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A.S.No.675 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.No.675 of 2014

1.S.Mohanasundaram

2.D.Ashok Kumar

...Appellants

Vs.

1.V.Thirumoorthy

2.A.Rajendran

3.R.Chitra

... Respondents

Prayer:- Appeal Suit filed under Section 96 and Order XLI of C.P.C., against the judgment and decree dated 10.04.2014 made in O.S.No.15 of 2012 passed by the learned Principal District Judge, Tiruppur.

For Appellants : Mr.S.Kumaresan

For R1 : Mr.Lakshmikanth

For R2 : No appearance

For R3 : Mr.Swarnam J.Rajagopalan



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JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

The plaintiffs in the suit in O.S.No.15 of 2012 on the file of the Principal District Court, Tiruppur, are the appellants in the above appeal.

2. The appellants filed the suit in O.S.No.15 of 2012 for the specific performance of an Agreement of Sale dated 23.07.2008 and for other consequential reliefs.

3. The plaintiffs also filed a suit for declaration that the Sale Deed executed by the 1st defendant in favour of the 3rd defendant is null and void. Alternatively, the plaintiffs also prayed for a decree for a sum of Rs.20,00,000/- being the double value of advance stated to have been paid to the 1st defendant with interest @ 18% per annum and to create a charge over the suit schedule property for the due payment.

4. The case of the plaintiffs is that the 2nd defendant is the absolute owner of the suit property to an extent of 0.60.5 Hectare in S.No.283/1 L,



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Thandukarampalayam Village, in Avinashi Taluk, Avinashi Panchayat Union

Limit of Coimbatore District.

5. The case of the appellants is that the 1st defendant is the Agreement Holder of the suit property belonging to the 2nd defendant and he entered into an Agreement of Sale with the plaintiffs on 23.07.2008. It is also stated that the 1st defendant had entered into an Agreement with the 2nd defendant earlier on 27.04.2008 to purchase the suit property. It is the case of the appellants that the total sale consideration was Rs.34,50,000/- and that the 1st defendant received a sum of Rs.10,00,000/- as advance towards part of the sale consideration. As per the Agreement, it is stated that the time specified was two months from the date of the Agreement. As per the Agreement the 1st defendant had with the 2nd defendant earlier on 27.04.2008, the 2nd defendant had agreed to execute the Sale Deed in favour of the 1st defendant or the nominee of the 1st defendant upon receiving a balance of sale consideration on or before 27.09.2008. Therefore, the plaintiffs filed the suit for specific performance. It is also stated in the plaint that time is not an essence of the contract in respect of immovable property and that the plaintiffs were ready and willing to perform their part of the contract in terms of the Agreement dated 23.07.2008. Though the plaintiffs state that they paid only advance of a sum of Rs.10,00,000/- under the suit agreement, the



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plaintiffs' have prayed for an alternative relief for refund of a sum of Rs.20,00,000/- without any reasons supporting such claim in the plaint. The plaintiffs have further referred to the Power of Attorney Deed stated to have been executed by the 2nd defendant in favour of the 1st defendant before the Suit Agreement that was executed on 24.07.2008. The suit was filed on 14.07.2011.

6. The suit was contested by the 1st defendant and the written statement of the 1st defendant was also adopted by the 3rd defendant in whose name the 1st defendant had already executed a Sale Deed as Power of Attorney Agent of the 2nd defendant.

7. In the written statement filed by the 1st defendant, it is admitted that the 2nd defendant is the absolute owner as per the registered Sale Deed dated 22.07.1999. However, the Suit Agreement was specifically denied. It is also the case of the 1st defendant that he borrowed a sum of Rs.1,00,000/- from the plaintiffs and the Suit Agreement was manipulated with the blank stamp papers and green sheets signed by the 1st defendant which were obtained by the plaintiffs at the time of lending a sum of Rs.1,00,000/-.

