



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON :21.04.2022

PRONOUNCING ORDERS ON:25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.No.526 of 2015

and

M.P.No.1 of 2015

P.Ranjithkumar ..Plaintiff/Appellant/Appellant

..Vs..

1.Baskar

2.Ambiga

3.Sumathi

4.Ramu

5.Nagarathinammal

6.Sundarammal (Deceased)

7.Sivalingam

8.Mani (died)

9.Punniyakotti

10.Egambaram

11.The Sub Registrar
The Registrar's Office
Cheyyur.

12.Selvaraj

13.Nagaraj

14.Devaraj

15.Gobi,
S/o.Late Mani



16.Moorthy,
S/o.Late Mani

..Defendants/Respondents/Respondents

(R6 died. R7 to R10 are LRS of the deceased R6 Viz., Sundarammal as per the memo dt.19/09/2018 vide order of court dt.19/09/2018 made in SA.No.526/2015 (TRNJ).

(RR 15 & 16 brought on record as LRS of the deceased R8 viz., Mani vide Court order dt.22.2.2022 made in CMP.No.2554/2022 in S.A.No.526/2015 (NAVJ)

PRAYER:Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 30.10.2014 passed in A.S.No.4 of 2013 on the file of the Principal District Judge of Kancheepuram District at Chengalpattu, by confirming the Judgment and decree dated 01.02.2011 passed in O.S.No.71 of 2007, on the file of Sub Court, Madurantakam.

For Appellant : Mr.K.Goviganesan

For Respondents: M/s.M.L.Ganesh
for R1 to R 5, 7, 9, 10 and 12 to 16

Mrs.E.Indhumathi
Government Advocate for R 11

J U D G M E N T

The plaintiff is the appellant in this Second Appeal.

2.The plaintiff filed the suit seeking for the relief of specific performance and permanent injunction restraining the defendants from in any manner encumbering or alienating the suit property.

3.The case of the plaintiff is that on 18.7.2005, defendants 7 to 10 and the deceased Thirunavukarasu jointly entered into an agreement of sale with the plaintiff. This document was marked as Ex.A2. A total sale consideration of Rs.1,50,000/- was fixed under this sale agreement and the entire sale consideration was paid even on the date of the agreement. The further case of the plaintiff is that one of the co-owners, Thirunavukarasu died intestate and his legal representatives are defendants 1 to 6 in the suit.

4.The grievance of the plaintiff was that he was always ready and willing to perform his part of the contract and was requesting the defendants to execute the sale deed in his favour. They were evading the execution of the sale deed under



some pretext. Left with no other option, the plaintiff issued a legal notice dated 7.6.2007 calling upon the defendants to execute and register the sale deed in favour of the plaintiff. The legal notice was marked as Ex.A3. According to the plaintiff, the defendants neither acted upon the notice nor gave a reply for the same. The plaintiff was therefore constrained to file the suit seeking for the relief of specific performance.

5. During the pendency of the suit, defendants 12 to 14 impleaded themselves in the suit on the ground that they are the legal heirs of one Elumalai Naicker and that they also have a share in the suit property and hence they are necessary parties in the suit. These defendants were given up by the plaintiff in the suit and the same was recorded in the Judgment of the Trial Court.

6. The defendants 1 to 10 filed a written statement. They took a stand that they are not the absolute owners of the suit property and that defendants 12 to 14 are also the co-owners of the property and they have a share in the suit property. They also took a defence that they have not executed the sale agreement and have not received the sale consideration for the suit property. They also took a stand that they were not aware about the legal notice issued by the plaintiff and that the plaintiff has approached the Court with delay.

7. The defendants 12 to 14 filed a written statement and they took a stand that they were not parties to the sale agreement and that defendants 1 to 10 do not have the exclusive right over the suit property. In view of the same, they pleaded that the sale agreement is not binding on them and it is unenforceable. Accordingly, they also sought for the dismissal of the suit.

