IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2019
PRONOUNCED ON : 13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.804 of 2012
and
M.P.No.1 of 2012

S.Ravindran ...Appellant/Plaintiff

Vs.

S.Shanmugam ...Respondent/Defendant

Prayer: First Appeal filed under Order 41 Rule 1 & 2 of CPC r/w Under Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.695 of 2007 on the file of the Additional District Court cum Fast Track Court No.4, Tiruppur, dated 30.07.2010.

For Appellant : Mr.B.Gopalakrishnan for M/s.M.Parthasarathy

For Respondents : Mr.Govi Ganesan

JUDGMENT

Aggrieved over the judgment and decree dated 30.07.2010 passed in O.S.No.695 of 2007 on the file of the Additional District Judge, Fast Track Court No.4, Tiruppur, the plaintiff has preferred the first appeal.

2. Suit for specific performance and permanent injunction.

3. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

4. The case of the plaintiff, in brief, is that the plaintiff and the defendant entered into the sale agreement dated 11.06.2004 in respect of the suit property for a sale consideration of Rs.21,50,000/- and on the date of the sale agreement, the plaintiff paid a sum of Rs.11,00,000/- towards the sale price as advance and the suit property had been allotted to the defendant as per the final decree proceedings in I.A.No. 893 of 1992 in O.S.No.262 of 1988 on the file of the subordinate court, Tirupur and the appeal in A.S.No.139 of 2001 against the said proceeding is pending on the file of the

District Court, Coimbatore. Pending the abovesaid first appeal, the suit sale agreement had been entered into between the plaintiff and the defendant. As per the terms of the sale agreement, the defendant has to execute the sale deed in favour of the plaintiff or his nominee within 90 days from the date of the disposal of the abovesaid first appeal in A.S.No.139 of 2001 if the decree of the trial court are confirmed in the said appeal and the possession taken by the defendant by levying the execution petition in seeking the separate possession and the sale agreement further stipulates that in the event of the defendant loosing the first appeal, he has to return back the advance amount with interest at the rate of 24% per annum from the date of the sale agreement. The first appeal in A.S.No.139 of 2001 has been disposed of on 31.08.2005 in favour of the defendant. On coming to know of the same, the plaintiff called upon the defendant to execute the sale deed in his favour and put him in the possession of the property by receiving the balance sale price. However, the defendant had been postponing the same and hence the plaintiff issued a legal notice on 17.03.2006 calling upon the defendant to discharge his obligation under the sale agreement. Despite the receipt of the notice, the defendant did not care to respond to the same nor comply with the demands set out by the plaintiff in the legal notice. The plaintiff came to know that the defendant had not taken steps to take the possession of the suit property by levying Execution Proceeding and the plaintiff has always been ready and willing to perform his part of the contract and having the means to pay the balance sale consideration and only due to the delay tactics adopted by the defendant, the sale agreement could not be enforced and the plaintiff further understood that the defendant is making attempts to sell the suit property to the third parties without taking possession and hence, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that he had not entered into any sale agreement with the plaintiff in respect of the suit property on 11.06.2004 for Rs.21,50,000/- as alleged in the plaint and not received Rs.11,00,000/- from the plaintiff as advance on the date of the sale agreement and according to the defendant, the sale agreement projected by the plaintiff is a fabricated record and not received any amount from the plaintiff by way of the sale agreement. The defendant had also not agreed to hand over the suit property to the plaintiff within 90 days after the disposal of the first appeal in A.S.No.139 of 2001. On the receipt of the legal notice from the plaintiff, the defendant approached the plaintiff in person and the plaintiff had assured that no action would be initiated based on the same. On that account, the defendant had not sent any reply to the defendant and further