8. It is the case of the 1st defendant that on the date of the alleged Sale



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Agreement between the 1st defendant and the plaintiffs, the 1st defendant had no power in respect of the suit property to act as the Power of Attorney Agent of the 2nd defendant as the Power of Attorney Deed authorizing the 1st defendant to act as Power Agent of the 2nd defendant was executed only after the Sale Agreement i.e. on 28.08.2008. It is also stated by the 1st defendant that the 1st defendant had already executed the Sale Deed in favour of the 3rd defendant on 27.10.2010 and that the plaintiffs have no right to seek specific performance. In the written statement it is further stated by the 1st defendant that the plaintiffs compelled the 1st defendant to give a registered document for the loan. In the said context, it is contended that the 1st defendant was compelled to execute a registered Sale Deed instead of Mortgage Deed regarding his another land in S.No.330/2 and 3 of Thandukkarampalayam Village. Though the 1st defendant requested the plaintiffs to hand over the signed blank stamp papers and green sheets, the plaintiffs told him that the same were misplaced. It is to be seen that the 1st defendant has specifically denied the Agreement of Sale and contended that on the date of the Suit Agreement the 1st defendant had no authority to execute the Sale Agreement in respect of the suit property. It is also stated that the suit is vexatious and filed only for the harassment of the defendants by creating a fabricated document. The defendants 1 and 3 also contended that the plaintiffs were not ready or willing to purchase the property and that there was



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no relationship of seller and purchaser between 1st defendant and plaintiffs.

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9. Before the Trial Court, the plaintiffs were examined as P.W.1 and P.W.2. The 2nd plaintiff was examined as P.W.1 and the 1st plaintiff was examined as P.W.2. Exs.A1 to A22 are marked on the side of plaintiffs. The 3rd defendant examined herself as D.W.1. The 1st defendant was examined as D.W.2 and one Balusubramani was examined as D.W.3. Exs.B1 to B4 were marked on the side of the defendants.

10. Having regard to the pleadings, the Trial Court framed the following issues:-

“a) whether there is any agreement to sell dated 27.04.2008 regarding the suit property between the 1st defendant and the 2nd defendant?

b) whether the 1st defendant entered into a Sale Agreement with the plaintiff on 23.07.2008 regarding the suit property?

c) whether the 1st defendant was having a “Saleable interest” over the suit property on 23.07.2008?

d) whether the plaintiffs are entitled to get the relief of specific performance of the Agreement dated 23.07.2008 against the defendants 1 to 3 as prayed for?



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e) whether the plaintiffs are entitled for a declaration that the Sale Deed executed by the 1st defendant as power agent of the 2nd defendant in favour of the 3rd defendant on 07.10.2010 is null and void?

f) whether the valuation for the relief of declaration that the Sale Deed executed by the 1st defendant as power agent of the 2nd defendant in favour of the 3rd defendant on 07.10.2010 is null and void, is proper and consequently whether the Court fee paid for that relief is proper?

g) whether the plaintiffs are entitled for the relief of permanent injunction restraining the defendants from encumbering or alienating the suit property to third parties?

h) whether the plaintiffs are entitled for the alternative relief of directing the 1st defendant to pay Rs.20,00,000/- (double the advance amount) with interest at 12% per annum from the date of suit till realisation?

i) whether the plaintiffs are entitled as an alternative relief for a charge on the suit property for due repayment of Rs.20,00,000/- with interests and costs, as prayed for as an alternative relief?

j) to what relief or reliefs the parties are entitled to?"



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11. On the first issue, the Trial Court held that the Suit Agreement under Ex.A2 is not proved by the plaintiffs as a true and genuine document. On the second issue, the Trial Court also held that the plaintiffs have not proved that the 1st defendant had earlier entered into an Agreement with the 2nd defendant for the sale of the property on 27.04.2008. On the question whether the 1st defendant was having a saleable interest over the suit property on the date of the Suit Agreement i.e. On 23.07.2008, the Trial Court specifically held that the 1st defendant had no saleable interest on the date of Suit Agreement. Since the property had already been sold in favour of the 3rd defendant only as Power of Attorney Agent of 2nd defendant it was further held that the suit is not maintainable based on the Suit Agreement. On the question whether the plaintiffs are entitled to the relief for specific performance against defendants 1, 2, and 3, the Trial Court also held that there is no privity of contract between the plaintiffs and defendants 2 and 3 and that therefore the suit for specific performance cannot be granted. The remaining issues were decided against the plaintiffs. Of course regarding Issue No.1, the Trial Court held that the court fee paid is proper. Aggrieved by the judgment and decree of the Trial Court the above appeal is preferred by the plaintiffs.

