



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.01.2020**

CORAM:

THE HONOURABLE **MR.JUSTICE R.SUBRAMANIAN**

S.A. (MD)No.602 of 2015

and

M.P. (MD)No.1 of 2015

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U.Shanmugam ... Appellant / Respondent / Plaintiff

Vs.

1.K.Manickam Chettiar

2.M.Lakshmanan .. Respondents / Appellants / Defendants

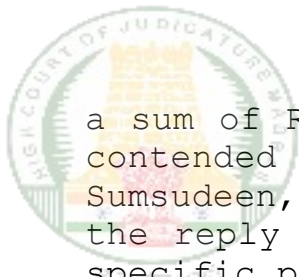
PRAYER: This Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.09.2014 passed in A.S.No.3 of 2014, by the learned District and Sessions Judge, Sivagangai, reversing the judgment and decree dated 30.10.2013 passed in O.S.No.94 of 2010 by the learned Subordinate Judge, Sivagangai.

For Appellant : Mr.M.Kamalanathan
For Respondents : Mr.G.Prabhu Rajadurai

JUDGMENT

The plaintiff in O.S.No.94 of 2010, who succeeded in obtaining a decree for specific performance before the trial Court on its reversal by the lower appellate Court, has come up with this Second Appeal.

2.The suit was filed by the plaintiff seeking specific performance of the agreement, dated 05.02.1997. As per the said agreement, the defendants agreed to sell roughly about 16 acres of land at a cost of Rs.2800/- per cent. An advance of Rs.7 lakhs was paid. The agreement did not contain any outer date for its performance. However, it is seen from the endorsements made in the agreement between 12.02.1997 and 30.06.2003 various payments were made by the plaintiff to the defendants and sale deeds were also executed by the defendants in respect of portions of the land. Claiming that he has paid a sum of Rs.50,000/- on 23.11.2003 and further a sum of Rs.4 lakhs in the year 2006, the plaintiff would cause a legal notice demanding execution of sale deed for remaining extent of 2 acres on 16.11.2006. The said notice was replied to, by the defendants under Ex.A4, dated 21.11.2006 setting up a claim that the agreement of sale dated 05.02.1997 was cancelled on 14.12.2004. It was also contended that the payment said to have been made on 23.11.2003 is not correct, but the payment was actually made on 03.11.2003. As regards the claim that



a sum of Rs.4 lakhs was paid during the year 2006, the defendants contended that one cent of land was sold for Rs.10,000/- to one Sumsudeen, who was introduced by the plaintiff. Upon receipt of the reply notice, the plaintiff had come up with the suit seeking specific performance.

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3.The suit was resisted by the defendants reiterating the claim made in the reply notice.

4.At trial, the plaintiff was examined as P.W.1 and one Malaichamy was examined as P.W.2. Exs.A1 to A6 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and one Palanikumar, the attesor of the cancellation agreement, dated 14.12.2004 marked as Ex.B1, was examined as D.W.2.

5.On consideration of the oral and documentary evidence, the learned trial Judge concluded that the plaintiff has established the truth and validity of the agreement and the endorsement dated 23.11.2003. The learned trial Judge also disbelieved the version of the plaintiff that the sale agreement-Ex.B1, was cancelled on 14.12.2004. On the said findings, the learned trial Judge decreed the suit as prayed for. Aggrieved, the defendants preferred an appeal in A.S.No.3 of 2014 on the file of the learned District and Sessions Judge, Sivagangai. The learned District Judge, who heard the appeal, disagreed with the findings of the trial Court on two aspects, viz., the date of payment of Rs.50,000/- that is on 03.11.2003 or 23.11.2003 and the factum of cancellation of the agreement. On the said findings, the learned District Judge, dismissed the suit concluding that the plaintiff is not entitled to the specific performance. Aggrieved, the plaintiff has come up with this Second Appeal.

6.The following substantial questions of law were framed by this Court at the time of admission, for consideration of this appeal:-

"(a).Whether the lower Appellate Court went wrong in finding that the suit is barred by limitation?

(b).Whether the Appellate Court is right in denying the appellant to seek relief of Specific Performance in view of Ex.A.2 and A.4 and the payment made on 23.11.2003 and subsequent payment on the year of 2006?

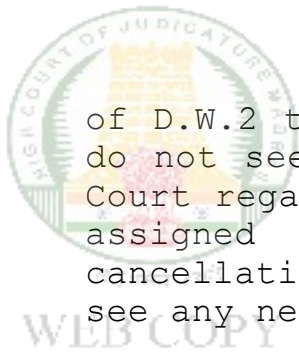
(c).Whether the Appellate Court is right in believing Ex.B1 the cancellation of suit sale-agreement in Ex.A.1?"

