



A.S.No.148 of 2009

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 30.11.2022

CORAM

**THE HON'BLE MR.JUSTICE D. BHARATHA CHAKRAVARTHY**

A.S.No.148 of 2009

V. Rajulu

.. Appellant

Versus

1.S. Chitra

2.Rukmani

3.N. Ramasamy

4.N. Lakshmanasamy

5.N. Bhanumathy

6.Vijayalakshmi

.. Respondents

**Prayer:** Appeal Suit is filed under Section 96 of C.P.C., against the Judgment and decree dated 29.08.2008 made in O.S.No.413 of 2006 on the file of the Additional District cum Sessions Judge (Fast Track Court No.II) Coimbatore.

For Appellant : Mr. P.Dinesh Kumar

For Respondents : Mr. S. Saravana Kumar, for R1

Mr. Vanaraj, for R2, 4, 5 & 6

Mr. A. Ganapatheeswaran, for R3



A.S.No.148 of 2009

## **J U D G M E N T**

### **A. The Appeal Suit :**

The Appeal Suit is filed against the Judgment and decree dated 29.08.2008 passed by the learned Additional District and Sessions Judge, Coimbatore in O.S.No.413 of 2006, in and by which, while refusing the relief of specific performance in the suit filed by the plaintiff, the Trial Court ordered refund of the advance amount.

### **B. The Case of the Plaintiff:**

2. The case of the plaintiff is that the first defendant namely, *Chitra*, is the owner of the 1/3<sup>rd</sup> undivided share in the suit property. One *C.Natrajan*, is the owner of another 1/3<sup>rd</sup> undivided share in the suit property. In the year 2001, vide a *Varthamana* agreement dated 12.03.2001, *C.Natrajan* had obtained the entire sale consideration of Rs.5 lakhs and agreed to execute the sale deed in favour of the first defendant. As a matter of fact, the said *C.Natrajan* also executed a registered Power of Attorney in favour of the first defendant. The first defendant had made a representation to the plaintiff that only to avoid payment of dual stamp duty, such an arrangement was made and therefore, the first defendant offered 2/3<sup>rd</sup> share in the suit property for sale to the plaintiff, for the



total sale consideration of Rs.14 lakhs and an agreement of sale was entered into on 04.03.2005. As per the said agreement of sale, out of the total sale consideration of Rs.14 lakhs, the plaintiff paid the first defendant a sum of Rs.10 lakhs as advance and the first defendant agreed to receive the balance sale consideration of Rs.4 lakhs and execute a sale deed within a period of four months from the said agreement. However, even before the said period of four months, the said *C.Natarajan* passed away on 16.06.2005. Thereafter, the first defendant has been promising to get a fresh Power of Attorney from the legal heirs of the deceased, *C.Natarajan* who are the defendants 2 to 6 herein and to execute the sale deed. But the parties were delaying the matter. They were not coming forward and therefore, the plaintiff issued a legal notice on 19.06.2006 calling upon all the defendants to execute the sale deed. Belatedly, the defendants 2 to 6 sent a reply notice on 03.08.2006 with false and untenable contention and hence, the suit for specific performance with an alternative prayer for return of the advance amount with 18% interest was prayed.

### **C. The Case of the Defendants :**

3. In response to the plaint, the first defendant filed a written statement. The first defendant admits entering into an agreement, receipt of the advance



A.S.No.148 of 2009

amount etc., and she is also ready and willing to execute her 1/3<sup>rd</sup> share in the suit property. As far as the other 1/3<sup>rd</sup> share is concerned, it is the case of the first defendant that as a matter of fact by virtue of the *Varthamana* letter dated 12.03.2001, the deceased *C.Natarajan* received the entire sale consideration from the first defendant and also executed a Power of Attorney. When a sale agreement has also been entered by virtue of the said Power of Attorney, before the execution of the sale deed, the said *Natarajan* suddenly passed away and when the legal heirs were approached, they demanded ransom and also without any basis disputed the execution of the *Varthamana*. Therefore, to execute the sale deed in respect of the 2/3<sup>rd</sup> share, the first defendant also issued legal notices to the legal heirs. But, even though they sent an untenable reply, they did not come forward to execute a fresh Power of Attorney in favour of the first defendant or to execute the sale deed in favour of the plaintiff.

3.1 The suit is resisted by the second defendant by filing a separate written statement which is adopted by the defendants 3 to 6. According to the second defendant, they denied the said *Varthamana* agreement. In spite of their reply notice demanding a copy of the *Varthamana* agreement, it was not furnished to them immediately. Belatedly, the *Varthamana* agreement has been concocted. It



is their case that their father *Natarajan* did not have any necessity to get such an amount of Rs.5 lakhs. Therefore, they deny that their father had executed such a *Varthamana* agreement and that such an agreement would not be binding on them. Their further contention is that any agreement of sale in furtherance of the same will not be binding on them. They have not received any sale consideration out of the said sale agreement. Therefore, they prayed that the suit be dismissed.

