

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.03.2018

PRONOUNCED ON:26.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 2191 of 2003

and

C.M.P.No.20442 of 2003

1.Krishnammal @ Gnanamani  
2.Durai @ Rajagopal  
3.Vijaya  
4.Kasturi @ Amudha  
5.Dhanammal  
6.Sakunthalammal  
7.Mangalammal

...Appellants/Plaintiffs 2 to 8

Vs.

1.Tamilmani  
2.Maniammal @ Manonmani ...1 & 2 Respondents/2 & 3 Defendants  
3.Vasanthamani ...3<sup>rd</sup> Respondents/Impleaded  
4<sup>th</sup> Respondent in AS.No.186/88

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Sub Court at Ariyalur dated 20.10.2000 in A.S.No.186 of 1988, confirming the judgment and Decree of the District Munsif Court at Jeyankondam, dated 28.12.1987 in O.S.No.46 of 1984.

For Appellants : Mr.P.Dinesh Kumar  
M/s.SarvaBhauman Associates

For Respondents : No Apperance  
Set exparte  
Vide order dated 15.03.2018

J U D G M E N T

The plaintiffs in O.S.No.46 of 1984 on the file of the District Munsif Court, Jeyangondam are the appellants in this second appeal.

2.The suit has been laid by the plaintiffs for specific performance on the basis of the the sale agreement dated 25.01.1976. According to the plaintiffs, the defendants owed money to the plaintiffs, by way of promissory notes and unable to discharge the same, it is stated that in respect of the amount due, the defendants agree to covey the suit property in favour of the plaintiffs and accordingly incorporating the necessary recitals as regards the adjustment of the sale consideration for the amount due and also the advance amount as well as the balance amount, it is the case of the plaintiffs that the sale agreement had been entered into between the parties fixing three years period for completing the sale transaction, by paying the balance amount and inasmuch as the defendants had not come forward to execute the sale deed, despite the readiness and willingness on the part of the plaintiffs, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

3.The defence has been taken by the defendants contending that there has been no sale agreement in respect of the suit property between the parties as claimed by the plaintiffs and the defendants at no point of time agreed to convey the suit property to the plaintiffs and inasmuch as there had been money transactions between the parties, the plaintiffs used to obtain the signature of the first defendant and making use of the same, the sale agreement had come to be concocted by the plaintiffs and the defendants have also thrown a challenge to the alleged payments made under the promissory notes dated 25.01.1976 and 29.06.1972 and therefore, according to the defendants, as there had been no consensus ad item between the parties for the sale of the suit property, the plaintiffs are not entitled to obtain the reliefs sought for.

4.In support of the plaintiffs' case, P.Ws.1 to 7 were examined. Exs.A1 to A29 were marked. On the side of the defendants, D.Ws. 1 to 6 were examined. Exs.B1 to B16 were marked.

5.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit laid by the plaintiffs. Impugning the same, the present second appeal has been laid.

6.After hearing the counsel for the appellants and also going through the records placed for consideration, it is found that as rightly determined by the Courts below, the plaintiffs are not entitled to obtain the relief of specific performance as claimed by them, in respect of the sale agreement dated 25.01.1976. At the foremost, the plaintiffs have failed to

establish that they had been consensus ad item between the parties in respect of the sale of the suit property as projected by them. It has not been clearly recited and established as to when the defendants had agreed to convey the suit property, for what price they had agreed to sell the suit property and whether any negotiation had taken place between the parties concerned as regards the same etc., Absolutely, as regards the same, there are no materials pleaded and placed on the part of the plaintiffs. It is found that some money transactions had been pending between the parties. That apart, it is also be noted that the plaintiffs have been assisting the defendants in their litigations. This could be evidenced from the documents marked as Ex.A4, A26 and A27. Accordingly, it is found that the plaintiffs were in a dominating position and it is further seen that on account of the same, the sale agreement had come to be concocted by the plaintiffs as determined by the Courts below. As rightly determined by the Courts below, on the face of it, Ex.A1 seems to be shrouded in mystery and the plaintiffs have not cleared the same by adducing acceptable and reliable evidence. The Courts below had also analyzed the evidence of the witnesses examined on the side of the plaintiffs and found their evidence unacceptable, unreliable and not trust worthy and the abovesaid determination of the Courts below do not warrant any interference and no infirmity is shown to be attached to the same. It is thus found that as rightly found by the Courts below, Ex.A1 sale agreement has come to be fabricated by the plaintiffs, with a view to grab the suit property and accordingly unable to place acceptable materials in support of their case.

7.That apart, the relief of specific performance being discretionary relief, if really the parties had agreed to entered into a sale agreement as put forth by the plaintiffs, nothing prevented the plaintiffs to immediately obtain the sale deed from the defendants, on paying the balance amount and complete the sale transaction. However, it is found that only at the vague end of the period fixed, the plaintiffs have issued the legal notice and thereafter laid the suit. This itself would go to show that the essential ingredient for obtaining the relief of specific performance, the readiness and willingness on the part of the plaintiffs being conspicuously absent in the present case and with reference to the same, no material is forthcoming, it is seen that on that score also the plaintiffs' suit should fail.

8.Further examination of the materials placed on record would go to show that the defendants 2 and 3 were not minors at the relevant of point of time and therefore the case of the plaintiff that the sale agreement has come to be executed by the first defendant on behalf of the defendants 2 and 3 as such

cannot be rightly accepted. That apart, when it is found that Kaliaperumal Padayachi has left behind not only the defendants, but also his daughter Vansantha mani, the sale agreement alleged to have been obtained not from all the legal heirs, is found to be unacceptable.

9. On a perusal of the judgments and decrees of the Courts below, in all aspects, it is found that the Courts below had appreciated the materials placed on record, both oral and documentary, properly and accordingly, rightly come to the conclusion that the sale agreement projected by the plaintiffs is not a genuine document and resultantly held that the plaintiffs are not entitled to obtain the reliefs sought for. No interference is called for in the above said determination of the Courts below.

10. Resultantly, it is found that no substantial question of law is involved in the second appeal. Accordingly, the second appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

mfa

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,  
Sub Court,  
Ariyalur.

2. The District Munsif,  
District Munsif Court,  
Jeyankondam.

3. The Section Officer,  
VR Section,  
High Court.

NRI (CO)  
sm:18.4.2018

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