



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2019

PRONOUNCED ON : 19.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.125 of 2013

D.Nagarathinam ... Appellant/Plaintiff

Vs.

K.M.Ramakrishnan ... Respondent/Defendant

PRAYER :

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 15.11.2012 in A.S.No.107 of 2011 on the file of the Principal District Court, Namakkal confirming the decree and judgment dated 25.08.2010 in O.S.No.360 of 1996 on the file of the Sub Court, Namakkal.

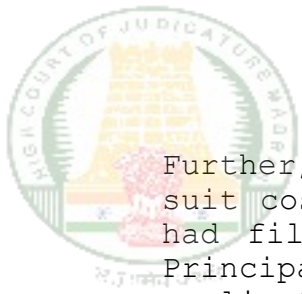
For Appellant : Mr.R.Subramanian

For Respondent : Mr.S.Kalyanaraman

JUDGMENT

This Second Appeal has been filed by the defendant against the judgment and decree passed by the Principal District Judge, Namakkal, in A.S.No.107 of 2011 dated 15.11.2012 confirming the judgment and decree passed by the Sub-Judge, Namakkal in O.S.No.360 of 1996 dated 25.08.2010.

2. The respondent herein had filed a suit in O.S.No.360 of 1996 on the file of the Sub-Judge, Namakkal for the relief of specific performance of the sale agreement dated 03.05.1993 and to direct the defendant to execute the sale deed in respect of the suit B schedule property. The learned Sub-Judge, Namakkal, by the judgment dated 25.08.2010 had decreed the suit for the relief of specific performance and directed the defendant to execute the sale deed in favour of the plaintiff in respect of suit 'B' schedule property within one month after receiving the balance sale consideration of Rs.56,250/- from the plaintiff.



Further, the learned Sub-Judge directed the defendant to pay the suit cost to the plaintiff. Aggrieved by the same, the defendant had filed an appeal in A.S.No.107 of 2011 on the file of the Principal District Judge, Namakkal. She had also filed two applications in I.A.Nos.49 and 58 of 2012 to receive certain documents as additional documentary evidence. The learned Principal District Judge, Namakkal, by the order and judgment dated 15.11.2012 had dismissed I.A.Nos.49 and 58 of 2012 and also the appeal in A.S.No.107 of 2011 and thereby confirmed the judgment and decree passed by the trial Court. Feeling aggrieved, the defendant has filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as described before the trial Court.

4. The averments made in the plaint are in brief as follows:

(a) The defendant is the absolute owner of the suit properties. She entered into an agreement of sale with the plaintiff on 03.05.1993 in respect of the suit 'A' schedule properties whereby she had agreed to convey the suit 'A' schedule properties to the plaintiff at the rate of Rs.75,000/- per acre after physical measurements. On the date of agreement, the defendant received a sum of Rs.1,50,000/- from the plaintiff as advance. Subsequently, the plaintiff had also paid amounts as detailed below:-

Sl.Nos.	Dates	Amount
1	31.05.1993	Rs. 25,000/-
2	19.06.1993	Rs. 25,000/-
3	21.06.1993	Rs. 55,000/-
4	12.09.1993	Rs. 50,000/-
5	11.03.1994	Rs. 25,000/-
Total		Rs.1,80,000/-

With regard to the aforesaid payments, endorsements have been made by the defendant in the sale agreement itself except for the amount of Rs.25,000/- which was paid on 11.03.1994. So, totally the plaintiff had paid a sum of Rs.3,30,000/- as advance to the defendant. The defendant had also agreed to the plaintiff to convey the suit properties within six months from the date of the agreement. It was also agreed that the defendant would convey the suit properties either to the plaintiff or to his nominees by one sale or by more than one sale at the request of the plaintiff.



