

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2018

Delivered on : 02.04.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit Nos.921 and 898 of 2010

K.K.Lingan ... Appellant in both appeals/plaintiff

vs.

1.Hilary Cornell Young

2.Lalitha Gautama @ Elizabeth Varkey

3.P.Suresh(deceased)

4.P.Srikumar

5.Nanditha Srikumar

.. Respondents 1 to 5/
Defendant 1 to 5

6.P.Bindu

7.Nikhil Suresh

8.Nitin Suresh

... Respondents 6 to 8
in both appeals

Respondents 6 to 8 in both
appeals brought on record
as LRs of deceased R3,
vide order of Court dated
1.4.2014 made in M.P.No.1/2012
in A.S.No.921 of 2010 and
A.S.No.898 of 2010

Appeal suits filed under Section 96 of Civil Procedure
Code, 1908 against the judgment and decrees dated 27.8.2010
passed by the District Judge of Nilgiris at Udhagamandalam, in
O.S.No.14 of 2008.

For Appellant :Mr.S.Sundar, in both appeals

For Respondents : Mr.Bijesh Thomas for R1 and R2
in both appeals
Mr.M.S.Krishnan,Senior counsel
for M/s.Sarvabhauman Associates
for R4 to R8 in both appeals

COMMON JUDGMENT

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

These Appeals Suits are directed against the judgment and decrees dated 27.8.2010, passed in O.S.No.14 of 2008, by the District Court, Nilgiris, Udagamandalam.

2.The appellant herein, as plaintiff, has instituted O.S.No.14 of 2008, on the file of the trial Court, for the reliefs of specific performance in pursuance of the sale agreement dated 26.5.1994 and also for perpetual injunction, wherein, the respondents 1 to 5 are arrayed as defendants.

3.The epitome of the averments made in the plaint are that the plaint 'A' Schedule property is the absolute property of one Lillian Cornell Brown, who passed away on 05.11.1960, leaving behind her a Will, dated 03.11.1960, wherein, she bequeathed 'A' schedule property in equal shares to Margery Anne Mathews, Jill Regina Mathews and Hilary Cornell Mathews. In pursuance of the said Will dated 03.11.1960, a probate petition has been filed in O.P.No.5 of 1961, wherein, it has been declared that all the three persons mentioned supra are each entitled to get 1/3 share in the suit 'A' Schedule property. On 06.11.1965, Margery Anne Mathews, on 20.11.1965 Jill Regina Mathews and on 11.11.1965 Hilary Cornell Mathews settled their undivided 1/3 share of the suit 'A' Schedule property on their mother viz., Gwendoline Lillian Mathews and she passed away on 16.4.1988, leaving behind her three daughters as her legal heirs. By virtue of the order passed in O.P.No.27 of 1990, Rev.Cecil Sundararaj has been appointed as an Administrator of the estate of Gwendoline Lillian Mathews. On 26.5.1994, the Administrator has entered into a sale agreement with the plaintiff and thereby agreed to sell the suit 'A' schedule property for a sum of Rs.32 lakhs and on the date of its execution, the plaintiff has paid an advance of Rs.2 lakhs. Both the plaintiff and the Administrator have agreed to complete the sale deed within a period of 12 months. In the meanwhile, the vendor has to make out clear title to suit 'A' Schedule property by way of obtaining necessary permission from the Reserve Bank of India and also a certificate from Income Tax authorities. The Administrator has executed a sale deed in favour of the plaintiff for a sum of Rs.9 lakhs in respect of the suit 'B' Schedule property, a part of suit 'A' schedule property. Both the plaintiff and Administrator have agreed to complete sale deeds in respect of the suit 'C' schedule property in parts. On 25.02.2004, the plaintiff sold the suit 'B' schedule property to his sister-in-law and that too, without disturbing the possession of the plaintiff. During June 1999,

