

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :30.04.2019
PRONOUNCED ON: 03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.403 of 2007
and
M.P.No.1 of 2007

Thilagam

... Appellant

Vs.

1. Sivaprakasam

2. S.Pavayee

3. Bakialakshmi

4. A.Jeyaraj

5. Saroja

6. Jeyalakshmi

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 29.09.2005 passed in A.S.No.21 of 1999 on the file of the Subordinate Court, Attur, reversing the judgment and decree dated 16.02.1999 passed in O.S.No.283 of 1996 on the file of the District Munsif, Attur.

For Appellant : Mr.N.Sankaravadivel

For RR1 & R2 : Mr.D.Shivakumaran

RR3 to R6 : No appearance
set exparte
vide order dated 30.04.2019

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J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 29.09.2005 passed in A.S.No.21 of 1999 on the file of the Subordinate Court, Attur, reversing the judgment and decree dated 16.02.1999 passed in O.S.No.283 of

1996 on the file of the District Munsif Court, Attur.

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

3. Suit for specific performance.

4. As per the case of the plaintiff, the first defendant having obtained the suit property by way of an assignment, agreed to convey the suit property in favour of the plaintiff for a sum of Rs.17,000/- and entered into a sale agreement with reference to the same on 09.11.1989, received a sum of Rs.9,000/- on the date of the sale agreement and agreed to receive the balance sale consideration of Rs.8,000/- and the time limit for the purpose of the sale agreement was fixed between 04.03.1990 and 09.11.1991 and the abovesaid time limit has been fixed taking into consideration, as the time limit of 10 years from the date of assignment empowering the first defendant to alienate the suit property expires only on 03.03.1990 and further according to the plaintiff, though he had been always ready and willing to pay the balance sale consideration and obtain the sale deed, for one reason or the other, the first defendant has been postponing the same and later the plaintiff came to understand that the first defendant had sold the suit property in favour of the second defendant in the month of the April 1991 along with the other properties and the first defendant is not entitled to convey the suit property in favour of the second defendant much against the terms of the sale agreement dated 09.11.1989 and therefore the alleged conveyance of the suit property in favour of the second defendant by the first defendant is not valid and as the plaintiff is entitled to enforce the sale agreement dated 09.11.1989, accordingly, it is the case of the plaintiff that the defendants are together liable to execute the sale deed in his favour after receiving the balance sale consideration and accordingly laid the suit.

5. The first defendant put forth the case admitting the execution of the sale agreement in favour of the plaintiff on 09.11.1989 as pleaded in the plaint and according to the first defendant, he had insisted the plaintiff to purchase the other property belonging to him along with the suit property and as the plaintiff has not come forward positively with the abovesaid proposal and on the other hand, as the second defendant had agreed to purchase the suit property as well as the other properties belonging to the first defendant and accordingly bonafidely, the first defendant had conveyed the suit property along with the other properties in favour of the second defendant and therefore the plaintiff's suit is liable to be dismissed.

6. The second defendant resisted the plaintiff's suit contending that the alleged sale agreement dated 09.11.1989 between the plaintiff and the first defendant in respect of the suit property is false and also denied the passing of Rs.9,000/- by the plaintiff to the first defendant on the date of the abovesaid sale agreement and also disputed that the plaintiff and the first defendant had agreed to complete the sale transaction, after receiving the balance consideration within the time limit as fixed in the abovesaid sale agreement and according to the second defendant, the abovesaid sale agreement is a fabricated document created by the plaintiff in collusion with the first defendant and therefore it is not binding upon the second defendant. According to the second defendant, he is a bonafide purchaser for value and without notice and accordingly purchased the suit property along with the other properties from the first defendant by way of a registered sale deed dated 16.04.1991 and prior to the same, an agreement of sale had been entered into between the second defendant and the first defendant on 13.05.1988 and Muchalikka dated 12.07.1991 and 15.05.1991 had also been entered into and therefore the second defendant being a bonafide purchaser and put in the possession and enjoyment of the suit property, accordingly, contended that there is no cause of action for the suit of the plaintiff and the plaintiff had laid the suit in collusion with the first defendant and therefore the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A4 were marked. On the side of the second defendant, D.Ws.1 and 2 were examined. Exs.B1 to B4 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. On appeal by the plaintiff, the first appellate court was pleased to set aside the judgment and decree of the trial court and granted the relief of specific performance in favour of the plaintiff. Impugning the same, present second appeal has been preferred.

