

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 22.08.2019]
[JUDGMENT PRONOUNCED ON : 04.12.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.778 and 779 of 1997

1. Lakshmi Ammal
2. Ananthanarayanan
3. Alamelu (Died)
4. R.Krishnamoorthy
5. K.Kannan
6. K.Venkatraman

[Appellants 4 to 6 brought on record as LRs of the deceased third appellant viz., Alamelu vide order of Court dated 24.06.2019 made in C.M.P.Nos.13074 and 13078 of 2019 in S.A.Nos.778 and 779 of 1997)

...Appellants/Respondents 1 to 3/Plaintiffs 2 to 4
in both S.As.

... Vs ...

1. Thangasubramanian (Deceased)
2. Poongavanam (Deceased)
3. Karuppu Udayar (Deceased)
4. S.Banumathi
5. T.S.Manikandan
6. T.S.Suresh
7. T.S.Latchumanan

[RR-4 to 7 brought on record as L.R's of the deceased R-1 vide order of Court dated 23.02.2018 made in C.M.P.Nos.292, 295 and 298 of 2017 in S.A.No.778 of 1997]

8. N.Vadiveiraja Udayar
9. N.Karthikeyan Udayar

[RR-8 & 9 brought on record as L.R's of the deceased R-2 & R-3 vide order of Court dated 23.02.2018 made in C.M.P.Nos.292, 295 and 298 of 2017 in S.A.No.778 of 1997].

... Respondents/Appellants/Defendants 5 to 7
in S.A.No.778/1997

1. Arumugha Padayachi ..1st Respondent/Appellant/1st Defendant
2. Minor Selvakumar (Deceased)
3. Minor Venkatesan
4. Minor Thiruvengadam
5. Savithri

[R-5 brought on record as L.R. of the deceased R.2 vide order of Court dated 21.10.2016 made in C.M.P.Nos.1065 to 1067 of 2007 in S.A.No.779/1997]

... Respondents 2 to 5/Respondents 4 to 6/
Defendants 2,3 & 4 in S.A.No.779/1997

Prayer in S.A.No.778/1997.: Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.09.1996 passed by the learned Subordinate Judge, Vridhachalam, in A.S.No.70 of 1992, reversing the decree and order of the learned District Munsif, Vridhachalam, dated 28.04.1992 in O.S.No.569 of 1984.

Prayer in S.A.No.779/1997.: Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.09.1996 passed by the learned Subordinate Judge, Vridhachalam, in A.S.No.45 of 1992, reversing the decree and order of the learned District Munsif, Vridhachalam, dated 28.04.1992 in O.S.No.569 of 1984.

In both S.As.

For Appellants : Mr.S.Parthasarathy
for M/s.Sarvabhauman Associates

For R-1 : Mr.V.Raghavachari

COMMON JUDGMENT

The legal representatives of the original plaintiffs are the appellants herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

The original plaintiff namely, Krishnamurthy Iyer has filed the suit in O.S.No.569 of 1984, seeking the relief of specific performance of Ex.A.1-Suit Sale Agreement entered into between the parties viz., the father of the first defendant along with him on 19.12.1983. The suit was decreed and hence, the defendants 1 to 4 owners of the land have preferred an appeal in

A.S.No.45 of 1992 while the subsequent purchasers [defendants 5 to 7] have preferred the appeal in A.S.No.70 of 1992. By a common judgment dated 20.09.1996, both the first appeals are allowed and hence, the above S.A.Nos.778 and 779 of 1997 were filed.

3. The above second appeals were admitted by this Court on 27.05.1997 by framing the following substantial questions of law:-

"(i) Whether in Law the Lower Appellate Court is correct in reversing the well considered discretion exercised by the Trial Court in decreeing the suit for specific performance only on the ground that the price fixed is inadequate and therefore the bargain is unconscionable?

(ii) Whether the Lower Appellate Court is correct in law in non suiting the plaintiff only on the ground that the sale consideration is inadequate especially when there is no plea that the first plaintiff stood in a fiduciary position to the first defendant or the contract had become vitiated by fraud? (Vide 1965 Vol.78, Law Weekly page 136 (Division Bench))."

