

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2019

PRONOUNCED ON : 10.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1160 of 2005

A.Rajendiran,
S/o.Arasappan,
Madam Street,
Kancheepuram.

... Appellant/Respondent/Plaintiff

Vs.

1. A.Selvi @ Tamilselvi,
W/o. Late Bhoopathy.

2. Minor Deepika,
represented by her
Guardian, mother,
A.Selvi @ Tamilselvi.

Respondents/Appellants/Defendants

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 12.01.2005 in A.S.No.52 of 2002 on the file of the Subordinate Court, Kancheepuram, reversing the judgment and decree dated 26.02.2002 in O.S.No.77 of 1997 on the file of the District Munsif Court, Kancheepuram.

For Appellant : Mr.V.Sairam

For Respondents: Mr.B.Damodaran

JUDGMENT

Challenge in the second appeal is made to the judgment and decree dated 12.01.2005 passed in A.S.No.52 of 2002 on the file of the Subordinate Court, Kancheepuram, reversing the judgment and decree dated 26.02.2002 passed in O.S.No.77 of 1997 on the file of the District Munsif Court, Kancheepuram.

2. The parties are referred to as per their rankings in the trial court for the sake of convenience.

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass,

it is unnecessary to dwell into the facts of the case in detail.

4. Suit for specific performance.

5. The case of the plaintiff in brief is that the plaint schedule property was the absolute and exclusive property of one Buvanagiri, Kanniappan and Pandiyan and out of the same 2/3 share had already been sold in favour of the plaintiff's wife R.Barani by the abovesaid two sharers Kanniappan and Pandiyan and the remaining 1/3 share of the suit property was retained by Buvanagiri and Buvanagiri died leaving behind his wife Chandra Ammal and two sons viz., Boopathy and Manoharan and they succeeded to the right and interest of Buvanagiri and after his demise, all the abovesaid legal heirs joined together and executed a sale agreement in favour of the plaintiff on 30.03.1994 agreeing to sell the 1/3 share in the suit property for a total price of Rs.60,000/- and on the date of the sale agreement, the plaintiff has paid a sum of Rs.19,500/- to the abovesaid three persons and it was agreed that the sale should be completed within a period of six months, though the time was not essence of the contract. The plaintiff has also paid a sum of Rs.25,000/- on 27.06.1994 to the abovesaid three persons and the same was duly endorsed by them in the backside of the sale agreement. The plaintiff has also paid the balance sale consideration of Rs.15,500/- on 12.11.1994 to the executants and the same was also duly acknowledged by them as per the endorsement obtained in the backside of the sale agreement and they all agreed to register the sale deed as and when required by the plaintiff. The plaintiff is not liable to pay any amount under the sale agreement as he had already paid the entire sale price as abovestated and the plaintiff had always been willing to perform his part of contract. Meanwhile during 1996, Boopathy had died leaving behind the defendants as his legal representatives and the plaintiff understands that there had been misunderstanding between the defendants on the one part and Chandra Ammal and Manoharan on the other part and consequently, all of them did not join together and not executed the sale deed in respect of the suit property for which the sale agreement had been executed in favour of the plaintiff as abovestated and the other legal heirs of Boopathy viz., Chandra Ammal and Manoharan had separately executed and registered the sale deed on 21.08.1996 in favour of the plaintiff and his wife and the said deed had been duly registered and as the defendants are entitled to 2/9 share in the suit property and as the sale deed dated 21.08.1996 relates to 7/9 share belonging to Chandra Ammal and Manoharan and accordingly, calling upon the defendants to execute the sale deed in favour of the plaintiff for their 2/9 share in the suit property, the plaintiff sent a legal notice and to the same, the defendants sent a reply notice containing false and untenable allegations and hence, according to the

plaintiff, he has been necessitated to levy the suit for appropriate reliefs.