9. The second appeal has been admitted on the following substantial questions of law.

1. Whether the judgment of the lower appellate court is sustainable in law, when the plaintiff has not proved readiness and willingness to perform the contract even on the date of filing of the suit by depositing the sale consideration in court on the date of filing of the suit?

2. Whether the equitable relief of specific performance can be granted in favour of a person who was not ready and willing to perform essential terms of the contract and he approaches the court after delay of five years. The plaintiff having admitted the signature of the owner of the property is the signature found in Ex.B1 and in that event, the plaintiff's case itself is false.

3. Whether the judgment of the lower appellate court is correct in law, when the plaintiff has not proved his case in the manner known to law, having failed to produce his evidence to substantiate his claim?

10. The plaintiff has come forward with the suit seeking the relief of specific performance based on the sale agreement dated 09.11.1989. It is the case of the plaintiff that the first defendant had agreed to convey the suit property in his favour for a sum of Rs.17,000/- and accordingly entered into the abovesaid sale agreement and received a sum of Rs.9,000/- on the date of the sale agreement and it is pleaded that both the parties had agreed that the sale transaction should be completed between 04.03.1990 and 09.11.1991, and according to the plaintiff, he has always been ready and willing to pay the balance sale consideration and complete the sale transaction, but the same has been postponed one way or the other by the first defendant.

11. As regards the case projected by the plaintiff that he had been always ready and willing to pay the balance sale consideration within the time limit fixed in the sale agreement marked as Ex.A1, absolutely, there is no material on the part of the plaintiff. If really, the plaintiff had been ready and willing to pay the sale consideration right from 04.03.1990 onwards and the first defendant had been evading the receipt of the same and postponing the execution of the sale deed one way or the other, as rightly contended by the second defendant, immediately on coming to know of the attitude of the first defendant, the plaintiff would have taken proper legal steps to enforce the sale agreement. On the other hand, it is found that only on 13.08.1991, the plaintiff has come forward to issue the legal notice calling upon the first defendant to execute the sale deed. Even as per the plea of the plaintiff, much prior to the issuance of the abovesaid legal notice marked as Ex.A2, he had come to know that the first defendant had alienated the suit property in favour of the second defendant in the month of April 1991. However, the plaintiff had not chosen to issue the legal notice to the second defendant. On the other hand, Ex.A2 legal notice is found to have been issued only to the first defendant. In such view of the matter, the alleged

reply said to have been issued by the first defendant to the plaintiff admitting the execution of the sale agreement Ex.A1, as such, would not be binding upon the second defendant, as according to the second defendant, the plaintiff and the first defendant in collusion have laid the suit against him. Conveniently, the first defendant had remained exparte in the present suit.

12. Considering the abovesaid factors, it is evident that right from 04.03.1990 till 12.08.1991, absolutely there is no material on the part of the plaintiff, evidencing his readiness and willingness to pay the balance sale consideration and obtain the sale deed from the first defendant. If really, the sale agreement Ex.A1 had been entered into between the plaintiff and the first defendant, nothing would have prevented the plaintiff from immediately paying the balance sale consideration and obtain the sale deed from the first defendant. There is no need on the part of the plaintiff to wait till 13.08.1991 to issue the legal notice to the first defendant. As determined by the trial court, when there is no proof worth acceptance placed on the part of the plaintiff evidencing his readiness and willingness to complete the sale transaction right from the commencement of the time limit fixed in the sale agreement, in all, it is found that the trial court is wholly justified in determining that the plaintiff has not been ready and willing to perform his part of contract and when the readiness and willingness on the part of the plaintiff is the Sine qua non ingredient for obtaining the discretionary and equitable relief of specific performance, the same being conspicuously absent in the present case, on the abovesaid ground alone, it is seen that the plaintiff is not entitled to obtain the relief of specific performance as determined by the trial court.

