



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.55 of 2009

Rathinameenakshi

...Defendant/Appellant

Vs.

Somaraj

...Plaintiff/Respondent

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 29.10.2008 in O.S.No.50 of 2007 on the file of the Principal District Court, Tirunelveli.

For Appellant : Mr.Niranjana S.Kumar
for Mr.V.Balaji

For Respondent : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

JUDGMENT

Aggrieved over the judgment and decree of the trial Court the present appeal suit has been filed.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

The suit property belongs to the defendant and it is divided into 155 plots. The defendant, who is living in a far away place appointed her sister namely, Bhagavath Geetha as power agent by a registered deed dated 01.10.1997. The said power agent entered into an agreement of sale on 24.01.2006 with the plaintiff agreeing to sell the suit schedule properties for a total consideration of Rs.8,00,000/- and received a sum of Rs.5,00,000/- as an advance towards the sale consideration on the same date. The balance of Rs.3,00,000/- was agreed to be paid within a period of 18 months. The possession of the property was handed over to the plaintiff and the plaintiff is in possession and enjoyment of the property. The plaintiff was always ready and willing to perform his part of contract, but neither the power agent nor the defendant herein had not come forward to execute the sale agreement. Hence, the plaintiff issued a legal notice on 10.01.2007 to the defendant and her power agent. The notice was replied only by the defendant on 12.02.2007 stating that she had executed a power of attorney on



01.10.1997 in favour of her sister and she did not inform about the sale agreement and also the power deed was cancelled on 10.04.2006, since the power agent failed in her duties. She further stated that several survey numbers mentioned in the notice are not covered under the power of attorney deed. Hence, the suit.

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(ii) The plaintiff states that the plot numbers mentioned and the corresponding survey numbers have been mentioned correctly in the sale agreement, but two survey numbers in Survey Nos.1014 and 106 had been mentioned in the sale agreement inadvertently. However, the above survey numbers have been omitted in this suit.

(iii) Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A6 were marked and on the side of the defendant D.W.1 was examined and Exs.B1 and B2 were marked.

4. It is the contention of the defendant that the power agent had not entered into an agreement on 24.01.2006 or any other date agreeing to sell the suit properties for a consideration of Rs.8,00,000/- and she did not receive any advance amount. As the power agent has not complied her duties, the defendant cancelled the power deed in favour of the power agent on 10.04.2006. At the time of cancelling the power of attorney, thorough verification was done by the defendant as to whether there are any existing agreement or deeds, but the defendant found nothing. Aggrieved over the cancellation of power deed, the sister of the defendant has come forward with the plaintiff in order to cheat and revenge the defendant. The alleged agreement of sale dated 21.01.2006 is created after the cancellation of the power deed by the defendant by anti-dating the document. It is further submitted that the possession of the property was never shifted to the plaintiff.

5. Based on the above pleadings, the trial Court has framed the following issues:-

1) Whether the agreement of sale dated 24.01.2006 is true, valid and genuine?

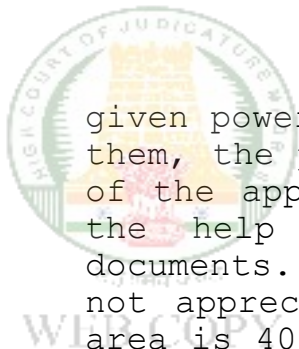
2) Whether the plaintiff has paid to the defendant's agent Rs.6,00,000/- as advance sale consideration?

3) Whether the defendant is bound by the sale agreement dated 24.01.2006?

4) Whether the plaintiff is entitled to the relief of specific performance?

5) Whether the plaintiff is entitled to the relief of permanent injunction as sought for?

6. The learned counsel appearing for the appellant vehemently contended that the trial Court has not appreciated the evidence properly. The agreement under Ex.A2 is anti-dated and it was created only to knock out the properties of the appellant, who is ~~several~~ andram. The sister of the appellant was originally



given power of attorney. As there was some misunderstanding between them, the power was cancelled. Aggrieved over the same, the sister of the appellant created the document under Ex.A2, agreement, with the help of her henchmen, namely, P.W.2 by anti-dating the documents. Hence, the appellant submitted that the trial Court has not appreciated the facts properly. Besides, the total extent of area is 40 acres and 42 cents. Therefore, the sale of the same for a sum of Rs.8,00,000/- creates serious doubt. The plaintiff has also not verified any document before entering into such contract with the power agent. P.W.2 is none other than the real estate broker. Therefore, Ex.A2, cannot be enforced for such huge property for a meagre amount. The trial Court has also not considered the undue hardship on the part of the defendant and simply granted decree. Hence, prayed for allowing this appeal.

7. The learned counsel appearing for the respondent submitted that execution of agreement has been clearly spoken by P.W.1 and P.W.2. Besides, P.W.1 also admitted in her evidence that the sister of the defendant has sold the property on the basis of the power deed. Therefore, it is submitted that the trial Court has analyzed the evidence and materials on record properly and came to the conclusion. Hence, prayed for dismissal of the appeal.

8. In the light of the above, now the points arise for consideration in this appeal are:

(i) Whether Ex.A2 was really intended for sale of the suit property?

(ii) Whether the plaintiff was always and ready and willing to purchase the property?

(iii) Whether the trial Court abdicated its responsibility in exercising discretion judicially?

(iv) To what other reliefs?

