



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.668 of 2010

Kalyani

... Appellant / Appellant /
Plaintiff

Vs.

1. V.N.Rajaraman

2. The Executive Engineer and
Administrative Officer,
Trichy Housing Unit,
Tamil Nadu Housing Board,
Having its office at
Pudukkottai Road,
Thanjavur Town.

... Respondents / Respondents /
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 23.02.2010 passed in A.S.No.15 of 2009 on the file of the Principal District Judge, Thanjavur, confirming the judgment and decree dated 08.12.2008 passed in O.S.No.66 of 2004 on the file of the Additional Subordinate Judge, Thanjavur and to allow the present second appeal.

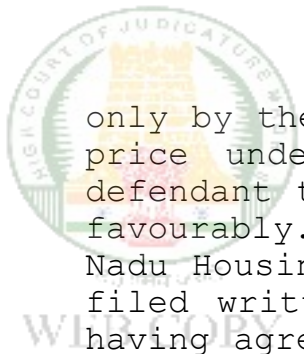
For Appellant	: Mr.S.Sudhagar
For R-1	: Mr.S.Ramesh
For R-2	: Mr.K.Rajesh Kumar

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J U D G M E N T

The plaintiff in O.S.No.66 of 2004 on the file of the Additional Sub Court, Thanjavur, is the appellant in this second appeal.

2. The suit was for specific performance. The case of the plaintiff is that the suit property was allotted to the first defendant by the Tamil Nadu Housing Board. The first defendant agreed to sell the suit property to the appellant and an agreement was entered into between the parties. It was registered on 24.07.2000. The sale price was fixed at Rs.4,25,000/-. The appellant paid the advance amount of Rs.1,90,000/-. Subsequently, the appellant paid a further sum of Rs.1,20,000/- on 10.10.2002 and an endorsement was made on the reverse side of the agreement. For obtaining pucca sale deed from the housing board, the plaintiff had to pay a further sum of Rs.49,839/-. The said amount was also paid



only by the plaintiff. Thus, the plaintiff had paid the entire sale price under the suit agreement. When he called upon the first defendant to execute sale deed, the first defendant did not respond favourably. The plaintiff therefore filed the said suit. The Tamil Nadu Housing Board was made as the second defendant. The defendants filed written statements. The first defendant categorically denied having agreed to sell the suit property to the plaintiff. According to the first defendant, there was a financial transaction between the first defendant's wife and one Vijaya Baskar and that the suit agreement came to be executed under coercive circumstances. The plaintiff filed reply statement also. The first defendant also filed additional written statement. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff's husband was examined as P.W.1 and one Karthigeyan who had attested the endorsement in the suit agreement was examined as P.W.2. Ex.A.1 to Ex.A.36 were marked. The first defendant examined himself as D.W.1 and two other witnesses were examined on the side of the defendants. Ex.B.1 to Ex.B.7 were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 08.12.2008 denied the relief of specific performance and also dismissed the alternative relief of refund sought for by the plaintiff. Aggrieved by the same, the plaintiff filed A.S.No.15 of 2009 before the Principal District Judge, Thanjavur. By the impugned judgment and decree dated 23.02.2010 the first appellate Court confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

3. The second appeal was admitted on 31.08.2012 on the following substantial questions of law:-

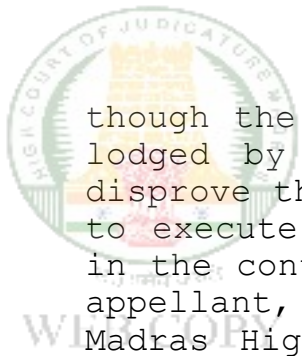
" (1) Whether Ex.A.3 being a registered document, can be impeached that it was obtained by fraud especially when the contents thereof have been proved as per Section 61 of the Indian Evidence Act?

