

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2018

PRONOUNCED ON : 01.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1796 of 2003

Chinnappa

...

Appellant

Vs.

Chinnappa

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 13.12.2002 passed in A.S.No.2 of 2001 on the file of the Subordinate Court, Hosur, reversing the Judgment and Decree dated 06.11.2000 passed in O.S.No.204 of 1991 on the file of the District Munsif Court, Hosur.

For Appellant : Mr.M.V.Krishnan

For Respondent : Mr.V.Raghavachari

JUDGMENT

This second appeal is directed against the judgement and decree dated 13.12.2002 passed in A.S.No.2 of 2001 on the file of the Subordinate Court, Hosur, reversing the Judgment and Decree dated 06.11.2000 passed in O.S.No.204 of 1991 on the file of the District Munsif Court, Hosur.

3. Suit for specific performance.

4. The case of the plaintiff, in brief, is that the plaintiff executed a sale deed in respect of the suit property in favour of the defendant on 27.08.1979 by way of a registered document and also delivered the possession of the same to the defendant and from the date of the sale, the defendant is in possession and enjoyment of the suit property. On the same date, the defendant executed an agreement of re-conveyance in respect of the suit property in favour of the plaintiff unconditionally agreeing to execute the deed of re-conveyance on receipt of the sale consideration of Rs.2,000/- after a lapse of 5 years and within 12 years from the date of the sale deed dated 27.08.1979 and accordingly, the agreement of re-conveyance had been duly executed in the presence of the attestors and as the time for the execution of the deed of re-conveyance ripened, it is stated that the plaintiff had been approaching the defendant to receive the consideration and execute the re-conveyance deed in his favour in respect of the suit property. However, the defendant did not show any sign of willingness with reference to the same and therefore, according to the plaintiff, he convened two panchayats, one on 01.05.1991 and another on 16.05.1991 and even thereafter, it is stated that the defendant did not come forward to execute the deed of re-conveyance and inasmuch as the defendant is bound to execute the re-conveyance deed in favour of the plaintiff and as the plaintiff has always been willing to ready to perform his part of the

contract to pay the consideration as agreed and the defendant did not come forward to execute the deed of re-conveyance in favour of the plaintiff, according to the plaintiff, accordingly, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5. The case of the defendant, in brief, is that it is true that the plaintiff executed a deed of sale in favour of the defendant on 27.08.1979 and in pursuance of the said sale deed, the defendant had been put in possession of the suit property by the plaintiff. However, it is false to state that on 27.08.1979, the defendant executed an agreement of re-conveyance in favour of the plaintiff in respect of the suit property and the defendant never executed any such agreement assuring to reconvey the suit property to the plaintiff as claimed and hence, the said agreement is not binding upon the defendant and it is false to state that the plaintiff has been always ready and willing to perform his part of the contract as regards the agreement of re-conveyance and it is the duty of the plaintiff to strictly prove the contents of the alleged agreement of re-conveyance as claimed in the plaint. It is false to state that the defendant did not come forward to execute the deed of re-conveyance in favour of the plaintiff, despite convening of the two panchayats. On the other hand, no such panchayat had been convened and the same has been projected only to create a cause of action by the plaintiff and the defendant never executed any agreement of re-conveyance in favour of the plaintiff as claimed and the plaintiff is thus not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 to 5 were examined and Exs.A1 has been marked. On the side of the defendant, DWs1 to 3 were examined and Exs.B1 to B3 were marked. Exs.C1 & C2 were also 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 accept the plaintiff's case and accordingly, decreed the suit as prayed for. On appeal, the first appellate Court, on an appreciation of the materials placed, was pleased to set aside the judgment and decree of the trial Court and accordingly, by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Aggrieved over 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:

" (a) Whether the learned subordinate Judge ought to have confirmed the decree of the Trial Court holding that the plaintiff was entitled to the decree for specific performance of the re conveyance of agreement Ex.A1 dated 27.08.1979?

(b) Whether the learned subordinate ought to have rejected the defendant's contentions regarding the terms of the agreement of re conveyance Ex.A1 dated 27.08.1979 when the defendant had denied the thumb impression in Ex.A1 did not dispute the other averments in the document?