denied that no steps had been taken to take delivery of the suit property after the disposal of the first appeal and on the other hand, the defendant had taken steps to recover the suit property by filing an Execution Proceeding and the same is pending. According to the defendant, the plaintiff was introduced to him by one Dasamuthu, who was running a wine shop and the same was run adjacent to the suit property and in the suit property one Narayasamy was running a wine business. On account of the business rivalry between Dasamuthu and Narayanasamy in the wine business, Dasamuthu had requested the defendant to vacate Narayanasamy from the suit property and the defendant had agreed to the same and it is only Dasamuthu who had spent the amount with reference to the steps taken by the defendant to vacate Narayanasamy from the suit property and the defendant also owe some money to Dasamuthu and as the security to the abovesaid amount, Dasamuthu had obtained blank signed stamp papers and blank signed promissory notes from the defendant and the defendant had been always ready to pay the amount due to Dasamuthu, on the other hand, Dasamuthu had created the sale agreement in favour of the plaintiff, his henchman, and laid the suit and the defendant has ample materials to sustain his abovesaid averments and therefore, according to the defendant, the plaintiff is not entitled to claim any reliefs based on the concocted sale agreement and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

1. Whether the plaintiff and the defendant had entered into the sale agreement in respect of the suit property on 11.06.2004 and the defendant had received Rs.11,00,000/- from the plaintiff on the date of the sale agreement?
2. Whether the plaintiff is not entitled to claim specific performance as put forth in the plaint?
3. Whether the plaintiff is entitled to seek the relief of permanent injunction as claimed in the plaint?

7. In support of the plaintiff’s case, P.Ws.1 and 2 were examined and Exs.A1 to A11 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B3 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff’s suit. Challenging the same, the first appeal has been preferred by the plaintiff.

9. The following points arise for determination in the first appeal.

1. Whether the sale agreement dated 11.06.2004 is true, valid and binding on the defendant?
2. Whether the plaintiff is entitled to seek the relief of specific performance in respect of the sale agreement dated 11.06.2004 as claimed in the plaint?
3. Whether the plaintiff is entitled to claim the relief of permanent injunction as prayed for?
4. To what relief the plaintiff / appellant is entitled to?
5. To what relief the defendant is entitled to?

Point Nos.1 to 3

10. The plaintiff has come forward with the suit seeking the relief of specific performance against the defendant based on the sale agreement dated 11.06.2004 marked as Ex.A1. According to the plaintiff, the defendant agreed to sell the suit property in his favour for Rs.21,50,000/- and received a sum of Rs.11,00,000/- on the date of the sale agreement and agreed to hand over the suit property within 90 days from the date of disposal of the first appeal in A.S.No.139 of 2001 and despite the disposal of the first appeal on 31.08.2005, according to the plaintiff, the defendant had not endeavoured to secure the possession of the suit property and hand over the same to the plaintiff and complete the sale transaction and even after the issuance of the legal notice, as the defendant remained evasive and delayed the execution, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs.

11. Per contra, according to the defendant, he had not executed the sale agreement in favour of the plaintiff as alleged in the plaint and not received any sum as advance as put forth in the plaint and according to the defendant, the suit sale agreement is a concocted and a fabricated record and it is put forth by the defendant that one Dasamuthu was assisting him in vacating Narayanasamy from the suit property and the defendant also owe certain amounts to Dasamuthu and as a security for the abovesaid sums, according to the defendant, Dasamuthu had obtained blank signed stamp papers and promissory notes and subsequently concocted the sale agreement based on the same in the name of the plaintiff, his henchman, and come forward with the false suit and hence according to the defendant, no relief could be granted in favour of the plaintiff based on the sale agreement projected in the matter.