4. The suit in O.S.No.569 of 1984 was filed by the original plaintiff Krishnamurthy Iyer seeking the relief of specific performance of Ex.A.1-Suit Sale Agreement, whereby, the father of the first defendant namely, Thiruvengadam Padayachi has agreed to sell the suit property for a sum of Rs.1,000/- and on the very same day, he has received a sum of Rs.200/- as an advance and balance of consideration of Rs.800/- has to be paid. The father of the first defendant viz., Thiruvengadam Padayachi died and hence, the first defendant and the minor children of the first defendant are arrayed as party defendants in the suit. Pending the suit, defendants 5, 6 and 7 were impleaded, in view of the fact that the lands have been sold to them.

5. The first defendant, in his written statement, disputing the Suit Sale Agreement inter alia contended that the signature found in the Suit Sale Agreement is forged and the original plaintiff being the document writer had created and fabricated the Suit Sale Agreement and since the father of the first defendant viz., Thiruvengadam Padayachi had filed money suit against him, the original plaintiff has fabricated the document and filed the same. In the additional written statement, the first defendant had stated that a sum of Rs.1,000/- fixed towards sale consideration is too low, since 31 years before viz., in the year 1952, the very same land was sold by the very

same plaintiff for the very same amount of Rs.1,000/- to the father of the first defendant Thiruvengadam Padayachi and hence, the sale consideration is totally inadequate.

6. Before the Trial Court, on behalf of the plaintiffs, witnesses P.Ws.1 to 6 were examined and documents Exs.A.1 to 8 were marked and on behalf of the defendants, witnesses D.Ws.1 to 4 were examined and documents Exs.D.1 to D.8 were marked.

7. The Trial Court, after considering both oral and documentary evidence, has come to the conclusion that in the year 1952, Ex.A.1 and Ex.A.4 were executed by the plaintiffs as sham and nominal and it is the Benami in favour of the Thiruvengada Padayachi. The Trial Court has further held that since the scribe of the document Ex.A.1-Suit Sale Agreement is dead, they have not examined him and the Suit Sale Agreement is true, valid and binding upon the first defendant being the son of the land owner, who entered into an agreement and accordingly, granted the relief of specific performance of Ex.A.1-Suit Sale Agreement.

8. On appeal, the Lower Appellate Court has appreciated the evidence and held that even in the year 1952, the very same plaintiff has sold the property to the father of the first defendant namely, Thiruvengada Padayachi, the land owner for a sum of Rs.1,000/- and hence, the very same amount of Rs.1,000/- fixed as sale consideration is totally inadequate and also causing doubt upon the colour of the agreement and accordingly, allowed both the First Appeals and dismissed the Original Suits.

9. Mr. S. Parthasarathy, learned counsel for the appellants/plaintiffs would contend that mere inadequacy of the sale consideration is not a ground for refusing the specific performance, unless the purchaser stands in a fiduciary position to the vendor or fraud entered into contract. It is further contended that as per the proviso to Explanation 2 of Section 20 of the Specific Relief Act, the same is not a ground to reject the relief of specific performance.

10. Learned counsel appearing for the first respondent made submissions in support of the judgment of the Lower Appellate Court.

11. It is not in dispute that the suit property was originally belonged to the original plaintiff Krishnamurthy Iyer and he sold the same to the father of the first defendant viz., Thiruvengada Padayachi under Ex.A.1 = Ex.B.1 for a sale consideration of Rs.1,000/- in the year 1952. It is the further case of the defendants that the Suit Sale Agreement was entered upon in the year 1983 and the Lower Appellate Court has observed

that even after 31 years of passage of time, whether the value of the suit property could be the very same Rs.1,000/- as projected by the original plaintiff, which is found to be more suspicious and apprehended that a fraud has been entered into in the contract. On a perusal of the evidence of P.W.1, there is nothing on record to show as to why and as to how Rs.1,000/- has been fixed as a sale consideration which is the sale consideration even in the year 1952 as admitted by the original plaintiff which also causes some serious doubt about coming into existence the document Ex.A.1-Suit Sale Agreement.

12. In view of the specific clause contained in the document Ex.A.1-Suit Sale Agreement, it remains to be stated that Explanation I appended to Section 20 of the Specific Relief Act, 1963, clearly stipulates that merely inadequacy of consideration, or the mere fact that the contract is onerous to the defendants or improvident in its nature would not constitute an unfair advantage within the meaning of Section 20(2) of the Specific Relief Act, 1963.

