

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020

Date of Verdict : 12.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.78 of 2001

1.Chandrappa
2.Venkatasami

...Appellants/Appellant/Plaintiffs

Vs.

1.S.Vijayendra
2.Akkiamma
3.Jayamma
4.Venkatasami
5.V.Muthamma (died)
6.Y.Madanagiriappa
7.Mohan Kumar

...Respondents/Defendants

(R6 & 7 brought on record as LR's
of the deceased 5th respondent viz.,
V.Muthamma vide court order dated
20.08.2019 made in CMP.No.7032
to 7034 of 2018 in SA.No.78 of 2001)

Prayer :- This Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.10.2000, in A.S.No.4 of 1997 on the file of the Sub Court, Hosur, confirming the decree and judgment dated 29.11.1996 in O.S.No.401 of 1989 on the file of the District Munsif Court, Hosur.

For Appellants : Ms.V.Srimathi

For Respondents

R1 to 3 : Notice served - No appearance

R5 : Died

For R6 & 7 : Mr.J.Hariharan
for Mr.V.Nicholas

JUDGMENT

This second appeal is directed as against the judgment and decree dated 25.10.2000, in A.S.No.4 of 1997 on the file of the Sub Court, Hosur, confirming the decree and judgment dated 29.11.1996 in O.S.No.401 of 1989 on the file of the District Munsif Court, Hosur.

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

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for specific performance and injunction. The suit property belonged to one, Venkata Subbachari. He entered into an agreement for sale dated 30.07.1987 to sell the suit property to the plaintiffs for sale consideration of Rs.12,350/- and received a sum of Rs.10,000/- as an advance. He also agreed to register the sale agreement within a period of two years. When the plaintiffs are ready and willing to pay the balance sale consideration to perform the part of their contract, the respondents prolonged the registration of sale deed. On the date of agreement for sale itself, the possession of the suit property was delivered to the plaintiffs and they are in possession and enjoyment of the same. They are also paying the revenue tax to the suit property. While being so, the said Venkata Subbachari died on 12.09.1987 and the defendants are the legal heirs. When the plaintiffs requested them to execute the regular sale deed on the basis of the sale agreement, the defendants informed that they will register the sale deed in their favour. Therefore, the plaintiffs waited for two years, since they are in possession and enjoyment of the property by cultivating the same. After a period of two years, on 17.07.1989 the plaintiffs received a notice from the fourth defendant claiming to be the power of attorney of the defendants 1 to 3, and the plaintiffs also suitably replied for the notice issued by the fourth defendant. Thereafter the plaintiffs issued notice to the defendants 1 to 3 calling them upon to come to the Office of the Sub Registrar on 27.07.1989 to execute sale deed in their favour on receipt of the balance sale consideration. But the defendants 1 to 3 failed to register the sale deed in their favour. Pending the suit, the fifth respondent was impleaded as party, since she purchased the suit property pending the suit.

4. Resisting the same, the fifth respondent filed written statement stating that originally the suit property belonged to Venkata Subbachari. The fifth respondent had absolutely no knowledge about the sale agreement entered between the plaintiffs and the Venkata Subbachari to purchase the suit property for sale consideration of Rs.12,350/-, in which the said Venkata Subbachari received a sum of Rs.10,000/- as advance. The said Venkata Subbachari never handed over the possession of the suit property to the plaintiffs. He died leaving behind his wife Akkiamma, Son Vijayendra and daughters Jayamma, Savithriamma, Sakkamma alias Saramma and Santhamma. Therefore, they are necessary parties to the suit and the suit is bad for non joinder of necessary parties. In fact, the fourth defendant is not related to Venkata Subbachari and he is a stranger. In respect of the power of attorney, the fifth defendant had absolutely no knowledge about the same and it is not valid. The fifth defendant purchased the suit property on 12.03.1992 for valid

sale consideration of Rs.50,000/- by the registered sale deed. All the legal heirs of the deceased Venkata Subbachari executed sale deed and from the date of sale, the fifth defendant was put up in possession and enjoyment of the property. Therefore, the fifth defendant is the bonafide purchaser of the suit property for value without notice.