12. In the light of the rival pleas put forth by the respective parties, as rightly determined by the trial court,

particularly, when the defendant has, in toto, disputed the execution of the sale agreement projected by the plaintiff and styled it as a fabricated record, the burden is heavy upon the plaintiff to establish the truth and validity of the sale agreement Ex.A1. No doubt, the defendant has admitted his signatures found in the sale agreement Ex.A1. However, according to the defendant, Dasamuthu, who has been examined as P.W.2, has obtained the signed blank stamp papers and blank promissory notes from him in respect of the amount due from the defendant and making use of the same, P.W.2 had created the sale agreement in the name of the plaintiff and come forward with the false suit. In the light of the abovesaid defence set out by the defendant, when it is found that the plaintiff and Dasamuthu are associates, merely from the admission of the defendant that his signatures are available in the Ex.A1 sale agreement, it cannot be held that the defendant had signed the sale agreement knowing the contents thereof as put forth by the plaintiff. As rightly determined by the trial court, mere admission of the signatures would not amount to the admission of the recitals contained in the document and unless and until the plaintiff establishes that the defendant had signed the document knowing the contents thereof with full knowledge, it cannot be held that the defendant has validly executed the sale agreement in question.

13. Further as held by the trial court, when the defendant has taken the plea that he had furnished the blank stamp papers and the promissory notes to Dasamuthu as the security for the amount due to him as alleged in the written statement and in such view of the matter, the abovesaid defence version has to be established only by the defendant. Now, according to the defendant, as also pleaded in the written statement that he has proof to establish the defence version put forth by him, accordingly, during the course of evidence, the defendant has come forward with the documents marked as Exs.B1 and B2 contending that the abovesaid documents are the xerox copies of the signed blank stamp papers and signed blank promissory notes and the same had been xeroxed by him without the knowledge of Dasamuthu before handing over the signed blank stamp papers and blank promissory notes to P.W.2. The plaintiff would put forth the contention that inasmuch as the defendant had not specifically disclosed about Exs.B1 and B2 in the written statement and had projected the same for the first time during the course of evidence, the abovesaid documents should not be relied upon. As rightly held and determined by the trial court, considering the defence version put forth by the defendant that he had taken the xerox copies of the documents containing his signatures without the knowledge of P.W.2 at the time of entrusting the same to P.W.2, on a comparison of the Xerox copies projected by the defendant, marked as Ex.B1, when it is found that the three sheets comprised in Ex.B1, in all aspects

correspond and found to be similar with the first three sheets of Ex.A1 sale agreement, in such view of the matter, the argument of the plaintiff that Ex.B1 had been prepared by concealing the typed portion of Ex.A1, as such cannot be countenanced as held by the trial court. On a perusal of Ex.A1, the same bears the signature and LTI of the defendant as well as the signature of the plaintiff. On the other hand, when as per the case projected by the defendant, while entrusting the blank signed stamp papers to P.W.2, he had only entrusted the papers containing his signature and LTI. Accordingly, it is seen that Ex.B1 does not contain the signature of the plaintiff. Therefore, to say that Ex.B1 had been prepared by the defendant by concealing the typed portion of Ex.A1 cannot be believed as such and rightly the same had been rejected by the trial court. That apart, on a perusal of Ex.B2 projected by the defendant, when it is found that particularly when the case had been projected by the defendant that P.W.2 had also secured the blank signed promissory notes from him and when Ex.B2 series not only contained the signatures of the defendant, but also the signatures of P.W.2 as well as the signature of another person, the abovesaid documents probabilise the version of the defendant that only as per the directions of P.W.2, for the amount due to be given to P.W.2 by the defendant, it is found that P.W.2 had secured the blank signed stamp papers and blank signed promissory notes from the defendant as security and thereafter had made use of the same in the name of the plaintiff and come forward with the suit for specific performance and in such view of the matter, the reasonings of the trial court for accepting Exs.B1 and B2 for sustaining the defence version do not warrant any interference. As regards the contention put forth by the plaintiff that Exs. B1 and B2 had not been disclosed in the written statement and for the first time projected during the course of evidence, when the plaintiff has marked Exs.B1 and B2 after obtaining necessary permission from the court concerned and when the court had also ordered the reception of the said documents as evidence and no further challenge has been made to the same by the plaintiff as per law, in such view of the matter, merely because Exs.B1 and B2 had not been, in specific, disclosed in the written statement, the same cannot be held to be the created documents as sought to be projected by the plaintiff. As above pointed out, the defendant has clearly put forth in the written statement that he has ample proof in his custody to sustain his defence version.

