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IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1584 of 2011

and

M.P.No.1 of 2011

M. Thiagarajan (deceased)

1. Tmt.Bommi

2.Tmt.Shanthi

3.Tmt.Sumathi

4.Thiru.Seenuvasan

..Appellants

(cause title accepted vide order of Court dated
14.12.2011 made in M.P.No.1 of 2011 in
S.A.Sr.No.103781 of 2011)

Vs.

1.M.Ramani

2.G.Mohan

...Respondents/Respondents/Defendants

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 12.04.2011 passed in A.S. No.30 of 2007, on the file of the Additional Sub Court, Thiruvannamalai, upholding the decree and judgment dated 30.11.2006 passed in O.S. No.523 of 2004, on the file of the Additional District Munsif, Chengam.

For Appellants : Mr.S.Parthasarathy, Sr.Counsel

Assisted by Mr.G.Karthikeyan

For Respondents : Mr.P.Balamurugan

JUDGMENT

The appellants are the legal heirs of the deceased plaintiff M.Thiagarajan. The said Thiagarajan (deceased) filed a suit in O.S.No.523 of 2004 before Additional District Munsif Court, Chengam, for the following reliefs :

"i. directing the defendants to execute and register the sale deed in favour of the plaintiff in respect of the suit property, in pursuance of the agreement of re-conveyance dated 07.05.1993.



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ii. in default thereof, directing the execution and registration of the sale deed by this Hon'ble Court.

iii. directing the defendants to put the plaintiff in possession of the suit property, in default thereof, directing the plaintiff to take possession of the suit property through process of this Hon'ble Court.

iv. directing the defendants to pay the costs of the suit to the plaintiff and

v. granting such other relief or reliefs to the plaintiff as this Hon'ble Court deems fit and proper in the circumstances of the case".

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

3. The minimum facts that are required for the disposal of the present appeal, are as follows:

3.1. The plaintiff purchased the suit property from one Amaravathiammal through a registered sale deed dated 07.07.1989 (Ex.A4) for a sale consideration of Rs.1,45,000/-. The plaintiff, in order to perform his daughter's marriage approached the second defendant for financial assistance and the defendant advanced a sum of Rs.50,000/- as loan to the plaintiff. The plaintiff, as requested by the defendant, executed a sale deed in favour of the first defendant (wife of the second defendant) and also put the first defendant in possession of the suit property as a security for the loan amount obtained by the plaintiff. On the same date, a deed of re-conveyance (Ex.A7) was also executed and a sum of Rs.100/- was paid as advance by the plaintiff. Though no time limit was fixed under the said agreement, the plaintiff was always ready and willing to purchase the suit property from the defendants by tendering the sale consideration. However, the defendants evaded to perform their part of contract and therefore, the plaintiff issued a legal notice dated 02.05.2003 (Ex.A8) to the defendants expressing his readiness and willingness to perform his part of the contract and also calling upon the defendants to execute a sale deed in his favour. The defendants issued a reply notice dated 10.06.2003 (Ex.A9) which, according to the plaintiff contained false allegations.

4. The defendants, in their written statement, contended that the re-conveyance agreement dated 07.05.1993 is a forged document and that they did not receive a sum of Rs.100/- as



alleged by the plaintiff. The plaintiff is also barred and precluded under Section 92 of Indian Evidence Act to take a plea that the value of the property sold in favour of the defendant is more than Rs.50,000/- since in the sale deed dated 07.05.1993 (Ex.A5) the market price of the suit property was indicated as Rs.50,000/-. According to the defendants, the suit was also barred by limitation and that they have also spent considerable amount in renovating the suit property. They therefore, prayed for the dismissal of the suit.

5.The trial Court after framing appropriate issues and after full contest, dismissed the suit filed by the plaintiff vide its decree and judgment dated 30.11.2006 on the following grounds :

- i. The plaintiff has failed to prove the execution of the re-conveyance agreement dated 07.05.1993 (Ex.A5).
- ii. The suit is barred by limitation under Article 54 of the Limitation Act, 1963, since the plaintiff did not file the suit within three years from the date of refusal of the defendants to execute the sale deed in his favour.

6. Aggrieved over the same, the plaintiff preferred an appeal in A.S. No.30 of 2007 before the Additional Sub Court, Thiruvannamalai. The learned Additional Subordinate Judge, Thiruvannamalai, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial Court vide its decree and judgment dated 12.04.2011.

