

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.03.2020

CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.1736 of 2000

Chinnasamy

...Appellant/Respondent No.1/Plaintiff

Vs.

1.K.Viswanathan(died)

...Respondent 1/Appellant/
Defendant No.4

2.Venkatarama Chettiar

3.Sridhar

4.Ravishankar

...Respondents 2 to 4/Respondents 2 to 4/
Defendants 1 to 3

5.Nallammal

6.Malarkodi

7.Senthilkumar.

...Respondents 5 to 7

(RR5 to 7 brought on record as LRS
of the deceased R1 viz., K.Viswanathan
Vide Order of Court dated 04/06/2019
made in CMP.No.1846, 1844 and
1851/2019 in SA.NO.1736/2000(TKRJ)

Prayer:- Second Appeals filed under Section 100 of Civil
Procedure Code against the judgement and decree dt.12-7-2000
passed in A.S.No.34 of 1999 on the file of Court of the III
Additional District Judge of Krishnagiri in reversing the
judgement and decree dt.8-2-1999 passed in O.S.No.138 of 1994 on
the file of Court of the Subordinate Judge of Dharmapuri.

For Appellant : Mr.P.Mani

For Respondents: R1-Died(steps taken)

RR2 to 4 - Restored Vide order
dt.06/3/2020 and D/w from causing
Paper Publication to RR2 to 4 Vide
order dt.06/03/2020

Mr.S.Doraisamy for RR5 to 7

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JUDGMENT

The plaintiff who has been successful in his suit for specific performance before the trial Court, but suffered a reversal before the first Appellate Court, has come before this Court with this appeal. The parties would be referred to by their rank before the trial court.

2.The case of the plaintiff is that the suit property is an agricultural property, that it belongs to defendants 1 to 3, that he has been the tenant of the said property, that on 01.05.1992 Vide Ext.A.1, he had entered into an agreement of sale to purchase the suit property for a total sale consideration of Rs.75,000/- that he had paid Rs.50,000/- and that in terms of the said agreement he was to pay the balance sale consideration of Rs.25,000/- within a period of 11 months. The plaintiff was also given possession of the suit property under the agreement in continuation of his possession of the same property in his capacity as the tenant. The plaintiff has been requiring the defendants 1 to 3 to execute the sale agreement but, they were evading. While so, defendants 1 to 3 were attempting to create some documents in favour of the fourth defendant and hence, the suit has become necessitated.

3.Defendants 1 to 3 have filed their written statement alleging in essence that Ext.A.1, sale agreement is a fabrication. They also denied that the plaintiff was not the tenant of the suit property. It is further alleged that on 24.09.1992, the second defendant had sold the suit property under Ext.B.1, sale deed to the fourth defendant on the premise that there was a family partition in which the suit property came to be allotted to the share of the second defendant. Impugning the said sale, the first defendant had filed O.S.No.606 of 1992 against the second defendant and others and this suit was compromised in which the suit property was allotted to the second defendant as claimed by the latter.

4.However, defendants 1 to 3 did not enter the witness box and consequently, were set ex-parte by the trial Court. The fourth defendant had filed a separate written statement but, in essence, he has adopted the same line of defence which defendants 1 to 3 have offered in their written statement. He also impugns that Ext.A.1, sale agreement is a fabricated document.

5.Before the trial Court, the plaintiff has filed Ext.A.1 as his only document, and also examined himself and attesting witness to Ext.A.1 on his side. For the defendants, only the fourth

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defendant had entered the witness box. On appreciating the evidence, the trial Court has held that Ext.A.1 is a genuine document. For arriving at this conclusion it took into account the failure of the defendants 1 to 3 to enter the witness box to deny their purported signatures in Ext.A.1, and also its own impression gathered on a perusal of the disputed signatures in Ext.A.1 with the admitted signatures of defendants 1 to 3 in the vakalat and their written statement in terms of Section 73 of the Evidence Act. Ultimately, it granted a decree in favour of the plaintiff.

6.The matter went before the first Appellate Court at the instance of the fourth defendant. The first Appellate Court also found that Ext.A.1 is a genuine document but, has found that plaintiff has not been ready and willing to perform his part of the contract and accordingly, dismissed the suit. The first Appellate Court has held that the plaintiff at no time has issued any suit notice to defendants 1 to 3, calling upon them to execute the sale deed in terms of Ext.A.1, nor he has proved his readiness and willingness to perform his part of the contract. Hence, the plaintiff has come before this Court.

7.The appeal is admitted on the following substantial questions of law;

"1.Whether in law the plaintiff is entitled to the relief of specific performance of Exhibit A1 sale agreement as prayed for when the courts below concurrently found that the said sale agreement is a true and valid one and when the fourth defendant neither pleaded nor established that he is a bonafide purchaser, for value and without notice?

2.Whether the lower appellate court erred in law and misdirected itself in casting the burden on the plaintiff to plead and prove that the fourth defendant subsequent purchaser had prior notice of the agreement when in law it is for the subsequent purchaser to plead and prove that he is a bonafide purchaser for value without notice as provided under Section 19(b) of the Specific Relief Act?

3.Whether in a suit for specific performance of sale agreement in respect of immovable property, the defence that the plaintiff was not ready and willing to perform his part of the sale agreement is available to the subsequent purchaser when the vendors failed to contest the suit and were set exparte?

