

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No. 683 of 2014

K.Jayanthi

... Appellant

Vs.

1. G.Raja

2. G.Kothandan

3. G.Dilipkumar

4. P. Padma

5. Pushpalatha

... Respondents

Prayer: Appeal filed under 96 of CPC against the judgment and decree dated 19.12.2012 passed in O.S.No. 85 of 2011 on the file of II Additional District Judge, Thiruvallur at Poonamallee.

For Appellant : Mr.S.Doraisamy,
Senior Counsel
for Mr.R.Ponnusamy

For Respondents : Mr.V.Lakshminarayanan
for R1
No Appearance for
others

JUDGMENT

(Delivered by M.M.Sundresh,J.)

The second defendant who suffered a decree for specific performance and remained ex-parte is the appellant before us.

2. The suit property originally belonged to the first defendant. He purchased a property through the auction conducted under the SARFAESI proceedings on 31.07.2008. A sale certificate was issued and registered in the name first defendant on 20.08.2008. Thereafter, an agreement was entered under Ex.A2, dated 15.12.2010 between the plaintiff and the first defendant for a total sale consideration of Rs. 60 lakhs. Advance amount of Rs.27 lakhs was also received. The time period for completion of sale was fixed at six months i.e., on or before 14.06.2011. A further sum of Rs.23 lakhs was paid in the third week of December, 2010 and an endorsement was also made by the first defendant accordingly.

3. Alleging that the first defendant is not coming forward to execute the sale deed, a notice was issued on 02.07.2011 under Ex.A8. The first defendant issued a reply notice under Ex.A10, dated 06.07.2011 admitting the agreement for sale under Ex.A2 along with the payment made, but contended that he was unable to execute the sale deed due to the objection from the other defendants. He also stated that he has executed certain documents in favour of the other defendants. In the meanwhile, the first defendant executed the settlement deed in favour of his daughter, the second defendant, on 06.01.2011 under Ex.A3, which was revoked by the first defendant on 21.01.2011 under Ex.A5. Another settlement deed was executed on the very same day under Ex.A6. However, based upon the settlement deed dated 06.01.2011, under Ex.A3, the appellant executed a sale agreement in favour of the third defendant, who is the none other than her son-in-law, for sale consideration of Rs.10 lakhs.

4. Under those circumstances, by arraying all the members of the family of the first defendant, including the appellant and son-in-law, the suit for specific performance has been laid in O.S.No.85 of 2011. The first defendant filed written statement admitting Ex.A2 and the receipt of Rs.23 lakhs. However, it has been stated that the appellant has also filed suit in O.S.No.166 of 2011.

5. The appellant for the reasons known to her filed no written statement. The other defendants supported the stand taken by the first defendant. The plaintiff examined himself as PW1, apart from examining another witness to the agreement under Ex.A2 as PW2. The first defendant examined himself as DW1. Exs.

A1 to A13 have been marked by the plaintiff.

6. The trial Court framed the following issues:-

“(1)Whether the suit agreement is true and genuine?

(2)Whether the plaintiff was ever ready and willing?

(3)Whether the plaintiff is entitle to the relief of specific performance?

(4)To what relief?”

7. Inasmuch as the documents relied upon are not in dispute coupled with the fact that the plaintiff was ready and willing, the suit was accordingly decreed on 19.12.2012. The plaintiff deposited the balance amount of Rs.10 lakhs on 13.02.2013. Execution Petition in E.P. 36 of 2013 was filed for execution of the sale deed. In pursuant to the order passed by the trial Court, the sale deed was executed on 25.10.2013 and the E.P. 36 of 2013 was terminated on 07.11.2013.

8. At that point of time, an application was filed in I.A.SR.No. 4783 of 2013 by the appellant on 23.10.2013 seeking to set aside the ex-parte decree. The said application was rejected on 28.04.2014. Challenging the judgment and decree rendered by the trial Court, the present appeal has been filed.

9. The learned Senior Counsel appearing on behalf of the appellant submitted that unfortunately the appellant could not contest the case before the trial Court. The entire amount was paid by the appellant for the purchase of the suit property in the name of the first defendant. The suit filed by her challenging the cancellation of the settlement deed executed by the first defendant has been decreed. Thus, considering the above, the judgment and decree rendered by the trial Court will have to be set aside and the matter requires reconsideration.

10. The learned counsel appearing for the first respondent/plaintiff would submit that the facts narrated would clearly show that the appeal deserves to be dismissed. The title

of the appellant cannot be gone into. In any case, the appellant herself is the beneficiary of the settlement deed executed under Ex.A3. Therefore, it is not open to her to contend to the contrary. The first defendant and the other defendants have accepted the documents filed, including the requirements necessary to satisfy the decree for specific performance in accordance with Section 16(c) of the Specific Relief Act. Therefore, the appeal will have to be dismissed.

11. The point for consideration is as to whether the appeal will have to be allowed or not by answering all the issues in favour of the appellant.

12. All the issues have been answered by the trial Court by considering the documents filed under Exs.A1 to A3 coupled with the evidence of PW1, PW2 and DW1. The trial Court took into consideration the evidence of DW1 and held that the document is true and genuine. Ex.A2 is true and genuine and the plaintiff is ready and willing to execute the sale deed as a part of the contract.

13. We do not find any merit in this appeal. As rightly contended by the learned counsel appearing for the first respondent/plaintiff, the question of title of the appellant cannot be gone into. The appellant herself is the beneficiary of the settlement deed executed by the father under Ex.A3. Therefore, it is not open to her to contend to the contrary. The suit was filed by the plaintiff on 24.07.2011. For the reasons known to the appellant, she has not chosen to file the written statement for two years. The settlement deed itself has been executed only after the execution of Ex.A2 and, thereafter, the plaintiff issued legal notice under Ex.A8. The documents filed under Exs.A3 to A7 would clearly show that all is not well between the defendants. There was settlement deed executed followed by cancellation. Even the appellant further executed agreement in favour of her own son-in-law for sale consideration of Rs.10 lakhs, as against Ex.A2 which speaks about sale consideration of Rs.60 lakhs. Even under Ex.A1, the sale consideration was Rs.17 lakhs. Considering the facts, the trial Court rightly decreed the suit and answered all the issues in favour of the plaintiff. Thus, we do not find any error warranting interference.

14. It is not as if the appellant was not aware of the proceedings. She did appear before the trial Court and file her vakalat and thereafter allowed herself to be set ex-parte, and

got the suit decreed and the execution petition ordered. Therefore, at every stage, she was not diligent enough to put forth her case. The first respondent/plaintiff has also complied with the direction to deposit the amount and got the sale deed executed. Thus, looking from any perspective we do not find any error warranting interference.

In view of the above, the appeal stands dismissed. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ssm

To:-

1. The II Additional District Judge,
Tiruvallur at Poonamalee.
 2. The Section Officer, VR Section,
High Court, Madras
- +4cc to Mr.V.Raghavachari, Advocate SR.No.39207
- +2cc to Mr.R.Ponnusamy, Advocate SR.No.38751

A.S. No. 683 of 2014

NMI (CO)
GMY (02/05/2019)

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