



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.04.2018
Coram:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

SECOND APPEAL No.64 of 2015

R.Natarajan

... Appellant/plaintiff

vs.

1.Raman (Deceased)

2.Saroja

3.Valliyammal

4.Thangavel

5.Mahesh

... Respondents/LRs of Defendants

(Respondents 2 to 5 are brought
on record as LRs of the deceased
sole respondent vide order of the
Court dated 13.11.2017 made in
C.M.P.No.2775 to 2777 of 2017)

Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.12.2013 passed in A.S.No.40 of 2012 on the file of the I Additional District Judge, Salem, reversing the Judgment and Decree dated 14.02.2012 passed in O.S.No.360 of 2008 on the file of the learned I Additional Subordinate Judge, Salem.

For Appellant : Mr.C.Prakasam

For Respondents 2 to 5 : Mr.P.Jagadeesan

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 20.12.2013 made in A.S.No. 40 of 2012 on the file of the I Additional District Judge, Salem, reversing the judgment and decree dated 14.02.2012 made in O.S.No. 360 of 2008 on the file of the I Additional Subordinate Judge, Salem.



2. The appellant is the plaintiff and the respondents 2 to 5 are the legal heirs of the first defendant in the suit in O.S.No.306 of 2008 on the file of I Additional Sub Court, Salem. The appellant filed the said suit for specific performance of agreement directing the first respondent to execute the sale deed in favour of the appellant in respect of the suit schedule property free from encumbrance in pursuance of the agreement of sale dated 19.06.1993. According to the appellant, the suit schedule property belongs to the first respondent/defendant absolutely and he entered into an agreement of sale on 19.06.1993 with the appellant, agreeing to sell the suit property for total sale consideration of Rs.1,44,400/-. The appellant paid a sum of Rs.25,000/- as advance. It was agreed that the first respondent must enter into an agreement of sale with his brother's wife Chinna Irusayee, for purchase of her land for formation of road to reach the suit property. On the date of such agreement with Chinna Irusayee, the appellant must pay a further advance amount of Rs.25,000/- and must pay the balance sale consideration within 11 months to get the sale deed executed.

2(a) The appellant paid Rs.50,000/- on 12.11.1995, Rs.43,000/- on 11.05.1998, Rs.10,000/- on 27.01.2001 and Rs.16,400/- on 10.07.2005 and thus paid the entire sale consideration of Rs.1,44,400/- to the first respondent. The first respondent did not enter into an agreement of sale with Chinna Irusayee and did not execute sale deed in favour of the appellant even though he has received the entire sale consideration. The appellant issued a notice dated 27.3.2007 to the first respondent, as the first respondent was not coming forward to execute the sale deed in favour of the appellant. The first respondent sent a reply dated 4.4.2007 denying the agreement of sale and other allegations repudiating the suit agreement of sale. The appellant has filed suit from the date of denial of agreement of sale by the first respondent.

3. The first respondent filed written statement and denied execution of agreement of sale and receipt of advance and further payments from 1995 to 2005 and denied that he made endorsements on the dates mentioned by the appellant. The first respondent further stated that the appellant tried to enter into an agreement of sale with one Chinna Irusayee, who is the adjacent owner of the first respondent's suit property in front portion. The appellant got document from Chinna Irusayee and created false agreement of sale. The first respondent contended that the alleged agreement of sale was dated 19.06.1993 and the appellant has not taken any steps to enforce the said agreement and the appellant has tried to cheat and forcibly occupy the first respondent's property. The signature of the witnesses are all false and created by the appellant.



3(a) The first respondent executed settlement deed for the entire extent of 86 cents on his son viz., R.Thangavel on 14.12.2004 registered as document No.3094 of 2004. After the settlement deed, his son Thangavel, (fourth respondent herein) is enjoying the property along with other properties and paying the kist and he is the absolute owner of the suit property. The relief of specific performance is discretionary and equitable relief and it cannot be granted to the appellant as he has not come to the Court with clean hands and based on the genuine documents and prayed for dismissal of the suit.

4. Based on the pleadings, the learned Trial Judge framed necessary issues. Before the learned Trial Judge, the appellant examined himself as P.W.1 and three other witnesses were examined as P.W.2 to P.W.4. and marked eighteen documents as Exs.A.1 to A.18. The first respondent examined himself as D.W.1 and marked three documents as Exs.B.1 to B.3. The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit holding that the agreement of sale and endorsements in the agreement of sale are true and the suit is not barred by limitation.