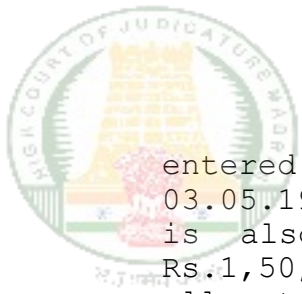
WEB COPY

(b) The plaintiff had always been ready, willing and able to perform his part of the contract and in fact so far as the portions of the 'A' schedule property, which is the subject matter of the agreement, actually two sale deeds have been executed by the defendant in favour of the nominees of the plaintiff on 11.03.1994, one for a valuable consideration of Rs.28,200/- and another for Rs.21,600/- in the names of Sugunakumari and G.Sumathi respectively. Though the plaintiff has always been ready and willing to perform her part of the contract, the defendant did not execute sale deeds for the remaining lands. The Government had acquired 38 cents of land in suit 'A' schedule of properties for forming road, i.e., 19 cents in S.No.10/3 and another 19 cents in S.No.9/1A. Later the plaintiff found that the defendant had actually sold away some portions of the suit 'A' schedule of properties to third parties even prior to the agreement of sale which fact was not disclosed by the defendant. The defendant had executed a settlement deed and sale deeds in favour of Jayakodi, Gopalan, Revathi, Varadaraj and Dasappa Raj to an extent of 84 cents in S.No.10/3 and put them in possession of it. When this fact was made known to the plaintiff, he approached the defendant and questioned the defendant who did not reply properly.

(c) However, at the instance of some mediators, the plaintiff was asked to give up the agreement so far as the property that had already been alienated by the defendant to the third parties as stated above prior to the agreement and the defendant also agreed to execute the sale deed either in the name of the plaintiff or in his nominees for the remaining property. The property yet to be sold is described in suit 'B' schedule. The plaintiff for the last one year has been hectically making efforts to get the sale deed executed by the defendant in respect of 'B' schedule property as per the agreement of sale dated 03.05.1993 and she has been giving false excuses and did not come forward to execute the sale deed. In fact on 10.10.1996 the plaintiff tendered the balance sale consideration to the defendant and requested her to execute the sale deed in respect of the remaining property, which is described in suit 'B' schedule, but she did not come forward to execute the sale deed. Hence, the plaintiff was constrained to file the above suit for the relief of specific performance.

5. The averments made in the written statement are in brief as follows:

(a) The allegation that the defendant is the absolute owner of the suit 'A' schedule properties is not correct. The defendant was the owner of the property described in the gift settlement deed dated 27.06.1979 executed by her husband N.Devarajan in her favour. The allegation that the defendant



entered into an agreement of sale with the plaintiff on 03.05.1993 in respect of the suit properties are all false. It is also false to state that she had received a sum of Rs.1,50,000/- from the plaintiff as sale advance. Further the allegation that subsequently the plaintiff had paid further sale prices to the defendant and made endorsement in the original agreement are all false. The plaintiff is a partner of the partnership firm, Ramakrishna Magnesite Mines. The family members are other partners in the said firm. The defendant is the proprietor of "Kalavathi Traders". The defendant used to purchase raw magnesite lumps from the plaintiff's Ramakrishna Magnesite Mines on credit basis. The plaintiff demanded a security and hence, the defendant handed over the gift settlement deed dated 27.06.1979 to the plaintiff. The plaintiff got signatures in blank stamp papers from the defendant. The plaintiff had filled up the said stamp papers, to make illegal gains. The defendant never received any advance of Rs.1,50,000/- or any subsequent payments as alleged in the plaint.

(b) The allegation that the plaintiff had always been ready and willing to perform his part of the contract are all false. In fact, even prior to 03.05.1993, the defendant alienated certain portions of the properties under registered documents and the Government acquired a portion for formation of road. All these facts have been told to the plaintiff when she handed over the gift settlement deed as a security for the payment of amounts due in the dealings in magnesite lumps. The allegation that two sale deeds have been executed by the defendant in favour of the nominees of the plaintiff are not correct. In the dealings between the defendant's 'Kalavathy Traders' and the plaintiff's 'M/s.Ramakrishna Magnesite Mines', there was a balance of Rs.49,800/- payable by the defendant. Thereupon the plaintiff suggested that nominal sale deeds may be executed in favour of his sister-in-laws in respect of certain portions of land covered in the gift settlement deed dated 27.06.1979 for the amounts due by the defendant assuring that on payment of the said sum of Rs.49,800/- the plaintiff would see that sale deeds are executed by his sister-in-laws in favour of the defendant. The vendees also agreed to re-convey the properties on payment of the said amount. Believing the said words, the defendant had executed two sale deeds dated 11.03.1994 in favour of Sugunakumari and G.Sumathi.

