



S.A. No. 105 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 105 of 2013

and

M.P.No. 1 of 2013

1. V.P.Perumal @ Venkatesan

2. V.P.Dilli @ Srinivasan

... Appellants

Vs.

1. I. Navaneetha Rani,

2. The Sub-Registrar,
Poonamallee,
Chennai-600 056.

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree of learned Addl. District Judge (Fast Track Court II) Poonamallee passed in A.S.No.22 of 2011 dated 21.02.2012 confirming the judgment and decree of the learned Subordinate Judge, Poonamallee dated 22.12.2010 in O.S.No. 218 of 2010.



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For Appellants : Mr.V.Chandra Prabhu for
Mr.S.Ranjith Kumar

For Respondent : Mr.N.Suresh for
Mr.T.R.Rajaraman for R1

Dr. S.Suriya,
Addl. Govt. Pleader for R2

JUDGMENT

The appellants herein are the defendants in the suit in O.S.No.218 of 2010 filed by the respondent/plaintiff herein for the relief of specific performance and other consequential relief contending that based upon the oral sale agreement dated 13.05.2004, the defendants 1 and 2 agreed to sell their property on receiving entire sale consideration, but they refused. Hence, the suit.

2. The defendants 1 and 2 denied the allegations contending that there was no such oral sale agreement entered with the plaintiff, on the other hand, he was their advocate and abusing her position, she forcibly taken their original sale deed and claiming herself as an agreement holder and filed the vexatious suit. That apart, already they have given a



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complaint before the Bar Council of Tamil Nadu about her conduct, thereby they have totally denied the oral sale agreement with the plaintiff with regard to plot No.17. The Trial Court framed five issues and on analysing the oral and documentary evidence on the side of both parties, held that the plaintiff is entitled for the relief of specific performance and also granted consequential relief of injunction not to make any encumbrance over the suit property. Aggrieved over that, the defendants 1 and 2 preferred an appeal in A.S.No. 22 of 2011 before the Addl. District Judge, Tiruvallur, wherein the lower appellate judge also analysed the facts and evidence independently and concludes that the plaintiff is entitled for the relief of specific performance by confirming the lower court findings and dismissed the appeal.

3. For the sake of convenience, the parties are referred as per the ranking in the suit.

4. Aggrieved over the concurrent findings rendered by the courts below, the defendants preferred this Second Appeal contending that both the courts below failed to appreciate the law and other circumstances, and



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erroneously granted the relief in favour of plaintiff, against whom, they have already given a complaint before the Bar Council of Tamil Nadu about her conduct of abusing her position and also failed to take note of the fact that the plaintiff not proved the alleged oral sale agreement with material evidence. Hence, they prayed to set aside the findings rendered by the courts below as unjust and illegal. Accordingly, this Second Appeal is admitted on the following substantial question of law :-

- “1) Whether the betrayal of confidence reposed by the clients viz., the appellants on an advocate leading to professional misconduct under the provisions of Advocate Act would disentitle the plaintiff to a decree for specific performance?
- 2) Whether the plaintiff, who is guilty of professional misconduct is entitled for a decree for specific performance in respect of suit schedule property?
- 3) Whether the plaintiff has proved the existence of oral agreement and payment thereon in the absence of a cogent and acceptable evidence to grant a decree for specific performance?



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4) Whether the suit is barred by limitation under Art.54 of Limitation Act?

5. Brief facts of the case is as follows :-

The case of the plaintiff is that with regard to plot Nos.5 and 17, she entered into a sale agreement with the defendants and with regard to plot No.5, sale deed was executed in her favour on 28.02.1994 and the defendants gave a power deed with regard to plot No.17 on 03.03.1994. For this plot, she has paid full claim and possession was also given to her. But, subsequently, in the month of November 1996, she entered into joint venture agreement with one Mohanraj, wherein, the defendants wanted partnership of them, but the same was not accepted. Hence, they developed vengeance over her and cancelled the power deed without her knowledge and they themselves purchased the property by setting up one Chinnasamy as their power agent. Having come to know those facts, there was a panchayat held, wherein the defendants orally agreed to sell the suit property of plot No.17 to her on 13.05.2004. But, they demanded further amount and accordingly, she paid a sum of Rs.4 lakhs in the presence of



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witnesses and they have agreed to execute the sale deed whenever demanded by the plaintiff and handed over the original sale deed. In the year 2008, during Pongal festival time, she was ready to get the sale deed and a draft sale deed was also prepared, but the defendants failed to execute the same upto February 2008 and also caused interference in the plaintiff's possession and enjoyment of the property. Hence, the plaintiff filed the suit.