(c) Whether learned subordinate Judge ought to have followed the judgments reported in A.I.R.2000 S.C. Page 2408 and A.I.R.2000 Kerala Page 17 and confirmed the decree of the Trial Court granting specific performance of the Agreement of re conveyance?

(d) Whether the learned subordinate Judge ought to have on the evidence on record and the report and the evidence of Finger Print Expert P.W.5 and confirmed the finding of the Trial Court that the thumb impression in Ex.A1 is that of the plaintiff?

9. It is not in dispute that the plaintiff had executed a sale deed dated 27.08.1979 in favour of the defendant for a valid consideration and thereby, the defendant is put in possession and enjoyment of the suit property and the said sale deed has been marked as Ex.B1. It is further seen from Exs.B2 & B3 that it is only the defendant, who has been in possession and enjoyment of the suit property pursuant to Ex.B1. That

the defendant is in possession and enjoyment of the suit property pursuant to Ex.B1 as such, is not disputed by the plaintiff.

10. It is the case of the plaintiff that on 27.08.1979 itself, the defendant agreed to re-convey the suit property in favour of the plaintiff on receipt of the consideration of Rs.2,000/- and accordingly, it is stated that the defendant had executed an agreement of re-conveyance in favour of the plaintiff in the presence of the attestors and the said document has come to be marked by the plaintiff as Ex.A1. Further, according to the plaintiff, as per the terms of Ex.A1, the plaintiff has to pay the balance sale consideration after a period of 5 years from 27.08.1979 and complete the transaction within 12 years from 27.08.1979 and though the plaintiff has been always ready and willing to pay the consideration as stipulated, inasmuch as the defendant failed to come forward to execute the deed of re-conveyance as promised, despite the several requests made by the plaintiff and the convening of the panchayats, according to the plaintiff, he has been necessitated to lay the suit for specific performance.

11. To establish that the agreement of re-conveyance marked as Ex.A1 has been executed by the defendant in respect of the suit property, the plaintiff has examined one of the attestors to the document as PW2 and on a perusal of the evidence of PW2, though it is found to be not properly considered by the Courts below, it is found that the plaintiff has through the reliable testimony of PW2, established that the

defendant has executed the agreement of re-conveyance in his favour as claimed by him. In addition to that, it is also found that the plaintiff has tested the document marked as Ex.A1 by an expert, who has been examined as PW5 and accordingly, PW5 was also tendered evidence that on a comparison of LTI found in Ex.A1 with the admitted LTI of the defendant, finding that one LTI found in Ex.A1 contained in the second page, tally with the admitted LTI of the defendant, it is the assertion of the expert, the LTI found in Ex.A1 is only that of the defendant and accordingly, documents marked as Exs.C1 & C2 have come to be exhibited through the expert and it is thus found that by way of the expert's testimony, the plaintiff has established the authenticity of the agreement of re- conveyance marked as Ex.A1. It is thus seen that the first appellate Court has erred in disbelieving the case of the plaintiff as regards the execution of Ex.A1 agreement by the defendant in favour of the plaintiff and on the other hand, as above discussed, Ex.A1 has been established to be executed by the defendant in favour of the plaintiff as put forth by the plaintiff. In this connection, it is found that the trial Court has rightly appreciated the materials placed on record in the proper perspective as far as the proof of the authenticity of the execution of Ex.A1 by the defendant in favour of the plaintiff in respect of the suit property.

