

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2019

PRONOUNCED ON : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.93 of 2014

and

M.P.No.1 of 2014

1. S. Mohammed Hussain
2. S. Mohammed Ashraf
3. S. Ahmed
4. S. Farook

...Appellants/Defendants

Vs.

1. V. Chennaiyan
2. C. Sanjeev Chetty

...Respondents/Plaintiffs

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.85 of 2010 dated 11.03.2013 passed by the Additional District Judge at Krishnagiri.

For Appellants : Mr. T. Sundaravadanam

For Respondents : Mr. C. Samivel for R1 and R2

JUDGMENT

Aggrieved over the judgment and decree dated 11.03.2013 passed in O.S.No.85 of 2010 on the file of the Additional District Court, Krishnagiri, the defendants have preferred the first appeal.

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

3. Suit for recovery of money.

4. The case of the plaintiffs, in brief, is that the suit property comprised in survey No.15/3 and 16/2 belongs to the defendants and they are also in the occupation of some poramboke land and a house therein and the defendants 1 to 3 had appointed their brother, the fourth defendant, as their power

agent to deal with the sale transaction in respect of the abovesaid properties by executing a power deed in favour of the fourth defendant and on the strength of the same, the fourth defendant and the plaintiffs had entered into an agreement of sale on 29.02.2008 by way of which the defendants had agreed to sell the suit property to the plaintiffs for Rs.57,50,000/- and received a sum of Rs.10,00,000/- and agreed to receive the balance amount and execute the sale deed in favour of the plaintiffs and as there is no proper road available to have access to the suit lands from the main road, it has been agreed by the defendants to form a road at their cost and it has also been agreed that only after the formation of the road, time limit for the enforcement of the sale transaction would commence i.e., for the payment of the balance sale consideration and the execution of the sale deed based on the same. Further, for the purchase of the land, with a view to form a road, the defendants also received a further sum of Rs.1,00,000/- towards the sale consideration on 28.03.2008 and made an endorsement in the suit sale agreement and accordingly the terms and conditions had been set out by the parties in the sale agreement and the defendants had delivered of the possession of the suit land to the plaintiffs to level the same and to convert them as house plots and after the sale agreement, the defendants 2 and 4 who were staying at the suit lands have sold all the coconut trees and mango trees to timber merchants and they have cut down all the trees and removed the same from the suit lands to leave the actual possession of the suit land to the plaintiffs. As the suit lands were full of ups and downs and with cut down trees roots and stems and with lots of bushes and rocks, the plaintiffs had been necessitated to remove the same and spent a sum of Rs.5,00,000/- towards the same and the plaintiffs also with the help of the qualified surveyor were making arrangement to plot out the suit lands. At that point of time, the adjacent land owners objected and opposed the plaintiffs' move and were proclaiming that they have possessory right over the suit lands and the poromboke lands and the defendants, despite notice of the same, had not come forward to measure the lands to which they are actually entitled to and sell and furthermore, the defendants cannot also sell the poromboke lands and accordingly as there were many disputes and confusions over the title, extent of the lands to which the defendants are actually entitled to and despite the repeated requests of the plaintiffs, the defendants having not come forward to clear the doubts and disputes and measure the property and therefore, the plaintiffs were unable to move ahead with the enforcement of the sale transaction and accordingly decided to cancel the sale agreement and get back the amount paid by them to the defendants as well as the sum of Rs.5,00,000/- spent by them for the improvement

of the suit lands and called upon the defendants by way of a legal notice dated 30.08.2010 to pay the same along with the damages. However, the defendants sent a reply notice containing false allegations and therefore, according to the plaintiffs, the suit for appropriate reliefs.