5. Against the said judgment and decree dated 14.02.2012 made in O.S.No.360 of 2008, the first respondent filed A.S.No.40 of 2012 on the file of the I Additional District Court, Salem. The learned first Appellate Judge framed necessary points for consideration. Considering the points for consideration, pleadings, oral and documentary evidence and the judgment of the trial Court allowed the appeal holding that Exs.A.2 to A.5 endorsements are not proved by the appellant and the contention of the appellant that he was waiting for purchase of the land from Chinna Irusayee for fourteen years is not acceptable and the suit is barred by limitation and the appellant is not entitled to the relief of specific performance as well as alternate relief of refund of sale consideration.

6. Against the said judgment and decree dated 20.12.2013 made in A.S.No.40 of 2012, the present Second Appeal is filed by the appellant.

7. At the time of admission, this Court framed the following substantial question of law:

"In the light of the finding of the trial Court that Ex.A.1 - sale agreement is true, whether the First Appellate Court was right in holding that the endorsements made on Ex.A.1 under Exs.A.2 to A.5 have not been proved though, according to the plaintiff, it has been proved by the evidence of P.Ws. 2 and 3?

8. The learned counsel for the appellant contended that the



learned first appellate Judge erred in law holding that P.Ws.2 and 3 were not present when the respondent executed the endorsement. They have stated that they were present when the first respondent executed the endorsement, but they were not present when P.W.1 wrote the endorsement. P.Ws.1 to 3 have deposed that the first respondent executed the endorsements freely and consciously with knowledge. The reasoning of the first Appellate Judge that the contents of the endorsement are not proved is perverse. The first respondent denied the execution of Exs.A.1 to A.5. The appellate Court found that execution of Ex.A.1. is established. When the plea of first respondent that his signature is forged is not accepted and the signature is established, the contents is deemed to be admitted and proved. The learned First Appellate Judge has held that in Ex.A.2 endorsement itself it has been stated that no agreement was entered into with Chinna Irusayee and the contention of the appellant that he has waited for 14 years for execution of sale deed is not acceptable is erroneous. The First Appellate Judge is not correct in holding that the suit is barred by limitation as the suit filed by the appellant is within the period of limitation after denial of the agreement by the first respondent in Ex.A.8, reply notice.

9.Per contra, learned counsel for the respondents contended that the first respondent has not admitted the execution of Exs.A.1 to A.5. The appellant has not proved the endorsements. P.Ws.2 and 3 deposed that they did not know who wrote the endorsement and the contents of the endorsement. In view of such evidence of P.Ws.2 and 3, the First Appellate Judge has rightly held that the appellant failed to prove the endorsements in Exs.A.2 to A.5. The learned counsel for the respondents further contended that the suit is not maintainable as the appellant has not impleaded son of first respondent as a party to the suit.

9(a)In support of his contentions, the learned counsel for the respondents relied on the following judgments:-

(i)V.S.Ramalingam vs. B.Laalitha (2017 [1] MWN (Civil) 479)

"21. Therefore, it is clear that the recital in Ex.A1 cannot be treated as true. The plaintiff has chosen to treat Ex.A1 as acknowledgement of debt. I am afraid, it cannot be treated as acknowledgement of debt. As per Section 18 of the Limitation Act in order to constitute the valid acknowledgement of debt., it should have been executed within the period of prescribed for the suit, in respect of any property or rights.

22. Ex.A1, is dated 16.10.2003, it purports to acknowledge the borrowings made on



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30.06.2000. It is beyond the period of three years prescribed in the Limitation Act. However, V.Suryanarayana Reddy, learned counsel appearing for the Appellant would contend that Ex.A1 is not just an acknowledgement of debt, it creates an equitable Mortgage. Unfortunately, the plaintiff's suit is not based on Mortgage Ex.B2, belies the statement made in Ex.A1. Thus Hon'ble Apex Court has on various occasions, highlighted the dangers of the exercise of comparison of signatures by Courts. I am inclined to agree with the learned counsel appearing for the Appellant on his submissions that comparison of signatures in the documents, after the suit is not justified.

(ii)Vimala Ammal vs. C.Suseela and others ([1] MWN (Civil) 479) .

