



A.S.(MD)No.627 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.627 of 2011

and

M.P.(MD)No.1 of 2011

1.Perumal (died)

2.Ramalakshmi

... Appellants 1 & 2 / Plaintiffs

3.P.Rajeswari

4.P.Rampriya

5.P.Sakeela

... Appellants 3 to 5

(2nd Appellant, who is already on record, is recorded as Lr., of the deceased 1st appellant and appellants 3 to 5 are brought on record as LRS., of the deceased 1st appellant vide Court order dated 15.06.2022 made in M.P.(MD)No.1 of 2014 in A.S.(MD)No.627 of 2011)

-Vs-

1.Murugappan

2.Velappan

3.Sanmugavel

4.Visalakshi

Kumuthavalli (since deceased)

1/10



A.S.(MD)No.627 of 2011

WEB COPY

5.Muthukaruppan

6.Saraswathi

7.Taiyal Nayaki

8.M.K.Subha

9.Senthil Nathan

... Respondents / Defendants

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree made in O.S.No.117 of 2009 dated 10.06.2011 on the file of the Fast Track Court No.1 (Additional District Judge), Tirunelveli.

For Appellant : Mr.A.Arumugam

For R1, 3, 5 to 9 : Mr.P.Thiagarajan

JUDGMENT

The appellants 1 and 2 as the plaintiffs have filed O.S.No.117 of 2009 on the file of the learned Additional District Judge, Fast Track Court No.1, Tirunelveli, seeking for specific performance.

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

(i)The suit property was originally in possession and enjoyment of the father of the defendants 1 to 5, namely, Ayya Subramaniya Mudaliar. He entered



A.S.(MD)No.627 of 2011

WEB COPY

into a sale agreement with the plaintiffs for sale consideration of Rs.14,70,000/- on 31.07.1999. He also received an advance amount of Rs.5,00,000/- from the plaintiffs. As per the sale agreement, a sum of Rs.2,00,000/- has been paid by the plaintiffs to the predecessor of the defendants on 24.12.1999. Therefore, the sale agreement was partly executed and the plaintiffs are always ready and willing to perform their part of the contract. Since there is a proposal for acquisition of part portion of the suit property, by consent of the predecessor of the defendants and the plaintiffs, the execution of the sale agreement was postponed.

(ii) In the meanwhile, the predecessor of the defendants died on 24.12.2000, leaving behind the defendants. During the life time of the predecessor of the defendants, the plaintiffs had taken up the suit property and divided the same into house sites. After the death of the predecessor of the defendants, when the plaintiffs approached the defendants 2 and 3, they agreed to execute the sale deed and the defendants 1, 4 and 5 also agreed the same. However, due to legal issues, granting of lay out approval was postponed. Later, it came to know that there is no proposal for acquisition of part portion of the suit property. Therefore, the plaintiffs sent notice to the defendants on 31.05.2008.



A.S.(MD)No.627 of 2011

WEB COPY

The defendants sent reply notice, stating that the suit property belongs to trust and the defendants are the trustees and no rights have been conferred to the predecessor of the defendants to sell the trust property. The plaintiffs are ready to deposit the balance sale consideration of Rs.7,70,000/- before the Court. During the pendency of the suit, the 5th defendant died on 01.06.2010, hence, the defendants 6 to 10 are impleaded as the legal representatives of the 5th defendant.

3.The brief facts of the written statement filed by the 1st defendant, which is admitted by the third defendant, are as follows:-

The allegation that suit property belonged to the father of the 1st defendant is false and incorrect. Likewise, the allegations that the father of the defendant intended to alienate the suit property and agreed to alienate the same to the plaintiffs at Rs.10,500/- per cent totalling Rs.14,47,000/- towards the total extent of 1 acre 40 cents to the plaintiffs and on 31.07.1999, the plaintiffs paid a sum of Rs.5,00,000/- to the father of this defendant and they have made oral sale agreement between themselves, are also false and incorrect. The suit property belongs to Vijayaragava Mudaliar Chatram trust being managed by the ancestors of the defendants. The father of this defendant was managing the said trust and



A.S.(MD)No.627 of 2011

its properties as its Huqdar. The trust is a public trust and trust properties cannot be alienated at the whims and fancies of the Huqdar. The alleged oral sale agreement is barred by limitation. The time is the essence of the contract. The plaintiffs have conveniently omitted to mention the period of completion of the contract and the dates, on which, they alleged to have met this defendant, asking for execution of the sale deed. Moreover, the defendants are not the competent persons to alienate the properties of the trust. Hence, the suit is to be dismissed.

