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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.07.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

S.A.No.407 of 2021

A.B.Govarthan
S/o.P.C.Balakrishnan

... Appellant/Plaintiff in Trial Court

Vs.

K.G.Duraisamy (Died)
1. S.Shanmugam
S/o.Subburayan
2. Amsaveni
W/o.Late.Duraisamy
3. Balasundaram
S/o.Late.Duraisamy

... Respondents/Defendants in Trial Court

Prayer: Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree passed by the Subordinate Judge, Arni made in A.S.No.2 of 2017 dated 02.11.2020 confirming the judgment and decree passed by the District Munsif Court, Arni made in O.S.No.22 of 2009 dated 22.10.2016 by allowing the Second Appeal.

For Appellant : Mr.N.Umapathi

J U D G M E N T

One decade and two years [in other words 12 years] is the age of the lis which has led to the captioned Second Appeal as a plaint inter alia with a prayer for specific performance qua sale of immovable property was presented by the 'appellant before this Second Appeal Court' [hereinafter 'plaintiff' for the sake of convenience and clarity] on 28.01.2009. This plaint was taken on file by 'District Munsif Court, Arni' [hereinafter 'trial Court' for the sake of convenience and clarity] as OS.No.22 of 2009. The suit is pivoted on an unregistered sale agreement dated 06.03.2007 [Ex.A1] between the plaintiff and the 'first respondent in this Second Appeal Court' [hereinafter 'first defendant' for the sake of convenience and clarity]. To be noted, first defendant died on 21.11.2013 (pending suit) and his legal heirs were brought on record as 'defendants 3 and 4'



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[respondents 3 and 4 in captioned Second Appeal]. It is further to be noted that second defendant one S.Shanmugam is an alienee qua suit property [prior to the suit], wherein a sale deed dated 29.02.2008 was executed by the first defendant in favour of the second defendant.

2. As alluded to supra, suit was pivoted on aforementioned Ex.A1 unregistered sale agreement dated 06.03.2007. The immovable property intended to be conveyed under this sale agreement is land admeasuring 3 acres and 8 cents or thereabouts comprised in Survey No.381/5 in Ladapadi village forming part of Mamanndoor group of villages in Arni Taluk, Tiruvannamalai District. This 3.08 acres of land shall hereinafter be referred to as 'suit property' for the sake of convenience and clarity. The total sale consideration under Ex.A1 is Rs.84,700/- and a sum of Rs.25,000/- has been paid by way of advance and part of sale consideration at the time of execution of Ex.A1 by plaintiff to first defendant is plaintiff's case. It is also the case of the plaintiff that after one year and four months i.e., on 14.07.2008, plaintiff issued a notice calling upon the first defendant to receive the balance sale consideration and execute the sale deed in his favour qua suit property. It is also the further case of plaintiff that thereafter, on 24.07.2008, plaintiff went over to the jurisdictional Registration Office in Arni and waited, but the first defendant did not turn up and therefore, plaintiff caused a telegram to be issued. To be noted, this is the erstwhile telegram of Postal Department which is not in vogue now and not telegram app/software, which is now in vogue.

3. Be that as it may, thereafter, suit was filed on 28.01.2009 as already alluded to supra. First defendant, who entered appearance, filed a written statement dated 02.07.2009, wherein pleadings accepted execution of Ex.A1, but contended that it was executed for urgent financial requirement of first defendant, but thereafter, plaintiff, when approached for paying the balance and getting the sale executed, wriggled out of the same, became evasive and ultimately agreed that Ex.A1 will not be enforced owing to which the first defendant conveyed the suit property to the second defendant in and by registered sale deed dated 29.02.2008. To be noted, it also came to light that thereafter, the second defendant had further alienated suit property to one V.Ramakrishnan in and by a registered sale deed dated 03.07.2008. There will be further discussion about this elsewhere infra in this judgment.

4. Be that as it may, as already alluded to supra, pending suit first defendant died on 21.11.2013 and therefore, his legal heirs were brought on record as defendants 3 and 4.



5. In the trial Court, four issues were framed, this is captured in paragraph 5 of trial Court judgment, which reads as follows:

'5. Based on the pleadings of the parties, the following issues were framed for trial:

1. Whether the plaintiff is ready and willing to perform his part of the contract?
2. Whether the sale by the 1st defendant in favour of the 2nd defendant is binding on the plaintiff?
3. Whether the plaintiff is entitled to the reliefs of specific performance and for possession?
4. To what other relief, the Plaintiff is entitled?'

6. Parties went to trial on the aforementioned four issues. Plaintiff examined himself as PW1 and one Palanivel was examined as PW2, six exhibits namely Exs.A1 to A6 were marked as exhibits on the side of the plaintiff. Ex.A1, as already alluded to supra is the fulcrum of the lis namely unregistered sale agreement, Ex.A2 is the aforementioned suit notice dated 14.07.2008 and Ex.A3 is the acknowledgement for the same. Ex.A4 dated 23.07.2008 is the reply of first defendant, Ex.A5 is the telegram dated 24.07.2008 (already alluded to supra), which the plaintiff sent after allegedly waiting in the jurisdictional Registration Office at Arni for execution. Ex.A6 is the registered sale deed dated 29.02.2008 by which the first defendant sold the suit property in favour of S.Shanmugam.

