

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.03.2018

PRONOUNCED ON:02.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 1961 of 2003
and
S.A.No.1162 of 2005

S.A.No. 1961 of 2003

1.Valarmathi
2.Ramesh Bharath
3.Rajeswaran

[Minor appellants 2 and 3 declared
Major and 1st appellant discharged
from guardianship vide order of the
Court dated 08.12.2014 made in
C.M.P.No.495 of 2013 in S.A.No.1961
of 2003]

.... Appellants/Plaintiffs

1.Venkatachalam
2.Katturaja

Vs.

... Respondents/Defendants

Prayer S.A.No. 1961 of 2003:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 13.08.2003 in A.S.No.13 of 2001 on the file of the Additional District Judge, Salem, reversing the judgment and decree dated 06.09.2000 in O.S.No.147 of 1997 on the file of the Subordinate Judge, Attur.

For Appellants : Mr.D.Shivakumaran

For RR1 : Mr.C.Jagadish

For R2 : Mr.P.Jagadeesan

S.A.No.1162 of 2005

[Cause title accepted vide order
of the Court dated 12.08.2005
made in C.M.P.No.12466 of 2005]

N.Venkatachalam Appellant/Ist Defendant

Vs.

1.S.A,41, Vepampoondi Primary
Agricultural Co-operative Bank Limited,
rep. by its Secretary,
Vepampoondi Village,
Attur Taluk,
Salem District.

2.Ramesh Bharath

3.Rajeswaran

[RR2 and R3 declared as major and
her mother A.Valarmathi discharged
from the guardianship vide order of
Court dated 13.02.2018 made in
C.M.P.No.180 of 2015 in
S.A.No.1162 of 2005]

... Respondents/Plaintiff/Defendants 2 and 3

Prayer S.A.No.1162 of 2005:

Second Appeal filed under Section 100 of C.P.C., against
the judgment and Decree dated 13.08.2003 in A.S.No.12 of 2001 on
the file of the Additional District Judge at Salem, reversing
the judgment and decree dated 06.09.2000 in O.S.No.288 of 1997
on the file of the Subordinate Court, Attur.

For Appellant :Mr.C.Jagadish

For RR1 :Mr.P.Jagadeesan

For RR2 & R3 :Mr.D.Shivakumaran

C O M M O N

J U D G M E N T

(i) The second appeal No.1961 of 2003 is directed against the judgment and Decree dated 13.08.2003 passed in A.S.No.13 of 2001 on the file of the Additional District Court, Salem, reversing the judgment and decree dated 06.09.2000 passed in O.S.No.147 of 1997 on the file of the Subordinate Court, Attur.

(ii) The second appeal No.1162 of 2005 is directed against the judgment and Decree dated 13.08.2003 passed in A.S.No.12 of 2001 on the file of the Additional District Judge, Salem, reversing the judgment and decree dated 06.09.2000 passed in O.S.No.288 of 1997 on the file of the Subordinate Court, Attur.

2.The above said second appeals have been admitted on the following substantial questions of law:

S.A.No.1961 of 2003:

"Can the defence of an agreement holder that his right under the agreement of sale would be defeated be a legal evidence in a suit for partition when the share of the parties are admitted?"

S.A.No.1162 of 2005:

"Without prior permission under Section 8 of the Hindu Minority and Guardianship Act, 1956, is an agreement to which the said minors are made as parties is capable of being enforced in law?"

3. Considering the scope of the issues involved in this matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. O.S.No.288 of 1997 has been laid by the respondent's bank for specific performance.

5. O.S.No.147 of 1997 has been laid by the appellants in S.A.No.1961 of 2003 for maintenance, creating charges, partition and permanent injunction.

6.It is not in dispute that the first appellant and the appellants 2 and 3 in S.A.No.1961 of 2003 are respectively the wife and the sons of Venkatachalam, the first appellant in S.A.No.1162 of 2005. Claiming that Venkatachalam as the kartha of the family consisting of himself and his two sons, had agree to convey the suit property in favour of the respondent's bank, for a sum of Rs.55,000/- and in connection with the same, entered into the sale agreement on 25.08.1993 and received a sum