13. Nowhere in the plaint, the plaintiff has pleaded that the second defendant had not paid the sale consideration and obtained the sale deed from the first defendant in respect of the suit property. As could be seen from the materials placed on record, the second defendant is found to have purchased the suit property along with the other properties from the first defendant by way of a registered sale deed dated 16.04.1991 marked as Ex.B2. Even prior to the same, the sale agreement had been entered into between the second defendant and the first defendant on 13.05.1988 which document has come to be marked as Ex.B1. Ex.B1 is found to be reflected in Ex.B2 sale deed. Furthermore, the plaintiff during the course of his evidence has also clearly admitted the availability of the signature of the first defendant in the sale agreement Ex.B1. Though he had denied the same subsequently, the fact remains that at the first instance, he had admitted the signature of the

first defendant in Ex.B1 sale agreement. Furthermore, when the plaintiff has not come forward with the case that the sale transaction dated 16.04.1991 is bereft of consideration and furthermore when the first defendant has not disputed the execution of the sale deed dated 16.04.1991 in favour of the second defendant and when there is no material on the part of the the plaintiff to hold that the second defendant is aware of the sale agreement dated 09.11.1989 and considering the fact that the Ex.B2 sale agreement has come to be executed by the first defendant in favour of the second defendant, following the sale agreement dated 13.05.1988 marked as Ex.B1 and when altogether it is found that the sale agreement entered into between the first defendant and second defendant is anterior in point of time to the sale agreement dated 09.11.1989 projected by the plaintiff and as above seen, when the plaintiff has not established his readiness and willingness to perform his part of the contract pursuant to the sale agreement dated 09.11.1989, on the other hand, when it is seen that following the sale agreement dated 13.05.1988, the second defendant had purchased the suit property from the first defendant for a valid consideration without notice of the sale agreement dated 19.11.1989, in such view of the matter, as determined by the trial court, conveniently, the plaintiff is found to have issued the pre-notice only to the first defendant and after obtaining a favourable reply from the first defendant, qua the sale agreement dated 09.11.1989, is found to have come forward with the present suit both against the first defendant as well as the second defendant for the relief of specific performance.

14. On the other hand, when as could be seen from the materials placed on record, the second defendant's sale agreement is anterior to the plaintiff's sale agreement and even assuming for the sake of arguments that the plaintiff's sale agreement is true, when there is no material placed on record that the second defendant is aware of the said sale agreement and on the other hand, the second defendant is found to be a bonafide purchaser for value without notice of the suit property from the first defendant following the sale agreement dated 13.05.1988, in such view of the matter, as rightly determined by the trial court, it is found that the second defendant is a bonafide purchaser for value without notice and in such view of the matter, the sale agreement dated 09.11.1989 would not be binding upon the second defendant in any manner and considering the abovesaid factual matrix, when it is found that the sale agreement dated 09.11.1989 is brought about by the plaintiff and the first defendant in collusion, one way or the other and accordingly, the plaintiff is also found to have not evinced interest to enforce the sale agreement immediately and taking his own time in enforcing the same and in particular, chosen to have enforced the same after the purchase of the suit property

by the second defendant from the first defendant on 16.04.1991 and only thereafter, much later to the abovesaid sale transaction, is found to have issued the said pre-notice on 13.08.1981 and when it is further seen that when the abovesaid notice has not been issued to the second defendant, in all, it is found that the plaintiff has not come forward with clean hands and on the other hand, is found to have laid the suit suppressing the material information and accordingly, in such view of the matter, the relief of specific performance being an equitable and discretionary relief, in my considered opinion, the trial court is found to be fully justified in refusing the said relief in favour of the plaintiff as prayed for.

15. During the course of arguments, the counsel for the plaintiff pointed out certain discrepancies in the sale agreement Ex.B1 and the sale deed as regards the handing over of the possession of the suit property to the second defendant. In my considered opinion, the abovesaid inconsistency would not in any manner affect the second defendant's case particularly when it is seen that the second defendant is a bonafide purchaser for value without notice. Similarly, the arguments by the plaintiff's counsel as regards the inconsistency in the Muchalikka dated 01.06.1991 marked as Ex.B4 pointing that the sale papers on which it had been engrossed, had been purchased only on 01.07.1991, when it is seen that the second defendant is not mainly relying upon the Exs.B3, B4 Muchalikka for sustaining his case, in such view of the matter, the abovesaid inconsistency, in my considered opinion, would not in any manner, affect the case projected by the second defendant.

16. In the light of the abovesaid factors, considering the position that the plaintiff has failed to establish his readiness and willingness to perform his part of the contract and when the equitable and discretionary relief of specific performance cannot be extended in favour of the plaintiff sans the establishment of his readiness and willingness to perform his part of the contract and on the other hand, when it is seen that the second defendant is a bonafide purchaser for value pursuant to the sale agreement Ex.B1, in all, it is found that the trial court is fully justified in upholding the case projected by the second defendant and rejecting the plaintiff's case.