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

“1. Whether the sale agreement has been entered into between Ayya Subramaniya Mudaliar and the plaintiffs on 31.07.1999 in respect of the suit property?;

2. Whether as per the sale agreement the plaintiffs has paid a sum of Rs.5,00,000/- to Ayya Subramaniya Mudaliar ?;

3. Whether on 24.12.1999 the plaintiffs has given a sum of Rs.2,00,000/- to Ayya Subramaniya Mudaliar ?;

4. Whether the suit property is belonged to Ayya Subramaniya Mudaliar or Vijayaragava Mudaliar Trust;

5. Whether the plaintiffs are entitled to get the relief of specific performance;



A.S.(MD)No.627 of 2011

WEB COPY

- 6. Whether the plaintiffs are entitled to alternative relief of Rs.7,00,000/- with interest; and*
- 7. To what relief the plaintiffs are entitled?.*

5. In order to substantiate the case, during the trial on the side of the plaintiffs, the first plaintiff himself examined as P.W.1 and 5 documents were marked as Exs.A.1 and A.5. On the side of the defendant, no witness was examined and no documents were marked.

6. On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court dismissed the suit in respect of the relief of specific performance and granted alternative relief of refund of Rs.7,00,000/- with 12 % interest.

7. Challenging the same, the plaintiffs have filed the present Appeal Suit before this Court.

8. The learned counsel for the appellant would submit that the plaintiffs entered into an agreement with the predecessor of the defendants. Since they



A.S.(MD)No.627 of 2011

WEB COPY were not ready and willing to perform their part of the contract, the plaintiffs were constrained to file the suit for specific performance. After trial, though the trial Court dismissed the main relief of specific performance on the ground that the suit property not belonged to individual, namely, predecessor of the defendants, ordered for alternative relief of refund of advance amount received by the predecessor of the defendants. Challenging the said judgment and decree passed by the trial Court, now, the plaintiffs have filed the present appeal. During the pendency of the appeal the 1st appellant died. Therefore, his legal representatives are impleaded as the appellants 3 to 5 and the 2nd appellant is also one of the legal representatives of the 1st appellant.

9.He would further submit that the plaintiffs were always ready and willing to perform their part of the contract, however, only the vendor of the agreement was not ready and willing to perform his part of the contract. The trial Court failed to consider the same and the suit for specific performance cannot be converted into the suit for title and for other nature without looking into the terms of the agreement.



A.S.(MD)No.627 of 2011

WEB COPY

10.The learned counsel for the respondents 1, 3, 5 to 9 would submit that since the suit property is trust property, which does not belong to any individual, nobody has right to sell the trust property against the object of the trust without obtaining any permission either from the competent authority or from the Court. Since the vendor to the agreement died, the suit was filed only against his legal representatives. Therefore, they do not have salable right on the suit property and the trial Court rightly ordered for refund of advance amount and disallowed the main relief of specific performance.

11.Heard the learned counsel on either side and perused the materials available on record carefully.

12.It is proved that the suit property is not the property of any individual and the same is only the trust property. Therefore, the agreement entered by the individual is not binding on the trust. Therefore, the plaintiffs are not entitled to get any relief of specific performance, since the vendor has no salable interest on the suit property and the plaintiffs have not canvassed that the suit property belongs to the vendor and it is not trust property.



A.S.(MD)No.627 of 2011

WEB COPY

13.At this stage, it is submitted that the respondents already deposited the advance amount, which was received by their predecessor before the trial Court. The learned counsel for the appellants would also submit that they have also deposited the entire balance sale consideration before the trial Court and both are lying before the trial Court. Therefore, the appellants are permitted to withdraw the both advance amount and balance sale consideration, which were deposited before the trial Court with accrued interest if any.

14.In the result, this Appeal Suit stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

27.07.2022

Index : Yes / No
Internet : Yes / No

Myr

To

1.The Additional District Judge,
Fast Track Court No.1, Tirunelveli.



WEB COPY



A.S.(MD)No.627 of 2011

P.VELMURUGAN, J.

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2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

A.S.(MD)No.627 of 2011

27.07.2022