#### **D. The Issues & The Trial :**

4. On the strength of the above pleadings, the Trial Court framed the following issues :-

- 1. Whether the agreement dated 04.03.2005 in respect of the suit property is genuine?*
- 2. Whether it is correct to state that the suit sale agreement is fabricated?*
- 3. Whether it is correct to state that an advance of Rs.10 lakhs was paid in pursuant to the suit sale agreement?*
- 4. Whether the plaintiff is entitled to the relief of specific performance?*
- 5. Whether the plaintiff will be entitled to the alternative relief as prayed for in the plaint?*
- 6. To what reliefs?*

4.1 On the said issues, the parties let in evidence. The plaintiff examined



A.S.No.148 of 2009

himself as P.W.1 and one *Selvaraj* who is the attesting witness to the sale agreement was examined as P.W.2 and **Exs.A-1** to **A-8** were marked on behalf of the plaintiff. On behalf of the defendants, the husband of the first defendant was examined as D.W.1. The 5<sup>th</sup> defendant was examined as D.W.2. One *Raj Selvaraj, Shanmugasundarm, Seethuraman* and *Tirunavukarasu* were examined as D.W.3 to D.W.6. On behalf of the defendants, **Exs.B-1** to **B-16** were marked.

#### **E. The Findings of the Trial Court:**

5. The Trial Court thereafter proceeded to consider the case of the parties and by a Judgment dated 29.08.2008, found that there is force in the contention of the defendants 2 to 6 that the *Varthamana* agreement is doubtful. The Trial Court, therefore, found that when no consideration has passed on to the defendants 2 to 6, no relief can be granted against them. In view thereof, the Trial Court held that the plaintiff will only be entitled for the refund of advance amount. Aggrieved by the same, the plaintiff has filed this Appeal Suit praying that the relief of specific performance should have been granted by the Trial Court.

#### **F. The Submissions:**

6. Heard, *Mr.P.Dinesh Kumar*, learned counsel appearing on behalf of



the appellant, *Mr.S. Saravana Kumar*, learned counsel appearing on behalf of the first respondent, *Mr.Vanaraj*, learned counsel appearing on behalf of the respondents 2, 4 to 6 and *Mr.A.Ganapatheeswaran*, learned counsel appearing on behalf of the third respondent.

6.1 *Mr.P.Dinesh Kumar*, the learned counsel appearing on behalf of the appellant would submit that the sale agreement was marked and the attesting witness was duly examined. There is no doubt about the execution of *Ex.A-1*/ sale agreement. That being the case, the major portion of the sale consideration was also paid. Only a period of four months time was fixed in the sale agreement. But within the said period, in the month of June 2005, the said *C.Natarajan* died. Therefore, the plaintiff would not immediately call upon or proceed further within the expiry of four months. When the legal heirs started wriggling out of the liability, almost after a period of one year, the suit is filed even though the period of limitation is three years. The plaintiff was always ready and willing to perform his part of the contract. When the *Varthamana* agreement has been duly marked and the attestor to the said agreement namely, the husband of the first defendant was examined as D.W.1, the Trial Court ought to have decreed the suit even in respect of the specific performance. The plaintiff



cannot be put to loss on account of the *inter se* claims between the first defendant and the defendants 2 to 6. Admittedly, the agreement was on a date when *C.Natarajan* was alive and when the Power of Attorney was in force. Therefore, even if the defendants 2 to 6 contend that the *Varthamana* agreement is false, they can only claim their part of the sale consideration from the first defendant and for the said dispute, the plaintiff cannot be non suited.

6.2 Learned counsel also relied upon the Judgment of the Hon'ble Supreme Court of India in ***R.Lakshmikantham Vs. Devaraji***<sup>1</sup>, more specifically paragraph 10 of the said Judgment to contend that the law as prevailing in England is different from the law in our country. In England, the relief of specific performance lies in the sphere of equity while in our country, it lies in statutory law and therefore, the mere delay of one year cannot be put against the plaintiff when the suit is well within the period of limitation.