12. The learned counsel appearing for the appellants submitted that the



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2nd defendant had appointed the 1st defendant as Power of Attorney Agent before the Agreement that was executed on 24.07.2008 and that therefore, the suit Agreement is valid and binding on defendants 1 and 2. The learned counsel then submitted that in complete violation of the Suit Agreement, the 1st defendant executed a Sale Deed in favour of the 3rd defendant as Power of Attorney Agent. The learned counsel then submitted that the 1st defendant had entered into an Agreement with the 2nd defendant and that the Trial Court came to a wrong conclusion. It is submitted that the finding on the genuineness of the Agreement between the plaintiffs and the 1st defendant is erroneous. The learned counsel submitted that the plaintiffs paid a substantial amount of Rs.10,00,000/- under Ex.A2 and that the Trial Court did not appreciate the actual amount paid as advance under Ex.A2. The learned counsel then submitted that the plaintiffs are entitled to the grant of the alternative relief of refund of a sum of Rs.20,00,000/- as the plaintiffs have proved the document under Ex.A2. This Court is unable to countenance the arguments of the learned counsel appearing for the appellants.

13. First of all, the plaintiffs/appellants have filed the suit based on the Agreement under Ex.A2 dated 23.07.2008. The plaintiffs have not proved by any document or any other evidence that the 1st defendant was appointed as Power of Attorney Agent of the 2nd defendant before the Suit Agreement dated



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23.07.2008. From the evidence, it is seen that the Power of Attorney Deed executed in favour of the 2nd defendant is not marked. However, there is a reference to a Power of Attorney Deed in the subsequent Sale Agreement the 1st defendant executed in favour of one Chenniappan. When the suit property belongs to the 2nd defendant, the plaintiffs is bound to prove that the 1st defendant had the authority from the 2nd defendant to execute the Sale Agreement on behalf of the 2nd defendant in favour of the plaintiffs. When there is no agreement between the plaintiffs and the 2nd defendant the suit is not maintainable purely on the ground that the plaintiffs had an Agreement with the 1st defendant, especially when it is seen that the appellant is unable to produce any satisfactory evidence as to the authority of the 1st defendant to enter into the agreement with the plaintiffs on behalf of 2nd defendant.

14. When the 1st defendant is not proved to be a person who has a saleable interest or right to deal with the property as Power of Attorney Agent, the findings of the Trial Court on the first three issues cannot be questioned. The appellants have relied upon only the document of the Sale Agreement under Ex.A2 between the plaintiffs and the 1st defendant. When the 1st defendant is not the owner or an Agreement Holder or the Power of Attorney Holder of the 2nd defendant the plaintiffs cannot enforce the Suit Agreement in respect of the



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suit property as against defendants 2 and 3.

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15. Having regard to the peculiar facts and circumstances of the case, the Trial Court has considered several conflicting statements of plaintiffs 1 and 2 while giving the evidences as P.W.2 and P.W.1 respectively, about the execution of Suit Agreement. The finding of Trial Court as to the genuineness of Ex.A2 is supported by proper reasonings especially where it is proved that the 1st defendant had no right or saleable interest as on the date of Suit Agreement.

16. It is the specific case of the 1st defendant that on the strength of the money given by the plaintiffs to the 1st defendant, the plaintiffs had obtained a Sale Deed from the 1st defendant in respect of different properties of the 1st defendant. The 1st defendant has deposed to the fact that the 1st defendant was not the Power of Attorney Agent to represent the 2nd defendant on the date of the Sale Agreement. Even in Ex.A2, it is only stated that 1st defendant had entered into a Sale Agreement with 2nd defendant and no power deed is referred to. The Sale Agreement under Ex.A2 cannot be treated as a valid contract and the Trial Court has come to a correct conclusion based on every material evidence and this Court has no reason to interfere with the findings of the Trial Court.