the Administrator has left India and thereby an application in O.P.No.19 of 2003 has been filed, wherein the second defendant has been appointed as fresh Administrator on 29.09.2003. The plaintiff has always been ready and willing to perform his part of the contract. On 08.05.2003, the counsel for the defendants 1 and 2 sent a communication to the plaintiff about the appointment of fresh Administrator in O.P.No.19 of 2003. Again on 18.07.2005, the counsel informed about the amended Letters of Administration, empowering the second defendant to administer the estate. On 06.12.2005, the counsel of the defendants 1 and 2 has sent a communication stating that due to change in regulation, there is no need for Reserve Bank of India permission and also requested to produce draft sale deed for approval. The plaintiff has approached the counsel and no result has come out. On 12.04.2007, the second defendant has addressed to the plaintiff so as to complete the sale deed on or before 15.05.2007. The plaintiff has approached the second defendant. He failed to perform his part of the contract. On 02.04.2008, the counsel of the second defendant has issued a notice stating that 'C' Schedule property has already been sold to the defendants 3 to 5. The sale deeds executed in favour of the defendants 3 to 5 are not binding upon the plaintiff. The defendants 1 and 2 have purposely delayed performance on their part of contract. The plaintiff has been put in possession of the plaint 'A' Schedule property on the date of execution of sale agreement. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

4.The material averments made in the written statement filed by the first defendant are that the second defendant represents the estate of the deceased viz., Gwendoline Lillian Mathews. The first Administrator appointed in O.P.No.19 of 2003 has entered into the suit agreement with the plaintiff on 26.5.1994, in respect of the suit 'A' Schedule property admeasuring 1.33-6/16 acres. It is true that total consideration has been fixed at Rs.32 lakhs. It is also equally true that the erstwhile Administrator has received a sum of Rs.2 lakhs by way of an advance from the plaintiff. The other conditions mentioned in the suit sale agreement are also true. It is false to aver that the plaintiff has always been ready and willing to perform his part of the contract. In fact, the counsel of the defendants 1 and 2 has duly informed to the plaintiff about the subsequent changes for obtaining necessary permission from Reserve Bank of India and also from Income Tax authorities. Despite of proper intimations, the plaintiff has not come forward to perform his part of the contract. On 27.3.2008, the suit 'C' schedule property has been sold in favour of the defendants 3 to 5 for a sum of Rs.45 lakhs. The plaintiff is in possession of the suit 'C' schedule property only as a care taker and not as an agreement holder. There is

no merit in the suit and the same deserves to be dismissed.

5. In the written statement filed on the side of the 3rd defendant it is averred to the effect that the 3rd defendant has purchased a part of the suit 'C' schedule property by virtue of sale deed dated 27.3.2008. The defendants 4 and 5 have purchased the remaining portion of the suit 'C' schedule property and there is no merit in the suit and the same deserves to be dismissed.

6. The material averments made in the written statement filed by the defendants 4 and 5 are that the plaintiff has failed to perform his part of the contract in pursuance of sale agreement dated 26.5.1994. The defendants 4 and 5 have purchased a portion of the suit 'C' schedule property from a right person. The defendants 3 to 5 are bona fide purchasers for value. The defendants 3 to 5 are not bound to execute sale deed in favour of the plaintiff and there is no merit in the suit and the same deserves to be dismissed. The defendants 3 to 5 are entitled to get possession of the suit 'C' schedule property and also damages.

7. The material averments made in the additional written statement filed by the first defendant are that it is false to aver that still the plaintiff is in possession and enjoyment of the suit 'B' Schedule property. In the sale deed dated 25.04.2004, it is clearly mentioned that the plaintiff has delivered possession of the suit 'B' schedule property to the purchaser viz., Meenakshi.

8. On the basis of the rival pleadings filed on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has dismissed the suit and decreed the same in respect of counter claims made by the defendants 3 to 5. Against the dismissal of the suit, Appeal Suit No.921 of 2010 and against counter claims, Appeal Suit No.898 of 2010 have been filed by the plaintiff, as appellant.

9. Before contemplating the rival submissions made on either side, the Court has to narrate the following admitted facts.

