



A.S.(MD)No.133 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of pronouncing the Judgment
16.08.2022	26.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.133 of 2010

and

C.M.A(MD)No.2382 of 2016

1.A.Balamurugan

2.A.Kadarkarai

...Appellants/Defendants

-Vs-

S.Seenivasan

...Respondent/Plaintiff

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure to set aside the Judgment and Decree, dated 19.02.2008 passed by the learned Additional District Judge/Fast Track Court No.II, Tuticorin, in O.S.No.3 of 2006.

For Appellants : Mr.J.Barathan

For Respondent : Mr.M.Suresh Kumar



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JUDGMENT

This Appeal has been filed to set aside the Judgment and Decree, dated 19.02.2008 passed by the learned Additional District Judge/Fast Track Court No.II, Tuticorin, in O.S.No.3 of 2006.

2. The brief facts of the plaint are as follows:-

The suit properties belonged to the defendants through a Will, by document No.75/1992 dated 23.09.1992. On consent, the defendants have entered into an agreement, on 21.11.2005 with the plaintiff, for selling the suit properties for a total value of Rs.6 lakhs, and on the same day, they have received a sum of Rs.50,000/-, as advance. As per the agreement, the plaintiff has to pay the remaining amount, on or before 30th day of Karthigai month. The defendants have also agreed to sell the suit properties to the plaintiff or his men or an agent of the plaintiff. In the said agreement, Ravikumar and David Pradeep Ravikumar have signed as witnesses. Now also, the plaintiff is ready to purchase the suit properties. Thereafter, the defendants have issued a legal notice, dated 06.12.2005 to the plaintiff and the allegations mentioned in the said legal notice are false one. The plaintiff has also sent reply legal notice, dated 08.12.2005 to



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the defendants. Again, the defendants have issued a rejoinder notice. Hence, the plaintiff has filed the suit for specific performance.

3. The brief facts of the written statement filed by the defendant are as follows:-

The claim of the suit is false. The suit properties are belonged to the defendants, as per Will, dated 23.09.1992. The defendants have not entered into any agreement, dated 21.11.2005 with the plaintiff and they have not received a sum of Rs.50,000/-,as advance. On 05.12.2005, the plaintiff, Ravikumar and David Pradeep Kumar have created the agreement and obtained the signatures of the defendants under coercion and compulsion. On 22.12.2005, the 1st defendant has sold the 1st item of the suit property to his sister. Hence, the suit liable to be dismissed.

4. Based on the above said pleadings, the trial Court framed the following issues:-

“1.Whether it is true that the sale agreement, dated 21.11.2005 was created on the suit properties? Whether it is true that the plaintiff has paid a sum of Rs.50,000/-, as advance?”



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2. *Whether the defendants are liable for specific performance?*
3. *To what relief the plaintiff is entitled?*

5. In order to substantiate the case, during trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and 10 documents were marked as Exs.A.1 to A.8. On the side of the defendants, one witness was examined as D.W.1 and 4 documents were marked as Exs.B.1 to B.4.

6. On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court decreed the suit in favour of the plaintiff.

7. Challenging the said Judgment and decree, dated 19.02.2008, the plaintiff has filed the present Appeal Suit before this Court.

8. Heard Mr.J.Barathan, learned counsel appearing for the appellants and Mr.M.Suresh Kumar, learned counsel appearing for the respondent.



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9. The learned counsel for the appellants would submit that Ex.A.1 agreement, dated 21.11.2005 was obtained under threat and coercion. Ex.B.1 to Ex.B.3 clearly shows that the signatures of the appellants were obtained in the blank stamp papers, subsequently, the same was created as sale agreement. P.W.2 has obtained Ex.A.3 to A.6 from the appellants and stated that he required the said documents for changing the name of appellants in the revenue records. So, that the property tax would be assessed in the name of the appellants, inspite of his Testator Arumugam Muthaliyar. Ex.B.2 and B.4 clearly established that the appellants have sent complaints to the Police Department as well as the Hon'ble Chief Minister's Cell regarding the incident took place on 05.12.2005. P.W.2 & P.W.3 are professional brokers who are close friends of the respondent and therefore, their evidences cannot be accepted. The appellants have no separate house, except the suit schedule properties and therefore they could not have entered into the agreement for selling the suit properties. Merely, filing of Ex.A.2 to A.6, the respondent could not make up his case. Absolutely, the appellants have no interest to sell the suit properties, particularly, when the worth of the property is more than Rs.10 lakhs, whereas, the agreement shows only Rs.6 lakhs. There is no necessity arisen to sell the suit properties for Rs.6 Lakhs which is



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prevailing the market value on that date. The relief sought for by the respondent is discretionary relief. The respondent has not established the alleged agreement.

