



IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

RESERVED ON :
15.02.2021

PRONOUNCED ON :
18.02.2021

S.A.NO.364 OF 2010

Pavadai Gounder

...Appellant / Plaintiff

Vs.

1.Sekar

2.Chinnaiya Udayar

...Respondents / Defendants

PRAYER : Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.85 of 2009, on the file of the Principal District Court, Villupuram, dated 14.12.2009 in confirming the judgement and decree made in O.S.No.315 of 2006, on the file of the Principal District Munsif Court, Thirukoilur District and dated 24.03.2008.

For Appellant : Mr.V.Raghavachari

For Defendants : No appearance

J U D G M E N T

This second appeal has been preferred against the judgment and decree passed in A.S.No.85 of 2009, on the file of the Principal District Court, Villupuram, dated 14.12.2009 in confirming the judgement and decree made in O.S.No.315 of 2006, on the file of the Principal District Munsif Court, Thirukoilur District and dated 24.03.2008.

2. The plaintiff is the appellant herein. The short facts of the case is that the first defendant agreed to sell the suit property to the plaintiff for sale price of Rs.32,000/- and executed a Sale Agreement dated 19.04.2006 and he paid the entire sale consideration to the first defendant on the same day itself. The plaintiff could not get the sale deed registered because the stamp duty was fixed basing on the rate per square feet instead of rate per cent. As per the sale agreement the first defendant did not come forward to register the sale deed. Instead he tried to sell the suit property to the second defendant for a higher price. Hence the plaintiff has filed this suit for specific performance before the Principal District



Munsif Court, Thirukoilur District.

3. The first defendant has filed his written statement by stating that the alleged sale agreement dated 19.04.1996 was not executed by him and he did not receive any sale consideration as alleged by the plaintiff. And the suit property jointly belonged to himself and his brother and sister and they had agreed to sell the same to the second defendant on 05.04.2005. The plaintiff has filed the suit with some ulterior motive.

4. The trial court dismissed the suit. The plaintiff filed the first Appeal before the District Court, Villupuram and the first Appeal was also dismissed. Aggrieved over the same, he has filed this second appeal. The second appeal has been admitted on the following substantial questions of law:

1. "Whether the Courts below are justified in dismissing the suit when it has been established that the entire sale price was tendered by the appellant to the first respondent?"

2. When the defence of the defendants is not believed, whether the Courts below are justified in dismissing the suit?"

5. On perusal of the plaint, Ex.A1 sale agreement and the oral evidence of the Appellant/Plaintiff (PW1) it is seen that the plaintiff has stated as per the sale agreement he has paid the entire sale consideration of Rs.32,000/- to the first defendant on 19.04.2006 itself when the sale agreement was executed. According to the Appellant the registration of sale Deed has not been done for the reason that the stamp duty has been fixed on the basis of square feet rate instead of rate per cent.

6. The learned counsel for the Appellant drew the attention of this court to the finding of the learned trial judge in his judgement where he observed that both the plaintiff and the first defendant has affixed their signatures in Ex A1 sale agreement but did not accept the same as a valid agreement. It is further submitted by the learned counsel for the Appellant that the defence of the first defendant that he executed the sale agreement in favour of the second defendant was falsified and hence the trial court should have granted a decree for specific performance. The learned Trial Judge despite making an observation that the signatures of the plaintiffs and the first defendant are seen in Ex. A1 sale agreement, did not believe the intention of the parties .

7. The first Appellate Court has considered the materials available on record and concluded that the sale agreement dated 19.04.2006 could not be enforced due to the facts and



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circumstances surrounding the case. It is claimed by the Appellant that the entire sale consideration has been paid to the first defendant and the said fact was also proved. The learned Trial judge has framed specific issues as to the genuineness of the sale agreement and the passing of the sale consideration and held those issues against the Appellant.

8. The first Appellate court appreciated the evidence and held that even though the suit sale agreement had been executed by the parties, the plaintiff can not get a decree for specific performance. In the suit for specific performance the mere truth of the execution of the sale agreement will not entitle a party to the agreement to get a decree for specific performance if the facts and circumstances surrounding the sale agreement cast cloud on the genuine intention of the parties.

9. If the entire sale price has been paid by the Appellant on one and the same day of the agreement, there could not be any reason to delay the registration of the sale deed. The reason as stated by the appellant for not registering the sale deed on the same day itself is that the stamp duty was fixed on the basis of rate per square feet instead of rate per cent and the Appellant did not have sufficient money to buy stamp duty. But these facts do not find place in Ex.A1 sale agreement.

