



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.09.2021
Pronounced on : 29.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.483 of 2008

1.J.R. Sampath (Died)

2.Nagarathinam

3.Maniganda Rajesh

4.Ramya ...Appellants/Plaintiffs
(Appellants 2 to 4 brought on record as LRs of the deceased sole appellant vide order of Court dated 08.02.2021 made in CMP. No.1837 of 2021)

Vs.

1.C.P. Manickaraj

2.M. Manikandan

3.Rajalakshmi

4.K. Nagarjan

5. C.K. Masilamani

6. Manimekalai ... Respondents/Defendants

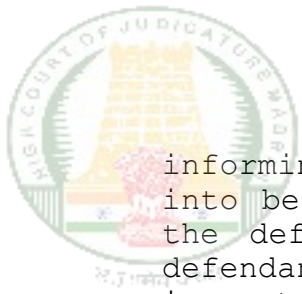
Prayer: Appeal is filed under section 96 of the Code of Civil Procedure against the judgment and Decree dated 31.12.2007 in O.S. No. 295 of 2005 on the file of the Additional District Court (Fast Track Court No.I), Coimbatore.

For Appellant : Mrs. R. Meenal

For Respondent 6 : Mr. P. Valliappan

For Respondents 1, 2 and 4: Ex-parte

For Respondents 3 and 5 : No appearance



informing the general public about the agreement of sale entered into between the plaintiff and the defendants. It appears that the defendants had created a sale deed in favour of the 6th defendant and the plaintiff would submit that the said sale deed is not binding upon him as the same was done during the subsistence of the agreement between the plaintiff and the defendants.

6. The plaintiff also contended that the defendants had admitted that the plaintiff had taken possession of the suit properties. Therefore, he has come forward with the above suit.

7. Defendants 1, 2 and 4 remained ex-parte and the defendants 3 and 5 had entered appearance through counsel. However, initially written statement had been filed only by the 6th defendant.

Written Statement of the 6th Defendant

8. The 6th defendant filed a written statement inter alia contending that the suit is nothing but the result of a collusion between the plaintiff and defendants 1 to 5. She denied the agreement of sale dated 04.11.2004 and would contend that the said agreement had been entered into only defeating the right of this defendant. It is her case that even as early as on 11.06.1993, the said C.P.Krishnaraj and his children the defendants 4 and 5 had conveyed an extent of 1005 Sq.ft. together with terraced and tiled building bearing No. 87/1 in favour of the 6th defendant. The property belonged to Bagyammal, the mother of Krishnaraj, who had executed a Will dated 13.11.1972, bequeathing a life interest on Krishnaraj and a vested remainder on his sons, defendants 4 and 5.

9. The 6th defendant would further submit that there was an oral partition between Krishnaraj and his brother Manickaraj, the 1st defendant, in and by which the property had been orally divided. The property which was in the occupation of the said Krishnaraj had been conveyed under the sale deed dated 11.06.1993.

10. The 6th defendant would submit that in the suit property one portion is in the occupation of one Balasubramanian and the other in the occupation of the plaintiff. The 6th defendant had filed an Eviction Petition against the plaintiff and the said Balasubramanian and had obtained an eviction order from the Rent Controller. The appeal filed by the plaintiff had also ended in a dismissal and the matter is now pending before this Court in revision. The plaintiff was in arrears of rent and only on the orders of this Court he had deposited the arrears of rent. The 6th defendant had also withdrawn the amounts deposited. The



Eviction Petition filed against the said Balasubramanian is also now pending in revision before this Court.

11. The 6th defendant would further submit that defendants 1 and 2 had entered into an earlier agreement of sale dated 08.10.2004 agreeing to convey their property for a total sale price of 6,00,000/- for which this defendant had paid an advance of Rs. 50,000/-. Thereafter, the property had been conveyed to this defendant under a sale deed dated 09.03.2005. The plaintiff was fully aware about the same. The sale agreement which is the subject matter of this suit and upon which the instant suit is based has been created in collusion by the plaintiff and defendants 1 to 5.

12. The 6th defendant would further submit that the plaintiff who is not able to even pay the rent does not have a capacity to pay the sale price of Rs.5,50,000/-. Further, the averments that the possession has been delivered to the plaintiff pursuant to the agreement of sale is totally false as he is already in occupation of the other property alone and not the suit property. Therefore, she sought for the dismissal of the suit.

Written Statement of defendants 3 and 5:

13. These defendants had later filed a written statement admitting the sale agreement and contending that they were ready and willing to proceed with the execution of the sale deed as per the terms of the agreement. They would contend that since the other defendants had breached the terms of the agreement they were unable to proceed with the execution of the sale deed and the contention of the other defendants that the agreement of sale has not been executed is false. Basically, the 3rd and 5th defendants had supported the case of the plaintiff.

Trial Court:

14. On the basis of the pleadings in the suit, the Trial Court had framed the following issues, which is translated from the vernacular and reads as follows:

"i) Whether the agreement of sale dated 04.11.2004 is true, valid and legally maintainable?

ii) Whether the plaintiff has been ready and willing to proceed with the agreement of sale?

iii) Whether the plaintiff is entitled to an order directing the defendants to receive the balance sale consideration and execute a sale deed in favour of the plaintiff?

iv) To what other reliefs the plaintiff is entitled to?"