10. He would further submit that in a suit for specific performance, it is essential that he was ready and willing to perform his part of the contract, even the trial Court has not framed any specific issue as to whether the respondent was ready and willing to perform his part of the contract. Therefore, the respondent has failed to consider the mandatory ingredients and wrongly decreed the suit. The alleged agreement, dated 21.11.2005, but, however, Ex.A8, Ex.B.1 & B.3 shows that even in the agreement, dated 21.11.2005 the time was fixed to complete the sale was 25 days. Ex.A.1, A.8 and Ex.B.1 and B.3 clearly shows that the, 25 days which is prior to the expiry of the agreement period. Therefore, it is clear that the agreement is not true and the same was obtained under coercion. Therefore, immediately, the appellants have issued notice, on 06.12.2005 itself under Ex.A.8 and therefore, the trial Court has failed to appreciate both oral and documentary evidence and wrongly decreed the suit. Therefore, the appeal is to be allowed. The learned counsel appearing for the appellants relied upon the following Judgments:



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1.(2009) 17 Supreme Court Cases 27, Azhar Sultana Vs. B.Rajamani and Others.

2.2014-4-L.W.686, K.Rajendran Vs. K.Chinnappa Gounder and another.

3.2018 (5) CTC 425, Velsamy Vs. Jothi Vayola Rani and another.

11. The learned counsel appearing for the respondent would submit that the appellants have entered into an agreement with the respondent on 21.11.2005. The sale price was fixed at Rs.6 lakhs and Rs.50,000/-was paid on the same day as advance and the time fixed for completion of the contract was 25 days. On the same day, at the time of executing the agreement the appellants gave xerox copies of the parent documents i.e., Will and Encumbrance certificate. Therefore, the respondent is ready and willing to perform his part of the contract, within the stipulated time. Shockingly, on 06.12.2005 the appellants have issued a legal notice with false allegations. Further, the appellants have not come to the Court with clean hands. Further the appellants have to prove that, what about the complaints given by them, whether the same was under enquiry or under investigation or any FIR was lodged as against the respondent, if not at all taken any steps and what steps they had taken. There is a serious allegations that, on



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05.12.2005, the respondent came along with 4 or 5 persons and they have threatened them and obtained signatures under coercion. If that be the serious allegations and gave complaints immediately, they have not stated anything about the outcome of the complaint and action taken against the respondent. The respondent has proved the agreement, by examining P.W.2 & P.W.3 and they have proved the agreement was true and genuine. Since the appellants had not taken specific plea that the respondent was not ready and willing to perform his part of contract, the trial Court has not framed any specific issue in this regard. Therefore, non-framing of the issues regarding readiness and willingness was not fatal to the case of the respondent. The respondent has established the execution of the agreement, through oral and documentary evidence and he has also stated that he is ready and willing to perform his part of the contract. Therefore, the trial Court has rightly concluded that, once the signatures were admitted, the appellants have to prove that the signatures were obtained by coercion. Except, one of the appellants, no other witnesses were examined before the trial Court. Therefore, the trial Court has rightly granted the discretionary remedy of specific performance and there is no merit in the appeal. The appeal is liable to be dismissed.



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12. The specific case of the respondent is that the appellants have entered the sale agreement on 21.11.2005 agreeing to sell the properties for a sum of Rs.6 lakhs and on the same day, he has paid a sum of Rs.50,000/-, as advance, to the appellants. The time for executing the sale deed was fixed as 25 days. The specific date was on or before 30th day of Karthigai month. On the same day, the appellants have handed over the xerox copies of the title deed and Encumbrance certificate and tax receipts. On 18.11.2005, the appellants have also applied for Encumbrance certificate, in which also, there was no Encumbrance in the said property. The said Encumbrance certificate was also marked as Ex.A.7. In order to substantiate his contention, the respondent has also examined the broker who acted in between the appellants and respondent and he was also examined as P.W.3. Therefore, the case of the respondent was proved.

13. The specific case of the appellants is that they never executed the sale agreement and not received any advance amount. They obtained signatures and got the xerox copies of Ex.A.1 to A.7 for changing the name of the appellants and they misspelled the revenue records. Though, the respondent came on 05.12.2005 along with 4 or 5 persons and threatened the appellants and obtained



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their signatures under coercion, they have not preferred any complaint against them.

14. Since the agreement was denied by the appellants it is the duty of the respondent to prove the same.

15. The points for consideration are as follows:

1. Whether the agreement is a genuine one?

2. Whether the respondent is ready and willing to perform his part of contract?

16. Point No.1:

Since this Court is an Appellate Court, it has to appreciate the oral and documentary evidence. On a reading of the pleadings and oral and documentary evidences, as already stated that the respondent has pleaded that on 21.11.2005 the appellants have entered into an agreement, agreeing to sell the suit properties for a sum of Rs.6 lakhs, and on the same day, they have received a sum of Rs.50,000/-, as advance and executed Ex.A.1 sale agreement. The time for



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completing the sale was 25 days i.e., specifically the date was mentioned as on or before 30th day of Karthigai month. On the same day, the appellants have also handed over Ex.A.2 to A.7. Further, even prior to expiry of 25 days for performing the contract, they have issued the legal notice with false allegations. Then immediately, the respondent has sent a reply notice, on 08.06.2012. On receipt of the same, the appellants once again sent a rejoinder notice on 10.12.2005.