5. The defendants 1 to 3 resisted the plaintiffs' suit contending that the suit lands in survey Nos. 15/3 and 16/2 belongs to them and the fourth defendant and disputed that they are in the occupation of the poromboke land and house therein and put forth the case that the house is in the patta lands of the defendants and admitted that they had executed a general power of attorney in favour of the fourth defendant with reference to the sale of the suit lands on 18.06.1998 and further admitted that the fourth defendant, on the strength of the same, entered into an agreement of sale with the plaintiffs and according to them, they had not given any power to the fourth defendant to provide any road for gaining access to the suit lands and therefore, put forth that the endeavour of the fourth defendant to give road for gaining access to the suit lands in favour of the plaintiffs is not valid and binding upon the defendants 1 to 3. No such power was given to the fourth defendant to provide road access to the plaintiffs and therefore, it is put forth that the abovesaid conditions incorporated in the sale agreement would not bind upon the defendants 1 to 3 and therefore, pleaded that the suit agreement is not a true one and further contended that two sets of properties are contained in the sale agreement. The above would go to show that the sale agreement is a fabricated one and further put forth the case that they had not handed over the possession of the property to the plaintiffs. Therefore, the question of levelling the same on the part of the plaintiffs by spending Rs.5,00,000/- do not arise and the suit lands had been even from the inception and also stated that the plaintiffs had admitted that they had cut and sold the trees in the suit land for more than Rs.15,00,000/- and thereby caused loss to the defendants. The defendants 1 to 3 had cancelled the power given to the fourth defendant on 24.09.2010 and contended that the plaintiff is not entitled to claim any amount from them and thereby prayed for the dismissal of the plaintiffs' suit.

6. The fourth defendant resisted the plaintiffs' suit contending that the sale agreement had been, indeed, executed between the plaintiffs and the defendants with reference to the suit lands, however, put forth that the possession had not been handed over to the plaintiffs as such and further disputed that the possession of the suit lands had been retained by the defendants 2 and 4 and they had cut and sold the trees available

in the suit lands to the third parties and agreed that the sale agreement stipulates for the formation of 20 feet road for gaining access to the suit lands and not disputed the receipt of Rs.10,00,000/- and Rs.1,00,000/- pursuant to the sale agreement as put forth by the plaintiffs and contended that the plaintiffs have admitted in the legal notice that it is only they who had cut the coconut trees and disputed the claim of the plaintiffs that they had spent Rs.5,00,000/- for levelling the suit lands and further contended that they never agreed to sell the poromboke lands and the plaintiffs had not been ready and willing to enforce the sale agreement and accordingly, challenged the claim of the plaintiffs qua the suit amount and prayed for the dismissal of the plaintiffs' suit.

7. On the basis of the abovesaid pleas put forth by the respective parties, the following issues were framed by the trial court for consideration.

1. Whether the plaintiffs are entitled to the refund of the advance amount and a sum of Rs.5,00,000/- spent by them as claimed in the plaint?
2. Whether the case of the defendants that the plaintiffs had cut the coconut trees and sold the same and thereby they are not entitled to recover the suit amount is correct?
3. To what relief the plaintiffs are entitled to?

8. In support of the plaintiffs' case, P.Ws.1 to 4 were examined and Exs.A1 to A4 were marked. On the side of the defendants, D.W. 1 was examined and Exs.B1 and B5 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to hold that the plaintiffs are entitled to receive a sum of Rs.11,00,000/- paid towards the sale price under the sale agreement, with interest at the rate of 6% per annum from the date of filing of the suit till the date of realisation and accordingly disposed of the plaintiffs' suit and in other aspects negatived the relief prayed for by the plaintiffs. Impugning the same, the defendants have preferred the first appeal.

10. The following points arise for determination in the first appeal.

1. Whether the plaintiffs are entitled to recover the suit amount from the defendants with interest as prayed for?
2. To what relief the plaintiffs are entitled to?

3. To what relief the defendants/appellants are entitled to?

Point Nos. 1 to 3

11. From the materials placed on record it is found that the defendants own the patta lands comprised in survey No.15/3 and 16/2. It is also noted that the defendants 1 to 3 had executed a general power of attorney in favour of the fourth defendant to sell the suit lands. On the strength of the same, it is found that the plaintiffs and the fourth defendant had entered into an agreement of sale on 29.02.2008 with reference to the sale of the suit lands for Rs.57,50,000/- and it is not in dispute that a sum of Rs.10,00,000/- had been paid by the plaintiffs as advance to the defendants. According to the plaintiffs and also as could be gathered from the recitals found in Ex.A1 sale agreement dated 29.02.2006, inasmuch as the suit lands had no separate access, it is found that the fourth defendant, on behalf of the defendants 1 to 3, had assured to form road access to the suit lands by acquiring the neighbouring lands and in that connection also received a sum of Rs.1,00,000/- from the plaintiffs. The abovesaid fact is not in dispute. Therefore, it is found that, in toto, pursuant to the sale agreement Ex.A1, the defendants have received a sum of Rs.11,00,000/-.