6. Per contra, the defendants 1 and 2 submitted that the plaintiff was their advocate and conducting their cases with regard to the properties. But, she misguided the defendants in the legal proceedings and at her advise, they have executed several documents including affixing signatures on the blank papers. At her advise, they have filed S.O.P. No.79 of 1991 seeking permission to sell the property and for obtaining succession certificate. They have also filed other suits at her ill-advise and all the suits ended in dismissal. With regard to selling up of plots, several litigations arose, at that time, the plaintiff, being an advocate, suggested to convey plot No.5 in her favour, which would give confidence to others to purchase



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the property. So, they have executed sale deed in respect of plot No.5.

Further, she had also collected huge amount. However, on seeing her conduct, they have given a complaint before the Bar Council of Tamil Nadu and in D.C.C.No.5 of 2008 she was found guilty for professional misconduct and also her practice was suspended for the period of three years and she was also directed to pay some amount after deducting her fees with interest from 14.03.1994. In fact, at her advise only, the power deed was executed in her favour with regard to plot No.17 without knowing her fraudulent intention and they have not received any sale consideration for the plot No.17. Further, they have also denied the alleged oral sale agreement with regard to plot No.17 with the plaintiff as she stated in the plaint. They also denied the fact that the plaintiff was put in possession of the suit property in the year 1994 itself. They submitted that the plaintiff was never in possession of the suit property. They content that there was no mediation taken place nor they agreed to convey the property by receiving a sum of Rs.4 lakhs on 13.05.2004 in the presence of witnesses. They never agreed to execute the sale deed with regard to plot No.17 in favour of plaintiff nor they promised her to register the sale deed



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at the Sub-Registrar office as he alleged. They further submitted that the alleged draft sale deed also created by the plaintiff with ill-motive. After the cancellation of power deed, a sale deed was executed as per family arrangement and they gave a new power deed to one Chinnasamy, from whom, they have purchased the property. The defendants were forced to hand over the sale deed dated 10.12.2003 again in the year 2008, but they gave a complaint before the Bar Council of Tamil Nadu on 13.03.2008. Immediately, she has filed a suit for specific performance in order to get away from the enquiry before the Bar Council of Tamil Nadu as per the complaint given by the defendants. Thus, the suit was filed by the plaintiff for the relief of specific performance based upon the alleged oral sale agreement dated 13.05.2004.

7. It is an admitted fact that plot No.17 is belonged to the defendants 1 and 2. With regard to the plaintiff's earlier project of plot no.5 is not considered in the suit. The case of plaintiff is that at the time of purchase of plot No.5, the defendants 1 and 2 gave a power deed with regard to plot No.17 and she had also paid entire sale consideration, but they have



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subsequently cancelled the power deed with ulterior motive in order to get back plot No.17 in their name. Thereafter, a panchayat was held, wherein the defendants 1 and 2 orally agreed to sell the property on 13.05.2004 by receiving another sum of Rs.4 lakhs towards additional sale consideration. Thereafter, she has preferred a draft sale deed, but the defendants failed to execute the same. To prove the alleged oral sale agreement made by the defendants 1 and 2, she was examined as P.W.1 and other witnesses 2 to 6, who are closely known to the plaintiff and they were not known to the defendants. Even at the time of arguments, the defendants counsel pointed out that those witnesses are clients of P.W.1, who is an advocate by profession. Furthermore, the defendants totally denied the alleged oral sale agreement with the plaintiff and also submitted that they lost confidence on her due to breach of trust committed by her, their relationship with her became strained, so they contended that they never intended to sell another plot No.17 to her.

8. Considering the submissions on either side and on perusal of evidence, it was clearly proved that the plaintiff was an advocate for the



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defendants 1 and 2 and plot No.5 belong to the defendants was sold to her.

Further, with regard to suit property (plot No.17), the plaintiff claimed that she entered into oral sale agreement with the defendants 1 and 2. Of course, the oral agreement is admissible in evidence. To that effect, in support of her case, the plaintiff relied on the authority in the case of ***Aloka Bose vs. Parmatma Devi and others*** reported in ***2009 (2) SCC 582***, wherein the Apex Court held as follows :-

“An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications, which may or may not be signed.”

But, to avail equitable remedy, the plaintiff bound to prove her case. Normally, with regard to the concurrent findings of the facts, this Court need not make any interference, but when the courts below failed to appreciate material facts and the same was established by the parties, then this Court is empowered to go into the facts of the case also.



