was converted into a Power of Attorney authorising the plaintiff to sell the suit property. Assuming that the said Ammakannu Ammal had authorised and granted a



Power of Attorney in favour of the plaintiff in the year 1996, the plaintiff would not have kept quite till 2002 and would have executed a sale immediately in the year 1996 or thereafter. Hence the courts below have disbelieved the version of the payment of Rs. 15,500/- on 02.10.1996 in favour of the deceased Ammakannu Ammal. If the endorsement in Ex.A1 was converted into the Power of Attorney, then, the plaintiff cannot claim the specific performance based on the same.

9. So far as the validity of Ex.A.1 is concerned, the plaintiff has taken steps only in the first appellate stage to obtain an expert opinion on the thumb impression found in page No.2 and back side of Page No.2. The expert also had given his opinion about the disputed left thumb impression marked as Ex.A10 and opined that Ex.D2 and Ex.D3 are unfit for comparison as they are highly smudged and do not reveal sufficient number of clear rigid details for comparison. The First Appellate Court rejected Ex.A.10 as it has not compared the disputed signatures, namely, Ex.D2 and Ex.D.3. The relief of Specific Performance, being an equitable relief, the plaintiff should come to Court with clean hands. When the plaintiff's case is prima facie unimpeachable, without any expert opinion or any other evidence, the court can consider for granting of a decree.

10. In this case, firstly, the plaintiff has not established the execution of Ex.A.1. Secondly, having parted with the entire sale consideration excepting Rs.420/- in the year 1996, the plaintiff has not explained the time taken to move the court for filing the suit for specific performance. Thirdly, the stamp paper on which the Ex.A.1 is written is of the year 1989 whereas the agreement was written on the same only in the year 1996. Though the dates in the Stamp Paper may be immaterial, no convincing reason has been given by the plaintiff for not entering into the Witness Box. Fourthly, the plaintiff should comply with all the mandatory conditions as incorporated in the sale agreement which may be the condition precedent for obtaining a decree for specific performance. When the sale agreement has specifically given a time frame and when the plaintiff also has parted with the substantial sale consideration, there is no reason given for the delay on the side of the plaintiff. Therefore, the courts below have held that the conduct of the plaintiff is not trustworthy.

11. So far as the readiness and willingness is concerned, the trial court has not discussed the same. But the Appellate Court has held that considering the totality of the circumstances, the plaintiff has not proved her readiness and willingness throughout. Thus, the plaintiff, having failed to establish all the necessary ingredients for a decree for specific performance, the substantial questions of law framed are found against her. Having failed to comply with Section 16 of the Specific Relief Act, the plaintiff is not entitled to the relief sought for.



12. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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/True Copy/

Sub Assistant Registrar

To

1. The Additional Subordinate Judge, Thanjavur.

2. The District Munsif, Thanjavur.

+1cc to Mr.P.Sesubalan Raja, Advocate Sr.No.68082

+1cc to Mr.M.P.Senthil , Advocate Sr.No.68070

TSI

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