IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2022	PRONOUNCED ON : 09.03.2022

CORAM::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

APPEAL SUIT NO.559 OF 2013

M.P.Ponnusamy,

... Appellant/
Plaintiff

/versus/

1. S.Dhandapani,
2. Anandhi,
3. Thilagavathi,
4. Saraswathi,
5. Saravanan,
6. K.Natarajan,
7. A.Kandasamy,
8. Arumugham,
9. Chinna Ramana Gounder (Died),

... 1 to 9 Respondents/Defendants

10. Rathnasamy,
11. Sri Raja Rejeshwari,
12. Marudhachalam,

... 10 to 12 Respondents

RR 10 to 12 brought on record as LRs of the deceased R9 vide order of the Court dated 27.02.2020 made in C.M.P.Nos.3606 to 3608/2020 in A.S.No.559 of 2013

Prayer:

Appeal Suit has been filed under Section 96 of Code of Civil Procedure, 1908, praying against the order dated 16.08.2013 passed in O.S.No.48 of 2009 on the file of the learned II Additional District-cum-Sessions Court, Tiruppur.

For Appellants : Mr.T.R.Rajagopalan, Senior Counsel,
for Mr.K.Govi Ganesan

For R6 to R12 : Mr.V.P.Sengottuvel

For R1 to R5 : No appearance

J U D G M E N T

This appeal is by the plaintiff, who lost his suit for specific performance.

2. The case of the plaintiff is that the suit property is the absolute property and jointly held by the defendants 1 to 5, one Mythili and Kothavalli. It is their ancestral property inherited through their grand father R.K.Subramaniam, who got the property under a partition deed dated 23/03/1952. The plaintiff entered into an agreement for sale with Mythili, Kothavalli and defendants 1 to 5 in respect of suit property measuring 3.50 acres, at the rate of Rs.4,50,000/- per acre. The total consideration was fixed as Rs.15,75,000/- and 6 months time was fixed for execution of the sale. On the date of agreement, the vendors received Rs.3,00,000/- and subsequently Mythili and Kothavalli received Rs.50,000/- on 10/03/2007 towards part sale consideration. Though the plaintiff was ready to pay the balance consideration and get the sale deed executed, the defendants 1 to 5 were evading to execute the sale under some pretext or other. After repeated demand, Mythili and Kothavalli alone came forward to execute the sale deed in respect of their share and their mother share, who has relinquished her right in favour of them. Accordingly, a sale deed was executed by them for an extent of 0.61 ¼ cents on 24/03/2008 in favour of the plaintiff.

3. The defendants 1 to 5, who are legally bound to execute the sale deed on receipt of the balance sales consideration as per the agreement, in contra to their written agreement with the plaintiff, had collusively created a sale deed dated 05/06/2008 in favour of the defendants 6 to 9 for an extend of 1.47 3/8th acres in the suit survey land. The said sale deed is not true and valid. The defendants 6 to 9, who had purchased the property with knowledge of the existing sale agreement with the plaintiff are not bonafide purchasers for value. The agreement dated 23/01/2007 between the plaintiff and the defendants 1 to 5 will bind the defendants 6 to 9.

4. In this regard, the plaintiff issued a legal notice dated 01/07/2008 demanding the execution of the sale deed. The defendants gave reply dated 11/08/2008 containing false and

untenable allegations denying the very execution of the sale agreement. For which, the plaintiff sent a rejoinder on 08/09/2008 which was again replied with false and incorrect averments by the defendants 1 to 5 and defendants 6 to 9 separately.

5. Claiming that, the plaintiff is always ready and willing to pay the balance consideration and stating that though the suit agreement was for 3.50 acres, since they have already purchased the share of Mythili and Kothavalli along with their mother’s share totally measuring 0.61¼ cents, the suit laid for specific performance to direct the defendants to execute sale deed for an extend of 3.06¼ acres of land morefully described in the plaint schedule.