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4. Whether the fourth defendant is entitled to raise the defence that he is a bonafide purchaser for value without notice in the appellate stage even though no such defence was raised in his written statement or in the Appeal grounds and when no evidence was let in with respect to such defence?

5. Whether in law the judgment and decree passed by the lower appellate court are sustainable in law when it has failed to consider and appreciate the evidence on record in their proper perspective and based its conclusions on mere surmises and conjectures?"

8. The learned counsel for the appellant submitted that under Section 19(b) of the Specific Relief Act, the specific performance of a contract can be enforced against the other party of the contract or against any person claiming under him by a title arising subsequent to the contract, except a transferee for a value who has paid his money in good faith and without notice of the original contract. In terms of this, if the 4th defendant has to succeed, he has to plead that he is a bonafide purchaser for value without notice of Ext.A.1, agreement, but, he has omitted to plead it. Still, the first Appellate Court cast a burden on the plaintiff to prove that the fourth defendant had notice of Ext.A.1. Secondly, when both the Courts below have entered a concurrent finding that Ext.A.1 is a genuine document and when the fourth defendant had not pleaded the exception provided under Section 19(b) of the Specific Relief Act, the first Appellate Court ought to have decreed the suit. He also placed reliance on the authority of R.K.Mohammed Ubaidullah & Ors Vs. Hajee C.Abdul Wahab(D) & Ors[(2000)-6-SCC 402] for the proposition that protection granted to the subsequent purchaser under Section 19(b) of the Specific Relief Act is in the nature of an exception to the general rule provided in the first part of 19(b) of the Specific Relief Act and hence, the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser.

9. In response, the learned counsel for the respondents 5 to 7/LRs of the fourth defendant argued that the first Appellate Court has found that there is nothing on record to indicate that the fourth defendant had notice of Ex.A.1. This apart, the plaintiff has not even proved that he has been willing and ready to perform his part of the contract right through the period commencing from the date of Ext.A.1 up till the date he filed the suit. This apart, he claims himself to be a tenant and that he was given possession of the suit property in continuation to

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his earlier possession. But, the said tenancy was not proved. At any rate, he has not proved that he was ready to pay the balance sale consideration. He relied on the authority in Padmakumari & Ors Vs. Dasayyan & Others [(2015)-8-SCC-695].

10.1 This Court carefully weighed the rival submissions and perused the records. The decision to this case is rooted in the fundamental guiding principal that a decree for specific performances a discretionary relief, and that he who claims specific enforcement of an agreement should satisfy the conscience of the court that he deserves it.

10.2 Hence, grant of a decree is not entirely dependent on the fact that Ext.A.1 was found to be a genuine document concurrently both by the trial Court and the first Appellate Court. Here the burden is entirely on the plaintiff to establish that the failure of the fourth defendant to plead that he was a bonafide purchaser for value without notice of Ext.A.1 cannot ipso facto discharge the burden on the plaintiff to prove that the fourth defendant had notice of Ext.A.1, though it may be counted as a circumstance.

11.The fundamental flaw in the plaintiff's case is that he has not pleaded that he was ready and willing to perform his part of the contract in terms of Section 16(C) of the Specific Relief Act. Section 16(C) of the Specific Relief Act as it stood then, when the suit was laid, mandates that the party seeking specific enforcement shall plead and prove his readiness and willingness to perform his part of the contract. It is a statutory burden cast on the plaintiff and therefore, in every case where the plaintiff requires the Court to exercise its discretion for the grant of relief in equity, he has to satisfy the Court that he was ready and willing to perform his part of the contract. It is hence, in this case, whether time is the essence of sale of immovable properties or should the plaintiff ought to have filed the suit immediately on the expiry of the 11 months period which is fixed in Ext.A.1, matter significantly.

12.This Court finds that there is considerable merit in the finding of the first Appellate Court that the plaintiff has not proved that he was ready and willing to perform his part of the contract.

13.Looking from another angle, irrespective of the fact that the fourth defendant had not pleaded that he was a bonafide purchaser for value without notice of Ext.A.1 in terms of Section 19(b) of the Specific Relief Act, inasmuch as the relief sought is a equitable relief, the plaintiff still may

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require to prove that the fourth defendant had notice of Ext.A.1 before he purchased the property under Ext.B.1 sale deed. After all, even if the fourth defendant had pleaded so, yet, he cannot prove the negative, for the burden will still be on the plaintiff. Since the plaintiff seeks a relief in equity, he has to walk the extra distance to satisfy the Court's conscience that he is entitled to obtain a decree for specific performance.

14.This Court does not find any perversity in the findings of the first Appellate Court, though the reasons for arriving at the same finding may have a mild variance. All the substantial questions of law fails. This Court does not find any merit in the appeal.

15.In the result, the second appeal is dismissed and the judgement and decree, dated 12.07.2000, passed in A.S.No.34 of 1999 on the file of the III Additional District Judge, Krishnagiri reversing the judgment and decree, dated 08.02.1999, passed in O.S.No.138 of 1994 on the file of Subordinate Judge, Dharmapuri is upheld. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsg

To:

1.The III Additional District Judge,
Krishnagiri.

2.The Subordinate Judge,
Dharmapuri.

3.The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.S.Doraisamy, Advocate SR.22082

+1cc to Mr.P.Mani, Advocate SR.22312

S.A.No.1736 of 2000

MR (CO)

CB(29/01/2021)

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