



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.NO.715 OF 2008 AND
M.P.NO.1 OF 2008

Parameswari

... Appellant/Appellant/
2nd Defendant

.Vs.

1. S.V.Namachivayem
S/o.Velayutha Gounder

... 1st Respondent/1st Respondent/
Plaintiff

2. Saraswathi
W/o.Venugopal

... 2nd Respondent/2nd Respondent/
1st Defendant

PRAYER:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 10.03.2008 in A.S.No.42 of 2006 on the file of II Additional District Judge, Puducherry concurring the judgment and decree dated 29.04.1992 in O.S.No.194 of 1990 on the file of the Principal Sub Judge, Pondicherry.

For Appellant : Mr.R.Sreedhar

For Respondent

For R1 : Ms.R.Meenal

R2 : No appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 10.03.2008 passed in A.S.No.42 of 2006 on the file of II Additional District court, Puducherry, confirming the judgment and decree dated 29.04.1992 passed in O.S.No.194 of 1990 on the file of the Principal Subordinate Court, Pondicherry.

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



3. The second defendant O.S.No.194 of 1990 is the appellant in the Second Appeal.

4. Suit for Specific Performance.

WEB COPY

5. The suit has been filed by the plaintiff based on the sale agreement dated 21.09.1988, where-under the first defendant had agreed to sell the suit property to the plaintiff for Rs.50,000/- and received a sum of Rs.10,000/- as advance on the date of the sale agreement and the parties had agreed that the first defendant should hand over the title deed, Encumbrance Certificate pertaining to the suit property within one year and thereafter, the plaintiff should pay the balance sale consideration and obtain the sale deed. According to the plaintiff, the first defendant has failed to perform his part of the contract and even though the plaintiff has always been ready and willing to pay the balance sale consideration, the first defendant had failed to hand over the documents of the suit property as promised and subsequently, it is also seen that the parties had agreed to extend the period of sale agreement on 11.09.1989 till 30.06.1990 and also made an endorsement to that effect in the sale agreement and according to the plaintiff, even after the extension of time, the first defendant had failed to perform his part of the contract and therefore, the plaintiff issued a legal notice on 25.06.1990 expressing his readiness and willingness in obtaining the sale deed after paying the balance sale consideration and despite the acknowledgement of the receipt of the notice, the first defendant had failed to come forward to execute the sale deed and further according to the plaintiff, inasmuch as it had been returned by the Court amin that the first defendant had sold the suit property and left the house, on verification, the plaintiff came to know that a collusive sale deed dated 12.02.1990 had been effected between the defendants 1 and 2 with a view to defraud the plaintiff and hence the suit has come to be laid by the plaintiff for appropriate relief.

6. The second defendant contested the plaintiff's case putting forth the pleas that the sale agreement projected by the plaintiff is not true, valid and binding on her and stated that the sale agreement had been effected in collusion between the plaintiff and the first defendant and the plaintiff has not taken any concrete steps to enforce the sale agreement till the issuance of the legal notice and further put forth the case that a conditional deed had been executed between the defendants 1 and 2, whereunder, the first defendant received a sum of Rs.25,000/- from the second defendant and despite the execution of the conditional sale deed on 20.04.1989 and as the first defendant failed to repay the amount and as per the terms of the conditional sale deed, the first defendant had executed a pucca



sale deed in favour of the second defendant on 12.02.1990 after receiving the balance sale consideration and thus it is put forth that the second defendant is the bonafide purchaser for value and accordingly, prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined and Exs.A1 to A4 were marked. On the side of the second defendant, D.W.1 was examined and Exs.B1 and B2 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth, the courts below were pleased to grant the relief in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been laid by the second defendant.

9. The suit has been laid by the plaintiff based on the sale agreement dated 21.09.1988 marked as Ex.A1. To sustain the truth and validity of the sale agreement Ex.A1, the plaintiff has tendered evidence as P.W.1 and also examined the attestors of the same as P.Ws.2 and 3. Considering the evidence of P.Ws.1 to 3 in toto and their evidence being found to be trustworthy, reliable and convincing in all aspects, the courts below are found to be justified in upholding the truth and validity of the sale agreement Ex.A1. Though it is contended that the attestors are related/known to the plaintiff one way or the other, on that score alone, it cannot be held that they are the interested witnesses and when their evidence are found to be appealing and convincing, I do not find any infirmity in the approach of the courts below in relying upon their evidence. Thus, it is seen that the plaintiff has established the genuineness of Ex.A1 sale agreement.