"7. On the other hand, learned counsel for the appellant distinguished the said decision rendered in AIR 1968 Mad 388, on the footing that, in the said case subsequent purchaser was a party in the specific performance suit. In the present case the appellant-subsequent purchaser was not a party in the above said specific performance suit in O.S.No.3244 of 1983. Learned counsel also relied on the decision in Chinne Vasgan V.Alamalu (1975 I Mad LJ 263) which held that subsequent purchaser with the knowledge of prior agreement to sell to another, was a necessary party in the suit by the latter for specific performance and that the decree should direct both the owner and the subsequent purchaser to execute conveyance in favour of the agreement holder. The following determination in the said decision are significant:

"But if the purchase by the third party was with the knowledge of the agreement to sell, he will hold the property subject to the obligation under S.91 of the Indian Trust Act, 1892. This section provides that where a persons acquires property with notice that another person has entered into an existing contract affecting that property of which specific performance could be enforced, the former must hold the property for the benefit



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of the latter to the extent necessary to give effect to the contract. Thus the obligation of holding as a trustee, is only to the extent necessary to give effect to the contract. It does not affect the passing of the title. In other words even where S.91 of the Act applicable the transaction of sale is not made void, but

the subsequent purchaser is under an obligation to convey the property to the agreement holder as and when he establishes his rights, The agreement holder can acquire title to the property only if a proper conveyance is executed by the subsequent purchaser as well ... These principles clearly show that the subsequent purchaser is a necessary party in a suit for specific performance and the decree should direct both the owner and the subsequent purchaser to execute the conveyance in favour of the agreement holder'. (Underlines are mine).

(iii) Sivanappa Gounder (Died) and Others vs. Subbammal @ Seeethammal (2018 [2] MLJ 720):

"16. In so far as this case is concerned, as above mentioned, there is no reason at all given by the Courts below for holding that disputed and admitted signatures tally. Further, the trial court had only held that on comparison, to some extent, the two signatures tally. The same had been concurred by the first appellate court. It is seen that even as per the determination of the Courts below the two signatures namely the disputed and the admitted signatures do not tally in all aspects. Such being the position, it is seen that the Courts below had completely fallen into error in upholding the plaintiff's case merely on the naked comparison of the signatures in question without pointing out in a scientific and acceptable manner, as to how the two sets of signatures either tally or do not tally. The Courts below is thus found to have flawed in their approach and erred in holding that the plaintiff has established her case merely on the basis that the two sets of signatures which they have compared are similar which decision is found to be only on the basis of



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the subjective satisfaction of the Courts concerned and not on any detailed and scientific analysis as required to be done as per law. Therefore, it is found that the judgment and decree of the Courts below for accepting the plaintiff's case on the above said basis cannot be allowed to sustain further.

(iv) Birbal Yadav vs. Suchan Thakur and other respondents (AIR 1999 PATNA 6) and contended that the suit is not maintainable for not impleading necessary party to the suit.

(v) Suryagandhi vs. Lourduswamy (AIR 2004 MADRAS 8) :
"Specific Relief Act (47 of 1963), S.10 - Agreement to sale immovable property - Vendor keeping silence for 9 years and thereafter asking vendor to execute sale deed - Vender's conduct indicating that he made no attempt to keep contract alive but abandoned it - Though time was not essence of contract, his claiming specific performance after 9 years was not within reasonable time."

10. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

11. The appellant has filed suit for specific performance of the agreement of sale dated 19.06.1993. He has filed the suit in the year 2007. According to the appellant, the first respondent received further amounts on four occasions and made endorsements on the back side of the sale agreement - Ex.A.1. The appellant paid entire sale consideration as evidenced by Exs.A.1 to A.5. As per Ex.A.1, the sale agreement, the appellant has to enter into an agreement of sale with Chinna Irusayee, the owner of the land in respect of front portion of the suit property, so that there will be an access road to the property. The appellant had eleven months time from the date of the said agreement to pay the balance sale consideration and to get the sale deed executed in his favour. In view of the delay in entering into the agreement of sale with Chinna Irusayee, the appellant paid entire sale consideration and the first respondent has extended the time for completion of sale transaction as per agreement of sale dated 19.06.1993. In spite of receiving entire sale consideration, the first respondent did not take any steps to execute the sale deed in favour of the appellant. The appellant issued notice dated 27.03.2007 to the first respondent and first respondent sent reply notice dated 4.4.2007 denying the agreement of sale. In view of the same,



the suit filed by the appellant on 18.08.2007 is not barred by limitation.

12.The first respondent not only denied the endorsement in Exs.A.2 to A.5 but also denied the execution of Ex.A.1 agreement of sale dated 19.06.1993. The appellant, to prove the execution of Exs.A.1 to A.5, examined himself as P.W.1 and also examined P.Ws.2 to 4 to substantiate his case. P.Ws.2 and 3, who are witnesses to Exs.A.1 to A.5 deposed that the first respondent executed Ex.A.1 and also Exs.A.2 to A.5, the endorsements on Ex.A.1. The Trial Judge has accepted the evidence of P.Ws.1 to 4 and held that the first respondent executed Exs.A.1 to A.5. The learned Trial Judge also exercising his power under Section 73 of the Indian Evidence Act, compared the signature of the first respondent in Exs.A.1 to A.5 with his signature in vakalat and written statement and held that the signature found in Exs.A.1 to A.5 are that of the first respondent. The learned trial Judge has also held that the suit is not barred by limitation in view of the endorsements as well as denial of agreement by the first respondent on 4.4.2007.