6. The defendants resisted the plaintiff's suit in toto, particularly, the execution of the sale agreement to the plaintiff in respect of the suit property by Boopathy and according to them, they are the legal representatives of the deceased Boopathy and also disputed the case projected by the plaintiff that as there had been misunderstanding between the defendants on the one part and Chandra Ammal and Manoharan on the other part, all of them did not join together to execute the sale deed in favour of the plaintiff in respect of the suit property. Further, according to the defendants, the case of the plaintiff that Chandra Ammal had inherited a moiety of share in the suit property as the legal representative of her son Boopathy is not true and according to them, to the legal notice sent by the plaintiff, they had sent a suitable reply and further, it is stated that with a view to defeat the share of the defendants in the property of Buvanagiri, it is put forth that the plaintiff had colluded with Chandra Ammal and Manoharan and falsely created the suit sale agreement, as if Boopathy had also joined the execution of the same after receiving the amount and made the endorsement of the payments made as alleged in the plaint and thereby, attempted to snatch away the property belonging to the defendants illegally. The plaintiff's suit is bad for non-joinder of parties and the plaintiff has no cause of action and the suit is therefore liable to be dismissed.

7. In support of the plaintiff's case, PW1 and PW2 were examined and Exs.A1 to A4 were marked. On the side of the defendants, DW1 was examined and no document was 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 decree the suit of the plaintiff as prayed for. On appeal by the defendants, the first Appellate Court on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"1. Whether the Lower Appellate Court was right in shifting the burden on the appellant to prove the signature of Boopathy

when it was the first defendant who has disputed the signature of Boopathy in Ex.A-1?

2. Whether the Lower Appellate Court was not in error in not giving any finding with reference to Ex.A-4 much less even referring to it?"

10. From the materials placed on record, it is found that the defendants are the legal representatives of Boopathy. It is also noted that Chandra Ammal is the wife of Buvanagiri. Boopathy and Manoharan are his sons. It is further seen that Buvanagiri had 1/3 share in the property described in the plaint and according to the plaintiff, after the demise of Buvanagiri, his legal representatives viz., Chandra Ammal and Manoharan and Boopathy had executed the sale agreement in his favour on 30.03.1994 agreeing to convey the suit property for a sale consideration of Rs.60,000/- and according to the plaintiff, he had paid a sum of Rs.19,500/- on the date of sale agreement and subsequently, paid a sum of Rs.25,000/- on 27.06.1994 and paid the balance sum of Rs.15,500/- on 12.11.1994 and according to the plaintiff, all the abovesaid three executants had acknowledged the payments made by the plaintiff on 27.06.1994 and 12.11.1994 on the reverse side of the sale agreement and it is put forth by the plaintiff that Boopathy having died, subsequently, his legal representatives viz., the defendants did not join with Chandra Ammal and Manoharan in executing the sale deed in favour of the plaintiff as per the sale agreement dated 30.03.1994 and according to the plaintiff Chandra Ammal and Manoharan had conveyed their share in the property covered under the sale agreement on 21.08.1996 by way of a registered sale deed and inasmuch as the defendants as the legal representatives of Boopathy are liable to execute the sale deed in respect of their share in the suit property pursuant to the sale agreement dated 30.03.1994 and though the plaintiff had been always ready and willing to perform his part of his contract and has indeed performed his part of the contract and on the other hand, as the defendants had not come forward to convey their share in the suit property, despite the issuance of notice and on the other hand, repudiated the notice by sending a reply dated 20.12.1996 containing untenable allegations, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

11. The defendants disputed the genuineness of the sale agreement dated 30.03.1994 put forth by the plaintiff for claiming the relief as prayed for and according to the defendants, in particular, Boopathy had not executed the abovesaid sale agreement in favour of the plaintiff as put forth in the plaint and furthermore, the defendants have also disputed

the payments said to have been made by the plaintiff on various dates and also disputed the case of the plaintiff that Boopathy had acknowledged the receipt of the said payments on the reverse side of the suit sale agreement and according to the defendants, all the above endorsements had been created by the plaintiff for the purpose of the case and according to the defendants, the plaintiff in collusion with Chandra Ammal and Manoharan had created the sale agreement dated 30.03.1994 with a view to deprive the lawful share of the defendants in the property belonging to Boopathy and accordingly, prayed for the dismissal of the plaintiff's suit.