8. Both the Courts below on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this Second Appeal.

9. When the Second Appeal was admitted, this Court framed the following substantial questions of law for consideration:

- a) Whether the Courts below are correct in dismissing the suit on the ground of non-joinder of necessary parties, when parties to the agreement alone have to be added as parties?
- b) Whether the non-consideration of DW1's oral evidence has resulted in miscarriage of justice, who had categorically admitted that the suit properties had been allotted to one Shanmuga Naicker which itself proves that the suit property is not a joint family property?



c)Whether the reasoning of the Courts below that Ex.A2 -Agreement of sale, relates to past transaction and is unenforceable, is incorrect and perverse ?

10.Heard Mr.K.Goviganesan, learned counsel for the appellant, M/s.M.L.Ganesh, learned counsel appearing for the respondents 1 to 5, 7, 9, 10 and 12 to 16 and Mrs.E.Indhumathi, learned Government Advocate appearing for the 11th respondent.

11.This Court carefully considered the materials available on record and the findings of both the Courts below.

12.The specific case of the plaintiff was that the entire sale consideration was paid even on the date of the agreement and what remained was the execution of the sale deed by the defendants in favour of the plaintiff. For proper appreciation, the contents of Ex.A2 are extracted hereunder:

விற்பனை உடன்படிக்கை

2005ஆம் ஆண்டு ஜூலை மாதம் 18 (18.07.2005) சென்னை/86, கோபாலபரம் 2வது தெரு, 20ஆம் எண் வீட்டில் வசிக்கும் திரு.B.பிரபாகரன் மகன் திரு.P.ரஞ்சித் குமார் அவர்களுக்கு, காஞ்சிபுரம் மாவட்டம் செய்யூர் வட்டம் பெருந்துறவ, கிராமத்தில் வசிக்கும் சண்முக நாயகர் மகன் திருநாவ, க்கரசு (1), பண்ணியகோட்டி (2), சிவலிங்கம் (3), மணி (4), ஏகாம்பரம் (5), ஆகிய நாங்கள் சம்மதித்து எழுதிக் கொடுத்த விற்பனை உடன்படிக்கை யாதெனில் நாங்கள் எங்களுக்கு சொந்தமான பெருந்துறவ, பன்செய் சர்வே எண் 250.1ல் ஏக்கர் 1.44 செண்டை தங்களுக்கு விலை பேசி விற்பனை செய்திட ஒப்ப,க்கொண்டு சென்ற 18.08.1997 தேதியில் தங்கள் தந்தையிடம் ஒரு உடன்படிக்கை எழுதிக் கொடுத்து ரூ பாய் 25,000./ம் பெற்றுக்கொண்டுள்ளோம். மேலும் கூடுதலாக கேட்டுக்கொண்ட வகையில் தாங்கள் ஒப்ப,க் கொண்டு இன்றைய நாளில் தங்களிடம் ரூ பாய் 1,25,000./ம் பெற்றுக் கொண்டோம். ஆக மொத்த தொகை ரூ பாய் 1,50,000./ம் பாக்கியின்றி தங்களிடம் பெற்றுக்கொண்டு பத்திரம் பதிவ, செய்து கொடுத்து விட்டோம்.

13.The defence taken by defendants 1 to 10 in their written statement can be captured as bullet points hereunder:

- The sale agreement was not executed and the sale consideration was not received.
- The suit property belonged to Elumalai Naicker and Shanmuga Naicker and defendants 1 to 10 come under the branch of Shanmuga Naicker and the other branch viz. defendants 12 to 14 who fall under the branch of Elumalai Naicker have half share in the suit property out of a family partition. Hence defendants 1 to 10 are not the absolute owners of the suit property.
- The plaintiff is aware about the suit property belonging to the two branches and had suppressed the said fact. The suit is therefore liable to be dismissed on the ground of non-joinder of necessary



parties.

- The defendants 1 to 10 did not receive the legal notice and were not aware of the contents of the notice.

