

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 04.07.2019
PRONOUNCED ON : 12.07.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A. No.722 of 2019
and
CMP No.13794 of 2019

Deivanai

...Appellant/Ist Respondent/
Plaintiff

Vs.

- 1.V.Satayanarayana Chetty ..IstRespondent/2nd Respondent
Ist Respondent
2. V.S.Nagamurali prasad ..2nd Respondent/3rd
Respondent/2nd Respondent
3. Pachiyammal ...3rd Respondent/Ist
Appellant/3rd Respondent
4. Kannappa Reddy ...4thRespondent /2nd appellant
4th Respondent
5. The Sub-registrar,
R.K.Pet, Pallipattu road,
R.K.Pet village and post,
Pallipattu Taluk,
Thiruvallur District.5thRespondent/4th Respondent
5th Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 20.02.2019 passed in A.S.No.41 of 2015 on the file of the I Additional District Judge, Tiruvallur, reversing the judgment and decree dated 24.08.2015 passed in O.S. No.1 of 2012 on the file of the Subordinate Judge, Tiruttani.

For Appellant : Mr.M.Ravi

For Respondents : Mr.P.Krishnan

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 20.02.2019, passed in A.S.No.41 of 2015, on the file of the I Additional District Court, Tiruvallur, reversing the judgment and decree dated 24.08.2015, passed in O.S. No.1 of 2012, on the file of the Subordinate Court, Tiruttani.

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

3. Suit for specific performance, declaration, permanent injunction and mandatory injunction.

4. Briefly stated, according to the plaintiff, she had purchased the land in S.No.97/4, vide the sale deed dated 19.08.1999, from the defendants 1 and 2 and due to error, the extent had been wrongly mentioned as 0.56 cents instead of 0.87 cents in the sale deed and however, the plaintiff had been in the possession and enjoyment of the entire extent of 0.87 cents in the abovesaid survey number and accordingly had approached the defendants 1 and 2 to secure a rectification deed with reference to the extent and the defendants claim additional sale consideration and it is stated that the parties had arrived at a sum of Rs.1,10,000/- and according to the plaintiff, she has paid an advance of Rs.1,05,000/- to the defendants 1 and 2 with reference to the execution of the sale deed in respect of the remaining extent of 0.31 cents in the abovesaid survey number described as the B schedule property and in this connection, the plaintiff and the defendants entered into a sale agreement on 15.03.2009 and according to the plaintiff, though she had been always ready and willing to perform her part of the contract by paying the remaining sum and obtain the sale deed, the defendants 1 and 2 had been evading to receive the same on some pretext or the other and according to the plaintiff, the defendants 1 and 2 without any authority had executed the sale deed in favour of the 3rd defendant on 20.10.2010 in respect of two portions of the lands out of the plaint A schedule property and the sale deed dated 23.11.2011 in favour of the 4th defendant in respect of the plaint B schedule property and hence, it is stated that the abovesaid sale deeds are not binding upon the plaintiff and hence, the need for the suit for appropriate reliefs.

5. The defendants 1 to 4 had filed a common written statement and therein they have disputed the execution of the sale agreement put forth by the plaintiff for seeking the relief of specific performance and contended that no advance amount had been received by the defendants 1 and 2 as alleged by the

plaintiff in respect of the sale agreement and that the sale agreement filed by the plaintiff is a forged one to grab the plaint B schedule property and furthermore, the defendants 1 and 2 as well as the other defendants have also admitted the execution of the sale deeds in favour of the defendants 3 and 4 and the genuineness of the same and accordingly prayed for the dismissal of the plaintiff's suit.

6. As could be seen from the materials available on record, though it is found that the defendants 1 to 4 have filed a common written statement at the first instance, without any application or the leave of Court, it is seen that the defendants 1 and 2 have endeavoured to file an additional written statement and by way of the same, they have given a go-by to their case projected in the earlier written statement and in the additional written statement, proceeded to admit the execution of the sale agreement in favour of the plaintiff and also disputed the genuineness of the sale deeds in favour of the defendants 3 and 4.

7. However, as rightly found and determined by the first appellate Court, when the abovesaid endeavour of the defendants 1 and 2 to file the additional written statement without the requisite application and the leave of the Court, the same cannot be received as such and therefore, the first appellate Court is justified in not placing reliance upon the pleas put forth by the defendants 1 and 2 in the additional written statement. Furthermore, in the additional written statement, though it is claimed by the defendants 1 and 2 that the sale deeds had been obtained from them by the defendants 3 and 4 out of threat and coercion, if really, the abovesaid additional written statement is properly levied and taken on file, necessary issues with reference to the abovesaid case projected by the defendants 1 and 2 would have been framed by the trial Court and on the other hand, it is seen that without framing any issues as regards the alleged threat and coercion said to have been exercised by the defendants 3 and 4 in the obtainment of the sale deeds from the defendants 1 and 2 and whether the said case has any truth, the trial Court, as found by the first appellate Court, is found to have accepted the abovesaid version of the defendants 1 and 2, mainly upon the evidence of the DW1, namely the first defendant. Accordingly, it is seen that there had been no proper issue framed with reference to the alleged threat and coercion said to have been exercised by the defendants 3 and 4 on the defendants 1 and 2 in the obtainment of the sale deeds. In conclusion, the first appellate Court is justified in determining that the defendants 3 and 4 had not been provided with proper opportunity to defend and contest the abovesaid case projected by the defendants 1 and 2 by way of the additional written statement.

