

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.20 of 2014

and

M.P.Nos.1 of 2014 & 1 of 2015

Royappa Gounder (Died)

R.Chinna samy

..Appellant

(Cause title accepted vide

order of this court dated 26/04/2013

made in MP.No.1/2013 in SA.Sr.38898/2013)

Vs.

1. Murugasamy

2. R.Kandasamy

3. Meenakshi

4. C.Packialakshmi

5. R.Rangammal

6. R.Ponnusamy

7. K.padmavathi

8. R.Kandasamy

9. R.Gurunthachalam

10.R.Duraisamy

..Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned I Additional District Judge, Coimbatore, dated 03.11.2010 in A.S.No.30 of 2010, confirming the judgment and decree of the Principal Subordinate Court, Coimbatore, dated 11.09.2007 in O.S.No.451 of 2004.

For Appellant : Mr.M.R.Thalapathy
for Mr.M.Sriram

For Respondents: Mr.K.S.Karthick Raja (for R1)

J U D G M E N T

The legal heir of the 1st defendant in O.S.No.451 of 2004 has come up with this second appeal, challenging the decree for specific performance granted in the said suit, upon its confirmation by the lower appellate Court in A.S.No.30 of 2010.

2. The 1st respondent/plaintiff filed a suit for specific performance contending that the 1st defendant who is the owner of the property entered into an agreement of sale on 24.12.2003, agreeing to convey the suit to the plaintiff for a consideration

of Rs.2,50,000/-. An advance of Rs.50,000/- was paid on the date of the agreement and 6 months time was fixed for payment of the balance sale consideration and execution of the sale deed. While so, the 1st defendant namely Royappa Gounder had executed the settlement deed in favour of his son/2nd defendant Kandasamy on 19.03.2004. The plaintiff issued a notice demanding performance of the agreement on 17.06.2004, expressing his readiness and willingness to perform his part of the demand. The 1st defendant acknowledged the receipt of the notice, but he did not come forward to comply with the contract. The 2nd defendant sent a reply notice on 03.07.2004 denying the very contract forcing the plaintiff to sue for specific performance.

3. The 1st defendant filed a written statement admitting the agreement of sale. He would further claim that the 2nd defendant had got the settlement deed executed by him in the month of March 2004 by misrepresentation, stating that the document to be registered is a power of attorney authorizing the 2nd defendant to sell the property to the plaintiff as per the agreement, dated 24.12.2003. The 1st defendant in fact conceded the prayer of the specific performance.

4. The 2nd defendant filed a written statement denying the agreement itself and he would also claim that the suit filed by the 1st defendant seeking to set aside the sale deed executed by the 1st defendant in favour of his wife Meenakshi is pending. On the above contentions, the 2nd defendant sought for dismissal of the suit.

5. The 3rd defendant Meenakshi filed a separate written statement contending that the 1st defendant had sold the property to her, therefore, he had no right to enter into a contract.

6. The trial Court upon consideration of the evidence on record, concluded that the suit agreement is true and valid and the plaintiff has proved that he was ready and willing to perform his part of the contract. The trial Court further concluded that the delay if any in performance of the contract is attributable to the conduct of the 2nd and 3rd defendants. On the said conclusion, the trial court decreed the suit for specific performance.

7. The suit in O.S.No.813 of 1997 filed by the 1st defendant seeking cancellation of the sale deed dated 20.03.1990, alleged to have been executed by him in favour of Meenakshi, the 3rd defendant in O.S.No.451 of 2004 was decreed by the trial Court.

8. Aggrieved by the judgments and decrees in both the suits, the defendants 2 and 3 in O.S.No.451 of 2004 preferred two appeals in A.S.Nos. 64 of 2008 and 101 of 2008. Challenging the judgments and decrees in O.S.Nos.451 of 2004 and 813 of 1997. The 1st defendant Royappa Gounder filed an appeal in A.S.No.30 of 2010, challenging the decree for specific performance granted in O.S.No.451 of 2004.

9. All the three appeals were disposed of by a common judgment by the lower appellate Court on 03.11.2010. The appeal in A.S.No.64 of 2008 filed by the defendants 2 and 3 in O.S.No.451 of 2004 was dismissed, confirming the judgment and decree of the trial court granting specific performance. The appeal in A.S.No.101 of 2008 preferred by defendants 2 and 3 in O.S.No.451 of 2004 against the decree in O.S.No.813 of 1997 was also dismissed by the lower appellate Court. A.S.No.30 of 2010 filed by the 1st defendant in O.S.No.451 of 2004 was also dismissed. The applications seeking to produce the additional document was also dismissed by the lower appellate Court.

10. Aggrieved the appellant, who is the other son of Royappa Gounder had come up with this second appeal, since Royappa Gounder who is the 1st defendant in O.S.No.451 of 2004 died after the disposal of the appeal. The 2nd and 3rd defendants namely Kandasamy and Meenakshi have not preferred any appeal against the decree for specific performance. Their attempt to challenge the decree in O.S.No.813 of 1997 also failed, since this Court dismissed the application for condonation of delay in filing the appeal.