13. In the decision reported in (2004) 6 SCC 649 [P.D'Souza Vs. Shondrilo Naidu], the Hon'ble Supreme Court has held that "clarifying Nirmala Anand case, reported in (2002) 5 SCC 481, no law in absolute terms has been laid down by the Supreme Court that in all such cases, the Court should either refuse to grant specific performance or direct the plaintiff to pay a higher sum."

14. On the basis of the ratio laid down by the Hon'ble Supreme Court and in view of the reasons extracted above, from the recitals in the document, this Court finds that on the facts and circumstances of the case, it is not a fit case for interference of the judgments passed by the Lower Appellate Court. In the absence of anything on record either oral or documentary, as to how Rs.1,000/-, which was the sale consideration of the year 1951, was fixed in the year 1983, the Lower Appellate Court has rightly come to the conclusion. Furthermore, even as per the sale itself in favour of the defendants 5, 6 and 7 which was not disputed by the original plaintiff goes to show that the sale consideration is nothing but lenient and meager amount and hence, on the facts and circumstances of the case and in the absence of any explanation as to the fixation of the sale consideration, this Court is of the considered view that both the substantial questions of law does not arise for consideration in this second appeal on the above factual matrix. The judgments and decrees passed by the Lower Appellate Court do not suffer from any irregularity or illegality warranting interference at this appellate stage. Accordingly, both the Second Appeals are devoid of merits and the same are liable to be dismissed.

15. In the result,

Both the Second Appeals are dismissed and the judgments and decrees dated 20.09.1996 passed by the learned Subordinate Judge, Vridhachalam, in A.S.Nos.70 and 45 of 1992 respectively, reversing the judgments and decrees dated 28.04.1992 passed by the learned District Munsif, Vridhachalam, in O.S.No.569 of 1984, are confirmed. However, there shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

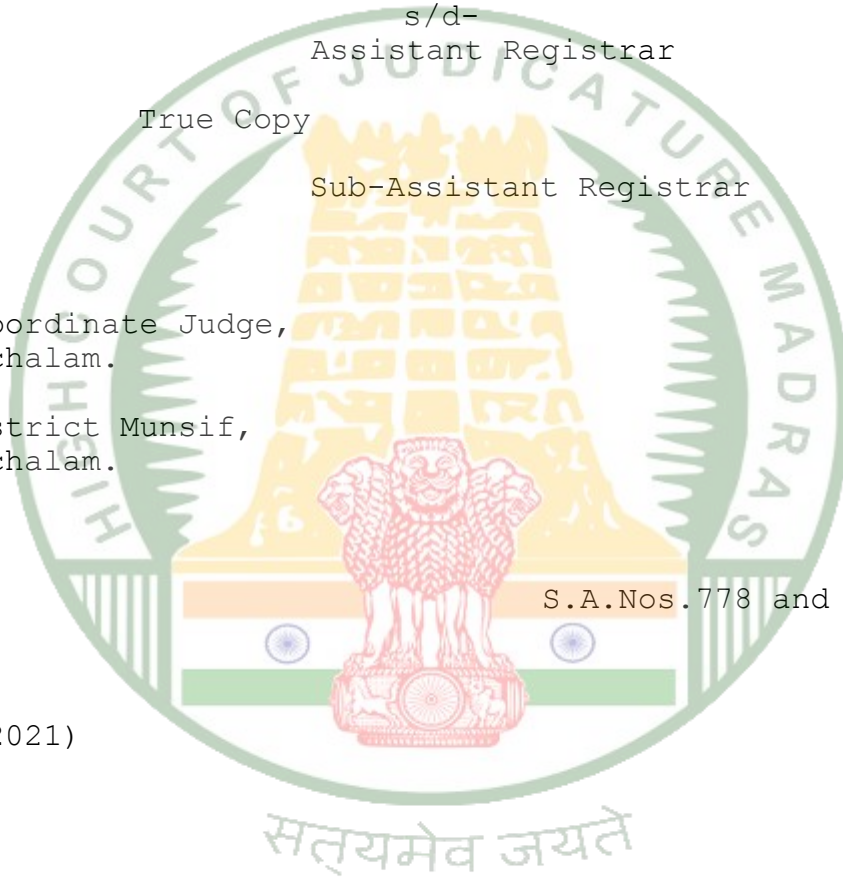
Jr1

To

1. The Subordinate Judge,
Vridhachalam.
2. The District Munsif,
Vridhachalam.

S.A.Nos.778 and 779 of 1997

NRL (CO)
SP(17/02/2021)



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