14. The argument had also been put forth that the case of the defendant that P.W.2, Dasamuthu had spent for him for vacating Narayanasamy from the suit property cannot be believed as it is put forth that Narayanasamy had vacated the suit property during 1999 itself and therefore, according to the plaintiff, the defence version should be rejected. However,

according to the defendant, he owed money to P.W.2, Dasamuthu, not only on account of the expenses incurred for vacating Narayanasamy from the suit property and also further pleaded that he owed other amounts to P.W.2, Dasamuthu. In such view of the matter, when according to the defendant only for the security for the said amount, P.W.2, Dasamuthu had obtained the blank signed stamp papers and Promissory notes and when the defendant has probabilised his abovesaid case by projecting Exs.B1 and B2, merely because Narayasamy had vacated the suit property during 1999 itself, that alone, cannot be projected for branding the defence version as a false one. As rightly held by the trial court when it is for the plaintiff to establish the truth and validity of the sale agreement projected by him, the plaintiff cannot be allowed to pick the holes in the defence version and thereby endeavour to sustain his case. The plaintiff has to stand or fall on the strength of his own case and cannot be allowed to rely upon the loopholes in the defence version and thereby attempt to succeed in his case.

15. The trial court has also given various reasons for not relying upon the sale agreement Ex.A1. Now according to the plaintiff, the defendant had agreed to sell the suit property for Rs.21,50,000/-. On a perusal of the description of the suit property, it is seen to be measuring north-south 10 ½ feet and east-west 90 feet consisting of a tiled house measuring about 850 sq. ft. According to the plaintiff, the value of the suit property had been determined based on the cent value and considering the extent of the suit property, as rightly held by the trial court, one could understand the determination of the value of the suit property if it had been ascertained based on the sq. ft. and on the other hand, when the suit property measures the abovesaid extent, to say that, the value of the suit property had been based on the cent basis, as such cannot be believed and accepted, particularly, considering the total extent of the suit property and the abovesaid reasons had been rightly weighed by the trial court for not accepting the truth and validity of the sale agreement.

16. The second reasoning given by the trial court for not believing Ex.A1 sale agreement is that Ex.A1 is found to be engrossed in four sheets, of them, three sheets are found to be engrossed on stamp papers and the last sheet is engrossed on the green paper. According to the trial court, it is not necessary for engrossing the sale agreement on three stamp papers. The sale agreements are usually engrossed in only one stamp paper and the remaining contents are filled in the green papers. On the other hand, finding the preparation of the suit sale agreement in three stamp papers, considering it odd, on that basis also, the trial court rightly did not place reliance upon Ex.A1 sale Agreement.

17. The third reason given by trial court for not accepting the plaintiff’s case is that, Ex.A1 sale agreement is found to be engrossed in three stamp papers bearing serial Nos.8798, 8797 and 8801, all purchased on the same date i.e. 11.06.2004 in the name of the defendant. According to the defendant, P.W.2 had secured his signatures in the blank stamp papers as security. According to the trial court, if really the sale agreement had been prepared in the normal course, the stamp papers used for the same would be serially numbered and on the other hand, according to the trial court, inasmuch as only the stamp papers bearing the abovesaid serial numbers are used and when the plaintiff has not furnished any explanation for not using the stamp papers purchased on the same date bearing serial Nos. 8799 and 8800 and on the other hand, the serial Nos of the stamp papers used for Ex.A1 bearing serial numbers 8797, 8798 and 8801, according to the trial court, probably the less numbers of stamp papers had been utilized to adjust the space of the contents of the sale agreement and on that reasoning also disbelieved the plaintiff's case. However, in my considered opinion, the abovesaid reasoning of the trial court for disbelieving the sale agreement, as such, cannot be accepted.