11. The resultant position as on today is that the sale deed executed by Royappa Gounder in favour of Meenakshi stands cancelled and the suit for specific performance filed by Murugasamy, the 1st respondent herein in O.S.No.451 of 2004 stands decreed.

12. Notice of motion was ordered on 20.01.2014.

13. I have heard Mr.M.R.Thalapathy, learned counsel for the appellant and Mr.K.S.Karthick Raja, learned counsel for the 1st respondent.

14. Mr.M.R.Thalapathy, learned counsel appearing for the appellant would vehemently contend that the trial Court is in error in granting a decree for specific performance. According to him, the 1st defendant having sold the property to Meenakshi in the year 1990 and having executed the settlement deed in

favour of the 2nd defendant, Kandasamy on 19.03.2004 was not competent to entered into a contract of sale. The contract of sale having been entered into during the pendency of the suit in O.S.No.813 of 1997 is not valid.

15. I have considered the submissions of the learned counsels.

16. No doubt the suit in O.S.No.813 of 1997 was pending, when the agreement of sale dated 24.12.2003 was entered. But as seen from the decree in O.S.No.813 of 1997, the suit filed by Royappa Gounder, the agreement vendor seeking cancellation of the sale deed came to be decreed and the said decree was confirmed on appeal. It is also not in dispute that the said judgment and decree has become final and the same has not been questioned by the defendants 2 and 3 in O.S.No.451 of 2004. This very suit in O.S.No.451 of 2004 contains a prayer for declaration that the settlement deed executed on 19.03.2004 by the 1st defendant in favour of the 2nd defendant is null and void.

17. The courts below have considered the evidence on record and come to the conclusion that the agreement is true and that the plaintiff was always ready and willing to perform the part of his contract. The Courts below have also found that the 1st defendant had in fact conceded the prayer for specific performance in favour of the plaintiff. These factual findings of the Courts below are based on evidence and they cannot be termed as perverse. I do not think that I can interfere with the factual findings, sitting in the second appeal.

18. Therefore, I do not find any question of law, much less substantial question of law, enable me to entertain the second appeal. Hence, the second appeal is dismissed without being admitted. Consequently, connected miscellaneous petitions are closed. No costs.

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-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The I Additional District Judge
Coimbatore

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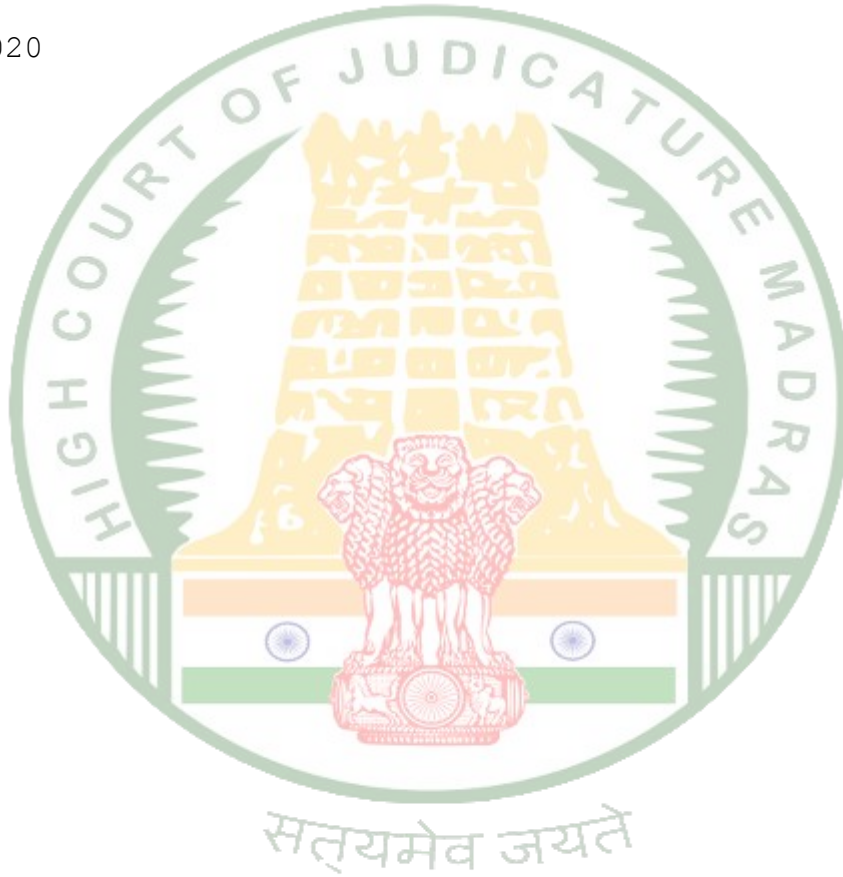
2. The Principal Subordinate Judge
Coimbatore.

+1 cc to Mr.M.Sriram Advocate sr 91006

+1 cc to Mr.K.S.Karthik Raja Advocate sr91302

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