12. Though the defendants 1 to 3 have admitted the execution of the sale agreement in favour of the plaintiffs by the fourth defendant as their power agent, however, contended that they had not authorised the fourth defendant to provide any road access for the plaintiffs to gain entry into the suit lands. Therefore, contended that, the abovesaid sale agreement had been entered into by the fourth defendant exceeding the power granted to him by the defendants 1 to 3. However, as rightly determined by the trial court, when it is found that the suit lands have no separate access to gain entry and the vendors have the duty to provide access to the suit lands, accordingly, it is found that the fourth defendant, as the power agent of the other defendants, had assured to acquire the neighbouring lands and provide road access to the suit lands and in such view of the matter, the abovesaid act of the fourth defendant cannot at all be construed as exceeding his power granted in his favour by the defendants 1 to 3. The abovesaid factor has been rightly assessed and determined by the trial court.

13. The defence has also been taken that the suit property had not been properly described in the sale agreement and therefore, on that basis alone the sale agreement is unenforceable. However, considering the sale agreement

projected in the matter, in toto, as rightly found by the trial court, in page No. 4 of the sale agreement, the suit lands had been properly described. However, on the next page, a separate schedule has been given wherein the fourth defendant has claimed to have retained the portion of the suit lands and had only endeavoured to sell the remaining lands. However, there is no clear description of the lands retained by the fourth defendant as well as the lands intended to be conveyed to the plaintiffs and when it is further noted that the fourth defendant has not disputed his signature in the abovesaid page where the unclear description of the suit property had been incorporated and in such view of the matter, when it is found that when the description of the suit property had not been materially altered as such on the part of the plaintiffs as put forth by the defendants 1 to 3 and on the other hand, the same had been done only at the instance of the fourth defendant by giving separate description of the property in page No.5 as if the portion of the land intended to be conveyed had been retained by him, in such view of the matter, the abovesaid inconsistency cannot be held to be a material alteration as sought to be projected by the defendants 1 to 3 and accordingly, the abovesaid defence version projected by the defendants 1 to 3 had been rightly rejected by the trial court.

14. It is put forth by the defendants that only after the provision of the road access to the suit land, the sale agreement would come into force. However, it is stated that bypassing the same, the plaintiffs have, on their own endeavoured to acquire the neighbouring land for forming road access to the suit lands with Mohammed Yusuf and the plaintiffs had also levied the suit against him in O.S.No. 37 of 2011 on the file of the Subordinate Court, Krishnagiri and therefore, according to the defendants, inasmuch as the plaintiffs failed to abide by the terms and conditions set out in the sale agreement, stand forfeited to lose the advance amount paid under the sale agreement. However, as rightly determined by the trial court, inasmuch as the defendants had failed to provide road access to the suit land as promised by them under the sale agreement and left with no other alternative, the plaintiffs in the earnest to accomplish the sale transaction had endeavoured to acquire the neighbouring land for forming road to gain entry into the suit lands from one Mohammed Yusuf and in this connection had also levied the suit against Mohammed Yusuf for the enforcement of the sale agreement entered into with him with reference to the same and when the same had not been disputed and also substantiated by the plaintiffs, all put together, would go to show that the plaintiffs have not violated any of the terms and conditions as alleged by the defendants and

on the other hand, would only endeavour to go ahead with the completion of the sale transaction pursuant to the sale agreement in the right earnest. Therefore, the contention of the defendants that the plaintiffs had violated the terms of the sale agreement as such cannot be accepted in any manner.