(c) The allegations that the plaintiff was always ready and willing to perform his part of the contract, but the defendant did not come forward to execute the sale deed are all false. The very fact that the plaintiff never issued any notice within six months from the date of the alleged sale agreement would clearly falsify the allegations of the plaintiff. There is



no cause of action for the suit. The suit is barred by limitation. The description of property in 'B' schedule is very vague and cannot be identified. Therefore, the defendant prayed to dismiss the suit.

WEB COPY

6. Based on the aforesaid pleadings, the learned Sub-Judge, Namakkal had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined one more witness as P.W.2 and he has marked Exs.A1 to A8 as exhibits. On the side of the defendant, the defendant examined herself as D.W.1 and also examined her husband as D.W.2, but, she has not marked any exhibits on her side.

7. The learned Sub-Judge, Namakkal, after considering the materials placed before her found that the defendant is the absolute owner of the suit property and she entered into Ex.A.1 sale agreement with the plaintiff on 03.05.1993 and also received a sum of Rs.1,50,000/- as advance and subsequently on various dates, she had received a sum of Rs.1,80,000/- by making necessary endorsements. She also found that at the request of the plaintiff, the defendant had executed two sale deeds (Exs.A7 and A8) in favour of one Sugunakumari and Sumathi respectively. She also found that a portion of the property has already been acquired by the Government for laying road and the defendant even before entering into the sale agreement executed settlement deeds and sale deeds in favour of third parties in respect of certain portion of the properties and thereafter, the remaining extent is 1.83 acres and the same is shown as 'B' schedule property and she also found that the plaintiff was always ready and willing to perform his part of the contract, but the defendant has evaded and hence, she decreed the suit directing the defendant to receive the balance sale consideration of Rs.56,250/- and execute the sale deed in respect of 'B' schedule property in favour of the plaintiff within one month.

8. Aggrieved by the aforesaid judgment and decree, the defendant had filed an appeal in A.S.No.107 of 2011 on the file of the Principal District Judge, Namakkal. She also filed two applications in I.A.Nos.49 and 58 of 2012 under Order 41 Rule 27 of C.P.C seeking permission of the Appellate Court for adducing additional documentary evidence. The learned Principal District Judge by the Order and Judgment dated 15.11.2012 , dismissed I.A.Nos.49 and 58 of 2012 and also the appeal and thereby confirmed the judgment and decree passed by the trial Court. Feeling aggrieved, the defendant has filed the present suit.

9. This Court at the time of admitting the second appeal has formulated the following substantial questions of law:



WEB COPY

1) Whether in law have the courts below exercised the judicial discretion conferred under Section 20 of Specific Relief Act Property?

2) Have not the Courts below overlooked that the plaintiff did not make any demand either before the expiry of 6 months or thereafter and therefore the readiness and willingness as mandated in Sec 16 (c) of Specific Performance Act are absent disentitling the relief of Specific Performance ?

3) Have not the Courts below omitted to see that the plaintiff having come to court with unclean hands is not entitled to the equitable relief?

4) Whether in law is not the rejection of application for additional documents under Order LXI Rule 27 of CPC by the lower appellate court without any application of mind or assigning reasons, is perverse?

5) Have not the Courts below failed to see that the agreement is in respect of 2.86 acres and the suit is for enforcement of 1.83 acres and therefore the suit is not maintainable? "

10. Heard , Mr.R.Subramanian, the learned counsel for the appellant and Mr.S.Kalyanaraman, the learned counsel for the respondent.