6. Before the Trial Court, the defendants 1 to 5 remained exparte. The defendants 6 to 9 contested the suit and filed written statement pleading that the suit property is the property of one R.K.Subramaniam, who got the property through a partition in the year 1952. The said R.K.Subramaniam died intestate leaving behind four sons and four daughters namely Shanmugam, Ramanathan, Gurubaran, Kumaresan, Rukumani, Radhamani, Ponnammal and Bhuvaneswari. All his eight children are entitled for 1/8th share each in the suit property. Shanmugam S/o.Subramaniam died intestate leaving behind the defendants 1 to 3. Ramanathan another son of Subramaniam died intestate leaving behind his wife the 4th defendant, son the 5th defendant and daughters Kothavalli and Mythili.

7. Further they contended that, the claim of the plaintiff that the suit property belongs to defendants 1 to 5, Kothavallai and Mythili is not correct. Therefore, their agreement is not valid and enforceable. Further, the averment that the 4th defendant relinquished her share in the property to and in favour of his daughters Kothavallai and Mythili is equally false like all other averments in the plaint.

8. In fact, the defendants 6 to 9 negotiated with the legal heirs of R.K.Subramaniam and entered into a sale agreement on 09.01.2007 with Gurubaran and Kumaresan, who are the sons of late R.K.Subramaniam to purchase their share. Subsequently purchased the share of Rukumani, Poonammal and Bhuvaneshwari who are the daughters of late R.K.Subramaniam as per sale deed dated 10.09.2007. The share of Rathamani daughter of late R.K.Subramaniam was purchased by the 6th defendant as per sale deed dated 11.09.2007. The defendants 6 to 9 purchased the

shares of defendants 1 to 5 under the sale agreement dated 05.06.2008. Prior to registration of the sale deed, the defendants 1 to 5 entered into an agreement for sale on 11.09.2006 with the defendants 6 to 9. As per the sale agreement, the consideration for the property was fixed at Rs.5,70,000/- and Rs.2,00,000/- was paid on the date of agreement and balance paid in parts later. The period for performing the contract was initially fixed at 11 months but later extended at the instance of the vendor. The property was purchased after due diligence and verification of the encumbrance.

9. The Plaintiff has not proved his readiness & willingness to get the Sale Deed executed based on the alleged Agreement dated 23.01.2007 (Ex.A-1) at any point in time. Agreement specifically mentions time for execution is 6 months, the Plaintiff has not proved his readiness & willingness either during the 6 months period or thereafter.

Further, contended that,

a). Endorsement made in Ex.A-1 with respect to receipt of Rs.50,000/- towards advance sale consideration is not proved.

b). Relinquishment by D4 in favour of her daughters Mythili and Kothavalli not proved.

c). The extent specified in Ex.A1 - Agreement for Sale and in Ex.A3-Legal Notice is 3.50 Acres. Whereas, in the suit schedule, the extent is mentioned as 3.06 1/4 Acres.

d). The Sale Deed in Ex.B-7 is much before the filing of the present suit and before the legal notice in Ex.A-3.

e). In spite of the reply notice in Ex.A-5 the Plaintiff had consciously delayed filing the present suit.

f). The forfeiture clause in Ex.A-1 explicitly states that the period for execution of Sale Deed is six months and upon failure to get the Sale Deed executed within the said period, the Plaintiff would lose not only the advance sale consideration but also the Agreement for Sale would become invalid.

g). No prayer sought for declaration of the sale deed Ex.B.7 as void.

10. Based on the above pleadings, the trial Court formulated the following issues:-

> i). Whether the plaintiff is entitled for the relief of Specific Performance of the sale agreement dated 23.01.2007?
>
> (ii). Whether the suit sale agreement is

fraudulent deed created in connivance with defendants 1 to 5 as pleaded by defendants 6 to 9?

(iii). Whether the plea of defendants 6 to 9 that the plaintiff know the prior agreement dated 11.09.2007 but falsely vague ignorance is correct?

(iv). Whether the sale deed dated 05.06.2009 was purchased by the defendants 6 to 9 for valuable consideration and bind the defendants 1 to 5?

(v). What other relief the plaintiff is entitled?

11. To prove the case, the plaintiff has examined four witnesses and marked 17 Exhibits (Ex.A.1 to Ex.A.17). On the side of the defence, one witness has been examined on behalf of the defendants 6 to 9 and 5 exhibits were marked (Ex.B.1 to Ex.B.5).