12. In the light of the abovesaid defence set out by the defendants, challenging the genuineness of Ex.A1 sale deed as such, particularly disputing the case of the plaintiff that Boopathy had also joined with Chandra Ammal and Manoharan in the execution of the said sale agreement, it is for the plaintiff to establish that Boopathy had also joined the execution of the sale agreement as put forth by him along with Chandra Ammal and Manoharan. The suit sale agreement has been marked as Ex.A1. With reference to his case, the plaintiff has examined himself as PW1 and he has clearly deposed about his case and accordingly, from the evidence of the plaintiff, it is found that the sale agreement Ex.A1 had been executed by Chandra Ammal and her two sons Boopathy and Manoharan and the plaintiff had paid the entire sale consideration as narrated in the plaint and as deposed by him, it is found that the executants of Ex.A1 sale agreement had acknowledged the payments made by the plaintiff to them on 27.06.1994 and 12.11.1994 and thus, it is found that the plaintiff in all had paid the entire sale consideration agreed to between the parties for the execution of the sale deed with reference to the suit property and therefore, as rightly determined by the Trial Court, it is found that inasmuch as the plaintiff had been always ready and willing to perform his part of contract, it is found that within the time stipulated under the sale agreement, he had paid the substantial sale consideration to the executants and also paid the remaining sale consideration on 12.11.1994 and the executants had also received the same without any demur and in such view of the matter, as far as the plaintiff is concerned, nothing remains to be done on his part pursuant to the sale agreement and on the other hand, it is only the executants who have to come forward and execute the sale deed in favour of the plaintiff as promised by them. However, it is seen that Boopathy had died in the meanwhile and the defendants are his legal representatives. Accordingly, it is noted that the plaintiff had approached the defendants to convey the sale deed in his favour with reference to their share in the suit property pursuant to the sale agreement Ex.A1. However, the defendants had not come forward to execute the sale deed in

favour of the plaintiff. It is noted that Chandra Ammal and Manoharan had conveyed their share to the plaintiff by way of a registered sale deed on 21.08.1996, the copy of which sale deed has been marked as Ex.A4. The first defendant has been examined as DW1 and during the course of the cross-examination, she has clearly admitted that she is fully aware that her mother-in-law and brother-in-law Manoharan had conveyed their share in favour of the plaintiff pursuant to the sale agreement. Therefore, it is found that inasmuch as Ex.A1 sale agreement had been executed by all the three legal representatives of Buvanagiri as claimed by the plaintiff and accordingly, the defendants, after the demise of Boopathy, had not come forward to execute the sale deed in favour of the plaintiff based on the sale agreement Ex.A1 and on the other hand, the other two executants viz., Chandra Ammal and Manoharan had come forward to execute the sale deed in favour of the plaintiff based on the sale agreement, it is found that the plaintiff had chosen to obtain the sale deed from them as far the their share in the suit property is concerned and accordingly, had marked the copy of the sale deed as Ex.A4 as above pointed out. The abovesaid fact that Chandra Ammal and Manoharan having executed the sale deed with reference to their share in the suit property pursuant to Ex.A1 sale agreement has not been disputed by the first defendant and on the other hand, she had admitted the same and furthermore, had admitted that she is fully aware of the same. The abovesaid factor alone would go to show that inasmuch as Ex.A1 sale agreement had been really executed by the legal heirs of Buvanagiri including Boopathy, the executors of Ex.A1 sale agreement unable to challenge the same and the plaintiff having paid the entire sale consideration as abovenoted, they had conveyed their share to the plaintiff by way of Ex.A4 sale deed and the said fact is known to the first defendant.

13. With a view to strengthen his case, apart from examining himself as PW1, the plaintiff has also chosen to examine the attesor of the sale agreement and also to the endorsements made on the reverse side of the agreement acknowledging the payments as part of the sale consideration as put forth by the plaintiff. The plaintiff has examined the attesor Munusamy as PW2. PW2 during the course of his evidence, has stated that the plaintiff, Chandra Ammal, Manoharan and Boopathy had entered into the sale agreement in respect of the suit property marked as Ex.A1 for a sum of Rs.60,000/- and he knew about the same and the sale agreement was executed on 30.03.1994, wherein he had attested by putting his signature and accordingly, he has deposed that Chandra Ammal and Manoharan and Boopathy had signed the sale agreement and that he had witnessed the same and Elumalai attested the sale agreement along with him and also deposed that the remaining sale consideration of

