

1 IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2018
PRONOUNCED ON: 08.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2196 of 2003

... Appellant/Plaintiff

M.Murugesan

Vs.

1.Fathima Bi

2.Mohammed Ali

3.Asraf Ali

4.Noornisha

5.Minor Rahima Bi

6.Minor Baseena Bi

7.Minor Eedees Bi

[Minors 5 to 7 represented by
their Mother/Guardian Fathima Bi,
the first respondent]

... Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.14 of 2003, on the file of the Court of the Principal District Judge, Vellore and dated 29.04.2003 confirming the judgment and decree of the Learned Subordinate Judge of Gudiyattam, in O.S.237 of 2000 and dated 19.12.2002.

For Appellant : Mr.G.Poonkunran
For Respondents : Mr.T.Dhanyakumar

J U D G M E N T

This second appeal is directed against the judgment and decree dated 29.04.2003 passed in A.S.No.14 of 2003 on the file of the Principal District Court, Vellore confirming the judgment and decree dated 19.12.2002 passed in O.S.No.237 of 2000 on the

file of the Subordinate Court, Gudiyatham.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for specific performance and permanent injunction.

4. The case of the plaintiff in brief is that the suit property belonged to one K.M. Kamaludeen and he entered into a sale agreement dated 05.11.1995 with him in respect of the suit property for a sum of Rs.90,000/- and the plaintiff agreed to purchase the suit property for the above said sum and accordingly on the date of the sale agreement itself, the plaintiff had paid the entire sale price and acknowledged by K.M.Kamaludeen and as per the terms of the sale agreement, K.M.Kamaludeen is to convey the suit property in favour of the plaintiff by way of a registered sale deed as and when the plaintiff calls upon him to do so and no time limit is fixed in the sale agreement for completing the sale transaction. K.M.Kamaludeen died intestate on 18.01.1996 leaving the defendants as his legal heirs and accordingly the defendants are liable to execute the sale deed in favour of the plaintiff, in respect of the suit property, as per the terms of the sale agreement dated 05.11.1995 and however, the defendants, despite the readiness and willingness on the part of the plaintiff to complete the sale transaction, did not come forward to execute the sale deed and hence the plaintiff issued a legal notice dated 21.06.2000 to the defendants and even thereafter, as the defendants did not come forward to perform their part of the contract, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and it is true that K.M.Kamaludeen is the owner of the suit property, the same being his self acquired property and it is false to state that K.M.Kamaludeen had entered into the sale agreement as put forth in the plaint with the plaintiff for a sum of Rs.90,000/- and it is false to state that K.M.Kamaludeen received the entire sale transaction from the plaintiff and it is false to state that the plaintiff has performed his part of the contract and the defendants as the legal heirs of K.M.Kamaludeen are liable to execute the sale deed in respect of the suit property in favour of the plaintiff as claimed. K.M.Kamaludeen had never talked about the alleged sale agreement with the plaintiff during his life time and the plaintiff had also never approached the defendants at any point of time for executing the sale deed prior to the issuance of the legal notice and the sale agreement projected by the plaintiff is a forged document and the suit is barred by limitation and there is no cause of action for the suit and the defendants sent

a reply containing true facts to the legal notice to the plaintiff on 30.06.2000 and hence the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws. 1 and 2 were examined. Exs. A1 to A7 were marked. On the side of the defendants', D.W. 1 was examined. Exs. B1 and B2 were marked.

7. 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 plaintiff's suit. Impugning 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.

"1. When the Court below having considered the undisputed signatures of Kamaludeen (whose legal representatives are the respondents herein) in Ex. A1 and which has been attested by P.W. 2 who has given evidence to prove the execution, whether the court below is right in embarking upon various surmises and assumptions regarding the date of stamp papers, the person on whom it was purchased, additional signatures on Revenue stamp by Kamaludeen, etc., and coming to the conclusion that Ex. A.1 cannot be said to have been executed by Kamaludeen?

2. When the document reads that the time is not the essence of the contract and when the appellant has explained for the delay in getting the sale deed, especially when he has paid the entire amount of consideration, whether the Court below is right in commenting upon the delay and hence the appellant is not entitled to the decree?

3. Whether the reasons and conclusion arrived at by the Courts below are only on the basis of the conjunctures that because there are many transactions between them, it is likely that the appellant would have got the signatures in some blank papers and used the same for the purpose of creating Ex. A.1?