10. A purchaser intending to get the sale deed executed should be willing to bare the stamp duty and other registration charges. If it is in the opinion of the Appellant that the stamp duty has been fixed unreasonably or wrongly he should have given due applications to the Appropriate authorities and see that rectified. But the plaintiff did not take any such steps. Neither the said fact was stated in Ex.A1 sale agreement. If the stamp duty has been accepted to be correct but the Appellant did not have the financial strength to meet out the above expense, this fact atleast should have been stated in the sale agreement in order to strengthen its credibility, especially when it is alleged that the entire sale consideration has been paid but sale deed not executed. The said reason was not stated in Ex.A2 legal notice also.

11. The terms of the sale agreement in Ex.A1 was in such a manner that the first defendant should execute the sale deed anytime when the plaintiff called and if the first defendant failed to come and execute, he should pay double the sale price to the plaintiff. Both the trial court and the first Appellate Court have observed that the terms as seen in the Ex.A1 is unfairly advantageous to the plaintiff and termed unilaterally. It was submitted that since the entire sale consideration has been paid by the plaintiff it is the defendant who alone has to fulfill his part of the contract.



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12. But it is not stipulated within which time the plaintiff would arrange the money for stamp duty and call upon the first defendant. If the facts and circumstances of the Ex.A1 does not convince the conscious of the Court for the reasons recorded, the courts can deny the relief of specific performance. If the plaintiff has prayed an alternative relief of recovery of sale amount and if he proved the payment of sale amount then the courts may consider to grant the alternate relief in case it is found that the plaintiff is not entitled to the relief of specific performance. In this case the plaintiff did not pray for any alternative relief. Though in the grounds of appeal it is stated that the plaintiff was put in the possession of the suit property the same was not pleaded by the plaintiff in his plaint.

13. The appellant who is the plaintiff has got the duty to prove that the intention of Ex.A1 was only for the purpose of conveying the suit property in his favour. The said fact cannot be taken as proved just because the respective parties found to have endorsed their signatures in Ex.A1, but the facts and circumstances prove the contrary.

14. The facts and circumstance surrounding Ex.A1 and the act of parties in pursuance of Ex.A1 has been elaborately discussed by the courts below basing on the materials available and it is held that the plaintiff did not prove the intention of the parties as pleaded. The Lower Appellate Court has held that the Appellant failed to prove the genuiness of the intention for the sale agreement because he could not convince the courts as to

- a) why he postponed the execution of the sale deed, despite he tendered the entire sale price on the same day of sale agreement itself and
- b) what necessitated the execution of the sale agreement if the entire sale consideration has been paid .
- c) And why the reason regarding his inability to raise fund to meet the stamp duty has not been alleged in the sale agreement Ex.A1 or in the legal notice Ex.A2 in order to prove its credibility.

15. In fact the first defendant has sent a reply notice and in which it is stated that the plaintiff did not tell any reason in his legal notice as to why the sale deed was not registered, if the sale amount was paid in entirety to him. May be because of that, the plaintiff had invented a reason connecting to stamp duty and pleaded it in his plaint as an afterthought. The plaintiff cannot claim a decree by disproving the defence of the defendant alone. He can claim a decree only if he proves his own contentions and entitlements. Hence the



Appellant cannot get a decree of specific performance, just because the defendant failed to prove his averments in the written statement. Further, the relief of specific performance is a discretionary relief and it is not obligatory on the part of the Court to grant the same without weighing the facts and circumstance surrounding the sale agreement. The Courts below have done that exercise by correctly weighing the facts and circumstances in terms of sec. 20(2) of Specific Relief Act.

16. It is rightly observed by both the trial court and first appellate Court, that the sale agreement Ex.A1 contains unilateral conditions and it is silent about the obligations on the part of the plaintiff. Since the relief of specific performance is an equitable relief, the Appellant has got a duty to prove that for all the fairness and genuiness on his part he is entitled to get the relief for specific performance. The courts below have rightly fixed the said omission on the part of the Appellant by correctly appreciating the facts and circumstances on the basis of the materials produced before it. Hence the judgement and decree of the first Appellate court in confirming the judgement and decree of the trial court warrants no interference. Thus the questions of law 1 and 2 are answered against the Appellant.

In the result, this second Appeal stands dismissed and the judgment and decree of the first Appellate court is confirmed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

jrs

To,

1.The Principal District Court, Villupuram.

2.The Principal District Munsif, Thirukoilur.

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

+1cc to Mr.N.Suresh, Advocate SR.No.10101

+1cc to Mr.V.Raghavachari, Advocate SR.No.9634

S.A.No.364 of 2010

PP(CO)
RVM(01/11/2021)