Rs.25,000/- was paid after three months and at that time also he was called and an endorsement was obtained with reference to the same and also stated that in the said endorsement, all the executants had signed and he had attested the same as the second attester and the first attester is one Ravi and has also deposed that the third payment of Rs.15,500/- was paid within four months thereafter and with reference to the same also, an endorsement had been obtained on the sale agreement and the said endorsement was written by one Malliga and acknowledging the payment, all the executants had signed the same and he had attested the said endorsement as the first witness and the second attester is one Elumalai and according to him, Boopathy had died after the second endorsement and also deposed that Manoharan and Chandra Ammal had executed the sale deed in favour of the plaintiff and in the said sale deed marked as Ex.A4 (copy), he had also attested the same as witness and also deposed clearly that on the date of the sale agreement, the plaintiff has paid an advance sum of Rs.19,500/- to the executants as part of the sale consideration and thus, from the evidence of PW2, the attester, it is seen that he has, in all material facts, corroborated the evidence of the plaintiff examined as PW1 and despite cross-examination, nothing has been culled out from him to discredit his testimony in any aspect and accordingly, it is found that the plaintiff has adduced acceptable and reliable materials in support of his case and in particular, in support of his plea that Boopathy had also joined the execution of Ex.A1 sale agreement and also acknowledged the receipt of the balance sale consideration in the endorsements made with reference to the same on the reverse side of the sale agreement and in such view of the matter, when the defendants are not able to cull out any point from the mouth of PW1 and PW2 to discredit them or in support of their defence version, as rightly determined by the Trial Court, the plaintiff's case had been amply established through the acceptable and convincing evidence of PW1 and PW2 and therefore, it is found that the Trial Court has rightly granted the reliefs in favour of the plaintiff as prayed for. सत्यमेव जयते

14. The first Appellate Court seems to have disbelieved the evidence of PW2 on the footing that inasmuch as Chandra Ammal had put only her LTI in the sale agreement as well as in the endorsements of payments on the reverse side, whereas PW2 has deposed about Chandra Ammal having signed the sale agreement and the endorsements, on that premise, the Trial Court did not rely upon his evidence. No doubt during the course of chief examination, PW2 has deposed that Chandra Ammal has signed the sale agreement and endorsements, however, during the course of the cross-examination, he has clearly deposed that Chandra Ammal is related to him and she has only put her LTI and in such view

of the matter, when PW2 is able to assert that Chandra Ammal had put her LTI in the agreement and the endorsements and when the evidence of a party or witness has to be viewed cumulatively and not in an isolated manner, in such view of the matter, the evidence of PW2 adduced both during the course of the chief examination and cross-examination seen jointly, it is found that he has clearly deposed about the execution of sale agreement by Chandra Ammal without any ambiguity and inasmuch as Chandra Ammal had executed the sale agreement, as rightly put forth, it is found that Chandra Ammal subsequently, also had conveyed the sale deed in favour of the plaintiff towards her share along with Manoharan by executing the sale deed Ex.A4 in favour of the plaintiff. Therefore, the abovesaid inconsistency in the evidence of PW2 has been blown out of the proportion by the first Appellate Court as if PW2 is not speaking truth and has deposed falsely. When no motive, as such, has been attributed on the part of PW2 to testify in support of the plaintiff's case or against the defence version, it is found that PW2 has spoken clearly about the plaintiff's case in all aspects without giving any room for any suspicion as such.

15. The first Appellate Court also seems to have disbelieved PW2's evidence on the footing that there is no clear indication in the sale agreement and endorsements with reference to PW1's identity i.e., PW2's father's name, address, etc., had not been furnished other than his signature and therefore his evidence cannot be readily accepted. However, when PW2 has clearly deposed about his attestation in the sale agreement as well as his attestation in the endorsements found on the reverse side of the same and when the evidence adduced by PW2 is found to be consistent with the case put forth by the plaintiff projected in the matter, the abovesaid factor, in my considered opinion, do not merit acceptance for disbelieving the plaintiff's case as such or disbelieving the testimony of PW2 and the mere factor that PW2's father's name has not been described in the sale agreement and the endorsements, the same would not be the sole factor for disbelieving his testimony particularly when it is not pleaded that any impersonation of Munusamy, or his signatures had been obtained in the sale agreement and in the endorsements and on the other hand, when PW2 has asserted that he is only he who had attested the sale agreement and the endorsements with the other attestors as named by him as abovesaid, hence, the abovesaid reason given by the first Appellate Court for disbelieving his deposition does not merit approval.