7. After full contest, on the basis of aforementioned oral and documentary evidence, trial Court non suited the plaintiff in and by judgment and decree dated 22.10.2016. A perusal of the judgment of trial Court reveals that the trial Court has proceeded on four main points and they are:

- (i) non-joinder of necessary party,
- (ii) Ex.A1 is unregistered sale agreement,
- (iii) Plaintiff has not established readiness and willingness, which is essential concomitant and ingredients/determinants qua Section 16 (c) of Specific Relief Act, 1963 (Act No.47 of 1963) and
- (iv) Plaintiff has not chosen to challenge subsequent sale.

8. The non suited plaintiff carried the matter in appeal by way of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' ['CPC' for the sake of brevity] vide AS.No.2 of 2017 on the file of 'Subordinate Judge's Court, Arni, Tiruvannamalai District' [hereinafter 'First Appellate Court' for the sake of brevity]. First Appellate Court, after full contest, dismissed the First Appeal in and by judgement and decree dated 02.11.2020 and therefore, confirming the judgment



and decree of trial Court, but the First Appellate Court directed refund of a sum of Rs.25,000/- with interest at the rate of 10% per annum from the date of institution of the suit to the date of realisation. It is after such trajectory i.e., after suffering two concurrent decrees, plaintiff is before this Second Appeal Court vide aforementioned Second Appeal.

9. Before proceeding further, this Court also notices that a perusal of the judgment of First Appellate Court reveals that the First Appellate Court has disturbed the findings returned by the trial Court regarding readiness and willingness and the sale agreement being unregistered, but the First Appellate Court has proceeded primarily on the basis that the second alienee namely V.Ramakrishnan, who is vendee, qua second defendant S.Shanmugam is a bona fide purchaser. Though not articulated with clarity and specificity, it is obvious that a reading of First Appellate Court judgment makes it clear that this turns essentially on Section 19 of the Specific Relief Act, 1963 (Act No.47 of 1963).

10. Mr.N.Umapathi, learned counsel on record for plaintiff contended that the first defendant had no intention of conveying the property but entered into Ex.A1 and thereafter, wriggled out of the same by quickly alienating the suit property in favour of second defendant on 29.02.2008. Learned counsel contended that the first defendant has admitted execution of A1 in the written statement and therefore, Ex.A1 has to necessarily be believed. It was also contended that readiness and willingness is an aspect on which the findings returned are perverse. Learned counsel, in an attempt to buttress these arguments advanced pressed into service a judgment rendered by a Hon'ble Division Bench of this Court in Nanjammal and Ors.Vs.Palaniammal reported in (1993) 2 MLJ 7. Learned counsel drew the attention of this Court to paragraph 6 of said judgment of Hon'ble Division Bench and submitted that relief of specific performance should be granted as a normal rule once the truth of the agreement is made out.

11. This Court carefully considered the submissions made by learned counsel. The primary submission is with regard to findings touching upon readiness and willingness. The mere chronicle of events makes it clear that it is not possible for this Second Appeal Court to interfere with the findings returned by the Courts below regarding readiness and willingness though trial Court has held against the plaintiff and First Appellate Court has reversed finding (not the conclusion). This Court finds that the unregistered sale agreement is dated 06.03.2007, but the first demand was made only on 14.07.2008 more than one year and four months later. It is in this backdrop that no time frame having been fixed in Ex.A1, itself makes it intriguing. Be that as it may, the proposition canvassed i.e., proposition that



once the truth of the sale agreement is made out, the specific performance prayer shall be granted is not without exception. This is set out in the judgment of Hon'ble Division Bench itself. Hon'ble Division Bench has made it clear that if there are circumstances which would prove that equity will suffer by enforcing the sale agreement that will be an exception to this Rule. This case will fall in that category. This is owing to the subsequent alienation (alluded to supra and mentioned that there will be further discussion infra) wherein and whereby second defendant S.Shanmugam has alienated the suit property in favour of one V.Ramakrishnan (third party to the suit) vide registered sale deed dated 03.07.2008. In any event, a careful perusal of judgment of Hon'ble Division Bench of this Court makes it clear that the fact setting is very different and it would not be applicable to the case on hand. The reason is, Nanjammal case is one where the plea of the defendant is that it was a loan transaction and there was no real sale agreement. That is not the case here. This is not a case where the defendant has taken a plea that Ex.A1 is not a sale agreement and it was merely a loan transaction. On the contrary, first defendant admitted the execution of Ex.A1 but only stated that the plaintiff, who agreed to quickly complete the sale, wriggled out of the same and therefore, the first defendant alienated suit property in favour of second defendant. The fact setting being completely different, Nanjammal case would definitely not come to the aid of the appellant in the case on hand. In this regard, this Court reminds itself of the celebrated Padma Sundara Rao Vs. State of Tamil Nadu case reported in (2002) 3 SCC 533 which laid down the principle that a case law is for the fact setting of that case and not what follows and flows from that principle. Relevant paragraph in celebrated Padma Sundara Rao case is paragraph 9 and the same reads as follows:

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'



12. Therefore, in this view of this matter also Nanjammal case does not come to the aid of the plaintiff in the case on hand. With regard to readiness and willingness, this Court has already set out its discussion and dispositive reasoning and one year and four months is truly a long time in a sale agreement where no time frame has been fixed.

