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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.1125 of 2007

Rajaram ...Appellant /Respondent/Plaintiff
Vs.

1.Krishnammal

2.Kumar ... Respondents/Appellants/Defendants

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 01.12.2006 passed in A.S. No.25 of 2006, on the file of the Principal Sub Court, Villupuram, reversing the decree and judgment dated 29.07.2005 passed in O.S. No.321 of 2004, on the file of the Principal District Munsif, Villupuram.

For Appellant : Mr.N.Suresh

For Respondents : Mr.T.S.Baskaran

JUDGMENT

The appellant is the plaintiff in O.S.No.321 of 2004 on the file of the Principal District Munsif, Villupuram. He filed the suit for specific performance of contract or in the alternative to direct the respondents/defendants to pay the advance amount of Rs.31,000/- together with interest @ 12% per annum and for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:

3.1. The suit properties which are dry lands in S.No.434/8 and S.No.434/10 of Venkatadri Agaram Village, Villupuram, measuring 0.31.0 hectare and 0.16.0 hectare respectively belonged to Krishnammal, the first defendant. The plaintiff is the son of the deceased Rajagopal Chettiar who is the brother of the first defendant. Initially Rajagopal Chettiar was agreeable to purchase the suit properties from the first defendant. In the meanwhile, the first defendant's husband had orally agreed to sell the suit properties to one Govindarasu



Gounder of Purushanur village, but as Rajagopal was interested in buying the properties in the name of his son Rajaram, the plaintiff, the first defendant's husband withdrew his oral sale agreement. Thereafter, Ganesan, husband of the first defendant sent a letter dated 25.08.1983 (Ex.A1) to Rajagopal Chettiar as to whether he is willing to purchase the properties and give his consent failing which he (Ganesan) may have to proceed with his agreement for sale with Govindarasu Gounder. This letter was sent through one Mohan and also returned by Rajagopal Chettiar through the same person in which he had agreed to purchase the suit properties. Based on this, the said Ganesan did not proceed with the proposed sale with Govindarasu Gounder. On 30.05.1984, the first defendant agreed for the sale of the suit properties and received an advance of Rs.10,000/- being 1/3rd of the sale value to the first defendant and issued a receipt (Ex.A2). It is the contention of the plaintiff that since the sale transaction took place between the brother and sister, the sale agreed upon did not bear any time limit for remitting the balance sale agreement and simultaneously patta was obtained in the name of the plaintiff and kist was also paid. The remaining amount of sale consideration was also paid by the plaintiff in instalments in cash.

3.2. According to the plaintiff, it was only after the demise of his father on 14.10.1992, that the first defendant tried to sell the suit properties to others taking advantage of the situation that the properties were not registered in the name of the plaintiff.

3.3. In fact the plaintiff had leased out the suit properties to one Selvaraju son of Govindasamy Gounder and another Selvaraju son of Perumal Gounder both belonging to Purushanur Village and they were cultivating the land. Patta was also issued in the name of the father of the plaintiff and later transferred in the name of the plaintiff. The plaintiff issued a legal notice dated 02.06.1995 (Ex.A13) which was acknowledged by the first defendant (Ex.A14) and countered by her through her advocate vide Ex.A15 totally denying the existence of any sale agreement between the two. The plaintiff was willing to perform his part of the contract but it was the first defendant who kept postponing the execution of the sale deed under some pretext and finally breached the contract by selling the suit properties to one Kalivaradhan. The said Kalivaradhan died and his son is added as second defendant in the instant suit.

4. The suit was resisted by the first defendant on the following grounds:



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- i. The first defendant never agreed to sell the suit properties in favour of either the plaintiff or his father.
- ii. The plaintiff's father borrowed a sum of Rs.20,000/- from the first defendant during 1983 out of which, only a sum of Rs.10,000/- was repaid for which a receipt dated 30.05.1984 was given to him and it cannot by any stretch of imagination be considered as sale agreement.
- iii. According to the defendant, the version of the plaintiff that the suit properties were leased out to other persons for cultivation is also a concocted version to support the present case.
- iv. In fact, the plaintiff's father late Rajagopal Chettiar owned about 8 acres of land adjacent to the suit properties and in 1985 had agreed to cultivate the entire stretch of land including that of the first defendant and had promised to share 1/3rd of the harvest with her but he failed to do so.
- v. During that time patta was also clandestinely transferred in the name of late Rajagopal Chettiar which facilitated, in turn, the present plaintiff to transfer patta to his name.
- vi. It is the contention of the first defendant that as early as december 1994 itself the first defendant had agreed to sell the suit properties to one Kalivaradha Gounder and also took an advance of Rs.50,000/- and subsequently the remaining balance of Rs.31,000/- thereby effecting full and final settlement and conveyance of title through Ex.A16 dated 19.07.1999 in favour of Kalivardhan.
- vii. After the demise of Kalivardhan his son Kumar, the second defendant is in possession of the suit properties.