4.1 In fact, the fifth defendant filed a suit in O.S.No.175 of 1992 against the fourth defendant and six others. Subsequently, the power of attorney executed in favour of the said Venkatasami, namely the fourth defendant was cancelled as invalid one. The daughters of the said Venkata Subbachari mortgaged the suit property and availed loan from Hosur Cooperative Agricultural Bank by mortgaging the suit property. Therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.4 were examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.6 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal suit in A.S.No.4 of 1997 before the Subordinate Court, Hosur. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree passed by the trial Court. Challenging the same, the plaintiffs have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the courts below are right in holding that document in Ex.A.1 is fabricated, when the respondents have not chosen to produce any document containing the signature of the deceased Venkatasubbachari to have it compared with the suit document?

b) When the defendants 1 to 3 have not responded to the suit notice under Ex.A.5, whether the courts below are right in entertaining the objections as regards the validity and genuineness of Ex.A.1?

c) Whether the respondents are not estopped from challenging Ex.A.1 by reason of their silence?

d) Whether the Courts below have not violated the provisions of Order XVIII CPC in permitting the defendant No.1 to be examined after the other witnesses?

7. The learned counsel appearing for the plaintiffs and the fifth defendant are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard M/s.V.Srimathi, learned counsel appearing for the plaintiffs and Mr.J.Hariharan, learned counsel appearing for the fifth defendant.

9. This Court considered the rival submissions made by the learned counsel on either side.

10. According to the plaintiffs, they entered into a sale agreement with one, Venkata Subbachari to purchase the sale property for total sale consideration of Rs.12350/- on 30.07.1987 and paid a sum of Rs.10,000/- as advance. It is not a registered one. When the plaintiffs were ready and willing to pay the balance sale consideration to perform the part of their contract, the defendants 1 to 3 had not come forward to register the sale deed. After the sale agreement, the said Venkata Subbachari died on 12.09.1987. The said agreement was marked as Ex.A.1. After the said sale agreement, Venkata Subbachari died within 42 days and thereafter the plaintiffs did not take any step to register the sale deed on the strength of Ex.A.1 the sale agreement even after receipt of the notice from the fourth defendant as if he claimed that defendants 1 to 3 executed power of attorney in respect of the suit property in his favour to maintain the suit property. Thereafter the power of attorney issued notice dated 30.07.1989 to the plaintiffs. Even then, the plaintiffs did not take any step to execute the sale deed in their favour. Though the plaintiffs claimed that on the date of agreement for sale itself, the possession and enjoyment of the suit property was handed over, even then they failed to produce any document to show that they are in possession and enjoyment of the suit property.

11. Further, the specific case of the defendants is that the signature found in the sale agreement is not belonged to Venkata Subbachari. When it being so, the plaintiffs ought to have taken steps to prove the signature in the agreement for sale. They did not take any step to send for the document for verification of signature found in the sale agreement. Further, the suit itself was filed after a period of two years from the date of sale agreement. Though they stated in the plaint that they were given two years time for payment of balance sale consideration on the execution of sale deed, they failed to prove the same by evidence.

12. The fifth defendant purchased the suit property from the legal heirs of the deceased Venkata Subbachari. The fifth defendant filed written statement and specifically stated that

there are other legal heirs of the said Venkata Subbachari, namely two daughters. Even then, the plaintiffs did not add them as party to the suit proceedings. Therefore, the suit itself is bad for non joinder of necessary parties. In a case of specific performance, the readiness and willingness are the basic ingredients to claim specific performance. The plaintiffs failed to prove their readiness and willingness to perform their part of contract at any point of time. Admittedly, the agreement for sale is not a registered one as such both the courts below rightly held that the plaintiffs are not entitled to suit for specific performance and dismissed the suit. .

13. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiffs. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in this appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiff.

14. Accordingly, this Second Appeal is dismissed. No order as to costs.

Sd/-

Assistant Registrar(CS-III-MDU)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Hosur

2.The District Munsif, Hosur.

Copy To : The Section Officer,
V.R. Section, Madras High Court,
Chennai.

+1cc to Mr.V.Raghavachari, Advocate SR.No.11673

+1cc to Mr.V.Nicholas, Advocate SR.No.11314

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SSI (CO)

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