6.3 *Mr.S.Saravana Kumar*, learned counsel appearing on behalf of the first defendant would submit that even as on today, the first defendant is ready and willing to execute the sale deed in respect of her 1/3<sup>rd</sup> share. The deceased

---

<sup>1</sup> 2019 (6) CTC 859



*Natarajan* had as a matter of fact, obtained the entire sale consideration of Rs.5 lakhs, which was the market value of the property as in the year 2001 and had also duly executed a power of attorney in favour of the first defendant. That being so, the same is categorically binding on the legal heirs as the said *Varthamana* document is duly proved and D.W.1 himself is an attesting witness to the said document. Therefore, the Trial Court ought not to have accepted the case of the defendants 2 to 6 that they did not receive any sale consideration as no further sale consideration was liable to be paid to the said *Natarajan* and after his death, to his legal heirs i.e., the defendants 2 to 6. In that view of the matter, the learned counsel would support the appeal suit and would urge this Court to order specific performance in respect of the entire 2/3<sup>rd</sup> share in the suit schedule property.

6.4 *Mr. Vanaraj* and *Mr. A. Ganapatheeswaran*, learned counsel appearing on behalf of the defendants 2 to 6 would submit that firstly, the so called *Varthamana* marked as **Ex.A-2**, is a document which is belatedly created in collusion between the parties. The learned counsel would submit that the first circumstance to prove the collusion between the party is that the plaintiff is none other than the tenant under the first defendant. In the cross examination, he had



stated that he wanted to purchase the suit schedule property because the first defendant being his landlord had directed him to vacate the suit property and therefore, he had to relocate his mechanic shop. But, however, he had entered into a sale agreement for the purchase of an undivided share in the property. That by itself proves the collusive nature of the sale agreement. The second circumstance pleaded by the learned counsel is that once the defendants 2 to 6 received legal notices both from the plaintiff as well as D.W.1, they had immediately asked for a copy of the *Varthamana* document. But nothing was forthcoming, which also goes to show that the said **Ex.A-2** was belatedly concocted by the plaintiff in collusion with the first defendant.

6.5 The learned counsel would further submit that in the cross examination of D.W.1, he had categorically stated that the person who prepared **Ex.A-2** *Varthamana* agreement and **Ex.A-3** General Power of Attorney is one and the same. But it can be seen that it is by two different persons and even the name of the person who prepared the *Varthamana* agreement was not mentioned and this was also noted by the Trial Court. This apart, the learned counsel by relying upon the Bank Statement in **Ex.B-15** would submit that at the relevant point of time, the deceased *Natarajan* was having ample money i.e., about Rs.6



lakhs in his account and therefore, that is also yet another circumstance which throws suspicion on the document in **Ex.A-2**. Therefore, when the defendants 2 to 6 being the legal heirs, have not been paid any consideration in respect of the instant sale agreement and even the earlier amount of Rs.5 lakhs which is said to be paid as cash is without any proof, the Trial Court has rightly decided the suit in favour of defendants 2 to 6. He would further submit that in this case even though the last date of the four months time expired on 03.07.2005 and the said *C.Natarajan* died in the month of June itself, immediately after the expiry or before the same, the plaintiff did not issue any notice to the parties showing his readiness and willingness. As a matter of fact, the suit was belatedly filed in the month of September 2006 and therefore, that by itself would demonstrate that the plaintiff was not ready and willing to perform his part of the agreement and therefore, he is not entitled for the relief of specific performance on that score also.

6.6 The learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Vidhyadhar Vs. Manikrao and Another***<sup>2</sup>, more specifically, paragraph 17 to contend that the first defendant is the concerned party and when she did not enter the witness box, the entire fulcrum of the case

---

2 (1999) 3 SCC 573



which revolves on the *Varthamana* cannot be believed by the Courts and her husband alone may not be the competent witness to speak on her behalf. He would pray that on this score also the appeal suit be dismissed.

### **G. The Points for Consideration:**

7. Upon consideration of the rival submissions made on behalf of the parties and on a perusal of the material records of the case, the following points arise for consideration in this case:

(i) Whether the suit agreement for sale is genuine and whether the plaintiff is entitled for the relief of specific performance?

(ii) Whether *Ex.A2 Varthamana* has been duly proved by the plaintiff as well as the first defendant and whether the same would be binding on the defendants 2 to 6?

### **H. On the Points (i) & (ii):**

8. It is seen that the sale agreement has been marked as *Ex.A-1*. The signature of the first defendant is not denied. The first defendant has signed on her own behalf in respect of her 1/3<sup>rd</sup> share and also as the Power of Attorney agent of the said *C.Natarajan* in respect of his share. As on date of entering into the sale agreement, the same is valid and she had the authority to enter into the



same and subsequently receive the advance amount. The balance sale consideration of Rs.4 lakhs had to be paid within a period of four months. The attesting witness to the agreement was also examined. The first defendant admits the **Ex.A-1** sale agreement as well as the transaction. The defendants 2 to 6 have no knowledge about the same.

