



S.A.No.585 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.585 of 2017

&

C.M.P.Nos.14448 & 14449 of 2017

Ramanujam Pillai

...Appellant

Vs

1.R.Natarajan (Died)

2.Chowdry

3.Kolanchimani

4.N.Jothi

5.Lakshmi

6.N.Sundari

7.N.Rathinasabathi

... Respondents

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(RR 4 to 7 brought on record as LR's of the deceased R1 Viz., R.Natarajan vide Court order dated 16.12.2021 made in C.M.P.No.11737 of 2021 in S.A.No.585 of 2017)

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 05.06.2015 made in A.S.No.30 of 2014 on the file of the Court of the Subordinate Judge, Chidambaram, confirming the Judgement and Decree dated 26.03.2014 made in O.S.No.159 of 2005 on the file of the Court of the Principal District Munsif, Chidambaram.

For Appellant : Mr.T.Dhanasekaran

For Respondent 1 : Died

For Respondents
2 & 3 : No Appearance

For Respondents
4 to 7 : Mr.A.Muthukumar



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JUDGEMENT

The plaintiff whose suit for specific performance was concurrently dismissed by the Courts below has filed the above Second Appeal. The facts in brief is set out herein below and the parties are referred to in the same litigative status as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.159 of 2005 on the file of the Principal District Munsif, Chidambaram, seeking specific performance of an agreement of sale dated 07.12.1985. The plaintiff would contend that the 1st defendant is the owner of the suit properties and on 10.05.1982, the 1st defendant had executed a sale deed in favour of the plaintiff for a sum of Rs.10,000/- in respect of the Item I of the suit properties.



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3. However, when the sale deed was executed, the 1st defendant had stated that the registration should be held later. The 1st defendant had received a sum of Rs.10,000/- and had handed over possession of Item I of the suit property to the plaintiff. Thereafter, on 19.05.1983, the 1st defendant executed the sale deed in favour of the plaintiff and the total sale consideration was a sum of Rs.37,000/-. The sale was in respect of the property comprised in certain survey numbers listed therein.

4. Once again the 1st defendant had sought to have the registration later since the above properties that were the subject matter of this sale was attached by Venkatachalam Pillai. The 1st defendant received a sum of Rs.37,000/-, which was a total sale consideration and he had handed over the possession of the above properties to the plaintiff. Thereafter, the plaintiff had entered into an agreement of sale on 07.12.1985, agreeing to sell the suit schedule property. In the said



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agreement of sale, the earlier sale deed dated 19.05.1983 was set out.

5. The plaintiff would further submit that the 1st defendant had agreed to execute the sale deed as and when required. However, the same was not done in May 2005, when the plaintiff had approached the 1st defendant and demanded execution of the sale deed. The 1st defendant had further demanded money and refused to register the sale deed. On 30.06.2005, a legal notice was issued by the plaintiff calling upon the 1st defendant to execute the sale deed.

6. On receipt of the notice, the 1st defendant had sent a reply notice dated 20.06.2005 containing false allegations. The 1st defendant had denied handing over of the possession of the property under the sale deeds but he would state that the possession of the property was handed over only to enable the plaintiff to take care of the same. Therefore, the suit came to be filed in the year 2005.



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7. The 1st defendant had filed a written statement inter alia denying the contents of the plaint and it was his specific case that the sale deeds dated 10.05.1983 and 19.05.1983 were forged and concocted documents. The 1st defendant would submit that he and the plaintiff are brothers and he has also been in possession and enjoyment of the suit properties. The 1st defendant had requested the plaintiff to take care of the lands in his absence.

8. The 1st defendant would submit that he was facing a civil case against him filed by one Venkatachalam Pillai and the plaintiff wanted the signature of the 1st defendant in blank stamp papers, so that the same could be used to defend the 1st defendant. Out of trust, the 1st defendant signed the stamp papers and it is these documents that are now used to create unregistered sale deeds and the agreement of sale. At no point of time had the 1st defendant handed over the suit property



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to the plaintiff.
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9. The 3rd defendant who has purchased the property Item Nos.2 and 3 from the 2nd defendant had filed a written statement denying the plaintiff's claim and stating that the suit itself is hopelessly barred by limitation since the plaintiff is attempting to enforce the agreement of sale executed in the year 1985 by filing the suit in the year 2005.

10. The Trial Court had not framed a separate issue with regard to limitation, the learned Principal District Munsif, Chidambaram, had framed the following issues:

“1.Whether the plaintiff is entitled for the relief of specific performance of contract as he prayed for?

2.Whether the suit properties are in enjoyment of the plaintiff?

3.Whether the plaintiff is entitled for the relieves of



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permanent injunction as he prayed for?

4.To what other relief the plaintiff is entitled for?

11. The plaintiff examined himself as P.W.1 and one Sivakumar was examined as P.W.2. Ex.A.1 to Ex.A.18 were marked on the side of the plaintiff. The 1st defendant was examined as D.W.1. Ex.B.1 and Ex.B.2 were marked on the side of the defendants 1 and 2. The 3rd defendant was examined as D.W.2 and Ex.B.3 to Ex.B.11 were marked on his side.

12. Ultimately, the learned Principal District Munsif, Chidambaram held that the agreement of sale which has been put forward has not been proved to be a lawfully enforceable contract. Further, the plaintiff has not proved that the suit properties are in his lawful possession and enjoyment by virtue of Ex.A.1 to Ex.A.18. On the contrary, the 1st defendant has not only proved that the suit property



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continued to be in his possession and enjoyment by filing Ex.B.3 and Ex.B.5 but also proved the subsequent sale of the suit property to the 2nd and 3rd defendants are valid and consequently the suit was dismissed.

13. Aggrieved by the said Judgement, the plaintiff had filed an appeal in A.S.No.30 of 2014 on the file of the Sub Court, Chidambaram, who had also confirmed the Judgement passed by the Trial Court. Challenging the said Judgement and Decree the plaintiff is now before this Court.

14. When the matter had come up for admission, this Court had directed notice to the defendants. The defendants had also entered appearance and both the learned counsels had made their submissions today.



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15. A perusal of Ex.A.1, sale agreement does not specify the sale consideration and the agreement does not contain the details such as time for performing the contract, total sale consideration fixed and the manner in which it is going to be paid to the 1st defendant, which are the basic ingredients of an agreement of sale. This agreement of sale has been entered into as early as in the year 1985 and there is no explanation whatsoever as to why the plaintiff has filed the suit in the year 2005, nearly 20 years after the execution of the agreement of sale. On the face of this it is clear that the agreement and the sale deeds have not been executed by the defendant. There is also no explanation as to why three unregistered deeds have been executed by the 1st defendant in favour of the plaintiff.

16. A reading of the plaint would clearly show that there is no cause of action for filing the suit. I see no reason to interfere with the concurrent Judgement of the Courts below and the appeal does not give



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rise to any Substantial Questions of law.

17. In the result, the Second Appeal stands dismissed. Consequently, connected Civil Miscellaneous Petitions are closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

To,

1.The Subordinate Judge,
Chidambaram.

2.The Principal District Munsif,
Chidambaram.

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P.T.ASHA, J.,

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