11. Substantial Questions of Law 1 to 5:

The learned counsel for the appellant/defendant has submitted that the Courts below failed to consider the defence taken by the defendant that she has not executed Ex.A.1 Sale agreement and only to pay the amount due, to the plaintiff in the business transaction, the plaintiff has obtained signatures of the defendant in blank stamp papers and other papers. He further submitted that the Courts below failed to give any finding as to why, the plaintiff has not obtained signature from the defendant for the alleged payment of Rs.25,000/- on 11.03.1994. He further submitted that if really Exs.A.7 and A.8 were executed in pursuance of Ex.A.1 sale agreement, there must be a reference in Ex.A.7 and A.8 with regard to Ex.A.1 sale agreement. He further submitted that the sale considerations also not adjusted with the amount already received from the plaintiff by the defendant in pursuance of Ex.A.1 sale agreement. He further submitted that Exs.A7 and A.8 would show as if the defendant had sold the properties to the said Sugunakumari and Sumathi directly after receiving the sale



amount by cash and the said facts would show that Exs.A.7 and A.8 were not executed in pursuance of Ex.A.1 Sale agreement.

12. He further submitted that the Courts below failed to consider that the plaintiff has not produced any evidence to show that he has taken steps for getting sale deed executed from 03.05.1993 to the alleged oral request made by him on 10.10.1996. He further submitted that the Courts below failed to see that the alleged oral request has not been proved by the plaintiff. The Courts below failed to see that the plaintiff has not proved his readiness and willingness and the plaintiff has not taken steps for getting sale deed within the reasonable time. He further submitted that in order to prove the fact that already there are business transactions between the plaintiff and the defendant, the defendant had filed applications in I.A.Nos.49 and 58 of 2012 under Order 41 Rule 27 of CPC seeking permission of the Appellate Court to produce the invoices and permits received by the plaintiff as additional documentary evidence, but the first Appellate Court had dismissed the said applications simply by saying that the said documents are irrelevant documents and alien to the issue.

13. He further submitted that if the said documents are received and considered in a proper perspective, the Appellate Court would have allowed the appeal. He further submitted that in order to prove the case of the appellant/defendant, this Court may give an opportunity to the defendant to adduce additional evidence and therefore he prayed to set aside the judgments and decrees passed by the courts below and remit the matter to the trial Court for fresh disposal.

14. Per Contra, the learned counsel for the respondent has submitted that since the defendant has admitted the signatures found in Ex.A.1 Sale agreement and endorsements made thereon, the burden is upon her to prove that there was no agreement to sell her property to the plaintiff. He further submitted that the defendant herself has admitted in her written statement and also in her evidence that only at the request of the plaintiff, she executed Exs.A.7 and A.8 in favour of one Sugunakumari and Sumathi and the said fact also would show that Ex.A.1 sale agreement is a true agreement. He further submitted that the defendant has not specifically denied in the written statement and also in her evidence that she has not received any amount on 11.03.1994 and hence, it has to be presumed that she has received the said amount, but, she did not sign and acknowledge the same.

15. He further submitted that the defendant has not stated any valid reason for adducing additional evidence before



the Appellate Court. He further submitted that the alleged invoices and permits are not relevant for deciding the issue in the above matter. He further submitted that the Courts below, taking into consideration of all the aforesaid facts, have concurrently held that the plaintiff is entitled for the relief of specific performance and in the said concurrent findings, this Court cannot interfere. He further submitted that the first Appellate Court, after taking into consideration the documents sought to be produced before the Appellate Court are not relevant to the case, has rightly dismissed the applications in I.A.Nos.49 and 58 of 2012 and therefore, he requests to dismiss the Second Appeal.