13.The First Appellate Judge considering the evidence on record held that Ex.A.1 was executed by the first respondent and it is a genuine one. The First Appellate Judge held that Exs.A.2 to A.5 are not proved as P.Ws.2 and 3, who are the witnesses did not know who was the scribe of Exs A.2 to A.5. The learned First Appellate Judge failed to see that P.Ws.2 and 3 did not depose that they were not present when the first respondent executed the endorsements. They only deposed that they did not know, who was the scribe of the endorsement of Exs.A.2 to A.5 and they did not know the contents. Once the signatures in Exs.A.2 to A.5. is proved as that of the first respondent, then it is for him to prove that the said endorsements are not true. The learned First Appellate Judge failed to take into account that in the written statement, the first respondent has stated that the appellant got document of the suit property from Chinna Irusayee and fabricated the agreement of sale. The first respondent has stated that he did not know the appellant and P.W.2 Soundararajan. When he was confronted with photographs taken at the time of House Warming ceremony of the appellant, where he was seen with the appellant, he admitted that he attended the said function. Contrary to his stand in written statement, he has deposed as D.W.1 that P.W.2 Soundararajan took the document from him and the appellant fabricated the agreement of sale. The learned First Appellate Judge also did not consider the findings of the learned trial Judge that the signature in Exs.A.1 to A.5 are that of the first respondent. It is pertinent to note that the First Appellate Judge relied on Ex.A.2, endorsement to hold that the



suit is barred by limitation, as in the said endorsement itself it has been stated that no agreement of sale was entered into with Chinna Irusayee. Based on the said endorsements, the learned Judge rejected the contention of the appellant that he was waiting for 14 years for the first respondent to comply with the condition of agreement of sale. Having admitted that Ex.A.2, is acceptable, the reasons given by the learned First Appellate Judge, that the appellant failed to prove Exs.A.2 to A.5 is erroneous. The learned first Appellate Judge accepted the contents of Ex.A.2 but held erroneously that first respondent did not execute Ex.A.2 to 5. From Ex.A.1, the agreement of sale, the time limit for completion of agreement is eleven months from the date of agreement of sale with Chinna Irusayee for purchase of the property to lay the approach road to reach the property.

14.From over all consideration of pleadings, oral and documentary evidence and the judgment of the trial Court, it is clear that the first respondent only executed Exs.A.1 to A.5 and the First Appellate Judge on erroneous consideration of pleadings and evidence of P.Ws.2 to 3 held that the appellant failed to prove the endorsements in Exs.A.2 to A.5 after holding that Ex.A.1 was executed by the first respondent and relying of Ex.A.2 to hold that suit is barred by limitation.

15.According to the respondents, the third endorsement is on 27.01.2001 and the fourth endorsement is on 10.07.2005. Therefore, the suit is barred by limitation. This contention is without merit. The suit is not for recovery of money. The suit is for specific performance of agreement of sale. By the said endorsements, the first respondent has extended the time for completion of terms of agreement of sale and received payments at the time of endorsements. The time for completing sale transaction is 11 months from the date of entering into agreement of sale with Chinna Irusayee. Admittedly, no agreement of sale was entered with Chinna Irusayee. He denied the agreement of sale only in the reply notice dated 04.04.2007 and appellant had filed the suit on 18.08.2007 and hence, the suit is not barred by limitation. The first respondent has not sold the property to any third party. He has settled the property on his son. In view of the settlement, the settlee, who is the son of the first respondent is not a necessary party. After the death of first respondent, his son settlee is brought on record as fourth respondent.

16.For the above reasons, the substantial questions of law raised by the appellant is answered in favour of the appellant. The judgment and decree passed by the First Appellate Court is set aside. The judgment and decree dated 14.02.2012 made in O.S.No.360 of 2008 of the Trial Court is restored. The suit is decreed as prayed for.



In the result, the Second Appeal is allowed. There is no order as to costs.

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Sd/-
Assistant Registrar(CS IX)

Sub Assistant Registrar

cla/rgr

To

1. The I Additional District Judge,
Salem.
2. The I Additional Subordinate Judge,
Salem.

+2 ccs to Mr.C.Prakasam Advocate sr 30861
+1 cc to Mr.P.Jagadeesan Advocate sr 30787

S.A.No.64 of 2015

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