4. Whether the appellant is not entitled to a decree for specific performance of the agreement in Ex. A.1 is sustainable in law in the fact of oral and documentary evidence?

9.It is not in dispute that the suit property belonged to K.M.Kamaludeen. It is also not in dispute that the defendants are the legal heirs of the deceased K.M.Kamaludeen. Now, according to the plaintiff, K.M.Kamaludeen had entered into a sale agreement with him in respect of the suit property on 05.11.1995, agreeing to sell the same to the plaintiff for a sum of Rs.90,000/- and it is the further case of the plaintiff that he had paid the entire sale consideration on the date of the sale agreement itself. Further, according to the plaintiff, K.M.Kamaludeen is to execute the sale deed in favour of the plaintiff as and when directed by the plaintiff and no time limit is fixed in the sale agreement for completing the sale transaction and as K.M.Kamaludeen had died intestate leaving the defendants to succeed to the suit property and as the defendants failed to execute the sale deed in favour of the plaintiff despite several requests and the issuance of the legal notice, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

10.Per contra, the defendants have disputed the sale agreement projected by the plaintiff as a forged document and according to them there has been no sale agreement entered into between the deceased K.M.Kamaludeen and the plaintiff in respect of the suit property and the plaintiff had never approached them at any point of time to complete the sale transaction, prior to the issuance of the legal notice and hence the suit laid by the plaintiff is liable to be dismissed.

11.In the light of the defence version, as rightly argued, it is for the plaintiff to establish that K.M.Kamaludeen had entered into the sale agreement with him in respect of the suit property as claimed in the plaint. The sale agreement has come to be marked as Ex.A1. To establish the genuineness of the same, the plaintiff has examined one of the attestors to the document Ex.A1 as P.W.2. According to P.W.2, K.M.Kamaludeen received a sum of Rs.90,000/- and executed Ex.A1 and he had attested the said document. However, during the course of the cross examination, he would state that he is not aware to who had written the sale agreement and who is the other attesor to the same. He would further state that he had only put his signature and does not know whether K.M.Kamaludeen's son-in-law Akbar had signed the same and further, according to him, the plaintiff used to come to his shop for drinking tea and thereby he had acquaintance with the plaintiff. As rightly determined by the Courts below, considering the prevaricative and unreliable evidence of P.W.2, the Courts below had rightly not placed reliance upon his evidence to accept the plaintiff's case as such for upholding that K.M.Kamaludeen had really entered into the sale agreement with the plaintiff in respect of the suit property as projected in the plaint. Despite the above said

evidence of P.W.2, the plaintiff has not chosen to examine the other attester nor the scribe of the document to establish the genuineness of the same. Further, as seen from the intrinsic evidence of the sale agreement marked as Ex.A1, it is found that it could not be a genuine document. As rightly determined by the Courts below, the sale agreement has come to be engrossed on a five rupee stamp paper which had been purchased on 08.03.1991 in the name of Kamal Basha and when according to the plaintiff, the sale agreement is dated 05.11.1995, it is very strange to note that the same had come to be engrossed on a stamp paper dated 08.03.1991. The plaintiff has not offered proper explanation with reference to the same. Further, the other sheet attached to the sale agreement is found to be a plain sheet in which the signature of K.M.Kamaludeen is found to have been obtained on a revenue stamp and another signature below the revenue stamp. This also creates a suspicion as to whether at all the agreement would have been executed by K.M.Kamaludeen as claimed by the plaintiff for the sale of the suit property. It is noted by the Courts below that inasmuch as the plaintiff had money transactions with K.M.Kamaludeen and accordingly had obtained his signatures in the documents at the time of lending the money, probably the plaintiff would have had an advantage of the knowledge of the signatures of K.M.Kamaludeen and thereby created the sale agreement by forging the signatures of K.M.Kamaludeen as regards the same. In this connection, the plaintiff examined as P.W.1 had admitted clearly that he had money transactions with K.M.Kamaludeen for several years and further he used to advance money on the basis of the promissory notes. It is further admitted by him that on 05.11.1995 K.M.Kamaludeen had obtained money from him as debt for family purpose and business activities and also would state that he obtained money from him for acquiring property. Accordingly, it is found by the Courts below, the plaintiff had obtained the signature on the revenue stamp paper and made use of the same as a sale agreement to suit his case.

