

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.NO.929 OF 2008

Thangaraj

...Appellant / 3rd Defendant

Vs.

1.R.Venkatachalam

2.Dhanasekaran

3.Palaniammal

...Respondents / Plaintiff,
1st & 2nd Defendants

Prayer : The second appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.08.2005 passed in A.S.No.27 of 2002 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 28.11.2000 passed in O.S.No.123 of 1996 on the file of the District Munsif Court, Rasipuram.

For Appellant : Mr.T.Muruga Manickam
for Mr.V.Rajesh

For Respondent : Mr.T.S.Baskaran
No.1

For Respondent : Given up
Nos.2 & 3

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 29.08.2005 passed in A.S.No.27 of 2002 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 28.11.2000 passed in O.S.No.123 of 1996 on the file of the District Munsif Court, Rasipuram.

2.The third defendant in O.S.No.123 of 1996 is the appellant in this second appeal.

3.The suit has been laid by the plaintiff against the defendants seeking for the relief of specific performance and according to the plaintiff, the suit property belonged to the second defendant and based on the power of attorney obtained

from the second defendant on 06.05.1992, the first defendant entered into a sale agreement with the plaintiff qua the suit property on 10.07.1995 for a sum of Rs.27,000/- and entrusted the possession of the suit property and on the date of the sale agreement, a sum of Rs.22,000/- was paid as advance by the plaintiff and the balance amount is agreed to be paid by the plaintiff within six months from the date of the agreement and the plaintiff has always been ready and willing to perform his part of the contract and also expressed his willingness to the first defendant. However, the first defendant had been postponing the execution of the sale deed pursuant to the sale agreement and consequentially, the legal notice has been issued by the plaintiff and it has been deliberately refused by the defendants and though the plaintiff has been ready to part with the balance sale consideration and obtain the execution of the sale deed, the first defendant failed to comply with the terms of the sale agreement and as the second defendant had passed away, his LR has been impleaded as the third defendant in the suit and hence, according to the plaintiff, he has been necessitated to levy the suit for the relief of specific performance.

4.The third defendant resisted the plaintiff's suit contending that the second defendant has not executed the General Power of Attorney to the first defendant as put forth in the plaint and the power deed has not been executed with the full consent of the second defendant and the power deed has been secured by the first defendant out of instigation and compulsion using foul play. Further it is put forth that taking advantage of the relationship between the first defendant and the third defendant, the first defendant in collusion with his brother Ravichandran had also secured a settlement deed in respect of the family properties belonging to the second defendant and further more also obtained a Will in respect of other properties belonging to the second defendant and after the relationship between the defendants 2 & 3 had become smooth and cordial and the third defendant had also withdrawn the partition suit laid by him against the second defendant and the second defendant had also cancelled the power of attorney, settlement deed and Will obtained stealthily by the first defendant on 25.08.1995 and the same had also been communicated to the first defendant and despite having knowledge of the abovesaid facts, with a view to grab the suit property, the sale agreement dated 10.07.1995 had been created by the plaintiff and the first defendant in collusion and it is false to state that the plaintiff had advanced a sum of Rs.22,000/- based on the sale agreement and the possession of the suit property had not been entrusted to the plaintiff pursuant to the sale agreement and the suit has been falsely laid by the plaintiff and hence, the suit is liable to be dismissed.

5.It is found that the suit in O.S.No.123 of 1996 and the suit in O.S.No.189 of 1996 laid by the plaintiff for the relief of specific performance and permanent injunction respectively had been jointly tried and the common evidence was recorded in both the suits by the trial Court.

6.In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A8 were marked. On the side of the defendant, DWs1 & 2 were examined and Exs.B1 to B52 were marked.

7.On an appreciation of the materials placed on record and the submissions put forth by the respective parties, the trial Court was pleased to dismiss the suit laid by the plaintiff for the relief of permanent injunction in O.S.No.189 of 1996 and granted the relief of specific performance in favour of the plaintiff as claimed by him in O.S.No.123 of 1996 and as against the judgment and decree of the trial Court in O.S.No.123 of 1996, the appeal has been preferred by the third defendant. The appellate Court has also confirmed the judgment and decree of the trial Court and resultantly, the present second appeal has been preferred by the third defendant.

8.It is also noted that as against the dismissal of the plaintiff's suit in O.S.No.189 of 1996, no appeal has been preferred by the plaintiff.

9.The appellant's counsel would put forth two points for setting aside the judgment and decree of the Courts below. According to the appellant's counsel, the sale agreement marked as Ex.A1 do not correctly recite the entrustment of the possession of the property covered under the sale agreement and when the plaintiff has projected the case as if the suit property had been entrusted to him by way of the sale agreement, however, the suit for the relief of permanent injunction on that footing laid in O.S.No.189 of 1996 by the plaintiff has been dismissed and the abovesaid factors would only go to expose that the suit property is in the possession and enjoyment of the defendants as such and the plaintiff also having not preferred any appeal challenging the dismissal of the suit in O.S.No.189 of 1996, according to the appellant's counsel, the Courts below on that basis should have disbelieved the sale agreement and erred in granting the relief of specific performance in favour of the plaintiff. However, the abovesaid facts have been extensively discussed by the trial Court as well as the appellate Court and the appellate Court in particular vide para No. 13 of its judgment has held that the abovesaid factor on its own would not belie the authenticity of the sale agreement marked as Ex.A1 as such, when particularly, the genuineness of Ex.A1 agreement has been upheld by the Courts below based on the

materials placed on record and merely because the recital concerning possession has been not correctly recited in the sale agreement, on that factor alone, we cannot hold that the sale agreement itself is a fabricated document and when the plaintiff has secured the right of specific performance as rightly concluded by the first appellate Court, the same includes the relief of possession of the property in question. In such view of the matter, the abovesaid contention put forth by the appellant's counsel in support of the defence version of the third defendant, when it is noted that the same had been properly considered, appreciated and determined by the Courts below, does not merit acceptance, as such and the same being purely on the basis of the facts involved in the matter.

10.The other contention put forth by the appellant's counsel is that the stamp papers for the sale agreement marked as Ex.A1 has been purchased at Salem and the sale agreement is executed at Rasipuram and therefore, the abovesaid factor would throw a serious suspicion in the plaintiff's case. In this connection, the evidence of PW2 has been taken into consideration by the Courts below and when the evidence of PW2 is not shown to be unsatisfactory and unacceptable, the Courts below are found to be justified in accepting the reliable evidence of PW3 for negating the abovesaid contention put forth by the appellant and the abovesaid factors are also based on the factual matrix, not involving any question of law as such. The same cannot be accepted for entertaining the second appeal.

11.Other than the abovesaid two points, no other has been canvassed by the appellant's counsel during the course of admission of the second appeal.

12.Considering the reasonings and conclusions of the Courts below, it is found that the Courts below have properly appreciated the materials placed on record in the right perspective, both on factual matrix and on the point of law and rightly held that the plaintiff is entitled to secure the relief of specific performance based on Ex.A1 sale agreement and in such view of the matter, the judgment and decree of the Courts below granting the relief of specific performance in favour of the plaintiff do not warrant any interference. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in the second appeal.

For the reasons aforesaid, the Judgment and decree dated 29.08.2005 passed in A.S.No.27 of 2002 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 28.11.2000 passed in O.S.No.123 of 1996 on the file of the District Munsif Court, Rasipuram, are confirmed and accordingly,

the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

sms

To

1.The Subordinate Judge,
Namakkal.

2.The District Munsif,
Rasipuram.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.5611

S.A.No.929 of 2008

CNR(CO)
RVM(18/11/2021)