16. The first Appellate Court seems to have made some comparison of PW2's signature with his signature in his

deposition and thereby noting certain discrepancies, on that basis also disbelieved his version. However, as rightly pointed out by the plaintiff's counsel, the abovesaid approach of the first Appellate Court in endeavouring the comparison of the signatures of PW2 with the signature available in his deposition is found to be not in consonance with law and with reference to the same, no acceptable reasonings had been offered by the first Appellate Court as to on what basis, it has come to the conclusion that his signatures differ. In such view of the matter, the abovesaid exercise adopted by the first Appellate Court could only be described as not in accordance with law as well as perverse.

17. The first Appellate Court further proceeded to reject the plaintiff's case on the footing that the deceased Boopathy having suffering from cancer and therefore, would not have been in a position to execute the sale agreement as well as acknowledged the endorsements as put forth by the plaintiff and on that premise, accepted the defence version. However, when the defendants themselves had not pleaded that on account of the ailment of cancer Boopathy was not in a position to put his signature, etc., as rightly argued, the first Appellate Court seems to have invented a special cause for the defendants and thereby erroneously seems to have rejected the plaintiff's case one way or the other.

18. When in the light of the evidence of PW1 and PW2, the plaintiff has established his case without any ambiguity or doubt that Boopathy had also joined Ex.A1 sale agreement as well the acknowledgment of the payments by way of the endorsements obtained on the reverse side of the sale agreement and when the defendants have not placed any material or culled out any material from PW1 and PW2 to disbelieve their version in any manner and furthermore, when the defendants have admitted the subsequent execution of sale deed by Chandra Ammal and Manoharan in favour of the plaintiff by way of the sale deed Ex.A4 and furthermore, when the defendants, despite the positive evidence adduced by the plaintiff with reference to the execution of the sale agreement as well as the acknowledgments of the payments and endorsements on the reverse side of the same by Boopathy, despite the abovesaid position, they have not produced any contra evidence to hold safely that the signature of Boopathy is not available in the sale agreement as well as in the endorsements on the reverse side and pointing to the same, the defendants had not placed any reliable materials other than the testimony of the first defendant, in fact, the defendants had not even come forward to project any document containing the signature of Boopathy so as to enable the Courts concerned to compare his signatures in the sale agreement and endorsements on the reverse side of the same and subjecting the same to expert's scrutiny and other than mere denial, the defendants had not

endeavoured to sustain their defence version and on the other hand, when the plaintiff had established his case clearly by placing acceptable and reliable materials and when the case of the plaintiff has also been buttressed by the evidence of the attessor PW2 in all material facts and when nothing serious has been pointed out to disbelieve the version of the plaintiff as well as the version of PW2 as unacceptable, in such view of the matter, the first Appellate Court seems to have brushed aside the plaintiff's case on noting certain trivial discrepancies in the plaintiff's case i.e., in the evidence of PW2 and also by taking special pleadings for the defendants and thereby disbelieved the plaintiff's case which cannot be sustained in the eyes of law.

19. In the light of the abovesaid discussions, the plaintiff having established his case by placing acceptable and reliable materials and the defendants having not placed any contra materials to discredit the same on any ground and when the plaintiff's case has also been buttressed by the subsequent sale deed executed by other two executants marked as Ex.A4 and which fact has not been controverted by the defendants in any manner and on the other hand, they have clearly admitted the same, in such view of the matter, in my considered opinion, the judgment and decree of the first Appellate Court upholding the defence version and rejecting the plaintiff's case needs reversal.

20. In support of his contentions, the counsel for the defendants placed reliance upon the decisions of the Apex Court dated 04.04.2011 in Civil Appeal No.8153 of 2017 [Champa Devi Vs. Sudama Dubey (Dead) & Others] and another decision dated 27.03.2017 in Civil Appeal No.5514 of 2005 [Ganeshi (D) through Lrs & Others Vs. Ashok & another]. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

21. Accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiff and against the defendants.

22. For the reasons aforesaid, the judgment and decree dated 12.01.2005 passed in A.S.No.52 of 2002 on the file of the Subordinate Court, Kancheepuram, are set aside and the judgment and decree dated 26.02.2002 in O.S.No.77 of 1997 on the file of the District Munsif Court, Kancheepuram, are confirmed.

Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Subordinate Judge,
Subordinate Court,
Kancheepuram.
2. The District Munsif Judge,
District Munsif Court,
Kancheepuram.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.B.Damodharan, Advocate, S.R.No. 35410
+1cc to Mr.V.V.Sairam, Advocate, S.R.No. 35844

RSV(CO)
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S.A.No.1160 of 2005

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