IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.11.2022

Pronounced on : 13.12.2022

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S. No.147 of 2014
and M.P. No.1 of 2014

Mr.K.Soundarapandian …Appellant/ Defendant

Vs.

1.S.Srinivasan (Died)
2.S.Malar
3.S.Meenakshi …Respondents/ Plaintiffs

(Respondents 2 and 3 are brought on record as LRs of the deceased sole respondent vide order of Court dated 03.01.2020 made in C.M.P.Nos.27321 to 27323 of 2019 in A.S.No.147 of 2014 by SMSJ)

PRAYER: First Appeal filed under Section 96 of Civil Procedure Code to set aside the judgment and decree made in O.S.No.18 of 2009 dated 22.08.2013 on the file of the District Court of Tiruvarur.

For Appellant : Mr.V.Saravana Rengan

For Respondent 1 : R1 died (Steps taken)

For Respondents 2 and 3 : Mr.G.Govarathanan

JUDGMENT

A. The Appeal Suit :

This Appeal Suit is filed against the Judgment and Decree of the learned District Judge, Tiruvarur dated 22.08.2013 in O.S.No.18 of 2009 in and by which the Suit for specific performance of the agreement dated 08.12.2007 is decreed by the Trial Court.

B. The Plaintiff's Case:

2. The case of the plaintiff is that the defendant is the owner of the lease hold interest in the suit schedule property having got the same from *Arulmigu Thangamuthu Mariamman Temple* by a duly registered Document No.503 of 1998 thereby having the lease right in respect of the property for a perpetual 99 years with the right to put up his own super structure for a rent of Rs.20/- per month. Thereafter, he has put up a super structure with R.C.C. Constructions and is in possession and enjoyment of the same. The defendant agreed to sell the said super structure along with the lease hold rights in the land to the plaintiff and for that purpose on 08.12.2007, an agreement for sale was entered into. As per the agreement for sale, the total sale consideration was Rs.13,00,000/-. Out of which a sum

of Rs.10,00,000/- was paid as on the date of the agreement as advance. The balance sale consideration was payable within a period of 2 years therefrom. But however, to the dismay of the plaintiff in spite of the sale agreement he came to know that the defendant was attempting to sell his property to third parties and therefore he confronted the defendant in person. Even though the defendant initially prayed for time, he continued with his attempts to alienate the suit property and hence the Suit.

C. The Defendant's Case :

3. The case of the defendant is that the suit sale agreement is not genuine. The defendant had business transactions by way of partnership business with one *V.K.K.Ramamoorthy* and his wife *Geetha* in respect of Cable TV network and other businesses. At the time of expanding the business, when the said *Ramamoorthy* brought in money as capital, by way of security he had also obtained signatures of the defendant on blank stamp papers, blank papers and also on cheques. Later on, when the defendant and the said *Ramamoorthy* fell out and conflicts arose between them, the said *Ramamoorthy* had also misused the cheques and filed cases. He had set up the plaintiff to file the present Suit by handing over the blank stamp paper

containing the signature of the defendant in which the suit agreement was created/concocted. The defendant did not receive any amount as advance nor did he enter into such an agreement for sale and prayed for dismissal of the Suit.

D. The issues & The Trial:

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

"i) Whether the plaintiff is entitled for specific performance of the agreement dated 18.02.2007?

ii) Whether time is the essence of the contract?

iii) Whether the plaintiff is entitled for the alternative relief?

iv) To what reliefs?"

4.1 On the said issues, the plaintiff examined himself as ***P.W.1*** and one *K.Jeyavel*, the attesting witness of the Suit agreement was examined as ***P.W.2***. and ***Exs.A1 to A7*** were marked on behalf of the plaintiff. The defendant examined himself as ***D.W.1*** and ***Exs.B1 to B18*** were marked on behalf of the defendant.

E. The Findings of the Trial Court :

5. Thereafter, the Trial Court proceeded to consider the case of the parties and after extracting the case of the parties and the rival contentions, decided the issue in paragraphs 7 and 8 of the judgment. The Trial Court found that the contention of the defendant that the Temple is a necessary party to the Suit is untenable because the agreement was to sell the super structure along with the lease hold rights. The Trial Court further found that the defence that the signature made in a Twenty rupees stamp paper was being misused by the plaintiff as untenable, since in the legal notices issued in ***Ex.B5, B8 and B9***, only signature in Hundred rupees blank stamp paper is mentioned and therefore in view of the said contradiction, the defendant's case is unbelievable and therefore the Trial Court decreed the Suit for specific performance by directing the plaintiff to deposit the balance sale consideration of Rs.3,00,000/-. Aggrieved by the same, the defendant has filed the present Appeal Suit.

F. The Submissions :

6. Heard *Mr.V.Saravana Rengan*, learned counsel for the

appellant/ defendant and *Mr.G.Govarathanan*, learned counsel for the respondents/ plaintiffs.