7.I shall first take up the substantial questions of law (b) and (c), since the substantial question of law (a) would depend upon the answers to the substantial questions of law (b) and (c).



8.As regards the factum of payments said to have been made on 23.11.2003, the learned District Judge has found that the said payment was made on 03.11.2003 and not on 23.11.2003. Ex.A1 agreement contains several endorsements of payments made on various dates. The defendants are not disputing any of the endorsements except the date found in the endorsement dated 23.11.2003. According to the defendants, the payment was made on 03.11.2003 and not on 23.11.2003 and the numeral-2 has been inserted by the plaintiff with ulterior motive. The learned District Judge has considered this submission and on a perusal of the agreement-Ex.A1, the learned District Judge has found that the numeral-2 appearing before the numeral-3 in the endorsement dated 23.11.2003 is a subsequent insertion. The learned District Judge has taken into account the features in the writing of the numeral-2 found in various places in the agreement, which were admittedly written by the first defendant. I have also perused the agreement. A mere look at the document, particularly, the endorsement dated 23.11.2003, clearly shows that numeral-'2' has been inserted subsequently. The style of writting of numeral-'2' in the endorsement dated 23.11.2003 is not the same as the other numeral-'2' found in the endorsement dated 30.06.2003 and the numeral-'2' in the year 2003 written on 23.11.2003 itself. I, therefore, agree with the conclusion of the appellate Court that this numeral-'2' has been subsequently inserted with ulterior motive.

9.As regards the cancellation agreement, the same has been produced as Ex.B1. Two circumstances have been relied upon by the lower appellate Court to conclude that Ex.B1 cancellation agreement is true. The lower appellate Court has taken into consideration the fact that the defendants in the reply notice marked as Ex.A4, dated 21.11.2004 have specifically stated that the sale agreement-Ex.A1, dated 05.02.1997 was cancelled under Ex.B1, dated 14.12.2004. Though the plaint was filed after the receipt of the said reply notice, there is no whisper or reference in the plaint about the invalidity or otherwise of the cancellation agreement, dated 14.12.2004. The plaintiff should come with clean hands to seek for specific performance. The plaintiff must have pleaded that Ex.B1 was not executed by him. There is no such plea. Even in the proof affidavit filed, as P.W.1, the plaintiff does not whisper about the cancellation agreement, dated 14.12.2004. It is expected of a normal person, who sues for specific performance to deny the cancellation agreement in the proof affidavit, so as to enable the defendants to cross examine him on that aspect. By maintaining, the plaintiff had prevented the defendants from effectively cross examining him on Ex.B1. The lower appellate Court has relied upon the evidence



of D.W.2 the attessor to conclude that Ex.B1 agreement is true. I do not see any perversity in the findings of the lower appellate Court regarding its appreciation of evidence of D.W.2. The reasons assigned by the lower appellate Court for believing Ex.B1-cancellation agreement, are based on material evidence. I do not see any need to interfere with the said findings.

10.Mr.M.Kamalanathan, learned counsel appearing for the appellant would vehemently contend that the fact that D.W.1 has admitted the receipt of Rs.4 lakhs in the year 2006 and the execution of a sale deed for 40 cents in favour of Sumsudeen, would show that the cancellation under Ex.B1 is false. I am unable to accept the said submission of the learned counsel for the following reasons:-

The sale price agreed to under Ex.A1, dated 05.02.1997 is only Rs.2800/- per cent, whereas for the sale in favour Samsudeen, the defendants have received a sum of Rs.10,000/- per cent. After receiving Rs.4 lakhs in the year 2006, the first defendant had executed a power of attorney directly in favour of Samsudeen and the plaintiff had nothing to do with the sale transaction. The vast difference in the sale price would definitely indicate that the sale in favour of Samsudeen in the year 2006 was not under Ex.A1 agreement, which stood cancelled. I am, therefore, compelled to answer the substantial questions of law (b) and (c) in favour of the respondents and against the appellant. Once it is found that the cancellation is true and the sale transaction in the year 2006 has nothing to do with the sale agreement, the plaintiff's suit has to be necessarily dismissed de-hors the question of limitation. Therefore, I do not see any need to answer to the substantial question of law (a).

11.In fine, this Second Appeal is dismissed confirming the judgment and decree of the lower appellate Court. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



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To

1.The District and Sessions Judge, Sivagangai,

2.The Subordinate Judge, Sivagangai.

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The Section Officer,-2copies

VR Section

Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.M.KAMALANATHAN, Advocate (SR-3320[F] dated 28/01/2020)

+1 CC to MR.G.PRABHU RAJADURAI, Advocate (SR-3313[F] dated 28/01/2020)

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