

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.02.2020

Date of Verdict : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1383 of 2003

Chennamma ...Appellant/Appellant/Plaintiff

Vs.

Sallapuri Boyi ...Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the Sub Court, Hosur, dated 25.11.2002 in A.S.No.1 of 2001 on the file of Sub Court, Hosur, confirming the judgment and decree of the District Munsif Court, Hosur, dated 11.09.2000 in O.S.No.65 of 1996.

For Appellant : Mr.K.Selvarangan

For Respondent : Mr.J.Hariharan
for Mr.V.Nicholas

J U D G M E N T

This second appeal is preferred as against the judgement and decree of the District Munsif Court, Hosur, dated 25.11.2002 in A.S.No.1 of 2001 on the file of Sub Court, Hosur, confirming the judgment and decree of the District Munsif Court, Hosur, dated 11.09.2000 in O.S.No.65 of 1996.

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

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

3.1. The suit is filed for specific performance. The suit property belongs to defendant. The defendant has agreed to sell the suit property for a total sale consideration of Rs.25,000/- and received a sum of Rs.15,000/- as advance and agreed to receive the balance sale consideration of Rs.10,000/- within a period of six months. The defendant also delivered possession of the suit property to the plaintiff. The defendant executed an agreement for sale in favour of the plaintiff on 12.12.1988. The plaintiff was ready and willing to pay the balance sale

consideration of Rs.10,000/- to the defendant and approached the defendant in the first week of June 1989, and requested him to receive balance sale consideration and execute the sale deed. But the defendant had taken only 9,500/- from the plaintiff on 10.06.1989 and agreed to receive balance sale consideration of Rs.500/- within a period of one year and execute the sale deed in favour of the plaintiff. He had also made an endorsement to that effect in the agreement for sale. Even thereafter, the defendant failed to execute sale deed in favour of the plaintiff and as such, the plaintiff caused legal notice on 29.01.1990 to the defendant. Then the defendant replied by the reply notice dated 07.03.1990 containing false allegations that he had not agreed to sell the suit property to the plaintiff. Hence the suit.

4. Resisting the same, the defendants filed a written statement and stating that the entire averments made in the plaint is false and frivolous. The defendant never executed any agreement for sale in favour of the plaintiff. In fact, in respect of the suit property the defendant already entered into an agreement for sale with the people residing at Bangalore, as early as on 18.05.1987, for total sale consideration of Rs.1,25,600/-. Thereafter, the entire land was laid out to house plots and sold out to various persons. Further one of the purchaser have got a General Power of Attorney from the defendants to sell the other plots laid out in the suit property. Further in respect of the property comprised in Survey No.34/1 is only a small bit of land wherein there is a house and toilet are situated which was allotted to the defendant by the Government with special darkhast namely in Harijan Colony without any right of alienation to the third parties. The defendants further stated that the defendant and his sons are illiterate and belong to one Boya Community. Therefore, the plaintiff and one Netha Reddy had taken advantage of the same and they created an agreement for sale, as if the defendant agreed to sell the suit property in possession of the plaintiff. In fact, the said Netha Reddy is the witness to the earlier agreement for sale in respect of the suit schedule property in favour of the Bangalore parties. The plaintiff obtained the blank signed papers from the defendant while pending loan and while paying the interest they wanted another signature on the back side of the blank stamp papers and without any suspicion, the defendant signed blank stamp papers. Thereafter, alleged sale agreement and the endorsement were created by the defendant and filed the present false and frivolous suit and prayed for dismissal of the suit.

5. In support of the plaintiff's case, PW.1 to PW.4 were examined and four documents were marked as Ex.A1 to Ex.A4. On the side of the defendant, DW.1 to DW.4 were examined and Ex.B1

to Ex.B5 were marked. Ex.C1 was marked as Court document. 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 by the judgment and decree of the trial Court, the defendant preferred an appeal suit in A.S.No.1 of 2001 and the same was also dismissed. Aggrieved by the same, the defendant filed this second appeal.

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

"(i) Whether the lower Courts are right in holding that the suit sale agreement (Ex.A1) and the endorsement made thereon (Ex.A2) are not executed by the defendant, especially when the defendant himself admitted her signature in Exs.A.1 and A.2?

(ii) Whether the lower Courts are right in declining to grant the relief of specific performance on the ground that a portion of the suit property was sold to third parties, ignoring that there is no impediment for granting the decree for specific performance in respect of the unsold portion of the suit property?"

7. The learned counsel appearing for the plaintiff submitted that the plaintiff categorically admitted her signatures in the sale agreement of Ex.P1 and Ex.P2 and also admitted the advance amounts received by her. Though the plaintiff is not entitled for the relief of specific performance, she is entitled for refund of advance amount paid by her. He further submitted that the PW.1 and PW.2 categorically deposed and proved the execution of the sale agreement by the defendants. The PW.2 is none other than one of the witnesses to the sale agreement and as such, both the Courts erred in holding that the agreement of sale itself is concocted one.