12. Even as per the case of the plaintiff, as per the terms contained in Ex.A1, the parties had agreed that the plaintiff should tender the sale consideration after a lapse of 5 years and within 12 years from the date

of the sale deed dated 27.08.1979. Now, according to the plaintiff, he has been always ready and willing to perform his part of the contract as per the terms of Ex.A1 and it is only the defendant, who had been postponing the same on some pretext or the other and it is the further plea of the plaintiff that with reference to the same, he has convened two panchayats and despite the same, the defendant did not come forward to execute the deed of re-conveyance in his favour and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

13. As regards the convening of the panchayats claimed by the plaintiff, the same is disputed by the defendant. It is found that the first appellate Court has disbelieved the case of the plaintiff with reference to the convening of the panchayat by the plaintiff for the purpose of obtaining the deed of re-conveyance from the defendant pursuant to the terms of Ex.A1. In this connection, the first appellate Court has rightly appreciated the evidence of PWs3 & 4 projected by the plaintiff in the proper perspective and considering the fact that PW3 is unable to depose clearly about the reasons of the Panchayat and the outcome of the same and further, as PW3 has also failed to substantiate his evidence that only with reference to the agreement of re-conveyance, the panahcyat had been convened, accordingly, it is noted that the first appellate Court disbelieved his version with reference to the convening of the panahcyat.

Further, as rightly determined by the first appellate Court, PW4 would go one step further and state that a Muchalika had been written in the

panchayat, however, it is not the case of the plaintiff that such a muchalika had been executed with reference to the panchayat. If really, such a muchalika had been executed by the panchayatars, the said document would have been projected by the plaintiff. Accordingly, it is found that the first appellate Court did not place acceptance on the evidence of PW4 and it is thus found that the case of the plaintiff that he has also convened the panchayats for the purpose of obtaining the deed of re- conveyance from the defendant in respect of the suit property was rightly disbelieved by the first appellate Court. According to the defendant, the plea of convening the panchayats has been made by the plaintiff only to create a cause of action for the suit, in other wards, it is the case of the defendant that only to establish that the plaintiff has been always ready and willing to perform his part of the contract, the factum of the convening of the panchayats has come to be projected by the plaintiff. However, when it is found that the evidence projected by the plaintiff with reference to the above case is found to be unreliable, not satisfactory, no safe credence could be attached to the same wholly to hold that the plaintiff has always been ready and willing to perform his part of the contract.

14. As per the terms of Ex.A1, the plaintiff should part with the sale consideration after a lapse of 5 years and within 12 years from the date of the sale deed dated 27.08.1979. As seen from the decision relied upon by the defendant's counsel reported in **(1998) 2 Supreme Court Cases 226, (Bismillah Begum (SMT) Dead by LRS. Vs. Rahmatullah Khan**

(Dead) By LRs.) which decision was also projected before the first appellate Court, it is found that time is always the essence of the contract for the re-conveyance of the property. Accordingly, it is found that the plaintiff, in order to claim the relief, pursuant to agreement of re-conveyance marked as Ex.A1, should establish that he has been always ready and willing to perform his part of the contract as per the terms of the concern deed. Now, as per the terms of Ex.A1, the plaintiff has to be ready to part with the consideration after a lapse of 5 years from the date of the sale deed dated 27.08.1979 and complete the transaction within 12 years within the said date. It is thus found that on a conjoint reading of the plaintiff's case and the materials placed, only during the year 1991, the plaintiff has chosen to convene the panchayats for the purpose of obtaining the deed of re-conveyance from the defendant pursuant to Ex.A1. When it is noted that 5 years after 27.08.1979, the plaintiff should be ready to part with the consideration and take necessary steps to obtain the deed of re-conveyance from the defendant, on the other hand, when the materials projected by the plaintiff would go to show that much later i.e. only during 1991, he had endeavoured to obtain the deed of re-conveyance from the defendant, would go to show that he has not been ready and willing to perform his part of the contract immediately after the lapse of 5 years from 27.08.1979. The plaintiff examined as PW1 would only state that only 9 years after 27.08.1979, he had approached and requested the defendant to receive the consideration and execute the deed of re-conveyance, however, the defendant refused to the same and thereafter, according to the plaintiff, he convened the panchayats.