5. The second defendant in his written statement has contended that a sale agreement was entered into between his father and the first defendant during the year 1994 and that possession was also handed over to him. On 19.07.1999 a sale deed was executed in favour of the second defendant's father by the first defendant and hence the suit is liable to be dismissed.

6. The learned Principal District Munsif, Villupuram framed the following issues and additional issues:

- i. Whether the plaintiff is entitled for specific performance of contract as claimed by him?
- ii. Whether the suit is bad for non-joinder of necessary parties?
- iii. Whether the Court fee has been paid properly?
- iv. To what relief the plaintiff is entitled?

Additional Issues:

- i. Whether the plaintiff is entitled to get back Rs.31,000/-



- with interest at the rate of 12% towards compensation?
- ii. Whether the plaintiff is entitled for recovery of possession of the suit properties from the defendants?
 - iii. Whether the sale deed dated 19.07.1999 is true and valid and was acted upon?
 - iv. Whether the suit is barred by limitation?

7. In the trial Court the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A20. The defendants 1 & 2 examined themselves and marked Ex.B1 to Ex.B7.

8. After full trial the trial Court decreed the suit vide its decree and judgment dated 29.07.2005 by observing that Ex.A2 has been signed by the first defendant, that her signature has not been disputed and that there is also a mention of 1 acre 16 cents on the receipt Ex.A2, which could be related to the suit properties. It is also the finding of the trial Court that the first defendant was silent about the actual sale to the father of the second defendant even in the reply to the legal notice issued by the plaintiff. In such circumstances, the trial Court concluded that Ex.A2 has to be considered as a sale of agreement and that the first defendant had breached the contract though the plaintiff was ready and willing to perform his part of the contract. Based on these findings, the trial Court had decreed the suit. The trial Court also discarded the contention of the first defendant that Ex.A2 was a receipt for part of the loan amount repaid by the appellant's father since it did not contain any entry as regards the balance amount to be repaid.

9. Aggrieved over the same, the defendants filed an appeal in A.S.No.25/2006 before the Principal Sub Court, Villupuram. The first appellate Court had a different view regarding the validity of Ex.A2 as a sale agreement. According to the learned Sub-judge any sale agreement has to be signed by both the parties i.e. seller and buyer and also should contain details about the proposed property to be sold with description and also a default clause in case of default by anyone of the parties. It was also observed that the trial Court had grossly erred in accepting Ex.A2, a plain cash receipt signed by the first defendant as the sale agreement which is unknown to law. He therefore reversed the findings of the trial Court and dismissed the suit filed by the plaintiff.

10. Now the present second appeal is filed on the following substantial questions of law :

- i. Whether in law the Court below is right in holding that inasmuch as both parties have not signed the agreement, the agreement is not valid in law, when the first defendant



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under Ex.A2 has clearly acknowledged the agreement between the parties to sell the properties and receipt of advance?

ii. Whether in law the Court below is right in holding that the agreement is vague, when Ex.A2 contains all the requirements for the agreement?

11. Heard, Mr.N.Suresh, learned counsel appearing for the appellant and Mr.T.S.Baskaran, learned counsel appearing for the respondents 1 & 2.

12. Ex.A2 is a receipt signed by the first defendant for having received a sum of Rs.10,000/- from the father of the plaintiff who is no more. The contention of the plaintiff is that there was an oral agreement of sale between his father and the first defendant and in evidence of the same, a sum of Rs.10,000/- was paid to the first defendant. Though the plaintiff contended that he paid the balance sale consideration, there is no proof for the same. In fact in the plaint the plaintiff has averred in one of the paragraphs that the remaining amount of the sale consideration was paid to the first defendant in instalments. If that was the case it is incomprehensible as to why no receipt was obtained from the defendant for the remaining amount paid and why no efforts were made to register the properties in his name. At the same time in the same plaint, the plaintiff has also expressed his readiness and willingness to pay the balance sale consideration.