6.1 *Mr. V. Saravana Rengan*, the learned counsel for the appellant/ defendant pointing out an order of this Court in CRP.No.3587 of 2009 arising out of the Registrar's objection in returning the Suit at the very filing stage itself would submit that the Temple was very much a necessary party to the Suit. It is also agreed by the parties that the Temple is the owner of the property. In that view of the matter, the Trial Court, ought to have held that the Temple is a necessary party to the Suit.

6.2 The learned counsel also contended that the Suit agreement in ***Ex.A1*** is a concocted one on the face of it. Merely because they had signature in one blank stamp paper, the entire agreement was very cryptically typed in a manner that would itself adumbrate that it is a concocted agreement. As a matter of fact, the parties have not signed at the appropriate places. Even though, the agreement speaks about the witnesses, only one witness has signed. The stamp paper is of the year 2002 while the agreement was entered into in the year 2007. Therefore, on the face of it, it is clear that the stamp paper was misused. The learned counsel would draw the attention of this Court to the relevant portions of the cross examination of ***P.W.1*** and ***P.W.2***, and the oral testimony of ***D.W.1.*** in this regard to submit that the suit agreement was not at all genuine and therefore the plaintiff was not entitled to specific performance. The learned counsel would submit that if the sale consideration is only Rs.13,00,000/-, no reason whatsoever is mentioned in the agreement as to why further time of 2 years has been fixed with only a sum of Rs.3,00,000/- remaining as the balance. The learned counsel also submitted that the plaintiff did not even issue a pre-suit notice, as it is his case that the defendant is attempting to alienate the property. As a matter of fact, even though two years time has been mentioned in the suit agreement, the Suit was filed prior to the expiry of the two years and therefore would be premature. The learned counsel would submit that for all the above reasons, the Suit for specific performance filed by the plaintiff ought not to have been decreed by the Trial Court.

6.3 Per contra, *Mr. G. Govarthanan*, the learned counsel appearing on behalf of the respondents/ plaintiffs would submit that on perusal of ***Ex.A1/*** agreement itself, it would be clear that the Suit agreement is for sale of super structure along with lease hold interest / possessory rights of the defendant. Therefore, in that view of the matter, the Temple is not a necessary party. There is no express prohibition in the registered lease agreement which is also marked as ***Ex.A6.*** Even the hereditary trustee of the temple has not objected for the transaction, which would be clear from ***Ex.A7***. Thus, the Temple is not a necessary party to the Suit. The learned counsel drew the attention of this Court to the cross-examination of ***D.W.1. DW-1*** admits that in the earlier notices it is mentioned that only on one blank stamp paper he had signed and entrusted to the said *Ramamoorthy* and the said stamp paper is a Hundred rupees stamp paper. Thus, the contention in the present Suit is liable to be rejected.

6.4 The learned counsel would submit that admittedly there were earlier rent control proceedings between the said *Ramamoorthy* and the defendant. In those proceedings, no whisper has been made about the misuse of stamp paper or handing it over to the plaintiff herein. As regards the usage of old stamp paper, DW1's answers in the cross-examination clearly would prove that the parties wanted to enter into an agreement and the defendant was in possession of an old Twenty rupees stamp paper and it was used. There is no illegality or abnormality in the same.

6.5 The learned counsel would submit that the Temple being an unnecessary party, a specific issue need not also be framed by the Trial Court. Therefore, he would submit that when the plaintiff was ready and willing to perform his part of the contract and having paid a sum of Rs.10,00,000/- and only minor portion of the sale consideration being due, the Suit for specific performance has rightly been decreed by the Trial Court.

G. The Points for Consideration :

7. Upon consideration of the rival submissions made by both sides and perusal of the material records placed before this Court, the following questions arise for consideration :

1. Whether ***Ex.A-1*** Suit Sale agreement is genuine?

2. Whether the Suit is bad for non-joinder of Temple as a party?

3. Whether the plaintiff was ready and willing to perform his part of the contract and is entitled to the relief of specific performance?

4. To what other reliefs, the parties are entitled to?

H. On Point No. 1 :

7.1 On perusal of the judgment of the Trial Court, it can be seen that the Trial Court held in favour of the plaintiff predominantly for the reason that in the cross-examination it was agreed that the defendant had signed only on one blank stamp paper and as per ***Exs.B5, B6 and B9***, it is on a Hundred rupees stamp paper and therefore the defence on the face of it is untenable. I am unable to agree with the said conclusion. The said factor alone, will not conclusively determine whether the suit agreement in ***Ex.A1*** is genuine or not. As a matter of fact, ***Exs.B5, B6 and B9*** are all produced to show that there has been proceedings between the said *Ramamoorthy* and the defendant. But on a careful perusal of the same, what is mentioned in ***Ex. B5*** etc., is that the defendant, his wife and family members signing in one Hundred rupees stamp paper. Since the present Twenty rupees stamp paper was not an issue in those proceedings, it is not specifically mentioned. Therefore, I am unable to reject the case of the defendant on this sole criteria alone. On the contrary, the plaintiff will not be entitled for relief on the basis of the weakness of the defence case. For a wholesome consideration, the Sale Agreement in ***Ex.A1*** which is a one page agreement is reproduced hereunder as a picture copy:

20 Rs.

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TWENTY RUPEES

20 RS

3386

18.11.02

7.2 On a perusal of the same and a cumulative reading of all the evidence on record, the following factors arise:

i) From the evidence of ***D.W.2*** it is clear that only on 08.12.2007 between 7 and 8 pm, the parties negotiated and agreed on the sale consideration of Rs.13,00,000/- therefore, the plaintiff who is a business man in Chennai, only periodically visiting Tiruvarur, carrying a cash of Rs.10,00,000/- at the time of negotiation itself is the first abnormal circumstance.

ii) Even if on the same day of negotiation, a sum of Rs.10,00,000/- is paid, then the plaintiff being a person of such nature to conclude transactions immediately, there is no reason whatsoever which is mentioned in the ***Ex.A1 /*** agreement as to why two years time has been kept for the payment of balance sale consideration and conclusion of the sale.

iii) The Suit agreement ***Ex.A1*** is in a very strange form. Normally, the agreements for sale are written with both preamble clauses leading to the agreement and then reciting the covenants, followed by the schedule of property or it is written in Terms of Sale – Tabular form containing only the amount, date of completion, decription of parties and property. The above Ex.A1 is neither of the both and on a bare perusal of the same, it is clear that with very great difficulty, it is compressed in one single page, to the extent of not including the usual covenants of indemnity of title, refund/forfeiture of advance, specific performance etc.

iv) When the words *"vendor"* and *"purchaser"* have been meticulously typed, the word *"witnesses"* is not typed (because of want of space).

v) Even though the word *"witnesses"* is written in handwriting, only one witness has signed in the ***Ex.A1*** / agreement.(There is no space for a second witness to sign)

vi) Normally, the parties would sign above the phrase *"vendor" "purchaser"* mentioned within brackets at the end of the agreement. In ***Ex.A1 /*** agreement, the signature finds place below the description.

vii) The plaintiff did not even know the correct name of the attesting witness namely ***P.W.2*** and repeatedly mentioned his name as ***Jeyabalan*** instead of ***Jeyavel***. In this context, it is pertinent to note the defence that both of them are known only to the said *Ramamoorthy* and they were not acquainted with each other.

viii) The plaintiff did not even know what are the super structures and the shops which are constructed by the defendant in the suit schedule property;

ix) When such a huge amount of Rs.10,00,000/- is paid to a stranger, the conduct of the plaintiff in keeping ***P.W.2*** alone as the only witness and entering into the transaction is also unbelievable.

x) The entire advance amount is also said to be given as cash, which is also admittedly not accounted for in the Income Tax.

7.3 Thus, all these circumstances and pieces of evidence, cumulatively weigh greater than the solitary circumstance of the admission in the cross examination by the defendant about the Hundred rupees stamp paper. On a careful perusal of the evidences, both chief examination and cross-examination of ***P.W.1***, ***P.W.2*** and ***D.W.1*** and perusal of all the material evidence records fortifies the conclusion which can be drawn that on the face of it, ***Ex.A1*** does not appear to be genuine. Accordingly, I answer point No.1.

I. On Points (ii) -(iv):

7.4 Once the Suit agreement is held not to be genuine, the plaintiff will therefore not be entitled to any relief. But however, it can been seen that the Temple is not a necessary party to the suit. Once the agrement itself is not genuine,whether the plaintiff was ready and willing cannot be gone into. The plaintiff is not entitled to the relief of specific performance or to the alternative relief of refund of advance amount and accordingly the points are answered. For the said reasons, the findings of the Trial Court in respect of all the issues are held to be incorrect.

J. The Result :

8. In the result:

i) The Appeal Suit in A.S.No.147 of 2014 stands allowed;

ii) The Suit in O.S.No.18 of 2009 dated 22.08.2013 on the file of the learned District Judge, Tiruvarur stands dismissed;

iii) The parties shall bear their respective costs throughout;

iv) Consequently, the connected miscellaneous petition is closed.

13.12.2022

Speaking (or) Non Speaking Order
Index : Yes/ No
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D. BHARATHA CHAKRAVARTHY, J.

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To:
The District Judge,
District Court, Tiruvarur.

Pre-Delivery Judgment in
A.S. No.147 of 2014
and
M.P. No.1 of 2014

13.12.2022