12. The Trial Court, on appreciation of the evidence has held that as per the recital found in Ex.A.1, the suit agreement dated 23.01.2007 time for execution of sale is fixed as 6 months which expiry on 22.07.2007. However, the suit was filed only on 22.01.2009 much after the expiry of the reply notice received from the defendants. When there is a specific forfeiture/waiver clause in Ex.A.1, the claim of the plaintiff seeking relief of specific performance much after the expiry of the time fixed will dis-entitled the plaintiff to seek relief. There is no evidence let in by the plaintiff to prove his ready and willingness and the suit agreement itself entered between the plaintiff and the defendants 6 to 9 with the defendants 1 to 5 under Ex.A.6 subsequently held that the defendants 6 to 9 are bonafide purchaser for value. The plaintiff has failed to establish their vendor's right over the entire suit property in their absence of consensus ad idem among the vendors in respect of extent and on receipt of sale consideration, suit is liable to be dismissed.

13. Aggrieved by the said judgment of dismissal, the present appeal is filed by the plaintiff.

14. The Learned Senior Counsel appearing for the plaintiff would submit that the defendants 1 to 5 are common vendors for the plaintiff and defendants 6 to 9. When there is

no issue regarding ready and willingness, the subsequent purchaser have no right to raise the defence of ready and willingness to defeat the lawful claim of the plaintiff. In the absence of any issue framed by the trial Court regarding ready and willingness, finding that the plaintiff was not ready and willing to perform the contract is beyond the scope. When the plaintiff has specifically pleaded that the time is not essence of the contract and he was always ready and willing to perform his contract, the Court below failed to consider the said plea. Contrarily, the plaintiff had relied upon the fabricated so called agreement for sale marked as Ex.B.6 which is apparently an antedated make belief document to defeat the lawful claim of the plaintiff.

15. When the witness has admitted in his testimony that before entering into a sale agreement, they discussed about the existing agreement with the plaintiff and only thereafter, executed the sale deed. The defendants 6 to 9 herein are not bonafide purchaser and they are purchaser pendente lite with knowledge.

16. Per contra, the learned Counsel appearing for the respondents/defendants would submit the alleged suit sale agreement executed on 23.01.2007 for a total sale consideration of Rs.15,75,000/- and fixing six months time for completion of the contract is an unenforceable contract for multiple reason including latches and lack of title to the vendors.

17. While the agreement is between defendants 1 to 5 and two others, only for receipt of Rs.3,00,000/- on the date of execution of the deed, there is an endorsement by all the vendors, but subsequent payment of Rs.50,000/- on 10.03.2007 has been signed by Mythili and Kothavalli alone and not by other five vendors, who are defendants 1 to 5.

18. The said agreement is for total extent of 3.50 acres in common out of 7.86 acres. When the property being inherited from Subramaniam as an ancestral property and Subramaniam died interstate leaving eight 1st class legal heirs, more than 50% of the extent agreed to be sold by legal heirs of two branches alone. This by itself makes the agreement void.

19. Further, even if admitted that the plaintiff had purchased the shares of Mythili and Kothavallai under Ex.A.2 on 24.03.2008, that sale deed bristles with illegality since the

said Mythili and Kothavallai had not only sold their share but they have also sold the shares of their mother-the 4th defendant, claiming their mother has relinquished her right in their favour. However, there is no document produced by the plaintiff to show that the 4th defendant relinquished her share in favour of Mythili and Kothavallai.

20. Contrarily, the defendants 6 to 9 have produced the sale deed to prove their bonafide purchase from lawful owners of the suit property from among the legal heirs of eight branches of late Subramaniam. Except the shares of Mythili and Kothavallai, who are the daughters of Ramanathan, and sold to the plaintiff independently all other shares have been lawfully purchased by the defendants 6 to 9 and therefore, there is no error in the finding of the trial Court.

Point for determination:-

Whether the agreement for sale (Ex.A.1) entered between the plaintiff and defendants 1 to 5 is legally enforceable and if Yes; Whether it can be specifically enforced?