(2) Whether the plaintiff has proved the execution and registration of Ex.A.3 agreement or whether the 1st defendant has proved that it was obtained by fraud? "

4. On the previous occasion, an additional substantial question of law was formulated as follows:-

" (3) Whether the Courts below ought to have ordered refund? "

5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. He also filed detailed notes of arguments. The learned counsel pointed out that Ex.A.3 sale agreement is a registered one. Therefore, the allegation that it was executed under coercive circumstances is intrinsically not believable. Even assuming that a registered document was coercively obtained, nothing stopped the first defendant from lodging a police complaint. In the case on hand even



though the agreement was registered on 24.07.2000, no complaint was lodged by the first defendant. This is more than sufficient to disprove the allegation of the first defendant that he was compelled to execute the suit agreement. Though I do find considerable force in the contention advanced by the learned counsel appearing for the appellant, what stares against him is a recent Judgment of the Madras High Court reported in **(2019) 7 MLJ 216 (P.M.Thangavel V. M.Ramamoorthy)**. A learned Judge of this Court had held that when an allottee of the Housing Board property who was yet to take a pucca sale deed from the Housing Board enters into a sale agreement, such an agreement cannot be specifically enforced. This is the clear ratio emerging from the said decision. The learned counsel appearing for the appellant tried to distinguish the said decision on facts. But I am more than convinced that it is not possible for the appellant to overcome the said ratio. Respectfully following the said judgment, I hold that Ex.A.3 sale agreement is not capable of having enforced. Therefore, the genuineness of the suit agreement and its proof fade into irrelevance and I hold that the plaintiff is not entitled to specific performance.

6. However, the Courts below clearly erred in denying the relief of refund. Of course the question that first arises for consideration is how much was paid by the appellant to the defendants. Ex.A.3 is a registered sale agreement. It states that a sum of Rs.1,90,000/- was paid by the plaintiff to the first defendant. Under Section 92 of the Indian Evidence Act it is not open to the first defendant to let in any oral evidence to the contrary. The plaintiff has also marked Ex.A.22 to Ex.A.30 receipts issued by the Tamil Nadu Housing Board. Of course the receipts are in the name of the first defendant only. But the plaintiff has marked the original receipts. Therefore, I am satisfied that the payments covered under the said receipts were actually paid only by the plaintiff to the Housing Board. The amount paid by the plaintiff to the Housing Board comes to Rs.49,839/-. The plaintiff would of course make a further claim that he paid a sum of Rs.1,20,000/- on 10.10.2002. An endorsement made purportedly to this effect is found on the reverse side of Ex.A.3. The Courts below have concurrently rendered a finding that this endorsement is highly suspicious and cannot be believed. I hold that the plaintiff's claim of having paid a sum of Rs.1,20,000/- to the first defendant on 10.10.2002 has not been established.

7. The learned counsel appearing for the first respondent submitted that the Courts below rightly refused the award of refund for the simple reason that the claim for refund was hit by limitation. I do not agree with the said contention. It is seen that the plaintiff had been remitting the installments payable to the Housing Board. The last installment was paid on 05.08.2002. The installments made by the plaintiff to the Housing Board is pursuant to the suit agreement. I have already held that Ex.A.3 is a valid



agreement. Payments made to the Housing Board should be seen as part of the single transaction. The last payment was made on 05.08.2002. The suit in question was filed on 16.09.2004. The suit is within time. Hence the claim for refund cannot be said to be time barred. Therefore, the third substantial question of law is answered in favour of the appellant.

8. The judgment and decree passed by the Courts below are modified and this second appeal is partly allowed on the following terms:-

(a) Denial of specific performance by the Courts below is confirmed.

(b) The first defendant is directed to pay the plaintiff a sum of Rs.2,40,000/- with interest @ 12% p.a. with effect from 24.07.2000 till realisation.

(c) The plaintiff is entitled to withdraw whatever amount was deposited to the credit of the suit with accrued interest.
No costs.

Sd/-

Assistant Registrar(CS.III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal District Judge, Thanjavur.
2. The Additional Subordinate Judge, Thanjavur.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.S. RAJESH KUMAR, Advocate (SR-18413[F] dated 13/04/2022)

+1 CC to M/s.V. RAGHAVACHARI, Advocate (SR-18776[F] dated 13/04/2022)

Decree + Judgment in
S.A. (MD) No.668 of 2010
Date:12.04.2022