13. According to Mr.N.Suresh, learned counsel for the appellant/plaintiff, 1 acre and 16 cents mentioned in Ex.A2 receipt are the properties which the first defendant agreed to convey in his favour. However, the description of the properties is not mentioned in Ex.A2. The contention of the plaintiff is that the first defendant's husband sent a letter dated 25.08.1983 (Ex.A1) to the father of the plaintiff offering to sell the suit properties through his son Mohan and that if the plaintiff's father is agreeable for that he should give his consent, failing which, the properties would be sold to the third party. According to the plaintiff, his father gave his consent immediately and sent a communication to the first defendant's husband through the said Mohan. Neither a copy of the communication sent by the plaintiff's father was marked nor the said Mohan was examined on the side of the plaintiff. The plaintiff also did not send any notice to the first defendant to produce the acceptance letter allegedly sent by his father. Therefore, there is force in the contention of the counsel for the respondent that it was only an offer and not an acceptance as far as the present case is concerned.

14. Mr.N.Suresh, learned counsel for the appellant



contended that the first defendant did not deny Ex.A2 receipt and that 1 acre 16 cents mentioned in Ex.A2 cannot be said to be related to some other properties. He also relied on the decision in Vathsala Manickavasagam & Others Vs N.Ganesan & Another reported in CDJ 2013 SC 523 and contended that when the contents of a document is not disputed by the first defendant, Section 17 of the Indian Evidence Act, would apply. His specific contention is that when Ex.A2 clearly speaks about the sale of properties measuring 1 acre 16 cents it is wrong to say that there was no acceptance on the part of the plaintiff's father.

15. At this juncture, it is relevant to point out that the first defendant had issued a receipt dated 30.05.1984 (Ex.B1) for receiving a sum of Rs.10,000/- towards the discharge of loan amount obtained by the plaintiff's father. Ex.A2 is also dated 30.05.1984. It is the contention of the counsel for the respondent that since the receipt was issued on 30.05.1984 (Ex.B1) the first defendant admitted the same in her written statement that a receipt was issued on 30.05.1984 and that her signature on Ex.A2 was forged. In fact, P.W.1 was cross examined on this aspect and the trial Court without going through the entire cross examination of the first defendant, had observed that the first defendant admitted her signature on Ex.A2. In any event, Ex.A2 is only a receipt and not an agreement of sale. Therefore the decision in Alka Bose Vs Parmatma Devi & Others reported in CDJ 2008 SC 2200 relied on by the counsel for the appellant would not apply to the facts of the present case since in that case, the agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser was considered to be a valid contract. Even assuming that there was an oral agreement of sale between the plaintiff's father and the first defendant, the readiness and willingness on the part of the plaintiff and his father has to be gone into.

16. As already observed, according to the plaintiff his father accepted the offer of the first defendant's husband immediately and sent a communication on 25.08.1983. Ex.A2 receipt is dated 30.05.1984. The plaintiff's father died on 14.10.1992. On 08.07.1993, a lawyer's notice (Ex.B2) was issued by the sisters of the plaintiff to the first defendant, requesting the latter to specify the date and time for execution of the sale deed in respect of the suit properties in favour of the plaintiff. This is the first notice sent to the first defendant after the alleged oral sale agreement that took place in the year 1983. A reply dated 16.07.1993 (Ex.B3) was sent by the first defendant to the counsel for the plaintiff's sisters denying the contents of the notice in Ex.B2. In fact the first defendant had made an allegation against the father of the plaintiff that he had clandestinely changed the patta in respect



of the suit properties in his name and that it was re-transferred in the name of the first defendant in the year 1987. Therefore even during the life time of the father of the plaintiff, the first defendant had refused to execute any sale deed in favour of the plaintiff. No rejoinder was sent by the plaintiff to the first defendant. After a long gap, another legal notice dated 02.06.1995 (Ex.B4) was issued by the plaintiff without mentioning the contents of the earlier notice issued by his sisters (Ex.B2) and the reply (Ex.B3). The first defendant had once again denied the contents of the plaintiff's notice (Ex.B4) in her reply notice dated 09.06.1995 (Ex.B5). Thereafter, the suit was filed by the plaintiff in the year 1999 before the Subordinate Judge, Villupuram. Subsequently, the suit was transferred to the Principal District Munsif Court, Villupuram, on the point of pecuniary jurisdiction and numbered as O.S.No.321 of 2004. It is pertinent to point out that the suit was initially filed only for a permanent injunction restraining the defendant from alienating the suit properties and for a mandatory injunction directing the first defendant to execute a sale deed in respect of the suit properties in favour of the plaintiff. Only during the year 2001, the plaint was amended and a prayer for specific performance of contract was sought for by the plaintiff.