13. This Court also reminds itself that the age of the lis is one of the determinants in a legal drill under Section 100 of CPC and as already alluded to supra, the lis that has led to captioned Second Appeal is already twelve years old. Be that as it may, this being a legal drill under Section 100 CPC, it is necessary to examine whether the questions proposed by the protagonist of the captioned Second Appeal as substantial questions of law arise in this matter. All the three questions necessarily turn on Section 19 of Specific Relief Act, 1963. In this regard, from the narrative thus far, it is clear that Section 19 i.e., bona fide purchaser i.e., subsequent purchaser would come into play with regard to second alienation in favour of V.Ramakrishnan, if not, the first alienation by late first defendant in favour of second defendant. As already alluded to supra, the first alienation by first defendant in favour of second defendant was on 29.02.2008, but more than four months later, second defendant had alienated the suit property by way of a registered sale deed in favour of one V.Ramakrishnan on 03.07.2008. Ex.A1 sale deed being unregistered, would obviously have not come to the notice of the vendee V.Ramakrishnan. There is nothing to demonstrate a contrary scenario though there are some averments about the second defendant and first defendant being hand in glove but there is nothing of that sort with regard to V.Ramakrishnan and second defendant. Therefore, V.Ramakrishnan would qualify as a bona fide subsequent purchaser and therefore, this Court finds that the questions proposed do not arise much less as substantial questions of law and therefore, this Court finds that there is no ground to interfere with the judgment of Courts below more particularly, the First Appellate Court, considering that this is a legal drill under Section 100 of CPC.

14. In this regard, this Court also reminds itself that the expression 'substantial question of law' as occurring in Section 100 of CPC has been elucidatively explained by Hon'ble Supreme Court in a long line of case laws starting from Sir Chunilal Mehta's case [Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co., Ltd., reported in AIR 1962 SC 1314], wherein the view taken by a Full Bench of this Court in Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju and others reported in AIR 1951 Mad 969 (FB)] was affirmed. Without burdening this judgment with extracts from



those celebrated judgments, i.e., to avoid this judgment becoming verbose, it will suffice to say that this continues to be good law and this governs the field as Hon'ble Supreme Court has reiterated these principles as late as on 27.08.2020 in Nazir Mohamed case [Nazir Mohamed Vs. J.Kamala and others, reported in (2020) SCC OnLine SC 676]. Most relevant paragraphs are 29 to 35 and the same read as follows:

'29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.¹, where this Court held:-

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

30. In Hero Vinoth v. Seshammal , this Court referred to and relied upon Chunilal v. Mehta and Sons (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

31. The relevant paragraphs of the judgment of this Court in Hero Vinoth (supra) are set out herein below:-

21. The phrase substantial question of law, as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying question of law, means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with-technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of substantial question of law by suffixing the words of general importance as has been done in



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many other provisions such as Section 109 of the Code or Article 133(1) (a) of the Constitution. The substantial question of law on which a second appeal 2(2006) 5 SCC 545 shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta* [(1927-28) 515 IA 235 : AIR 1928 PC 172] the phrase substantial question of law as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal* case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* [AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557) When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.

32. To be substantial, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

33. To be a question of law involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

34. Where no such question of law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, as in this



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case, a second appeal cannot be entertained, as held by this Court in Panchagopal Barua v. Vinesh Chandra Goswami.

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari'.

15. In the light of Kanailal principle [Kanailal and others Vs. Ram Chandra Singh and others reported in (2018) 13 SCC 715], suffice to say that the lone point for determination in the case on hand is whether any substantial question of law arises in captioned second appeal in the light of Section 19 of Specific Relief Act, 1963 bona fide purchaser issue and suffice to say that this point has been determined in the narrative, discussion and dispositive reasoning thus far.

16. This takes us to Kirpa Ram principle i.e., the principle laid down by Hon'ble Supreme Court in Kirpa Ram Vs. Surendra Deo Gaur reported in 2020 SCC OnLine SC 935, wherein, the principle that a second appeal can be dismissed at the admission stage without formulating a substantial questions of law if none arises was reiterated. This is one such case and therefore, in the light of the narrative discussion and dispositive reasoning thus far, captioned second appeal is dismissed at the admission stage holding that no substantial question of law arises. Considering the trajectory and nature of submissions made before this Second Appeal Court, there shall be no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Subordinate Judge,
Arni,
Tiruvannamalai District.



2. The District Munsif,
Arni,
Tiruvannamalai District.

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+1cc to M/s.N.Umapathi, Advocate Sr.31926

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