17. On the other hand, the first appellate court without any proper appreciation of the materials placed on record as well as the principles of law governing the same, in an erroneous manner, for the reasons which cannot be accepted in any manner, had proceeded to uphold the plaintiff's suit, particularly without any material on the part of the plaintiff establishing his readiness and willingness in performing his part of the contract and without the plaintiff establishing that the second defendant is not a bonafide purchaser for value without notice and in such view of the matter, the reasons and conclusions of the first appellate court suffering from total perversity and also found to be illogical and irrational, in all, it is found that the judgment and decree of the first appellate court cannot be sustained in the eyes of law and liable to be set aside.

18. The plaintiff's counsel in support of his contentions placed reliance upon the decisions reported in

1. 2000 (6) SCC 402 [R.K.Mohammed Ubaidullah and others Vs. Hajee C.Abdul Wahab (D) By Lrs and others]

2. 2015 (1) SCC 705 [Zarina Siddiqui Vs. A.Ramalingam @ R.Amarnathan]

The principles of law outlined in the abovesaid decisions are taken into consideration and follows as applicable to the case at hand.

19. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the second defendant and against the plaintiff.

20. In conclusion, the judgment and decree dated 29.09.2005 passed in A.S.No.21 of 1999 on the file of the Subordinate Court, Attur are set aside and the judgment and decree dated 16.02.1999 passed in O.S.No.283 of 1996 on the file of the District Munsif Court, Attur are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition if any is closed.

sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Subordinate Judge,
Subordinate Court,
Attur.

2.The District Munsif,
District Munsif Court,
Attur.

Copy to

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

+1 cc to M/s.D.Shivakumaran Advocate sr44666

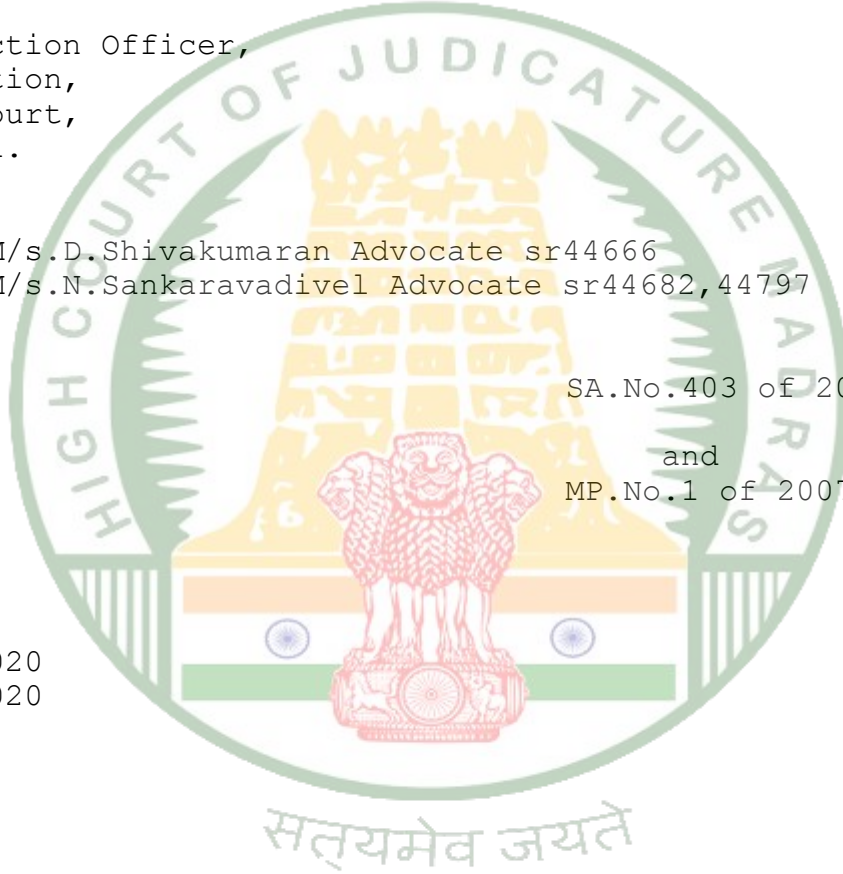
+1 cc to M/s.N.Sankaravadivel Advocate sr44682,44797

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and

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