17. Be that as it may, as per Article 54 of the Limitation Act, a suit for specific performance of a contract is required to be filed within three years in the event no date is fixed for the performance or within a period of three years from the date when the plaintiff has notice that performance is refused. The first defendant refused to execute the sale deed even in the year 1993 and therefore, the suit filed by the plaintiff is hopelessly barred by limitation. Even in the decision in Lakshmikantham Vs Devaraji reported in CDJ 2019 SC 1487 relied on by the learned counsel for the appellant, it is held that in India, it is well settled that the rule of equity that exists in England, does not apply, so long as a suit for specific performance is filed within the period of limitation. When the statute prescribes a specific period and the suit is filed beyond the said date, the Courts are left with no other option but to dismiss the suit as barred by limitation. The following dates and events would clearly show not only the conduct of the plaintiff and his father but also how the suit is barred by limitation.

- 1) Oral sale agreement according to the plaintiff is on 25.08.1983.
- 2) Advance of Rs.10,000/- paid on 30.05.1984 (Ex.A2).



- 3) Patta was transferred in the name of the plaintiff's father which according to the first defendant was without her consent and thereafter patta was re-transferred in her name during 1987.
- 4) First legal notice was issued on 08.07.1993 (Ex.B2) by the sisters of the plaintiff to the first defendant.
- 5) Reply notice (Ex.B3) was sent by the first defendant on 16.07.1993 denying the existence of any contract and also her intention not to sell the suit properties in favour of the plaintiff.
- 6) After a long gap, another legal notice dated 02.06.1995 (Ex.B4) was sent by the plaintiff without mentioning the earlier notice (Ex.B2) and the reply (Ex.B3).
- 7) The first defendant sent a reply on 09.06.1995 (Ex.B5) reiterating her contention in her earlier reply (Ex.B3).
- 8) Suit was filed for a bare injunction in the year 1999 and subsequently amended in the year 2001 seeking for a relief of specific performance.

Thus neither the plaintiff nor his father showed their readiness and willingness to perform their part of the alleged oral sale agreement. As already observed the suit is also barred by limitation.

18. The contention of the counsel for the appellant/plaintiff that on account of the close relationship between him and the first defendant, the plaintiff never insisted the first defendant to execute the sale deed cannot be accepted for the simple reason that the first defendant had clearly mentioned in her reply notice dated 16.07.1993 (Ex.B3) about the manner in which the plaintiff's father had changed the patta in his name and how it was re-transferred in her name during the year 1987. It is thus clear that the relationship between the plaintiff and his father with the first defendant was strained even in the year 1987.

19. The specific performance is an equitable remedy. The appellant/plaintiff had not approached the Court with clean hands and in such circumstances he cannot claim a relief of specific performance of the contract. It is clear that the plaintiff's father had changed the patta even without the consent of his sister, the first defendant, and subsequently the said patta was transferred in the name of the first defendant. The plaintiff who seeks to avail the equitable jurisdiction of a Court and specific performance is being an equitable relief, must come to Court with clean hands and in the instant case, the plaintiff has not come with clean hands and therefore, is not entitled to any relief prayed for by him. Moreover, the second defendant had purchased the properties on 19.07.1999 and the



counsel for the appellant contended that the second defendant did not specifically plead in his written statement that his father was a bonafide purchaser for value. However, I have held that the plaintiff has not come with clean hands and the suit filed by him is also barred by limitation. In the circumstances, merely because the second defendant had not specifically averred in his written statement that his father was a bonafide purchaser for value, the plaintiff cannot be granted the relief of specific performance of contract. Ex.A2 is not an agreement and is only a receipt even as per the version of the plaintiff and hence, answering of substantial questions of law would not arise as far as the present case is concerned. In view of all the reasons stated by me, the second appeal deserves to be dismissed.

20. In the result,

- i. the second appeal is dismissed. No costs.
- ii. the decree and judgment dated 01.12.2006 passed in A.S. No.25 of 2006, on the file of the Principal Sub Court, Villupuram, is upheld.
- iii. the decree and judgment dated 29.07.2005 passed in O.S. No.321 of 2004, on the file of the Principal District Munsif, Villupuram, is set aside.
- iv. The suit in O.S. No.321 of 2004 is dismissed with costs.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge, Villupuram.
2. The Principal District Munsif, Villupuram.
3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Suresh, Advocate SR.No.12249

+1cc to Mr.T.S.Baskaran, Advocate SR.No.11691

S.A.No.1125 of 2007

JPL(CO)

GN(06/05/2022)