of Rs.6,000/- on the date of sale agreement and agree to receive the balance sale consideration of Rs.49,000/- on or before 29.01.1994 and thereafter, even though the respondent's bank has been ready and willing to pay the balance sale consideration and complete the sale transaction, inasmuch as, Venkatachalam had not come forward to execute the sale deed as agreed to under the sale agreement as above stated, it is stated that the respondent's bank has been necessitated to lay the suit for specific performance. Further according to the respondent's bank, with a view of avoid the execution of the sale deed, it is only at the instigation of Venkatachalam, the appellants in S.A.No.1961 of 2003 had come forward with the suit for partition. Though the appellants in S.A.No.1961 of 2003 as well as Venkatachalam had raised various pleas as regards the sale agreement dated 25.08.1983, as rightly determined by the first appellate court, on the basis of the materials placed on record, it is found that, the abovesaid sale agreement had come to be executed by Venkatachalam in favour of the respondent's bank, in respect of the property described in the original suit No.288/97. It is found that the suit property is comprised in suit survey No.257/2 measuring 2.99 acres. The sale agreement dated 25.08.1993 is in respect of only 50 cents in the above said survey number. Even as per the case of the respondent's bank inasmuch as, out of the total extent of 2.99 acres in the said survey number, Venkatachalam and his two sons are each entitled to 1/3 share, according to the respondent's bank, the specific performance relief should be granted in their favour, from and out of the share allotted to Venkatachalam in the entire extent and hence the suit. It is also found that the respondent's bank had also sought for the alternative relief of the return of the advance amount with interest, in case their plea of specific performance is not accepted by the Court.

7. On the basis of the materials placed on record, it is found that the trial court was pleased to refuse the relief of specific performance sought for by the respondent's bank and on the other hand, had granted only the refund of the advance amount paid by the bank with interest. Similarly, it is also found that the trial court was pleased to decree the partition suit as prayed for by the appellants in S.A.No.1961 of 2003. However, the first appellate court set aside the judgment and decrees of the trial Court in both matters and resultantly granted the relief of specific performance prayed for by the respondent's bank and dismissed the partition suit laid by the appellants in S.A.No.1961 of 2003. Aggrieved over the same, the present second appeals have been laid.

8. As rightly argued, when it is found that Venkatachalam and his two sons are jointly entitled to the suit property comprising of 2.99 acres, it is found that each would be

entitled to nearly one acre in the suit survey number. The respondent's bank had levied the suit for specific performance only in respect of the 50 cents in the said suit survey number. It is thus found that even if the shares to which the parties are entitled to the suit property are declared, even assuming for the sake of arguments that the respondent's bank is entitled to enforce the sale agreement, the same could be done out of the share allotted to Venkatachalam and such being the position, it is found that the first appellate court has erred in dismissing the partition suit as such, on the footing that the said suit had come to be instigated at the instance of Venkatachalam and thus the appellants in S.A.No.1961 of 2003 are not entitled to obtain the reliefs prayed for therein.

9.The materials placed on record would go to show that Venkatachalam and his family members are residing under the same roof and therefore, it is found that the case of the appellants in S.A.No.1961 of 2003 that, Venkatachalam is estranged from them and not taking care of them as such cannot be accepted. Similarly, their case that the sale agreement executed by Venkatachalam in favour of the respondent's bank is not binding upon them also as such cannot be accepted straightaway. When it is found that, on the date of the execution of the sale agreement, Venkatachalam and his family members were residing under the same roof and the sale agreement had come to be executed by Venkatachalam only as the Kartha of the family, it is found that the said sale agreement is binding upon his sons and therefore, it is seen that the appellants in S.A.No.1961 of 2003 cannot disown the sale agreement executed by Venkatachalam in favour of the respondent's bank.

10.The sale agreemtn dated 25.08.1993 has been marked as Ex.A5 in O.S.No.288 of 1997. As per the terms contained therein, it is found that the respondent's bank, has to pay the balance sale consideration on or before 25.01.1994 and complete the sale transaction. Now according to the respondent's bank, though it has been always ready and willing to pay the balance sale consideration within time fixed and complete the sale transaction, according to them it is only Venkatachalam, who had been delaying his execution of the sale deed and hence it is stated that, they had been necessitated to lay the suit for specific performance. In this connection, it is found that, a legal notice has been issued by the respondent's bank on 20.01.1994 marked as Ex.A6. However, it is found that the suit for specific performance has come to the laid by the respondent's bank only 24.01.1997. It is thus found that, after the issuance of the legal notice dated 20.01.1994 marked as Ex.A6, there is no material placed on record to show that thereafter the respondent's bank had been always ready and willing to pay the balance sale consideration to Venkatachalam