15. The grievance of the plaintiffs is that at the time of levelling the suit lands, third parties objected to the same claiming interest over the suit lands and the other lands and the fourth defendant also retained certain portion of the land with him as described in the sale agreement, hence, according to the plaintiffs, they had requested the defendants to sort out the disputes raised by the third parties to establish their lawful entitlement of the suit lands and despite the same, inasmuch as the defendants had not endeavoured to come forward and sort out the issues for one reason or the other, according to the plaintiffs, they were unable to move ahead with the enforcement of the sale agreement and decided to cancel the same and accordingly come forward with the suit seeking for the refund of the advance and the other sum said to have been spent by them. Considering the reasons projected by the plaintiffs for not going ahead with the sale transaction when it is seen that the suit property had not been properly described and third parties had started interfering with the plaintiffs' enjoyment of the suit lands as well claiming interest over the same and the defendants having also not endeavoured to provide road access to the suit lands as promised by them and the defendants having also failed to sort out the issues with reference to the suit lands one way or the other, in all, it is found that the plaintiffs have given valid reasons for not proceeding further pursuant to the sale agreement and therefore, all put together, as rightly determined by the trial court, it is only the defendants who are the defaulting parties and not the plaintiffs and in such view of the matter, as rightly determined by the trial court, the plaintiffs would be entitled to claim the refund of the amount paid by them pursuant to the sale agreement.

16. As above noted, it is not in dispute that the plaintiffs in toto had paid a sum of Rs.11,00,000/- to the defendants pursuant to the sale agreement. Inasmuch as on account of the default committed by the defendants, as above pointed out, the sale agreement could not be proceeded further, the plaintiffs had been necessitated to come forward with the present suit for the refund of the advance amount and the other amounts.

17. In this matter, the plaintiffs would allege that the trees available in the suit lands had been cut and sold away by

the defendants. Per contra, the defendants would put forth the case that it is only the plaintiffs who had cut and sold the trees, Therefore, they having been put to loss, according to the defendants, the plaintiffs are not entitled to claim the refund of the amount. However, other than making the rival allegation against each other with reference to the cutting down and selling away the trees available in the suit lands, as rightly determined by the trial court, when there is no clear evidence on the part of both sides as regards the actual trees available in the suit lands at the relevant point of time and as to who had cut and sold the same and as to the value of the cut down trees and what price the same had been sold and as to whom the same had been sold and when with reference to the same, there is no clear material adduced on either side other than the oral allegations put against each other, in such view of the matter, as determined by the trial court, the claim of the defendants that it is only the plaintiffs who had cut down the trees and sold the same as such cannot be accepted and accordingly on that score, the defendants cannot be allowed to claim that they had been put to loss and thereby the plaintiffs are not entitled to claim the refund of the amount paid under the sale agreement. The abovesaid determination of the trial court, in my considered opinion, do not warrant any interference.

18. As regards the claim of the plaintiffs that he had spent Rs.5,00,000/- for levelling the lands, etc., absolutely there is no material projected by the plaintiffs. If really the plaintiffs had incurred any expenses with reference to the same, the plaintiffs should have buttressed their case by placing reliable materials pointing to the same. In the absence of any material pointing to the same, as held by the trial court, the plaintiffs are found to be not entitled to claim Rs.5,00,000/- from the defendants as put forth by them.

19. As rightly held by the trial court, there is no agreement between the parties to pay any interest for the amount paid by the plaintiffs pursuant to the sale agreement. In all, it is seen that as rightly determined by the trial court, the plaintiffs would be entitled to receive only Rs.11,00,000/- from the defendants paid by them under the sale agreement and not any further sum. The abovesaid determination of the trial court do not warrant any interference.

20. In support of his contentions, the counsel for the defendants placed reliance upon the decision reported in 2012 (6) CTC 121 (Satish Batra vs. Sudhir Rawal). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

21. In the light of the abovesaid discussions, I hold that the plaintiffs are entitled to receive only a sum of Rs.11,00,000/- from the defendants as determined by the trial court with subsequent interest at the rate of 6% per annum from the date of filing of the suit till the date of realisation and accordingly, the point number 1 is answered.
Point Numbers 2 and 3

22. For the reasons aforesaid, the judgment and decree dated 11.03.2013 passed in O.S.No.85 of 2010 on the file of the Additional District Court, Krishnagiri, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

bga

Copy to

1. The Additional District Judge, Krishnagiri.
2. The Section officer,
V.R. Section, High Court, Madras

+1 cc to Mr.T.Sundaravadanam Advocate sr104575
+1 cc to Mr.C.Samivel Advocate sr104361

A.S.No.93 of 2014

सत्यमेव जयते

kk(co)
aa19/11/2020

WEB COPY