7. Now the present second appeal is preferred by the legal heirs of the deceased plaintiff Thiagarajan. My learned predecessor (Hon'ble Mr.Justice C.S.Karnan, as he then was), while admitting the second appeal had extracted the following substantial questions of law from the grounds of appeal :

- " i. Whether the judgment of the Courts below are sustainable in law ?
- ii. Whether the Courts below has erred in holding that the suit is barred by limitation, when Article 54 of the Limitation Act, contemplates commencement of the Limitation period only from the date of notice and not from the date of inference ?
- iii. Whether the Courts below was right in not properly considering the validity of the agreement, when the appellant had examined the witnesses, typist and the advocate who had drafted the agreement ?
- iv. Whether the Courts below were correct in holding that the agreement for re-conveyance is not valid, when the



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appellant had discharged the onus on his part by examination of the witnesses ?

v. Whether the Courts below had considered the oral and documentary evidences in its proper perspective ?

vi. Whether the Courts below had erred in not properly construing the plaintiffs/appellants evidence in its proper perspective, when the period of limitation commences only from the date of notice viz., the reply notice in this case and not based on inferences of the respondents ?

vii. Whether the Courts below was right in dismissing the appeal, in the absence of evidence to hold so ?

viii. Whether the reasons given by the Courts below are sustainable in law ?"

8. Heard Mr.S.Parthasarathy, learned senior counsel assisted by Mr.G.Karthikeyan, learned counsel for the appellants and Mr.P.Balamurugan, learned counsel for the respondents.

9. Mr.S.Parthasarathy, learned senior counsel assisted by Mr.G.Karthikeyan, learned counsel for the appellants contended that though the plaintiff examined one of the attestors and the scribe of the re-conveyance deed Ex.A7, both the Courts below did not properly appreciate their evidence and had come to the conclusion that the plaintiff did not prove the execution of Ex.A7. It is also submitted that though the plaintiff in fact, approached the defendants to execute the sale deed in his favour as per the re-conveyance agreement (Ex.A7), the defendants did not evince any interest in executing the sale deed and this cannot be construed as 'refusal' on the part of the defendants. It was therefore, contended that the findings recorded by both the Courts below, that the suit is barred by limitation under Article 54 of the Limitation Act, 1963 is bad in law.

10. Per contra, Mr.P.Balamurugan, learned counsel for the respondents drew the attention of this Court to the evidence of the plaintiff (P.W.1) wherein he has deposed that the defendants refused to execute the sale deed in his favour during the year 1999. His contention is that the plaintiff sent a notice to the defendants only in the year 2003 and that as per the second limb of Article 54 of the Limitation Act, 1963, the suit is clearly barred by limitation. In this regard, he relied on the following decisions :

- i. "Shanmugham (died) and others Vs. Parvathi & Others" reported in "2006 (4) CTC 250"
- ii. "Lakshmi and others Vs. Giri Babu" reported in "2019 (1) MWN (Civil) 422"



iii. "Fatehji & Company and Another Vs. L.M.Nagpal and Others" reported in "(2015) 8 SCC 390".

He would also contend that both the Courts below after analysing the oral and documentary evidence adduced on both sides, had come to a definite conclusion that the re-conveyance agreement (Ex.A7) is not true and valid. According to him, there is no substantial question of law involved in the present second appeal.

11. The case of the plaintiff is that the suit property was sold in favour of the first defendant through a registered sale deed dated 07.05.1993 (EX.B1) only as a security for the loan amount of Rs.50,000/- advanced by the second defendant to the plaintiff as the latter was in dire need of money for performing marriage of his daughter. It is the further case of the plaintiff that on the same date of sale, an agreement, to re-convey the property (Ex.A7) was also executed. The execution of this re-conveyance deed (Ex.A7) was denied by the defendants. Therefore, in order to prove the execution of Ex.A7, the plaintiff relied on his oral evidence and the evidence of one of the attestors to Ex.A7 and also the scribe. It is seen from the evidence of the plaintiff that the sale deed (Ex.B1) was executed between 03.00 p.m. and 03.30 p.m. on 07.05.1993 and was presented for registration by 04.30 p.m. before the Sub Registrar, Chengam. The plaintiff states that at about 05.30 p.m., Ex.A7 was drafted in his shop by one advocate Natarajan (P.W.5). However, P.W.5 in his evidence had deposed that Ex.B1 and Ex.A7 were not drafted / typed on the same date. The P.W.2 & P.W.3 had deposed that the plaintiff and the first defendant did not subscribe their signatures on Ex.A7 in their presence. It is also seen from Ex.A7 that the stamp papers were purchased from Tirupattur on 07.05.1993 the date of execution of Ex.B1. The plaintiff's contention is that the defendants was very particular in executing the re-conveyance agreement only after the registration of Ex.B1 and that the stamp papers for Ex.A7 were brought by the second defendant. However, he admitted that duration of to and fro travel from Chengam to Tirupattur is about 3 hours and both the Courts below taking into account this aspect, had held that it is highly improbable for any one to purchase the stamp papers from Tirupattur within one hour from the time of presentation of the sale deed (Ex.B1) for registration. It is also further held by both the Courts below that Ex.B1 was drafted / typed by one Advocate Rajendran whereas Ex.A7 was drafted / typed by another Advocate Natarajan, (P.W.5). The plaintiff admitted during the course of cross examination that he did not give instructions to advocate Rajendran to prepare an agreement for re-conveyance. Thus, the