15. After the framing of issues, the parties had gone to trial and on the side of the plaintiff, the plaintiff had examined himself as P.W.1 and one K.S.Gopinath and Chadrasekhar as P.W.2 and P.W.3 respectively and marked Ex.A-1 to Ex.A-37. The 6th defendant had examined herself as D.W.2 and one Mr. C.K.Masilamani, the 5th defendant as D.W.1. They had marked Ex.B.1 to Ex.B.12 in support of their contentions.

16. The learned Additional District Judge on considering the evidence returned a finding that the sale agreement, Ex.A-1 and the letter of the same date, Ex.A-2 had been fraudulently and collusively created by the plaintiff and the defendants particularly when the defendants had executed Ex.B-8 agreement earlier in point of time with the 6th defendant. The learned Judge therefore dismissed the suit.

17. Challenging the said Judgment and Decree, the plaintiff is before this Court. Pending this appeal, the sole appellant / plaintiff had died and appellants 2 to 4 were brought on record as his legal representatives.

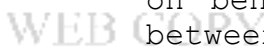
Submissions:

18. Mrs.R.Meenal, learned Counsel arguing on behalf of the appellants would contend that the Judgment of the Trial Court is a non-speaking one, wherein, the learned Judge has not rendered a finding on the issues that had been framed. The learned Judge has totally overlooked the admission of the defendants 3 and 5, wherein, they have admitted the execution of agreement of sale.

19. The learned counsel would contend that the sale deed in favour of the 6th defendant had been executed by the defendants during the subsistence of the agreement between the plaintiff and the defendants. Further, the 6th defendant had proceeded to purchase the property despite a public notice having been effected, putting the general public on notice that the plaintiff had entered into an agreement of sale with defendants 1 to 5. The agreement of sale, Ex.B-8 is a sham and nominal one and created solely for the purpose of defeating the rights of the plaintiff. The Court below had placed reliance on the pendency of the Rent Control proceedings, which is with reference to the property west and south of the suit property and not with reference to the suit property.

20. She would submit that since the learned Judge has not answered the issues framed by him, the Judgment deserves to be set aside and the matter remanded back for fresh hearing.

21. It has to be now considered as to whether the Judgement and Decree of the Trial Court has to be set aside on the sole



22. Per Contra, Mr.P.Valliappan, learned Counsel appearing on behalf of the 6th defendant would submit that the agreement between the 6th defendant and the defendants 1 to 5 were prior in point of time to agreement, Ex.A.1 between the plaintiff and the defendants. He would further submit that the plaintiff's readiness and willingness stands disproved by the Rent Control proceedings, where the plaintiff was found to be in arrears of rent.

Points for consideration:

A) Whether the Judgment and Decree of the Trial Court is bad on the ground that the same does not answer each of the issues independently?

C) Whether the plaintiff has proved the continuous readiness and willingness?

25. In order to answer the first point for consideration it would be necessary to refer to Order XIV Rule 2 of the Code of Civil Procedure which reads as follows:

(1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

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(a) the jurisdiction of the Court, or
(b) a bar to the suit created by any law for the time being in-force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

26. Therefore, a reading of the above provision would indicate that a Judgment can be pronounced either based only upon a preliminary issue or the Court could pronounce Judgment on all issues. Order XX Rule 5, reiterates this position. Order XX Rule 5 provides that where issues have been framed, the Court should state its findings and decision with reasons thereof, on each of the issues unless the findings upon any one or more issues would suffice for arriving at a decision in the said suit. Viewed from the provisions stated above, the Judgment and Decree of the learned Additional District Judge, (Fast Track Court No.2), Coimbatore, does not satisfy the above provisions.

27. The learned Judge has simply considered the documents filed on the side of the plaintiff and defendants and ultimately disposed of the suit on the findings which have been recorded concisely at paragraph No.13 of the Judgment. The issues have not collectively or individually answered. The first point is answered in favour of the plaintiff / appellant.

28. This Court is sitting in appeal under Section 96 of the Code of Civil Procedure. Order XLI of the Code of Civil Procedure, provides the procedure for the hearing of appeals from original decrees. Rule 24 therein provides that if evidence on record is sufficient to enable the Appellate Court to pronounce the Judgment the Appellate Court can after re-settling the issue finally determine the suit irrespective of whether the Judgment of the Trial Court proceeded on a different ground other than what the Appellate Court proceeds. The evidence is all on record hence I shall proceed to consider the same.