12.If really K.M.Kamaludeen had entered into a sale agreement with the plaintiff in respect of the suit property on 05.11.1995 and the plaintiff had paid the entire sale consideration on the date of the sale agreement, nothing prevented the plaintiff from acquiring the sale deed from K.M.Kamaludeen immediately with reference to the same. It has not been explained by the plaintiff as to he should wait even thereafter for getting the sale deed from him. That apart, after the demise of K.M.Kamaludeen, the plaintiff had not approached the defendants immediately to secure the sale deed and on the other hand, nearly five years after the demise of K.M.Kamaludeen, the plaintiff had chosen to issue the legal notice marked as Ex.A4 on 21.06.2000. This would only to go to show that inasmuch as there had been no sale agreement as such between the plaintiff and K.M.Kamaludeen as claimed in the

plaint, the plaintiff had not endeavored to obtain the sale deed immediately either from K.M.Kamaludeen or the defendants as the case may be, despite his plea that he had paid the entire sale consideration on the date of the sale agreement. No doubt, time may not be the essence of the agreement in respect of the immovable property, but when according to the plaintiff he has fully performed his part of the contract, in such view of the matter, it is for the plaintiff to take immediate steps thereafter to secure the sale deed from the owner of the property. The plaintiff having not so done, it is seen that his case is found to be suffering from serious suspicions and laches and in such view of the matter, it is seen that the Courts below had rightly negatived the suit laid by the plaintiff. No acceptable and valid reason has been projected to interfere with the concurrent findings of the Courts below in dismissing the plaintiff's suit.

13.In the light of the above said reasons, the Courts below have properly appreciated the evidence, both oral and documentary, in the right perceptive and giving proper reasonings and arriving at correct conclusions, derived the relief of specific performance and the other reliefs sought for by the plaintiff and accordingly the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

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

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

mfa

To

1.The Principal District Judge, Vellore.

2.The Subordinate Judge of Gudiyatham.

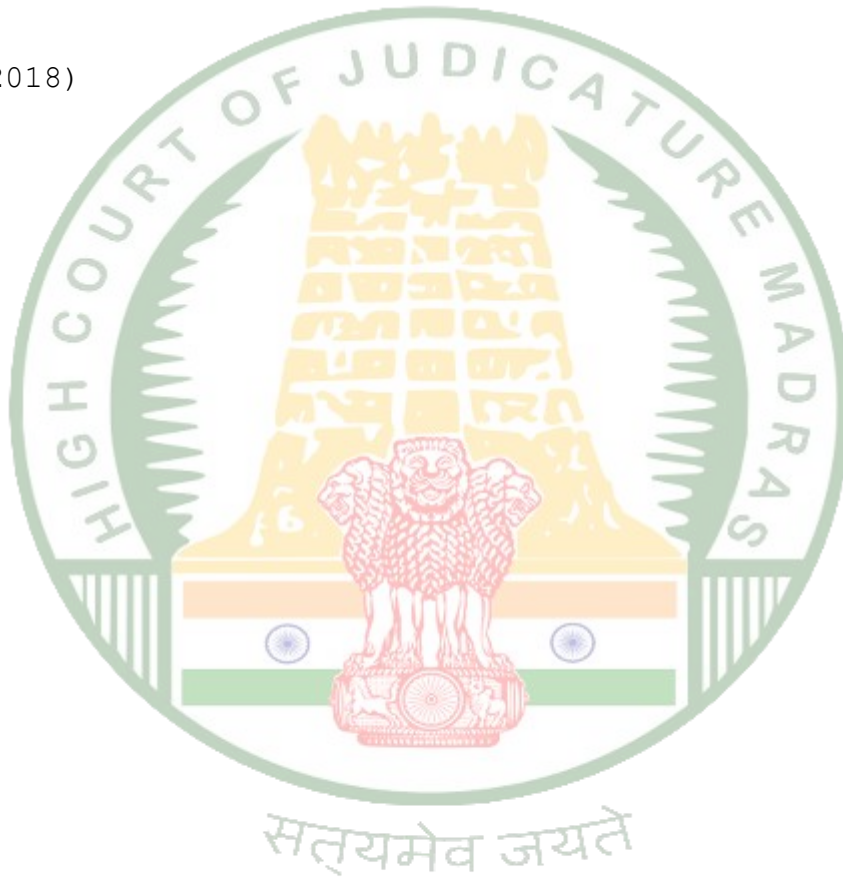
WEB COPY

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

+1 CC to Mr.T.Dhanyakumar, advocate sr 17924

S.A.No.2196 of 2003

GP (CO)
SP (27/04/2018)



WEB COPY