16. According to the plaintiff, on 03.05.1993, the defendant had agreed to sell suit 'A' schedule properties to him for Rs.75,000/- per acre and in pursuance of the said agreement, a sum of Rs.1,50,000/- was paid as advance and subsequently, on 31.05.1993, a sum of Rs.25,000/- was paid, on 19.06.1993, a sum of Rs.25,000/- was paid, on 21.06.1993, a sum of Rs.55,000/- was paid, on 12.09.1993, a sum of Rs.50,000/- was paid and on 11.03.1994, a sum of Rs.25,000/- was paid, totally, a sum of Rs.3,30,000/- was paid by him to the defendant and the defendant made an endorsement acknowledging the receipt of the aforesaid amounts except for the amount of Rs.25,000/- which was paid on 11.03.1994. His further case is that it was agreed that the sale transaction should be completed within six months and his further case is that in pursuance of the said agreement, at his request, the defendant had executed Exs.A.7 and A.8 sale deeds in respect of portions of the suit 'A' schedule properties in favour of one Sugunakumari and Sumathi respectively.

17. The case of the defendant is that she has not executed Ex.A.1 sale agreement. She also denied the endorsements made in Ex.A.1. Her further case is that since there was a business transaction between herself and the partnership firm, in which the plaintiff is a partner, some amount was due, to the said firm and only for that purpose, as security, the plaintiff has obtained signatures in blank stamp papers and other papers and subsequently with the help of said signatures, the plaintiff has fabricated the sale agreement and endorsements thereon.

18. Admittedly, for the endorsement dated 11.03.1994 with regard to the payment of Rs.25,000/- (Ex.A.6), the defendant has not signed. There is no explanation from the plaintiff as to why the plaintiff has not obtained signature from the defendant for the said endorsement. When the defendant has taken a definite stand that she has not received Rs.25,000/- on 11.03.1994 and she has not made the said endorsement, the Courts below should have given finding with regard to the said



issue, but, the Courts below have not given any reasons for coming to the conclusion that the said endorsement is a true one.

19. It is also to be pointed out that in Exs.A.7 and A.8, there is no reference as to Ex.A.1 sale agreement. The recitals found in the said documents would prima facie show as if the defendant had directly sold the properties under the said documents without any interference by the plaintiff. Further, in Ex.A.7, it is stated that the defendant had received Rs.28,200/- as sale amount and under Ex.A.8, she received a sum of Rs.21,600/- as sale amount. With regard to the said facts also there is no explanation from the plaintiff. If really the defendant had executed Exs.A.7 and A.8 only in pursuance of Ex.A.1 sale agreement, how the defendant can receive the amount directly from the purchasers. On this aspect also, the courts below did not discuss.

20. Further, the defendant attempted to produce nearly 23 documents (invoices, permits etc.,) by filing I.A.No.49 of 2012 and one document by filing I.A.No.58 of 2012 before the first Appellate Court. According to the defendant, the said documents are vital documents to prove the fact that there was a business transaction between her and the plaintiff, in which, the plaintiff is a partner in the firm, but, the first Appellate Court dismissed the said applications. Taking into consideration of all the aforesaid facts and circumstances of the case, this Court is of the view that the aforesaid documents are relevant for this case and therefore, this Court is inclined to set aside the order passed by the first Appellate Court in respect of dismissal of I.A.Nos.49 and 58 of 2012.

21. As already pointed out that, the Courts below have not given findings as to Ex.A.6 endorsement has been proved. Further, there is no reference as to Ex.A.1 sale agreement in Exs.A.7 and A.8, but in the said documents, it is stated that the sale considerations were directly paid to the purchasers. Therefore, for giving finding with regard to the aforesaid issues and also for giving an opportunity to both parties to adduce additional oral and documentary evidence including the documents which were produced before the first appellate court, this Court is inclined to remit the matter to the trial Court. Accordingly, the substantial questions of law are answered.

22. In the result, the second appeal is allowed. The judgment and decree passed by the Courts below are set aside. The matter is remitted back to the trial Court and the trial Court is directed to give an opportunity to both parties to adduce additional oral and documentary evidence including the documents which were produced by the defendant before the first



Appellate Court and dispose of the suit in O.S.No.360 of 1996 in accordance with law, as observed in paragraph Nos.18, 19 and 21. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dna/vs

To

1. The Principal District Court,
Namakkal.
2. The Sub Court,
Namakkal.
3. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.50938

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No.50435

S.A.No.125 of 2013
and
MP.No.1 of 2013

SJ(CO)
CS/20/11/2019
CS/29/11/2019