18. The next reason furnished by the trial court for disbelieving Ex.A1 sale agreement is that when the parties had endeavoured to execute the sale agreement for a fabulous sum of Rs.21,50,000/- and when the plaintiff had put forth the case that he had paid a sum of Rs.11,00,000/- as advance on the date of sale agreement, according to the trial court, the parties would have ensured that such a sale agreement had been prepared by an expertise scribe and on the other hand, as Ex.A1 sale agreement is found to have been prepared even without disclosing the name of the scribe who had prepared the same and furthermore, when the plaintiff has failed to establish that he had the capacity to advance Rs.11,00,000/- on the date of the sale agreement and when with reference to the same, the plaintiff has not placed any records worth acceptance to sustain his case and though the plaintiff is found to be running a wine and banyan business and the plaintiff having also admitted that he has not paid the income tax, in such view of the matter, the trial court disbelieved the means and capacity of the plaintiff in paying the huge sum of Rs.11,00,000/- as advance on the date of the sale agreement. If really the plaintiff had paid such an amount as alleged by him, according to the trial court, necessary records pointing to the means and capacity of the plaintiff on the relevant date would have been disclosed and the plaintiff having failed to substantiate his solvency to pay the said amount, on that basis also, the trial court had refused to accept the case projected by the plaintiff.

19. The trial court has held that when the suit property is subjected to litigation, admittedly, to the knowledge of the plaintiff on the date of the sale agreement and when the appeal proceedings in A.S.No.139 of 2001 is pending on the date of the sale agreement and when the plaintiff is uncertain as to how the first appeal would be disposed of, whether in favour of the defendant or in favour of the other contesting party, in such view of the matter, according to the trial court when the title of the suit property is at stake and in litigation at the relevant point of time, no prudent person would have endeavoured to venture into the sale agreement with reference to such a property. That apart, according to the trial court, when the sale agreement stipulates that the plaintiff should take the possession of the suit property within 90 days from the date of the disposal of the appeal, however, when there is a possibility of the parties claiming title to the suit property, taking the matter further by way of an appeal to the higher forum, in such view of the matter, according to the trial court, such recitals incorporated in the sale agreement belies the truth and validity of the sale agreement and according to the trial court, if really, the plaintiff had intended to purchase the suit property belonging to the defendant despite the pendency of the litigation, according to the trial court, the plaintiff should have endeavoured to obtain the sale deed immediately from the defendant and on that basis endeavoured to get himself impleaded as a party to the litigation and further endeavoured to secure the suit property on the basis of his claim of title. On the other hand, the endeavour of the plaintiff to purchase the suit property pending litigation, that too, having knowledge about the same, on that score, the trial court disbelieved the plaintiff’s case with reference to the sale agreement projected by him. As rightly determined by the trial court, when the suit property is under litigation at the relevant point of time, no prudent person would come forward to enter into the sale agreement with reference to the same.

20. The next reason given by the trial court for not accepting Ex.A1 sale agreement is that the recitals in the sale agreement reads as if the suit property is in the possession and enjoyment of the defendant. On the other hand, when it is found that the defendant has to obtain the possession of the suit property only after the disposal of the first appeal, that too, by initiating the execution proceeding, on that basis also, considering the abovesaid recitals found in the sale agreement being not only unacceptable and the same having not been explained by the plaintiff properly, on that score also the trial court has refused to place acceptance upon the sale agreement projected by the plaintiff.

21. The next reason given by the trial court for not accepting the plaintiff’s case is that the sale agreement does not clearly state as to when from the defendant should take the possession of the suit property and receive the balance sale consideration for the purpose of completing the sale transaction and according to the trial court, considering the contradictions with reference to the same as put forth in the sale agreement Ex.A1 and the legal notice Ex.A2, according to the trial court, the abovesaid contradictions had occurred only on account of the creation of the sale agreement on the part of the plaintiff and on that score also disbelieved the plaintiff’s case.