The suit 'B' and 'C' schedule properties are nothing but forms part of the suit 'A' Schedule property and the same is originally belonged to one Lillian Cornell Brown and she executed a Will dated 03.11.1960 in favour of three persons and in turn, the beneficiaries have settled their undivided 1/3 share in the suit 'A' Schedule property in favour of their mother viz., Gwendoline Lillian Mathews. On 16.4.1988, the

settlee has passed away leaving behind her legal heirs. By virtue of the order passed in O.P.No.27 of 1990, one Rev.Cecil Sundararaj has been appointed as an Administrator and he entered into sale agreement with the plaintiff on 26.5.1994, whereby, the plaintiff has agreed to purchase the suit 'A' Schedule property for a sum of Rs.32 lakhs. On the date of its execution, the said Administrator has received an advance amount of Rs.2 lakhs from the plaintiff. In the sale agreement dated 26.5.1994, it has been specifically mentioned that a sale deed should be executed within a period of 12 months and within that period, the Administrator has to make out a better title to the suit 'A' Schedule property by way of obtaining necessary permission from the Reserve Bank of India and also a certificate from the Income Tax authorities and subsequently, various communications have been sent to the plaintiff and in one of the communications, it has been specifically mentioned that due to subsequent changes permission from Reserve Bank of India is not necessary and therefore, the plaintiff is required to send a draft sale deed in respect of the suit 'C' Schedule property. Further it is an admitted fact that in respect of suit 'B' schedule property, the plaintiff has obtained a sale deed from the Administrator.

10.In the trial Court, both sides have adduced voluminous evidence (both oral and documentary evidence). The trial Court, after perpending the voluminous evidence adduced on either side, has given a specific finding to the effect that the plaintiff has failed to perform his part of the contract in pursuance of the suit sale agreement dated 26.5.1994 and ultimately dismissed the suit in respect of the reliefs sought in the plaint and decreed the counter claims made by the defendants 3 to 5.

11.The learned counsel appearing for the appellant has raised the following points.

(1)By virtue of the order passed in O.P.No.27 of 1990, an Administrator has been appointed and both the plaintiff and Administrator have entered into the suit sale agreement dated 26.5.1994 and on the date of its execution, the plaintiff has paid a sum of Rs.2 lakhs, by way of an advance and total sale consideration is Rs.32 lakhs and further it is agreed that a sale deed should be executed within a period of 12 months and within that period, the Administrator has to make out a better title to the suit 'A' Schedule property by way of obtaining necessary permission from the Reserve Bank of India and also from Income Tax authorities. But the Administrator has failed to perform his part of the contract. Under the said circumstances, the plaintiff has not been able to perform his part of the contract.

(2)The plaintiff has always been ready and willing to perform his part of the contract from inception of the suit sale agreement dated 26.5.1994.

(3)The second defendant, knowing fully well that the suit sale agreement dated 26.5.1994 is in existence, has sold the suit 'C' Schedule property in favour of the defendants 3 to 5 and therefore, the sale deeds executed in their favour are not binding upon the plaintiff.

(4)The plaintiff has been put in possession of the suit 'A' schedule property by virtue of sale agreement dated 26.5.1994 and therefore, the counter claims made by the defendants 3 to 5 are totally erroneous.

(5)The second defendant, even without obtaining necessary permission from the Court, has sold the suit 'A' Schedule property in favour of the defendants 3 to 5 and on that score also the sale deeds executed in favour of the defendants 3 to 5 are not binding upon the plaintiff.