Second point for consideration:

29. This suit is one for specific performance and as stated in para No.23, supra the points for consideration has been framed based on the pleadings, evidence both documentary and oral. The plaintiff has come forward with a case that he and defendants 1 to 5 had entered into an agreement of sale marked as Ex.A-1 dated 04.11.2004, in and by which the defendants had agreed to sell the suit property to the plaintiff. The sale consideration was fixed at a sum of Rs. 5,50,000/- and on the



date of the agreement a sum of Rs. 50,000/- has been paid by the plaintiff to the defendants 1 and 2. The sale consideration has been received by the 1st and 2nd defendants. The time for execution of the deed was fixed as 6 months. Therefore, as per the agreement, the sale had to be concluded by 03.05.2005. The plaintiff's further case is that he had issued a legal notice on 30.01.2005 calling upon the defendants 1 to 5 to execute the sale deed and the defendants had met the plaintiff thereafter and agreed to execute the sale deed on 14.02.2005.

30. Despite their promise the defendants 1 to 5 did not come forward to execute the sale deed on 14.02.2005 and on the contrary had issued a reply notice dated 07.02.2005, under Ex.A.4 denying the very agreement of sale. The Rejoinder dated 15.02.2005 has been issued by the plaintiff under Ex.A.5. This was followed by the plaintiff issuing a paper publication which has been filed as Ex.A.6. Meanwhile, defendants 1 to 5 have created a sale deed in favour of the 6th defendant which will in no way bind the plaintiff since the sale had been executed during the subsistence of the agreement between the plaintiff and the defendants 1 to 5 and C.P.Krishnaraj. Therefore, the plaintiff has come forward with this suit.

31. The 6th defendant who is the purchaser from the defendants 1 to 5 has rebutted/refuted the claim of the plaintiff on the ground that he has entered into an agreement of sale prior in point of time to the plaintiff under Ex.B-8 dated 08.10.2004. Pursuant to which, the sale deed has also been executed and registered under Ex.B-9 dated 09.03.2005. Considering the fact that the agreement of sale executed by the defendants 1 to 5 in favour of the 6th defendant is a month earlier to the agreement of sale, Ex.A-1, the learned Trial Judge has dismissed the suit filed by the plaintiff for specific performance. It is also seen that pursuant to Ex.B-8, Ex.B-9 sale deed had also come into existence before the filing of the suit.

32. A perusal of the sale consideration under the two agreements would indicate that the agreement of sale between the 6th defendant and the vendors, namely, defendants 1 to 5 was for a total sale consideration of Rs. 6,00,000/-. Whereas, the sale consideration of the agreement entered into between the plaintiff and defendants 1 to 5 a month later was for a sum of Rs.5,50,000/-. The defendants 1 to 5 have conveniently avoided the witness box and therefore, it is not possible for the parties to examine them. Their non-examination is also to the detriment of the plaintiff considering the fact that the defendants 3 and 5 had filed a written statement accepting the plaintiff's plea.



33. Another factor which weighs in favour of the 6th defendant is the fact that the 6th defendant had already purchased the adjacent property under a sale deed, Ex.B.5 dated 11.06.1993. Pursuant to the purchase it appears that the 6th defendant has initiated proceedings before the Rent Controller, Pollachi in R.C.O.P.No.5 of 1997 for willful default and owners occupation against the plaintiff herein and one Balakrishnan. One of the allegations was that the plaintiff had been in arrears since the year 1993 itself. The Rent Controller had directed eviction and the said order had been taken up on appeal by the plaintiff in R.C.A.No. 10 of 2001 on the file of the Subordinate Court, Pollachi. The Subordinate Court had also dismissed the appeal filed by the plaintiff and had upheld the eviction order passed by the Rent Controller.

34. Therefore, since the 6th defendant had purchased a portion of the property, it is but natural for her to have entered into an agreement of sale to purchase the remaining portion as well and it is with this intent that she had entered into an agreement of sale dated 08.10.2004 under Ex.B-8, which later translated into a sale deed, Ex.B.9 dated 09.03.2005. Therefore, considering the fact that the 6th defendant's agreement is prior in point of time and the same has also culminated into a sale deed, the second point for consideration is held against the plaintiff.

Third point for consideration:

35. If the readiness and willingness of the plaintiff is taken into account the same has not been proved by the plaintiff. Further, considering the fact that the plaintiff has been in arrears of rents to the tune of just a sum of Rs.400/- per month would also indicate that the plaintiff's financial position is not too sound. This view is also supported by a perusal of Ex.B.1 to Ex.B-3, which are the auction notices which has been published in the Tamil Dailies, bringing to the notice of the general public that the plaintiff's property was to be brought for auction on account of his non payment of the dues to the Pollachi Town Cooperative Bank. Except for making statement that he has been ready and willing there has been no manifest proof of the same and therefore, this Court has to hold that the plaintiff has not proved his readiness and willingness as well and the third point for consideration is also held against the plaintiff.



36. In the result, the First Appeal is dismissed and the Judgment and Decree of the Additional District Court (Fast Track Court No.I), Coimbatore in O.S.No.295 of 2005 is confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

The Additional District Judge,
(Fast Track Court No. 1, Coimbatore).

Copy to

The Section Officer,
VR Section, High Court,
Chennai-104.

+1cc to Mrs.R.Meenal, Advocate Sr.50413
+1cc to Mr.P.Valliappan, Advocate Sr.50416

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