9. The suit has been filed to enforce Ex.A2, agreement of sale said to have been executed on 24.01.2006 for sale of about 155 plots for an extent of more than 40 acres of land in various survey numbers. It is the case of the plaintiff that the agreement was entered with the power agent, namely one Bhagavath Geetha, sister of the defendant herein. Ex.A1 is the general power of attorney dated 10.01.1997. The said fact is not in dispute. Similarly, the same was cancelled on 10.04.2006 as per Ex.B2. It is the contention of the plaintiff that he has agreed to purchase the property for a total consideration of Rs.8,00,000/- for the entire 155 plots for an extent about more than 40 acres of land from the power agent of the defendant, whereas, the defendant contended that Ex.A2, sale agreement came into existence after the revocation of the power of attorney on 10.04.2006. P.W.1 and P.W.2 were examined to prove the execution of the sale agreement. P.W.1 and P.W.2 in one voice have spoken about the execution of the document dated 24.01.2006.

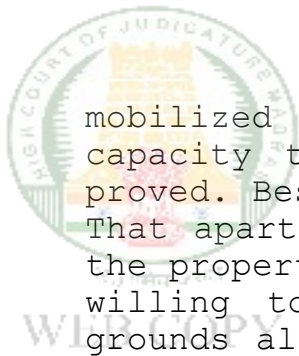


10. Now it has to be seen whether these documents are really intended for sale of a huge property. Though it is the contention of the plaintiff that he has agreed to purchase the huge property of about 155 plots, his entire cross examination when scanned, makes it very clear that only P.W.2, the land broker contacted the plaintiff and the husband of the power agent was also not known to the plaintiff closely and he has not paid any income tax at any point of time. Further, he has not received any receipts for the advance amount of Rs.5,00,000/-. The plaintiff has also submitted that the survey numbers, which are not mentioned in Ex.A1, were also included in their agreement and this agreement was written only by the power agent and he does not know, where the said agreement was prepared. Similarly, P.W.2 has spoken about the execution of Ex.A2. He has also feign ignorance of the place, where Ex.A2 was prepared. Only the husband of the power agent has informed him that his wife has prepared the document and he does not know, who has prepared the same.

11. A conjoint reading of the evidence of P.W.1 and P.W.2 makes it very clear that the plaintiff had not even verified the title of the properties and encumbrances over the property. Therefore, without verifying the document and title of the property, if a person is entering into a contract to purchase such huge properties, the same is highly improbable. Therefore, the intention of the plaintiff cannot be believed. This Court is unable to persuade itself that these documents are for sale of the huge property. Some of the survey numbers, which were not mentioned in Ex.A1, were also included while preparing the document of sale. This also shows that there is some urgency in preparing the document. The agreement is typed in two pages and the sentences are framed in a very narrow manner. This also creates serious doubt about the genuineness of the agreement of sale.

12. The above facts coupled with the evidence of P.W.1 and P.W.2 that without even verifying the title deeds and the encumbrance certificate, clearly probabilise the fact that the agreement was never intended for sale of properties. The Court below, simply relying upon certain admission on the part of D.W.1, that the power agent has sold certain properties, has disbelieved the case of the defendant.

13. To a pointed question to the learned counsel appearing on either side during the course of argument as to whether there is any encumbrance, on the verification both the learned counsel submitted that no encumbrance whatsoever is created over the suit properties. Therefore, merely on the basis of the strange admission on the part of D.W.1, specific performance ought not to have been granted by the trial Court. Further, to show that the plaintiff was always ready and willing to perform the part of contract, there is no evidence



mobilized was also not proved and whether the plaintiff had the capacity to raise the remaining sale consideration was also not proved. Besides, the source of income has also not been established. That apart, the plaintiff had not even verified the title deed and the properties, hence, he cannot contend that he is always ready and willing to perform his part of contract. Therefore, on these grounds also, the trial Court ought to have dismissed the suit for specific performance, but it has not been done so.

14. Similarly, the alleged extent of land agreed to be sold is more than 40 acres, which is agreed to be sold for a sum of Rs.8,00,000/-. The defendant is an absent landlady. She is permanently residing in Trivandram. Therefore, the power deed was given to her sister to maintain the property. Taking advantage of the above document, the entire properties sought to be knocked out. The real hardship that would be caused on the defendant also not considered by the trial Court. The discretion has not been judicially exercised. Therefore, this Court is of the view that the judgment of the trial Court granting specific performance is not sustainable in the eye of law.

15. This Court also entertained a serious doubt about the fact that the defendant has not cross-examined the power agent. Though this agreement said to have been signed by the power agent, she has not been summoned by the defendant. As long as the power deed was not cancelled, the power of attorney was not challenged. Ex.A2 signed by the power agent, it will bind only the principal. However, as discussed above, Ex.A2 is not intended for any sale and came into existence for some other dispute between two sisters. As the defendant has also not challenged the action of her sister, this Court is of the view that the amount received by the power agent should be returned by the appellant herein with necessary interest. Accordingly, the decree for specific performance granted by the trial Court is set aside and the appellant is directed to return a sum of Rs.5,00,000/- with interest at the rate of 6% from the date of agreement till the date of realization. Till such payment is made, there shall be a charge over the property. Accordingly, the substantial questions of law are answered.

16. In the result, this appeal suit is allowed and the judgment of the trial Court is set aside. No costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)



To

1.The Principal District Judge, Tirunelveli

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.V.BALAJI, Advocate (SR-6597[F] dated 23/02/2021)

Judgment made in
A.S. (MD) No.55 of 2009
22.02.2021

SVN(CO)
TR(17.03.2021) 6P 5C