8. As found by the first appellate Court, the sale deeds dated 20.10.2010 and 23.11.2011 are found to be the registered documents and therefore, justified the invocation of presumption under Section 114 of the Indian Evidence Act and accordingly, it is seen that the defendants 3 and 4 having also endeavoured to establish the truth and genuineness of the abovesaid sale deeds by examining the attestors of the same as DWs 3 and 4 and DWs 3 and 4 have tendered evidence in a clear and acceptable manner as regards the execution of the same by the defendants 1 and 2 in favour of defendants 3 and 4 for valid consideration and voluntarily and out of their own free will and the abovesaid case projected by them are also found to be supplemented by the recitals contained in the abovesaid sale transactions and when there is no material on the part of the defendants 1 and 2 that the defendants 3 and 4 had exercised threat and coercion for taking the abovesaid sale deeds and with reference to the abovesaid case of the defendants 1 and 2, other than the oral evidence of DW1, there is no other material on record to substantiate the same and the defendants 1 and 2 also found to have not lodged any police complaint against the defendants 3 and 4 with reference to the same, in such view of the matter, as rightly determined by the first appellate Court, the trial Court is totally in error in holding that the abovesaid sale deeds had been obtained by the defendants 3 and 4 by way of threat and coercion without there being any proof adduced on the part of the defendants 1 and 2 or the plaintiff as such.

9. Further, as could be seen from the materials available on record, it is found that though in the original written statement the defendants 1 and 2 along with defendants 3 and 4 have disputed the execution of the sale agreement dated 15.03.2009, however, DW1, during the course of evidence, appears to have admitted the execution of the same and it is further seen that as could be gathered from the evidence adduced in the matter, the plaintiff has preferred a criminal complaint against the defendants 1 to 4 before the land grabbing cell and the enquiry is pending with reference to the same and accordingly, it is found that only to wriggle out of the said enquiry, the defendants 1 and 2 have done 'U' turn and supported the plaintiff's case by way of the additional pleas. As above noted, there is no material placed on the side of the plaintiff or on the part of the defendants 1 and 2 that the defendants 3 and 4 had obtained the sale deeds by exercising coercion and threat and if the abovesaid case has any element of truth, the defendants 1 and 2 would have preferred complaint against them and other legal actions against them and on the other hand, considering the facts and circumstances of the case and the materials on record, it is found that the case has been falsely

projected by the plaintiff and the defendants 1 and 2 have subsequently joined hands with the plaintiff for projecting a false case as if the sale deeds had been obtained by the defendants 3 and 4 out of threat and coercion.

10. Though it is found that DW1, during the course of evidence, has admitted the execution of the sale agreement projected by the plaintiff, when as above noted, the defendants 1 and 2 have challenged the genuineness of the sale agreements in the written statement, in the light of the above position, the plaintiff having come forward with the suit seeking the relief of specific performance based on the said sale agreements, it is his bounden duty to establish the same for seeking the equitable relief of specific performance. The plaintiff has admitted in her evidence that she does not know who had prepared the sale agreement and for what consideration the same had been executed and admitted that she does not know who had attested the same and there is contradiction qua the place where the sale agreement had been executed between the evidence of PW2, the plaintiff's husband and DW1 and furthermore, even DW1 would only state that he does not know who were the witnesses for the sale agreements and for what amount the stamp papers had been purchased with reference to the same and also stated that only he had signed the agreement, whereas the sale agreement marked as Ex.A1 has been signed both by the defendants 1 and 2 and accordingly, noting the contradictions in the statement of the witnesses, the first appellate Court is justified in raising a doubt as regards the genuineness of the sale agreement Ex.A1.

11. The suit has been mainly instituted by the plaintiff for the relief of specific performance based on Ex.A1 sale agreement. The plaintiff has miserably failed to establish the genuineness of the sale agreements by reliable and convincing materials. Furthermore, Ex.A1 sale agreement is found to be dated 15.03.2009, executed for a sum of Rs.1,10,000/- and according to the plaintiff's case, she had tendered a sum of Rs.1,05,000/- on the date of the sale agreement and therefore, only a sum of Rs.5,000/- remains to be paid. If really Ex.A1 sale agreement had been entered into between the plaintiff and the defendants, the plaintiff, as the agreement holder, would have endeavoured to come forward in paying the remaining sum of Rs.5,000/- immediately and obtain the deed from the defendants 1 and 2 as per law. However, though the plaintiff would state that she has been ready and willing to perform her part of the contract and only the defendants 1 and 2 had been evading the execution of the sale deed on some pretext or the other, however, to sustain her case of ready and willingness absolutely there is no material on the part of the plaintiff. The plaintiff has not issued any notice calling upon the defendants