12.The learned counsel appearing for the respondents/defendants have uniformly contended to the effect that the suit sale agreement has come into existence on 26.5.1994 and as per recitals mentioned therein, initially permission has been obtained from Reserve Bank of India and Income Tax Department and in pursuance of the same, a sale deed has been executed on 11.6.1999 in respect of 0.40 acres and subsequently various communications have been sent to the plaintiff and on 06.12.2000, the counsel of the second defendant has sent a letter to the plaintiff, whereby it has been specifically stated that due to subsequent changes, permission from Reserve Bank of India is not required and the plaintiff has also been directed to submit a draft sale deed. Despite of proper communications sent by the second defendant, the plaintiff has not come forward to perform his part of contract in respect of the suit 'C' schedule property and subsequently, the suit 'C' schedule property has been sold in favour of the defendants 3 to 5 and since the plaintiff has not shown his readiness and willingness to perform his part of the contract, he is not entitled to get discretionary relief of specific performance and further, the plaintiff has not approached the Court with clean hands and further, the plaintiff is in possession and enjoyment of the suit 'C' schedule property only as a caretaker and the trial Court, after considering the overall evidence available on record, has rightly dismissed the reliefs sought in the plaint and rightly decreed the suit in respect of counter claims and therefore, the judgment and decree passed by the trial Court are not liable to be interfered with.

13. In support of their contentions, the learned counsel for the respondents/defendants have relied upon the following decisions:

(i) In AIR 1996 SC 2814-Sourdu Mari David and Others vs. Louis Chinnaya Arogiaswamy and Others, at para No.2, the Hon'ble Supreme Court has observed as follows:-

"It is settled law that the party, who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words, the party, who makes false allegations does not come with the clean hands and is not entitled to the equitable relief."

(ii) In (2009) 17 Supreme Court Cases 27, at paragraph No.30, the Hon'ble Supreme Court has observed that it is also a well settled principle of law that not only the original vendor, but also a subsequent purchaser would be entitled to raise a contention that the plaintiff was not ready and willing to perform his part of contract.

14. From a conjoint reading of the decisions referred to supra, it is made clear that in a suit for specific performance, the plaintiff has to approach the Court with utmost clean hands for getting equitable relief of specific performance. Further it is made clear that even the subsequent purchasers are entitled to raise that the plaintiff is not ready and willing to perform his part of contract. To put it in nutshell in a suit for specific performance, the plaintiff must show that he is always ready and willing to perform his part of contract from inception of sale agreement.

15. In the instant case, the suit sale agreement dated 26.5.1994 has been marked as Ex.A2. As narrated supra, in Ex.A2 it has been specifically mentioned that within a period of 12 months, a sale deed has to be executed and within that period, the administrator has to obtain necessary permission from Reserve Bank of India and also from Income Tax Department. Accordingly, necessary permissions are obtained by virtue of Ex.A3 and Ex.A4 dated 17.10.1997 and 25.05.1999, respectively. After Exs.A3 and A4, a portion of the suit 'A' schedule property has been purchased by the plaintiff by virtue of sale deed dated 11.6.1999 and a copy of the same has been marked as Ex.A5.

16. Now the only question that has winched to the fore is as to whether the plaintiff has shown his readiness and willingness to purchase the remaining portion of the suit 'A' schedule property, which has been described as 'C' schedule.

17.Ex.A6 is a xerox-copy of a letter dated 08.05.2003, Ex.A7 is a xerox copy of another letter dated 18.07.2005. In both Exs.A6 and A7 it has been clinchingly mentioned to the effect that the second defendant is ready to perform his part of the contract and ultimately Ex.A8 dated 06.12.2000 has been sent to the plaintiff by the second defendant, wherein, it is mentioned as follows:

"Please find enclosed herewith the Notarised xerox copy of the Letters of Administration granted to Mrs.Lalitha Goutama. Kindly note that due to change in regulations, there is no need for Reserve Bank permission for conducting the sale and we can go ahead as soon as you produce the draft sale deed for approval.

As the matter has been delayed long enough, you are requested to kindly expedite the same."

18.The main argument put forth on the side of the appellant/plaintiff is that as per recitals mentioned in Ex.A2, the administrator has failed to obtain necessary permission from Reserve Bank of India and also from Income Tax Department.