Therefore, as rightly found by the first appellate Court, it is found that much after the time stipulated under Ex.A1 to complete the sale transaction, it is found that the plaintiff had approached the defendant with reference to the same. Even as per the above said case of the plaintiff, it is found that the plaintiff has not shown his readiness and willingness immediately after the expiry of 5 years as stipulated under Ex.A1 to pay the consideration and obtain the deed of re-conveyance from the defendant. In such view of the matter, when according to the decision of the apex Court, as above noted time is the essence of the contract for the re-conveyance of the property in particular and the plaintiff having failed to establish his readiness and willingness in the payment of the consideration as stipulated, as rightly determined by the first appellate Court, the option of re-conveyance in favour of the plaintiff must be deemed to have been lapsed.

15. It is however pointed out by the plaintiff's counsel that inasmuch as he had been granted 12 years period of time to complete the transaction from 27.08.1979 and when he has approached the defendant after the expiry of 9 years as such from 27.08.1979 expressing his readiness and willingness to complete the transaction, it is argued that the first appellate Court erred in not believing his readiness and willingness to complete the transaction. However, the above contention does not merit acceptance. Even though 12 years period of time is granted for completing the transaction as per Ex.A1 terms, on a reading of Ex.A1 terms in the right perspective, it is seen that the plaintiff should

be always ready and willing to perform his part of the contract right from expiry of the period of 5 years from 27.08.1979 as stipulated therein and on the other hand, when it is found that as per the case of the plaintiff himself, he has approached the defendant to complete the transaction only 9 years after 27.08.1979 and when the said case of the plaintiff is found to be not substantiated as such with acceptable and reliable evidence, other than his *ipsi dixit* testimony and when the further case of the plaintiff, as regards the convening of the panchayats in connection with the same, also found to be not established with acceptable and reliable proof, as above discussed, the plaintiff cannot be allowed to take the outer time limit prescribed under Ex.A1 for completing the transaction to contend that within a period of 12 years, it is sufficient for him to establish his readiness and willingness and thereby argue that he has been always ready and willing to complete the transaction as per the terms of Ex.A1. As rightly determined by the first appellate Court, when the plaintiff is found to have approached the defendant much belatedly after the time had begun to run for completing the transaction, it is found that the plaintiff has failed to establish his readiness and willingness to perform his part of the contract as per the terms of Ex.A1 and it is thus found that the first appellate Court has rightly appreciated the materials placed on record in the proper perspective as regards the above aspect of the case and determined that the plaintiff is not entitled to obtain the equitable relief of specific performance sought for.

first appellate Court has erred in holding that Ex.A1 agreement of re-conveyance has not been established by the plaintiff to be a genuine document is unacceptable and on the other hand, it has to be held as above discussed, the plaintiff has established the genuineness of Ex.A1 agreement of re-conveyance. However, inasmuch as the plaintiff has failed to establish his readiness and willingness to complete the transaction as per the terms stipulated under Ex.A1 and when it is noted that time is essence of the contract as far as the deed of re-conveyance is concerned and when the materials placed do not support the claim of the plaintiff that he has been always ready and willing to perform his part of the contract as agreed to between the parties, the option of re-conveyance given to the plaintiff by way of Ex.A1 should be held to have been lapsed and accordingly, the substantial questions of law formulated in the second appeal are answered.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