1 and 2 to receive the balance sale consideration and execute the sale deed. The plaintiff has failed to establish that she had been orally requesting the defendants 1 and 2 to execute the sale deed in her favour and complete the sale transaction. Thus, it is found that absolutely there is no material evidencing the readiness and willingness on the part of the plaintiff in obtaining the relief of specific performance. Furthermore, the suit itself has come to be laid only in the year 2012, therefore, it is found that at the fag end of the stipulated period, the plaintiff has levied the suit for obtaining the relief of specific performance. Why the plaintiff has not endeavoured to enforce the sale agreement from the inception of the sale agreement till the laying of the suit, there is no proper explanation on the part of plaintiff, particularly, considering the position that only a sum of Rs.5,000/- remains to be paid for completing the sale transaction. Thus, as rightly found and determined by the first appellate Court, absolutely there is no readiness and willingness on the part of the plaintiff in seeking and obtaining the relief of specific performance and the abovesaid sine qua non factors for obtaining the equitable relief of specific performance, the same being completely absent in the present case, the first appellate Court is wholly justified in negating the same and no interference is warranted with reference to the same.

12. In the light of the abovesaid discussions, it is found that the first appellate Court had analysed and assessed the materials placed on record, both oral and documentary, in the right perspective as well as the principles of law governing the same and determined that the plaintiff is not entitled to any of the reliefs prayed for and the reasonings and conclusions of the first appellate Court with reference to the same not suffering from any perversity or irrationality and when the first appellate Court has taken into consideration all the facets of the evidence adduced in the matter, it is seen that there is no scope in any manner to interfere with the judgment and decree of the first appellate Court. Therefore, I hold that no substantial question of law is involved in the second appeal. Accordingly, the same is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

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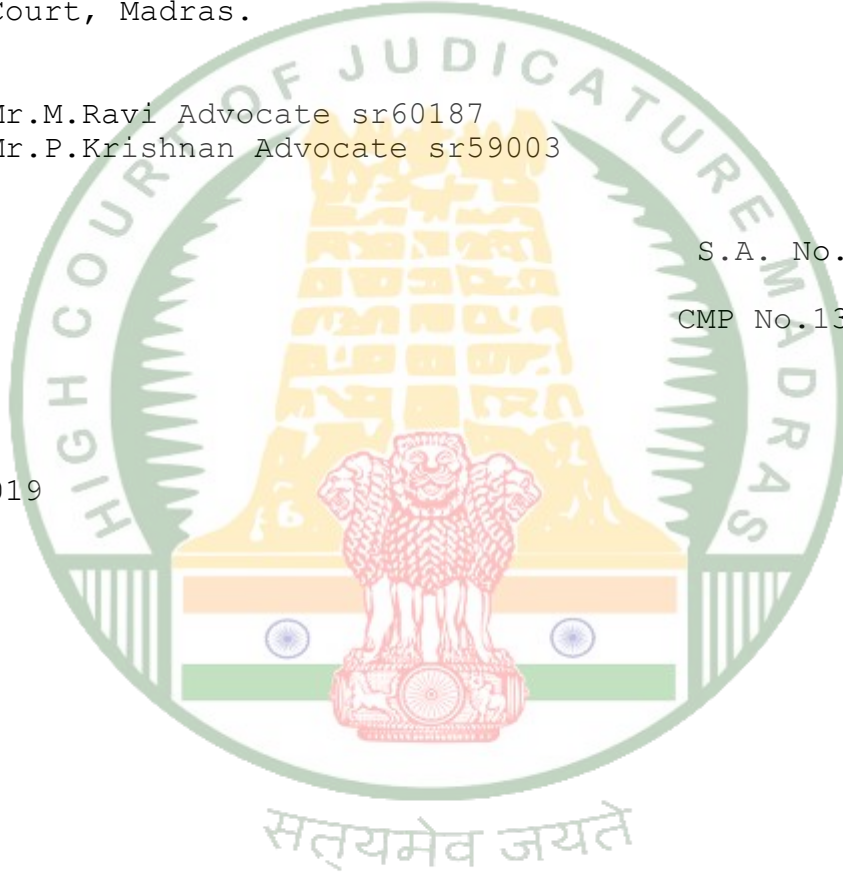
To

1. The I Additional District Court,
Tiruvallur.
2. The Subordinate Court, Tiruttani.
3. The Sub-Registrar,
R.K.Pet, Pallipattu road,
R.K.Pet village and post,
Pallipattu Taluk, Thiruvallur District.
4. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.M.Ravi Advocate sr60187
+1 cc to Mr.P.Krishnan Advocate sr59003

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and
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