19.It has already been pointed out that for selling the property covered under Ex.A5, necessary permissions have been obtained through Exs.A3 and A4. In respect of the remaining portion of 'A' schedule property, it is easily discernible that due to subsequent changes, no permission from Reserve Bank of India is required and the same has been clearly mentioned in Ex.A8 and further in Ex.A8 the plaintiff is required to produce draft sale deed for approval.

20.At this juncture, it is pertinent to narrate that Ex.A8 has been sent to the plaintiff on 06.12.2000. After a lapse of 8 years from Ex.A8, the present suit has been instituted in the year 2008. Therefore, it is pellucid that even after Ex.A8, the plaintiff has not shown his readiness and willingness to perform his part of the contract in respect of the suit 'C' Schedule property.

21.In fact, this Court has perused the entire averments made in the plaint, wherein it has been blindly stated to the effect that the plaintiff has always been ready and willing to perform his part of the contract, but necessary permission has not been obtained by the second defendant from the Reserve Bank of India and also from Income Tax Department. Even from the documents filed on the side of the plaintiff, the Court can easily discern that there is no laches or refusal on the part of

the second defendant to execute a sale deed in favour of the plaintiff in respect of the suit 'C' schedule property. Under the said circumstances, the Court can unflinchingly come to a conclusion that the plaintiff has not approached the Court with clean hands and therefore, as per dictum given by the Hon'ble Supreme Court, the plaintiff is not entitled to get the relief of specific performance.

22.It is an admitted fact that as per order passed in O.P.No.27 of 1990, the second defendant has been subsequently appointed as an administrator. The learned counsel appearing for the appellant/plaintiff has vehemently contended to the effect that the second defendant, knowing fully well that Ex.A2-sale agreement is in existence, without obtaining prior permission from the Court, sold the entire suit 'C' schedule property in favour of the defendants 3 to 5. To meet out the said point raised on the side of the appellant/plaintiff, it would be more useful to look into Section 307 of the Indian Succession Act, 1925, and the same reads as follows:

"307.Power of executor or administrator to dispose of property-(1)Subject to the provisions of sub-section (2), an executor or administrator has power to dispose of the property of the deceased, vested in him under Section 211, either wholly or in part, in such manner as he may think fit."

23.Even from a cursory look of the said provision it is made clear that an administrator is having right of selling property as he thinks fit even without prior permission from the Court. Therefore, it is needless to say that the above limb of argument advanced on the side of the appellant/plaintiff goes out without merit.

24.As mentioned in many places, the second defendant has sold the suit 'C' Schedule property in favour of defendants 3 to 5 in the year 2008. The main defence taken on the side of the defendants 3 to 5 is that they are bona fide purchasers for value without knowing existence of Ex.A2. In fact, this Court has scanned the entire evidence available and ultimately found that there is no clinching nor sufficient evidence to show that the defendants 3 to 5 are not bona fide purchasers for value.

25.The learned counsel appearing for the appellant/plaintiff has also raised a residual contention to the effect that in pursuance of Ex.A2, possession of the suit 'A' schedule property has been given to the plaintiff and since an attempt has been made to disturb his possession, relief of perpetual injunction has been sought in the plaint, but the trial Court has unnecessarily rejected the same.

26.The plaintiff has been examined as P.W.1. During the course of cross-examination, he has ultimately admitted to the effect that only as a care taker he has been put into possession of the suit 'A' schedule property. Further, this Court has grouped the entire recitals found in Ex.A2 and nowhere it is stated that only in pursuance Ex.A2, the plaintiff has been put into possession of the suit 'A' schedule property. Therefore, the aforesaid contention put forth on the side of the appellant/plaintiff is also sans merit.

27.It has already been pointed out that even after Ex.A8, the plaintiff has not shown his readiness and willingness to perform his part of the contract in respect of the suit 'C' schedule property. After a lapse of 8 years, the present suit has been instituted with false averments. Under the said circumstances, as mentioned supra, the plaintiff is not entitled to get the reliefs sought in the plaint.