To support of his contention, the learned counsel appearing of the plaintiff relied upon the judgment of this Court in the case of K.Pannai Sethuraman Vs. S.K.Subramanian and others reported in 2018 (1) MWN (Civil) 375.

8. Per contra, the learned counsel appearing for the defendant submitted that even according to the plaintiff, the defendant executed agreement of sale on 12.12.1988. In the total sale consideration of Rs.25,000/- in which he received a sum of Rs.15,000/- as an advance. Thereafter, when the plaintiff approached the defendant with full remaining sale consideration of Rs.10,000/-, the defendant received only a sum of Rs.9,500/- and requested to receive the balance sale consideration, at the

time of execution of the sale within a period of one year. No prudent man would agree to execute the sale deed, that too after the payment of total sale consideration with the balance of Rs.500/- within a period of one year. The specific case of the defendant is that even the date of alleged sale agreement, he already entered into the agreement between the parties from Bangalore and laid out the property, first item of suit property and sold out to various persons. In fact, the PW.2 is one of the vendor of the house plot from the defendant. While borrowing the loan from the plaintiff, the signatures of the defendants were obtained in the blank stamp paper and utilised the same for false agreement for sale. As if the defendants agreed to sell, so far as, the second and third item of the suit property are originally given to the defendant by the darakast under the particular scheme on condition that they should not sell the property to other community persons. Further the defendant is residing there after construction of house and he never intended to sell the property. Moreover, if at all the defendant agreed to sell the said property, it becomes void.

9. Further submitted that the PW.2 is the key person to fabricate the agreement for sale in favour of the plaintiff and filed suit for specific performance. Even then the plaintiff did not take any steps to implead the purchasers of the suit property in the suit proceedings and also did not seek any prayer to set aside the sale deeds and also did not take any steps to amend the prayer in favour of the third parties. Therefore, both the Courts below rightly held that the agreement for sale itself is created one and dismissed the suit.

10. Heard Mr.K.Selvarangan, learned counsel appearing for the plaintiff and Mr.J.Hariharan for Mr.V.Nicholas, learned counsel appearing for the defendant.

11. The plaintiff filed a suit for specific performance on the strength of the agreement for sale, dated 12.12.1988.

12. According to the plaintiff, the defendant agreed to sell the suit property for the total sale consideration of Rs.25,000/- in which he received a sum of Rs.15,000/- on the date of execution of sale agreement dated 12.12.1988 as advance and fixed six months time for balance sale consideration and execution of sale deed. Thereafter, on 10.06.1989 when the plaintiff was ready and willing to pay the balance sale consideration, the defendant received a sum of Rs.9,500/- only and requested further one year of time to execute the sale deed and on the said day, he would receive balance sale consideration of Rs.500/-. The sale agreement was marked as Ex.A.1 and made endorsement by the defendant on the back side of the first page of the sale agreement was marked as Ex.A2. Whereas, the

defendant contended that even before the sale agreement dated 12.02.1988 the first item of the suit property already laid out and sold out to various third persons. The defendant also executed Power of Attorney, which was also marked as Ex.B1 in favour of Narayanan and Mohamed Ibrahim to sell the first item of the suit property. The sale deed which was executed by the defendant was marked as Ex.B2 and Ex.B3. Insofar as the property comprised in Survey No.34/2 classified as Village Natham, which was marked as Ex.B4.

13. As rightly pointed out by the learned counsel for the defendant, no prudent man would agree for execution of sale deed after a period of one year that too after making the entire sale consideration with the balance of meagre amount of Rs.500/-. Except the Ex.A1 and Ex.A2 the plaintiff did not produce any piece of evidence to show that he had shown his readiness and willingness to perform his part of the contracts. Further the defendant categorically mentioned in the written statement that even before the alleged agreement for sale, the first item of the suit property was laid out in to the house plots and sold out to various persons. Even then the plaintiffs did not take any steps to implead the purchasers of the suit property and also did not take any steps to amend the prayer to set aside the sale deeds executed by the defendants.

14. On perusal of the deposition of the PW-2, revealed that who is the one of the vendor from the defendant purchased a house plots and he is one of the attessor to Power of Attorney executed by the defendants to sell first item of the suit property. When the PW.2 knows about the Power of Attorney and transactions between the other purchasers and he is also one of the witnesses of the agreement for sale, which was marked as Ex.A1. Therefore, the agreement of sale is nothing but created and concocted one. The defendant categorically replied by his reply notice that the signatures were obtained at the time of borrowal of the land from the plaintiff by PW-2 as well as the plaintiff. Thus, the signatures have been utilised for computing the alleged sale agreement. When it being so, the plaintiff failed to prove the agreement for sale in the manner known to law. Further, the plaintiff did not approach the Courts with clean hands and as such, he is not entitled for any relief. Both the Courts below rightly concluded that the plaintiff is not entitled for any relief and dismissed the suit.

15. In view of the above, this Court does not find any valid reason to interfere with the reasonings and 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 plaintiff.

Accordingly, this Court is of the considered opinion that no substantial questions of law 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 defendant and as against the plaintiff.

16. In fine, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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.Nicholas, Advocate Sr.17488

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S.A.No.1383 of 2003

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