10. Considering the recitals found in Ex.A1 sale agreement, when it is seen that the first defendant should part with the documents pertaining to the suit property within a particular period of time and also within the time extended further as per Ex.A2 endorsement, as the first defendant had failed to come forward to hand over the documents, left with no other alternative, the plaintiff is found to have issued the legal notice on 25.06.1990 marked as Ex.A3. The same had been received by the first defendant, which could be gathered from the acknowledgement card marked as Ex.A4. The first defendant has not responded to the same in any manner. The first defendant had remained exparte through out, both in the trial court as well as in the first appellate court. Therefore, according to the plaintiff, he has been necessitated to institute the suit for specific performance. According to the plaintiff, only after the issuance of the notice, he came to know that a collusive sale deed had been effected between the defendants1 and 2 on



12.02.1990 marked as Ex.B2.

11. Now according to the second defendant, prior to Ex.B2 sale deed a conditional sale deed had been effected between her and the first defendant on 20.04.1989 marked as Ex.B1. However, from the abovesaid materials placed on record, it is found that the conditional sale deed Ex.B1 had come into existence after Ex.A1, however, before the endorsement marked as Ex.A2 and subsequent to Ex.A2 endorsement Ex.B2 sale deed had come into existence. It is thus found that despite the plaintiff and the first defendant had agreed for the extension of the performance of the terms and conditions of the sale agreement Ex.A1, the sale deed in favour of the second defendant had come to be executed by the first defendant marked as Ex.B2. When the first defendant had already agreed to sell the suit property to the plaintiff for Rs.50,000/- under Ex.A1 sale agreement and also received Rs.10,000/- as advance and from the evidence adduced on the part of the plaintiff when it is found that and as rightly held by the courts below, the plaintiff has always been ready and willing to perform his part of the contract, only the first defendant had been evading the same on some pretext or the other, in such view of the matter, the sale deed Ex.B2, as concluded by the courts below, would not, in any manner, bind on the plaintiff.

12. The second defendant claims to be the bonafide purchaser of the suit property. However, to sustain the abovesaid plea, no acceptable and reliable material is forth coming on the part of the second defendant. Though the second defendant would claim that the suit property has been entrusted to her possession based on Ex.B1 deed, however, considering the recitals in Exs. B1 and B2 together, when they are found to be totally contradictory as regards the handing over the possession of the suit property as discussed and determined by the courts below and when the defendants 1 and 2 have endeavoured to execute Ex.B2 sale deed after Ex.A1 sale agreement and when the plaintiff has pleaded collusiveness between the defendants 1 and 2 qua Ex.B2 sale deed, to establish the truth and validity of Ex.B2 sale deed, no acceptable and reliable evidence has been adduced by the second defendant other than her interested testimony. When further Ex.B2 has not been shown to have been acted upon by the second defendant by placing the materials evidencing that following Ex.B2 sale deed she has been exercising absolute ownership over the suit property one way or the other and the second defendant also having failed to examine the first defendant in support of her case, on the other hand, the sale agreement having been established to be a genuine transaction by the plaintiff, as above pointed out, and the readiness and willingness of the plaintiff in performing his part of the contract having been established, as determined by



the courts below, in all, it is found that the courts below are found to be justified in upholding the plaintiff's case.

13. The reasonings and conclusions of the courts below for granting the relief of specific performance in favour of the plaintiff being based on proper appreciation of the materials available on record, both oral and documentary, both on factual matrix and on the point of law, and when they are not shown to be in any manner perverse, illogical and irrational, in all, no substantial question of law is found to be involved in the second appeal.

14. For the reasons aforesaid, the judgment and decree dated 10.03.2008 passed in A.S.No.42 of 2006 on the file of II Additional District court, Puducherry, confirming the judgment and decree dated 29.04.1992 passed in O.S.No.194 of 1990 on the file of the Principal Subordinate Court, Pondicherry, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bga

To

1. The II Additional District court,
Puducherry.
2. The Principal Subordinate Court,
Pondicherry.

Copy To:

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.R.Sreedhar, Advocate, S.R.No.12873
+1cc to Ms.R.Meenal, Advocate, S.R.No.13013

S.A.NO.715 OF 2008

RSV(CO)
PBS/05/10/2021