and complete the sale transaction. If according to the respondent's bank they had been always ready and willing to complete the sale transaction, by paying the sale consideration, it is not been explained as to why, when according to them, Venkatachalam had not come forwarded to execute the sale deed even after the issuance of Ex.A6 legal notice, it has not been explained as to why they should wait for three years to file the suit thereafter and why they had not endeavored to levy the suit immediately for obtaining the relief of specific performance. It is found that the respondent's bank has failed to establish the essential ingredient for obtaining the discretionary relief of specific performance, i.e., readiness and willingness on their part from the inception and when it is found that they had laid the suit at the fag end of the period of limitation for claiming specific performance, without placing any material to hold that in the interrugnum they had been always ready and willing to perform their part, i.e., the payment of balance consideration in such view of the matter, it is found that the respondent's bank cannot be allowed to obtain the relief of specific performance particularly, when it is noted that, they had come forwarded with the suit very belatedly and the abovesaid sole factor alone would be sufficient to decline the relief of specific performance sought for by them. In this connection, as seen from the decisions relied upon by the appellants' counsel reported in 1997 (3) SCC 1 [K.S.Vidyanadam and others Vs. Vairavan], 2011 (12) SCC 18 [Saradamani kandappan Vs. S.Rajalakshmi and others], the readiness and willingness on the part of the agreement holder should be outright and throughout from the inception till the laying to the suit and when it is found that other than Ex.A6 legal notice, there is no other material forthcoming on the part of the respondent's bank to evidence that, they had been always ready and willing to complete the sale transaction, by paying the balance sale consideration, it is found that the discretionary relief of specific performance cannot be extended in their favour, on account of the laches and delay in their part as above discussed. In such view of the matter, the first appellate court is found to have erred in granting the relief of specific performance prayed for by the respondent's bank.

11.As rightly argued the documents marked by the respondent's bank, Exs.A8 and A9 by themselves would not be sufficient to hold that the respondent's bank had been always ready and willing to pay the balance sale consideration and complete the sale transaction, right from the inception till the laying of the suit and on the other hand, when it is found that only three years after the issuance of Ex.A6 legal notice, the respondent's bank had chosen to levy the suit as above seen that by itself would go to show that they had ceased to obtain the benefit of the equitable relief of specific performance, on

account of the laches and delay on their part and in such view of the matter, it is found that, the first appellate court had erred in granting the relief of specific performance in their favour.

12.The position being above, it is found that the decision relied upon by the counsel appearing for the respondent's bank reported in 1965 (2) MLJ P.145 [Mademsetty Satyanarayana Vs. G.Yelloji Rao and others], would not be applicable to the case at hand.

13.When the materials placed on record would go to show that admittedly the suit property belongs to Venkatachalam and his two sons as their ancestral property, it is found that the sons would be entitled to obtain 1/3 share each in the suit property and in such view of the matter, it is found that the appellants 2 and 3 in S.A.No.1961 of 2003 would be entitled to obtain 2/3 share in the suit property. Inasmuch as the first appellant in S.A.No.1961 of 2003 has failed to establish that Venkatachalam, her husband, had neglected her and refused to maintain her, it is found that, she would not be entitled to obtain the relief of maintenance and the relief of charges and permanent injunction prayed for by her.

14.In the light of the above discussions, it is found that though the suit for partition, as such, would not by itself defeat the claim of the respondent's bank in enforcing the sale agreement, consider the laches and delay on the part of the respondent's bank in enforcing the sale agreement, it is found that the respondent's bank is not entitled to obtain the relief of specific performance with reference to the sale agreement in question. Further, when it is found that the sale agreement involved in the matter has been executed by Venkatachalam only as the Kartha of the family and for the benefit of the family, it is seen that, the same is equally binding upon by his sons and there is no need on the part of Venkatachalam to obtain the permission of the Court before entering into the agreement of sale in question, particularly, when is found that the agreement is only in respect of 50 cents of land which is far below the share to which Venkatachalam is entitled to in the total extent. The substantial questions of law formulated in the second appeals are accordingly answered.

15.In conclusion,

(a)Judgment and Decree dated 13.08.2003 passed in A.S.No.13 of 2001 on the file of the Additional District Court, Salem are set aside and the judgment and decree dated 06.09.2000 passed in O.S.No.147 of 1997 on the file of the Subordinate Court, Attur are confirmed only in so far as the relief of partition

granted in favour of the appellants 2 and 3 and in other aspects, the judgment and decree of the trial court are set aside.

(b) Judgment and Decree dated 13.08.2003 passed in A.S.No.12 of 2001 on the file of the Additional District Court, Salem are set aside and the judgment and decree dated 06.09.2000 passed in O.S.No.288 of 1997 on the file of the Subordinate Court, Attur are confirmed.

Accordingly, the respective second appeals are allowed with costs and Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Additional District Court,
Salem.

2.The Subordinate Judge,
Sub Court,
Attur.

3.The Section Officer,
VR Section,
High Court.(2 Copies)

+2cc to Mr.P.Jagadeesan, Advocate Sr.24407,24408

+1cc to Mr.C.Jagadish, Advocate Sr.24460

+1cc to M/S.D.Shivakumar, Advocate Sr.24357

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S.A.No. 1961 of 2003
and
S.A.No.1162 of 2005

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