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9. As per the contention of plaintiff, a oral sale agreement was entered between them on 13.05.2004 and the facts and circumstances before and after the date of 13.05.2004 also needs to be appreciated. As per the objections made by the defendants, the plaintiff was their advocate and at her ill-advise, they have filed many litigations, which were ended in dismissal. Apart from that, she has collected huge amount as fees and also insisted to sell plot No.5 on her name without any consideration. She insisted to execute the sale deed for plot No.5 and also got power of attorney in respect of plot No.17. Thereafter, due to her strained relationship, several panchayat was held between them. In such circumstances, it is unbelievable that again the defendants orally agreed to sell the plot No.17 to her on receiving further consideration of Rs.4 lakhs. She is not an illiterate lady, she, being an advocate, should know all the legal consequences of the sale agreement. Already she had strained relationship with the defendants, if really, she wanted to purchase plot No.17 from them, she ought to have obtained valid written sale agreement from the defendants 1 and 2. Hence, the plaintiff's contention that she entered into oral sale agreement with the defendants 1 and 2 is



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unbelievable one. Furthermore, even assuming that the sale agreement entered orally is valid, she has filed a suit in the year 2008 nearly about 4 years later of the alleged oral sale agreement. She has not offered any explanation for such inordinate delay on her part. She stated that a draft sale deed was prepared, but the defendants 1 and 2 failed to register the same as they promised. But, as rightly pointed out by the defendants counsel, being an advocate, she could very well create the documents in her favour. Therefore, the alleged draft sale deed will not support her contentions.

10. Both the courts below totally relied on the evidence of P.W.1 along with evidence of P.W.2 and P.W.6, who are her clients, and they are not known to the defendants. Furthermore, with regard to panchayat held between them also not been proved by the plaintiff apart from evidence of P.W.2 to 6. They are interested witnesses supporting the case of plaintiff. Hence, the courts need independent material evidence to prove her claim, but she failed. On seeing the conduct of plaintiff, already she faced enquiry based upon the complaint given by the defendants before the Bar Council of Tamil Nadu, in which her practice was suspended for 3 years. Now, she



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sought for specific relief with regard to another plot belongs to the defendants without any sufficient evidence. It is a settled preposition that the plaintiff has to prove her case on her own evidence, but the case in hand, the plaintiff not proved her oral sale agreement with the defendants 1 and 2, but both the courts below simply appreciated the evidence adduced on the side of plaintiff and erroneously concluded that already the original sale deed was handed over to her during the panchayat by the defendants 1 and 2 voluntarily. Both the courts below failed to take note of the fact that those witnesses are interested witnesses of the plaintiff and it is tainted with interested testimony to support the case of plaintiff. But, the learned counsel appearing for plaintiff argued that merely because, she being an advocate she is not entitled to enter into a sale agreement with the defendants 1 and 2 though they are her clients. Any person, who wants to purchase the property can enter into a sale agreement with real owners, but already the conduct of the plaintiff proves that she abused her position by committing breach of trust, violated the golden rule of Advocacy. Hence, the defendants 1 and 2 reached the Bar Council of Tamil Nadu, wherein they have also held that she has committed professional misconduct and



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directed her to repay the amount with interest. In such circumstances, the theory of oral sale agreement with defendants 1 and 2 is unbelievable, still the plaintiff is more greedy about the property of defendants. Mere possession of original sale deed in the hands of plaintiff alone is not sufficient to conclude that there was an oral sale agreement between herself and defendants 1 and 2. In some other circumstances, the document might have been taken into custody by the plaintiff from her litigants/defendants 1 and 2, however, one Chinnasamy is said to be close relative of defendants 1 and 2 is known all the facts, but he was not examined by the plaintiff to prove the fact. The plaintiff is picking up holes in the defendants case and claimed that they have evaded to perform their part of the agreement.

11. As discussed above, the plaintiff herself failed to prove the alleged oral sale agreement with the defendants 1 and 2 even assuming that the agreement is valid one, she has not performed her part of contract in time nor she proved her readiness and willingness from the date of alleged agreement till filing of suit to get the sale deed executed. Even from the alleged date of sale agreement, nearly about 4 years later, she filed a suit



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with inordinate delay itself proves that she has no valid sale. Hence, in all aspects, the plaintiff not proved her case. Thus, the question of law 3 and 4 is answered. The trust casted upon their advocate/plaintiff by the clients is golden rule of Advocacy, if it is breached or violated, it amount to betrayal, indeed the plaintiff, to avail equitable remedy of specific performance, one of ingredient is that she must approach the court with clean hands. But, she failed and the defendant also proved that she abused her position. Accordingly, the question of law 1 and 2 is answered. Therefore, findings rendered by the courts below is set aside.

12. In the result, this Second Appeal is allowed and consequently, the suit filed by the plaintiff is dismissed as no merits. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
Sub-Judge, Poonamallee.

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Pre-delivery judgment in
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