17. In order to substantiate the case of the respondent, it is seen that P.W.2 and P.W.3 were examined and they have signed as witnesses in Ex.A.1 agreement. They have clearly stated that the appellants have executed the sale agreement and all the allegations levelled in the notice and written statement are false.

18. On the side of the appellants, D.W.1 was examined. During the evidence, he has not stated anything about the complaint given to the Superintendent of Police and the Hon'ble Chief Minister's Cell against the respondent and he has not spoken about the action taken on the complaint. On a



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reading of Ex.A.8 notice which was issued by the appellants and also Ex.P.1 to P.3 and the complaint given to the Superintendent of Police are contradicted with each other.

19. On a perusal of the records, pleadings and evidences of the appellants, though the signatures of the appellants were admitted and stated that they were obtained by coercion and also saying that they put their signatures for the purpose of changing their names in the revenue records. Once the signatures were admitted, it is for the appellants to establish their defense that they have not put the signatures with free consent and the same were obtained by coercion. Once appellants admitted their signatures, the initial burden is proved by the respondent and onus has been shifted to the appellants and therefore, it is for the appellants to discharge their onus that the signatures found in the agreement were not put with free consent and the same were obtained by coercion.

20. Though, the appellants have stated that on 05.12.2005 the respondent along with 4 or 5 persons came to the house of the appellants and threatened them. Inorder to substantiate the same, they have not proceeded with



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the complaint even before the Superintendent of Police and further they have not spoken anything about the content of the complaint or action taken against the respondent. Further, in order to substantiate their defense, no independent witness was examined. Therefore, it all clearly shows that the agreement of sale is a genuine one and the respondent has proved that Ex.A.1 agreement is a genuine one which was executed by the appellants. Therefore, this Court has independently found that Ex.A.1 agreement was executed by the appellants with free consent and the agreement is genuine one.

21. In view of the foregoing reasons this Court finds that the appellants are liable to execute the sale deed in favour of the respondent.

22. Point No.2 :

There is no specific issue framed by the trial Court, because of the defense taken by the appellants that was not arisen. The appellants have not taken any defense that the respondent was not ready and willing to perform his part of the contract. The appellants totally denied the agreement. Now, the respondent has proved that the agreement of sale and also he has stated in the pleadings that



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since the appellants have issued notice on 06.12.2005, it is also before the expiry of 25 days, as mentioned in the agreement. Hence, the question of proving readiness and willingness has not arisen in this case.

23. It is a settled proposition of law that the plaintiff has to aware and prove readiness and willingness.

24. Further, it is a settled law that, even though readiness and willingness is not specifically pleaded by express words, the Court can very well infer from the pleadings and the evidences and the conduct of the parties.

25. Since the respondent has filed Ex.A.1 agreement and also the respondent was examined as P.W.1 and in order to substantiate the agreement P.W.2 & P.W.3 were examined. The appellants have also admitted that they handed over all the papers to P.W.2 for getting name transfer in the revenue records. Therefore, it is for the appellants to prove the same. On the other hand, P.W.2 denied the same and stated that the appellants have given those documents only in pursuance of the agreement. They have also stated that Ex.A.1 agreement



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was executed in the presence of P.W.2 and P.W.3. The appellants have not examined any independent witness, except D.W.1 who is only one of the appellant herein.

26. Therefore, considering the facts and circumstances of the case, the appellants have also not denied the financial capacity of the respondent. Therefore, this Court finds that the agreement Ex.A.1 is a genuine one. The Court has also seen the conduct of the parties and found that the respondent was always ready and willing to perform his part of contract.

27. On a perusal of the records and oral and documentary evidence and the conduct of the parties, this Court finds that the appellants have not come to the Court with clean hands.

28. Therefore, this Court finds that the respondent has proved his case with cogent evidence and the appellants have not proved their defense. The respondent has proved his case independently by examining himself as P.W.1 and two other witnesses P.W.2 & P.W.3. The appellants have not proved the defense



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taken in the written statement in the manner known to law with acceptable evidence.

29. Therefore, under these circumstances, this Court finds that there is no merit in the appeal.

30. Accordingly, this Appeal is dismissed, by confirming Judgment and Decree, dated 19.02.2008 passed by the learned Additional District Judge/Fast Track Court No.II, Tuticorin, in O.S.No.3 of 2006. No costs. Consequently, connected miscellaneous petition is also closed.

26.08.2022

Index : Yes / No

Internet : Yes / No

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To

1.The Additional District Judge/Fast Track Court No.II,
Tuticorin.

2.The Record Keeper,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.



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P.VELMURUGAN, J.

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Judgment made in
A.S.(MD)No.133 of 2010

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