22. It is found that during the course of arguments, the contention has been put forth by the plaintiff that in the event of the court declining the relief of specific performance, the plaintiff should be granted the refund of the advance amount paid by him under the sale agreement. However, rejecting the abovesaid contention, according to the trial court, when the plaintiff has failed to establish the truth and validity of the sale agreement and also the payment of Rs.11,00,000/- as advance on the date of the sale agreement and when, as above pointed out, the plaintiff having failed to establish that the defendant has executed the sale agreement knowing the contents thereof and considering the contradictions between Exs.A1 and A2 and when the defendant has established his defence by way of preponderance of probabilities that the sale agreement had been fabricated at the instance if P.W.2, on the strength of the signed blank stamp papers and the promissory notes entrusted to him as security for the amount due to him on the part of the defendant, on that premise when the sale agreement is beset with various suspicious circumstances, the trial court rightly declined the claim of the plaintiff for the refund of the advance amount as put forth during the course of arguments on the above lines. Inasmuch as the plaintiff has failed to establish the truth and validity of the sale agreement and his entitlement to secure the specific performance, based on the same, consequently the trial court has also declined the relief of permanent injunction prayed for by the plaintiff.

23. The counsel for the defendant contended that various reasonings had been furnished by the trial court for not accepting the truth and validity of the sale agreement Ex.A1 projected by the plaintiff. According to him, when the reasonings furnished by the trial court for disbelieving Ex.A1 are not established to be perverse, illogical or irrational and on the other hand, the reasonings furnished by the trial court with reference to the same are found to be acceptable and reliable and even if the appellate court feels that some of the reasonings given by the trial court for disbelieving Ex.A1 sale agreement are not acceptable, it is put forth that the first

appellate court is not entitled or empowered to substitute its views for deviating from the reasonings of the trial court and according to him such a course is available to the first appellate court only if the reasonings of the trial court are totally unacceptable, perverse and irrational and the abovesaid factors being completely absent in the present case, according to him, the judgment and decree of the trial court do not warrant any interference. The above contention merits acceptance.

24. The plaintiff's counsel during the course of arguments had not put forth that the reasonings and conclusions of the trial court for disbelieving Ex.A1 sale agreement are completely unacceptable or perverse or illogical, on the other hand, when by way of preponderance of probabilities the defendant has established his defence version and in particular when the plaintiff has failed to establish that the defendant had executed the sale agreement with full knowledge of the contents of the same as well as when, as above pointed out, Ex.A1 sale agreement is encircled with various improbabilities and unreliabilities, all put together, it has to be held that the plaintiff has failed to establish the truth and validity of the sale agreement as determined by the trial court.

25. In the light of the abovesaid reasons, concurring with the views of the trial court, I hold that the sale agreement dated 11.06.2004 is not true, valid and binding on the defendant. I therefore hold that the plaintiff is not entitled to obtain the relief of specific performance in respect of the sale agreement dated 11.06.2004 and further hold that the plaintiff is not entitled to obtain the relief of permanent injunction as prayed for. Accordingly, the point numbers 1 to 3 are answered against the plaintiff.

Point Nos. 4 and 5

26. For the reasons aforestated the judgment and decree dated 30.07.2010 passed in O.S.No.695 of 2007 on the file of the Additional District Judge, Fast Track Court No.4, Tiruppur, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

Copy to

1. Additional District Judge, Fast Track Court No.4, Tiruppur.
2. The Section officer, V.R. Section, High Court, Madras

+1cc to Mr.Govi Ganesan, Advocate, S.R.No.94296
+1cc to M/s.M.Parthasarathy, Advocate, S.R.No.94170

A.S.No.804 of 2012

NMI(CO)
CS/29/11/2019