21. The suit property form part of the land allotted to one Subramaniam as per the partition deed dated 23.03.1952 which is marked Ex.A.9. The said fact is not disputed by the parties. It is also not in dispute that the said Subramaniam died interstate leaving behind eight 1st class legal heirs. The defendants 1 to 3 are grand children of Subramaniam born through his son Shanmugam. The defendants 4 & 5 are the wife and son of Ramanathan S/o.Subramaniam. Kothavalli and Mythili are daughters of Ramanathan. While there are 6 other legal heirs of R.K.Subramaniam, the alleged sale agreement by the plaintiff with two legal heirs of Subramaniam who hold only 1/8th share each itself makes the agreement not specifically enforceable in view of dispute in the description of the property and title. Furthermore, out of total sale consideration of Rs.15,75,000/- only Rs.3,00,000/- has been passed to all the vendors and another Rs.50,000/- been passed only to Mythili and Kothavalli, who are not party to the proceedings. These two persons have later executed the sale deed separately in favour of the plaintiff in respect of 0.61 ¼ under Ex.A.2 dated 24.03.2008. It is uncertain whether the endorsement made by the said Mythili and Kothavalli behind the first page of Ex.A.1 for receipt of Rs.50,000/- is in respect of sale deed entered by them with plaintiff or it is a part sale consideration to the suit sale agreement dated 23.01.2007, if it is part sale consideration for the suit agreement (Ex.A.1) then, all the vendors ought to have

affixed his signature.

22. The recital in the said endorsement say that Kothavalli and Mythili have affixed their signature in the presence of witness on receipt of Rs.50,000/-. The plaintiff has examined P.W.4 Ravindran to substantiate and prove the endorsement made by Mythili and Kothavalli for receipt of Rs.50,000/-. The said witness in his chief examination had deposed that, he saw Kothavalli and Mythili receiving Rs.50,000/- from the plaintiff on 10.03.2007 and the plaintiff wrote the endorsement. He know that Kothavalli and Mythili received the money on their behalf and on behalf of the other vendors. When the plaintiff has scribed the endorsement on back of Ex.A1, there is no plausible explanation why he has not mentioned that in the endorsement it was written by him or why there is no recital to indicate that Mythili and Kothavalli received the money on their behalf and on behalf of other vendors and why there is no signature of any witness, when the recital say it was signed in the presence of the witnesses.

23. Yet another suspicion surrounds around the suit sale agreement is regarding the extent. The case of the plaintiff is that, he entered into the suit agreement with lawful owners to an extent of 3.50 acres of land which itself is found to be incorrect. Even assuming, the agreement was bonafidely entered for a larger extent, the present suit for specific performance is laid for execution of 3.06 acres on the premise that Kothavalli and Mythili had sold their share and the share of their mother, the 4th defendant measuring 0.61 acre ¼ cent of land under Ex.A.2, if it is so, the suit for specific performance ought to have been laid for lesser extent. The plaintiff has never explained in the plaint or in his evidence how the suit for specific performance for executing the sale deed to an extent of 3.50 acre is maintainable. This only indicates the unclean hands of the plaintiff approaching the Court suppressing several facts within its knowledge.

24. That apart, the plaintiff has purchased the property from the defendants 1 to 5 under sale deed Ex.B.7. Pursuant to the sale agreement Ex.B.6 has purchased only 1.47 3/8 acres from the defendants 1 to 5 i.e., right proportionate of share, which the defendants 1 to 5 hold and entitled to sell. On this ground also, a decree for specific performance of an agreement cannot be granted on the principle that a vendor can alienate only the right he possess and not more than that.

25. The very description of the property in the agreement as well as the suit schedule is in respect of an extent more and above what the defendants 1 to 5 entitled. The vendor cannot alienate which he does not possess and any such agreement for sale cannot be enforced by a decree of the Court.

26. Therefore, this Court finds that the suit deserves to be dismissed and rightly dismissed by the trial Court.

27. Hence, the Appeal Suit is dismissed as devoid of merits. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:-

1. The II Additional District-cum-Sessions Judge,
Tiruppur.

Copy To

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

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.16017

Appeal Suit No.559 of 2013

EV(CO)
PM/23/05/2022