WEB COPY

14.As against the specific defence in the written statement, the 7th defendant who was examined as DW-1 gave a different version in his evidence to the effect that the defendants approached the father of the plaintiff for a loan and at that point of time, their signatures were obtained in blank stamp papers and that was misused and Ex.A2 document was fabricated by the plaintiff. During the course of evidence, DW-1 clearly accepted that the defendants received the legal notice marked as Ex.A3 and no reply was sent to the said notice. He further admitted that they had received a sum of Rs.1,50,000/- on the date of agreement. He further admitted the execution of the sale agreement by the defendants in favour of the plaintiff. This oral evidence of DW-1 runs contrary to the defence taken by defendants 1 to 10 in the written statement.

15.The Trial Court framed a specific issue as to whether the sale agreement dated 18.7.2005 was a genuine document and it was found that the said document cannot be treated as a sale agreement and at best, it can only be treated as a receipt for receiving the entire sale consideration from the plaintiff and there was no contract between the parties capable of being enforced.

16.The Lower Appellate Court while dealing with this issue has concurred with the finding of the Trial Court and held that there was no executable contract between the plaintiff and the defendants 1 to 10. The Lower Appellate Court further gave a finding that the father of the plaintiff had paid a sum of Rs. 25,000/- to Thirunavukarasu (defendants 1 to 6 being the legal heirs of deceased Thirunavukarasu) and entered into a sale agreement on 18.8.1997 and the balance Rs.1,25,000/-was received from the plaintiff under Ex.A2. Hence there was nothing more to enforce under Ex.A2 document.

17.The evidence of DW-1 clearly shows that the deceased Thirunavukarasu along with defendants 7 to 10 executed Ex.A2 document in favour of the plaintiff. This is further confirmed by the fact that a Power of Attorney was also executed in favour of the plaintiff on the very same day and the same has been marked as Ex.A4. Both the Courts below have construed Ex. A2 document as an unenforceable contract. This interpretation was given by both the Courts below mainly on the ground that the father of the plaintiff had entered into an agreement with the deceased Thirunavukarasu in the year 1997 and paid a sum of Rs.25,000/- and by virtue of Ex.A2, the balance sale consideration was also paid by the plaintiff and the document

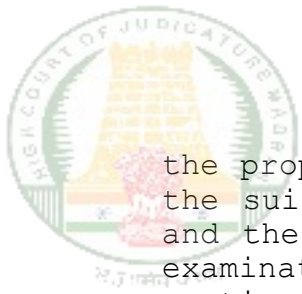


was executed in favour of the plaintiff under Ex.A2 and there was nothing more to be enforced under this document.

18.The above interpretation given by both the Courts below is not sustainable. Admittedly, the earlier agreement that has been referred to under Ex.A2 was entered into between the deceased Thirunavukarasu and the father of the plaintiff and a sum of Rs.25,000/- was paid to the said Thirunavukarasu. None of the other owners of the property were parties to the earlier agreement entered into in the year 1997. All the parties came together only while executing Ex.A2 document and they received a further amount of Rs.1,25,000/- from the plaintiff and thereby the entire consideration of Rs.1,50,000/- was received by Thirunavukarasu and defendants 7 to 10. This was specifically admitted by DW-1 in his evidence. Having received the entire amount, the defendants were bound to execute the sale deed in favour of the plaintiff. It is a trite law that there are three elements which constitute an enforceable contract. The first element is that there must be an offer by one party to another party. The second element is that the offer made by one party must be accepted by the other party and the third element is that it must be supported by consideration. In the present case, all the three elements are satisfied by Ex.A2 document. If this document had satisfied all the three elements, law permits the enforcement of such a contract. In the present case, the contract does not suffer from any illegality barred by law. Both the Courts below unnecessarily attached too much significance to the word “பத்திரம் பதிவு செய்து கொடுத்துவிட்டோம்” and construed it as if there was no more obligation on the part of the defendants. This finding suffers from perversity since both the parties understood Ex.A2 only as a sale agreement and hence the words “பத்திரம் பதிவு செய்து கொடுத்துவிட்டோம்” can be understood only as the sale agreement that was executed in favour of the plaintiff. This document can never be understood as a sale deed or as a receipt, as sought to be interpreted by both the courts below. The third substantial question of law is answered accordingly.