plaintiff had not proved the execution of Ex.A7 and all the observations made by both the Courts below are perfectly in order.

12. Article 54 of the Limitation Act, 1963 reads as follows :

Description of suit	Period of Limitation	Time from which period begins to run
For Specific Performance of a Contract	Three Years	The date fixed for the performance or contract. (2) if no such date is fixed, when the plaintiff has notice that performance is refused.

Therefore, from the above Article it is clear that if in a contract, time for performance is fixed, the limitation period is three years from the time fixed and if no time is fixed then limitation is three years from the date of notice of refusal to perform by the other side.

13. In the instant case, the deed of agreement is dated 07.05.1993 and the suit was filed in the year 2004. Though the plaintiff in the plaint, had averred that he was ready and willing to perform his part of the contract, and the defendant kept on postponing the execution of the sale deed, in his deposition, he had clearly admitted that the defendant refused to execute the sale deed during the year 1999. He did not file the suit within three years from the refusal in the year 1999 and on the contrary, he issued a notice only on 02.05.2003 (Ex.A8) to the defendants.

The Trial Court had also relied on the decision in "Manick Lal Seal and Another Vs. K.P.Chowdhury" reported in "AIR 1976 Calcutta 115" wherein it has been held as follows :

"According to Article 113, the limitation for specific performance of contract starts when the plaintiff has notice that performance is refused. The word "Notice" means intimation, information, cognizance, or observance. 'Notice' implies knowledge and this knowledge comes from



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direct perception or from inference reasonably arising out of several facts and circumstances.

When a party got notice of refusal or not depends upon the substantive evidence to that effect or inference from the surrounding facts and circumstances."

In the decision "Shanmugham (died) and others Vs. Parvathi & Others" cited supra relied on by the learned counsel for the respondents, it has been held as follows :

"6.The question in the present case is as to whether the suit for specific performance filed by the present appellant on 10.03.1984 can be said to be within the period of limitation. Obviously, the cause of action for filing such suit arise when the defendant specifically refused to execute the sale deed. The Trial Court as well as the Appellate Court have referred to the evidence on record and have come to the conclusion that in August, 1980, the defendant had refused to execute the sale deed and, therefore, the suit should have been filed within three years from the date of such refusal.

7.We have also independently gone through the evidence on record and we do not find any reason to differ from such conclusion arrived at by the Courts below. It is thus obvious that the suit was barred by limitation."

The second limb of Article 54 does not contemplate written notice of refusal. As already observed, the plaintiff admitted during the course of cross examination that the defendants refused to execute the sale deed in favour of the plaintiff during 1999 and therefore, the suit filed by the plaintiff in the year 2004 is clearly hit by Article 54 of the Limitation Act, 1963.

14. It is also pertinent to mention that this a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law. A full Bench of the Supreme Court in Bholaram Vs. Ameerchand reported in AIR 1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of Court below in a second appeal. In the instant case, there is



no substantial question of law and hence, the second appeal deserves to be dismissed and is dismissed.

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15. In the result,
- i. the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
 - ii. the decree and judgment dated 12.04.2011 passed in A.S. No.30 of 2007, on the file of the Additional Sub Court, Thiruvannamalai, and
 - iii. the decree and judgment dated 30.11.2006 passed in O.S. No.523 of 2004, on the file of the Additional District Munsif Court, Chengam, are upheld.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

mtl

To

1. The Additional Subordinate Judge, Thiruvannamalai.
2. The Additional District Munsif, Chengam.

Copy to

The Section Officer,
VR Section, High Court, Madras.

- +1 CC to Mr.G.Karthikeyan, Advocate sr 21536.
+1 CC to Mr.P.Dinesh Kumar, Advocate sr 22071.

S.A.No .1584 of 2011
and M.P.No.1 of 2011

NR(CO)

SP(03/06/2022)