8.1 In this scenario, the plaintiff has duly proved the agreement of sale and that he was ready and willing to perform his part of the contract and as such, would be entitled for specific performance of the same. But, however it can be seen that the sale agreement simply mentions the sale consideration as Rs.14 lakhs and does not specifically state that it is meant only for the first defendant and that the principal of the first defendant in as much as his 1/3<sup>rd</sup> is concerned, has already received the sale consideration pursuant to **Ex.A-2/ Varthamana**.

8.2 It is further seen that it is the case of the plaintiff himself that the first defendant has already represented to him about the execution of the *Varthamana* and he has also been given a copy of the same. In that view of the matter, the sale agreement being silent about the said aspect and reading as if the sale consideration is both for the first defendant as well as the *C.Natarajan*, has



been proved to be incorrect by the plaintiff and the first defendant themselves.

While filing the written statement, the first defendant even though had pleaded about the *Varthamana*, which was executed in the year 2001 wherein she had paid the entire sale consideration, but stated that she had obtained the Power of Attorney so that she can directly sell the same to the third party but did not claim any relief by making appropriate prayers in the written statement nor did she file a separate suit. This apart, the defendants 2 to 6 were only the legal heirs of the *C.Natarajan*. The amount is said to have been paid by way of cash. There is contradiction as to who prepared *Ex.A-2*. If *Ex.A-2* was readily available, the same was not furnished when reply notices were issued on behalf of the defendants 2 to 6 but it rather surfaced only at the time of filing of the suit.

8.3 Above all, the suit sale agreement is silent about the same. These circumstances raise serious doubts as to the veracity of *Ex.A-2* agreement of sale / *Varthamana*. There is no clinching evidence for the payment of Rs.5 lakhs and that the *Natarajan* had left the property to the first defendant for her to sell. Apart from the same, the plaintiff is only a tenant and because the first defendant had directed him to vacate his mechanic shop, to move to a new location he is said to have entered into the suit sale agreement. However, it must be seen that



the agreement is to purchase the undivided 2/3<sup>rd</sup> share in the suit property and as such the said purpose will not be fulfilled. In that view of the matter, when no consideration is passed on either to the *Natarajan* or to his legal heirs pursuant to *Ex.A-1* sale agreement, specific performance cannot be ordered.

8.4 However, it has to be noted that the first defendant is ready and willing to execute the sale deed in respect of her 1/3<sup>rd</sup> share of the suit property. The contention is reiterated even by the learned counsel appearing before this Court. That being the situation, the Trial Court ought to have decreed the suit for specific performance in part and ought not to have ordered the refund of advance amount alone. In the oral evidence of P.W.1, he admits in more than one place that even though the sale consideration is mentioned as Rs.14 lakhs in the suit sale agreement, it was actually Rs.16 lakhs and in one place it is admitted that it is Rs.17 lakhs. If it is Rs.17 lakhs, the sale consideration works out to Rs.8.5 lakhs in respect of the 1/3<sup>rd</sup> share of the first defendant. There is also time lag and the plaintiff has paid a sum of Rs.10 lakhs and the same was already received by the first defendant as of the year 2005.

8.5 Therefore, considering the overall equities between the parties, it



A.S.No.148 of 2009

would be just and equitable to order specific performance of the suit sale agreement only in respect of the 1/3<sup>rd</sup> share belonging to the first defendant and the entire advance amount of Rs.10 lakhs paid to the first defendant shall be the total sale consideration in respect thereof. Accordingly, the parties will be entitled to the reliefs.

### **I. The Result:**

9. In the result,

i) Appeal Suit No.148 of 2009 is partly allowed.

ii) The Judgment and Decree of the learned Additional District and Sessions Judge (Fast Track No.II) Coimbatore dated 29.08.2008 is set aside.

iii) O.S.No.413 of 2006 on the file of the Additional District and Sessions Judge (Fast Track Court No.II) Coimbatore is decreed on the following terms:-

a) In consideration of the sum of Rs.10 lakhs which is already received pursuant to the *Ex.A1* sale agreement dated 04.03.2005, the first defendant shall execute and register a sale deed in favour of the plaintiff in respect of her 1/3<sup>rd</sup> share in the



A.S.No.148 of 2009

suit schedule property within a period of one month from the date of receipt of copy of the Judgment;

b) If the first defendant fails to do so, the plaintiff will be at liberty to move the Trial Court by way of appropriate proceedings and have the sale deed executed in his name by a duly authorised officer of the Court;

c) There shall be no order as to costs.

iv) There will be no order as to costs in the appeal suit also.

**30.11.2022**

Index : Yes/No  
Speaking/Non-Speaking order

AT/klt

To

1.The Additional District cum Sessions Court, (FTC No.II),  
Coimbatore.

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



WEB COPY



A.S.No.148 of 2009

**D. BHARATHA CHAKRAVARTHY, J.**

AT

A.S.No.148 of 2009

30.11.2022