19.The next issue is with regard to the other branch viz. defendants 12 to 14 claiming for a share in the suit property. Both the Courts below have given a finding to the effect that defendants 12 to 14 are proper and necessary parties in the suit since they are claiming for a share in the property and since the plaintiff has not pressed the suit against defendants 12 to 14, the plaintiff will not be entitled to enforce Ex.A2 against defendants 1 to 10 alone.

20.The above finding rendered by both the Courts below goes contrary to the materials available on record and the law governing the said issue. Except for the claim made by defendants 12 to 14 in the suit property, there was absolutely nothing to show that any steps were taken to get their share in



the property. On the other hand, the evidence of DW-1 shows that the suit property was allotted to the share of Shanmuga Naicker and there is a categorical admission to that effect in the cross-examination. Even otherwise, who all are proper and necessary parties in a suit for specific performance has been dealt with by the Hon'ble Supreme Court in Kasturi Vs. Iyyamperumal and Others reported in (2005) 6 SCC 733. The relevant portions in the judgment are extracted hereunder:

"7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

8. We may look to this problem from another angle. Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by Chapter II, specific performance of a contract may be enforced against:

- "19. (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;



WEB COPY

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."

9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of clauses (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act.

10. That apart, from a plain reading of Section 19 of the Act we are also of the view that this section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced.

11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker v. Small* [(1834) 40 ER 848 : 3 My & Cr 63] made the following observations: (ER pp. 850-51)

"It is not disputed that, generally, to a



WEB COPY

bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

(emphasis supplied)

12. The aforesaid decision in Tasker [(1834) 40 ER 848 : 3 My & Cr 63] was noted with approval in De Houghton v. Money [(1866) 2 Ch 164 : 15 LT 403] . Turner, L.J. observed at Ch p. 170:

"Here again his case is met by Tasker [(1834) 40 ER 848 : 3 My & Cr 63] in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed."

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order



to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

WEB COPY

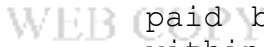
20. It was also argued on behalf of Respondents 1 and 4 to 11 that to avoid multiplicity of suits it would be appropriate to join Respondents 1 and 4 to 11 as party-defendants as the question relating to the possession of the suit property would be finally and effectively settled. In view of our discussions made herein above, this argument also which weighed with the two courts below has no substance. In view of the discussions made herein earlier, the two tests by which a person who is seeking addition in a pending suit for specific performance of the contract for sale must be satisfied. As stated herein earlier, first, there must be a right to the same relief against a party relating to the same subject-matter involved in the proceedings for specific performance of contract for sale, and secondly, it would not be possible for the court to pass effective decree or order in the absence of such a party. If we apply these two tests in the facts and circumstances of the present case, it would be evident that Respondents 1 and 4 to 11 cannot satisfy the above two tests for determining the question whether a stranger/third party is entitled to be added under Order 1 Rule 10 CPC only on the ground that if the decree for specific performance of the contract for sale is passed in absence of Respondents 1 and 4 to 11, their possession over the contracted property can be disturbed or they can be dispossessed from the contracted property in execution of the decree for specific performance of the contract for sale obtained by the appellant against Respondents 2 and 3. Such being the position, in our view, it was not open to the High Court or the trial court to join other cause of action in the instant suit for specific performance of the contract for sale, and therefore, the two courts below acted illegally and without jurisdiction in allowing the application for addition of parties in the pending suit for specific performance of contract for sale filed at the instance of Respondents 1 and 4 to 11. The learned counsel for Respondents 1 and 4 to 11, however, urged that since the two courts below had exercised their jurisdiction in allowing the application for addition of parties, it was not open to this Court to interfere with such order of the High Court as well as of the trial court. We are unable to accept this contention of the learned