28.On the side of the defendants 3 to 5, counter claims have been made in respect of recovery of possession and also for damages. It has already been discussed and decided that the possession of suit 'A' schedule property has been given to the plaintiff only as a caretaker and not on the basis of Ex.A2. Further, the defendants 3 to 5 have purchased the suit 'C' Schedule property for valuable consideration even without knowing existence of Ex.A2 and therefore, title to the suit 'C' schedule property has passed on to the defendants 3 to 5. Since the defendants 3 to 5 are having title to the suit 'C' schedule property and since the plaintiff has been enjoying the same only as a caretaker, the defendants 3 to 5 are entitled to get the counter claims sought by them.

29.The trial Court, after analysing the entire evidence available on record, has rightly dismissed the suit and also rightly decreed the same in respect of counter claims. 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 therefore, the present Appeal Suits are liable to be dismissed.

In fine, these Appeal Suits are dismissed with costs. The judgment and decree passed in O.S.No.14 of 2008 by the trial Court are confirmed.

Sd/-

Assistant Registrar(CS-iv)

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Sub Assistant Registrar

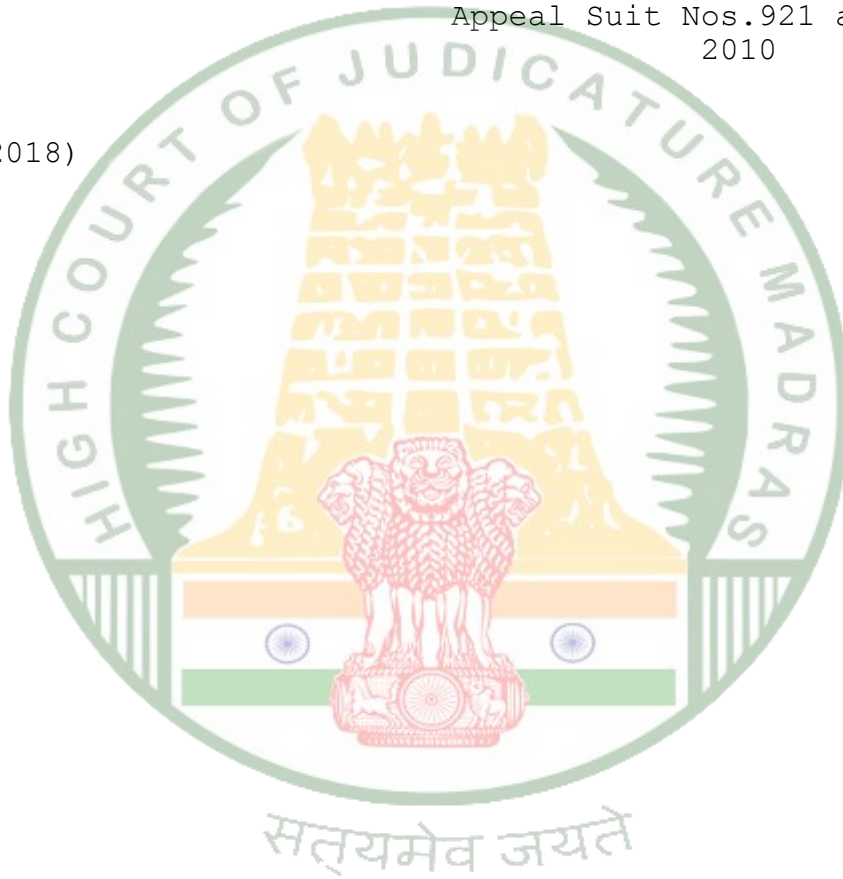
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To
The District Judge of Nilgiris
at Udhagamandalam

+2cc to Mr.S.SUNDAR Advocate, S.R.No.24441
+1cc to Mr.K.F. MANAVALAN, Advocate, S.R.No. 24471
+2cc to Mr.SARVABHAUMAN ASSO. Advocate, S.R.No. 24269,
24268

Judgment in
Appeal Suit Nos.921 and 898 of
2010

GJ II(CO)
TR(05/04/2018)



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