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17. In a suit for specific performance, the plaintiffs are expected to plead and prove readiness and willingness from the date of the Sale Agreement till the date of plaint, and the plaintiffs are also expected to come with clean hands. In the present case, the Suit Agreement is dated 23.07.2008, except this Agreement, no other document is produced to show that the plaintiffs have mobilised a sum of Rs.10,00,000/- to pay the said amount as an advance to the 1st defendant on the date of the Sale Agreement. The 1st defendant executed a Sale Deed in favour of the 3rd defendant as a Power of Attorney Agent of the 2nd defendant. The said Sale Deed is not an issue. When the property itself had been conveyed to a third party, unless the plaintiffs prove that the 3rd defendant had knowledge about the sale transaction, the 3rd defendant is entitled to the protection under Section 19(b) of the Specific Relief Act. Payment of substantial amount as advance under Ex.A2 is not proved by independent witness or evidence. The case of 1st defendant that Ex.A2 is a security for loan transaction is more probable.

18. Having regard to the facts and circumstances of the case, this Court is able to see that there is nothing on record to indicate that the 3rd defendant had purchased the properties with knowledge of the Suit Agreement. When the 1st



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defendant has no authority to deal with the property, the 3rd defendant may not have an occasion to believe that there would be an Agreement by the 1st defendant in favour of the plaintiffs in respect of the suit property earlier. Therefore, the suit for specific performance cannot be granted as against the 3rd defendant. When there is no privity of contract between plaintiffs and 2nd defendant, the suit for specific performance of Suit Agreement is not maintainable.

19. On the question of readiness and willingness, the plaintiffs though state that a sum of Rs.10,00,000/- was paid as an advance on 23.07.2008, it is seen that the suit for specific performance was filed only on 14.07.2011. From the plaint, it is seen that the plaintiffs issued the notice only before filing the suit on 24.05.2011. It is admitted that the plaintiffs, even as per the document under Ex.A2, have agreed to complete the transaction within two months from the date of the Suit Agreement dated 23.07.2008. In the plaint, the appellants have specifically stated that time is not an essence of the contract in respect of the immovable property quite contrary to the terms of the Agreement. This Court cannot interfere with the finding that the plaintiffs are not ready and willing to perform their part of the contract in terms of the Sale Agreement where the plaintiffs have agreed to complete the transaction within two months from the



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date of the Sale Agreement dated 23.07.2008. The suit notice itself was issued only before filing the suit. Therefore, this Court is unable to interfere with the findings of the Trial Court on any other issue.

20. Though, it is admitted by the 1st defendant that he received a sum of Rs.1,00,000/- as loan from the plaintiffs, the Suit Agreement is not proved by the plaintiffs. There is a specific prayer for recovery of a sum of Rs.20,00,000/- being the amount stated to have agreed by 1st defendant in the event he could not execute the sale. However, this Court has already held that the genuineness of Sale Agreement under Ex.A2 is not proved. Hence, the plaintiffs are not entitled to alternative relief. This Court has reason to refuse to grant the alternative relief even to the extent admitted by the 1st defendant in the written statement. The 1st defendant contended that he executed a registered Sale Deed in respect of some other property in favour of plaintiffs to discharge the debt. However, the plaintiffs have not put any questions on this during cross examination of 1st defendant.

21. In the result, the appeal suit is dismissed with cost and the judgment and decree dated 10.04.2014 made in O.S.No.15 of 2012 passed by the learned Principal District Judge, Tiruppur is hereby confirmed in all aspects.



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[SSSRJ] [NMJ]

18.11.2022

S.S.SUNDAR, J.,

AND

N.MALA, J.,

cda

To

1.The Principal District Judge, Tiruppur.

2.The Section Officer, VR Records,
High Court, Chennai.

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