counsel for Respondents 1 and 4 to 11. As discussed herein earlier, it is open to the Court to interfere with the order, if it is held that two courts below had acted without jurisdiction or acted illegally and with material irregularity in exercise of their jurisdiction in the matter of allowing the application for addition of parties filed under Order 1 Rule 10 CPC. The question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct interest in the controversy involved in the suit. Can it be said that Respondents 1 and 4 to 11 had any direct interest in the subject-matter of the instant suit for specific performance of the contract for sale? In our view Respondents 1 and 4 to 11 had no direct interest in the suit for specific performance because they are not parties to the contract nor do they claim any interest from the parties to the litigation. One more aspect may be considered in this connection. It is that the jurisdiction of the court to add an applicant shall arise only when the court finds that such applicant is either a necessary party or a proper party."

21. It is clear from the above Judgment that a suit for specific performance can be filed only as against the persons who have entered into a sale agreement. The necessary parties in a suit for specific performance of a contract are the parties to the contract or if they are dead, their legal representatives and also a person who had purchased the contracted property from the vendor. Insofar as a proper party in a suit for specific performance is concerned, the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. The issue to be decided in a suit for specific performance of the contract is the enforceability of the contract entered into between the parties and whether it was actually executed by the concerned parties and also whether the agreement holder was ready and willing to perform his part of the contract. Keeping this in mind, a third party or a stranger to a contract cannot be added as a proper party for deciding their claim over the property since it will change the very character of the suit.

22. In the present case, defendants 12 to 14 are neither necessary nor proper parties to the suit. They are making a rival claim for a share in the suit property and that issue cannot be decided in the present suit. This is apart from the fact that there is absolutely no material to even prima facie satisfying this Court that they have a share in the suit



३१.११.२०१३

24. In the present case, the conduct of the defendants is found to be not genuine. They have taken different stands at different points of time and their pleadings are completely in variance with their evidence. This is one more issue that was not taken note of by both the Courts below. In a suit for specific performance, even the conduct of the defendant should be taken into consideration by the Court while exercising its discretion. Where the defendants are not coming to the Court with clean hands and are suppressing material facts and are trying to mislead the Court, the Court while exercising its jurisdiction should not deny the relief of specific performance to the plaintiff in such cases. Useful reference can be made to the Judgment of the Hon'ble Supreme Court in Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan reported in 2014 (6) CTC 319 and the Division Bench of this Court in N. Venugopal and Another



Vs. N. D. Sukumar and Others reported in (2017) 7 MLJ 513.

25. Both the Courts below have taken adverse inference against the plaintiff since he did not enter into the witness box and only his father was examined as PW-1. In the considered view of this Court, there was no necessity to take adverse inference against the plaintiff since the father of the plaintiff was involved in this transaction right from the beginning and he was aware about the entire facts and he was capable of giving evidence in support of the case of the plaintiff. At the end of the day, PW-1 was not a stranger or a third party and was the father of the plaintiff who was well acquainted with the facts of the case. Hence the findings rendered by both the Courts taking adverse inference against the plaintiff is also held to be perverse.

26. In view of the above discussion, this Court finds that the Judgment and Decree of both the Courts below requires the interference of this Court. Even though this Court normally does not enter into the facts of the case after a finding is rendered by the Courts below, Section 103 of C.P.C. enables this Court to determine an issue on facts where the Courts below have wrongly determined the issue by misreading the evidence available on record. All the substantial questions of law framed by this Court are answered in favour of the appellant.

27. In the result, the Judgment and Decree of both the Courts below are hereby set aside and consequently the suit in O.S. No. 71 of 2007 is decreed as prayed for with costs. The Second Appeal is accordingly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssr

To

1. Principal District Judge,
Kancheepuram District,
Chengalpattu.
2. Subordinate Judge,
Sub Court,
Madurantakam.



3. The Sub Registrar
The Registrar's Office
Cheyyur.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.28606

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.28251

+1cc to the Government Pleader, S.R.No.28700

S.A.No.526 of 2015
and
M.P.No.1 of 2015

SSV(CO)
RGA(05/05/2022)