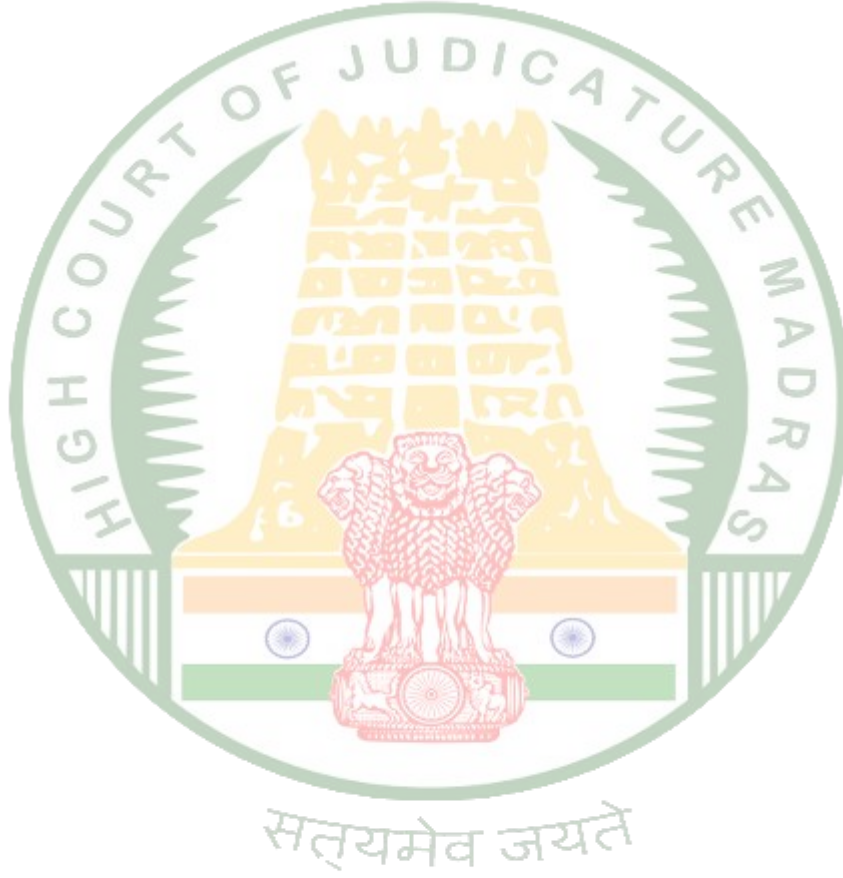
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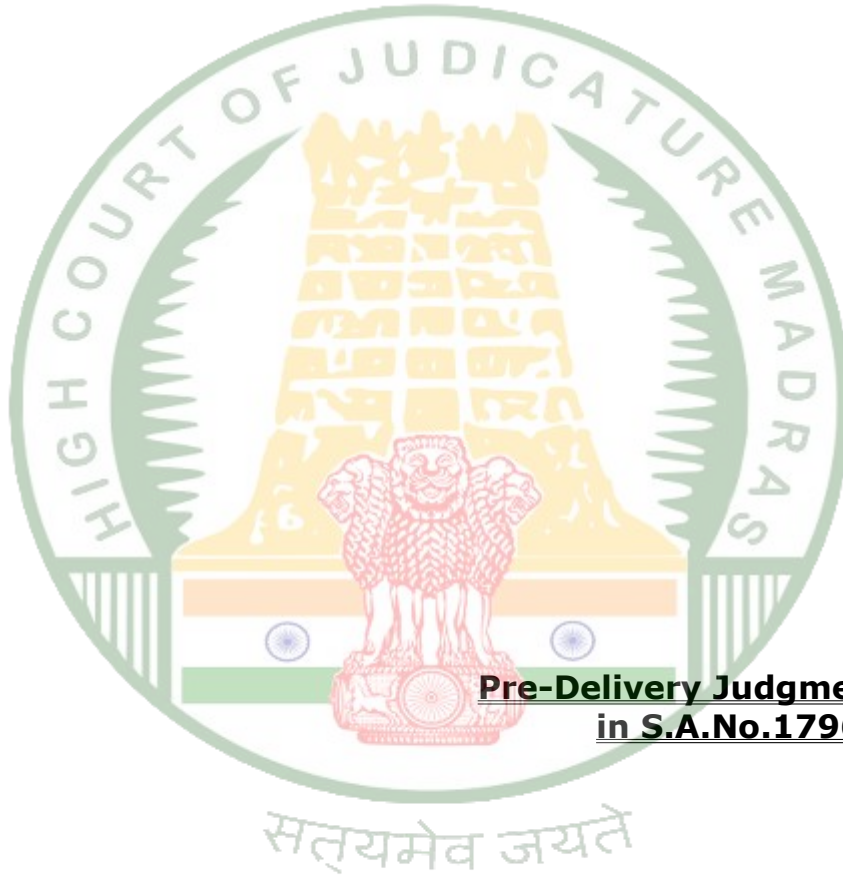
1. The Subordinate Court, Hosur.
2. The District Munsif Court, Hosur.
3. The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1796 of 2003**

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