



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD) No.731 of 2010

A.Selvi

.. Appellant/2nd Respondent/
(Added as party in lower
appellate court and not a
party in the trial court)

-vs-

1.P.Meenakshi Ammal

.. 1st Respondent/Appellant/
Plaintiff

2.Saithoon Beevi

.. 2nd Respondent/1st Respondent/
Defendant

Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree of the Sub Ordinate Judge, Devakkottai dated 07.07.2010 in A.S.No.47 of 2006 reversing the judgment and decree of the Principal District Munsif cum Judicial Magistrate, Karaikudi in O.S.No.54 of 2003 dated 25.07.2006.

For Appellant : Mr.R.Sundar Srinivasan

For R1 : Mr.K.Govindarajan
for Mr.A.Chandrakumar

For R2 : No appearance

JUDGMENT

This second appeal arises out of a suit for specific performance. The 1st respondent herein viz., Meenakshi Ammal filed O.S.No.54 of 2003 before the Principal District Munsif cum Judicial Magistrate, Karaikudi for directing the 2nd respondent herein Saithoon Beevi to execute a registered sale deed conveying the suit property in her favour. The stand of the plaintiff was that the defendant had obtained a loan of Rs.2,500/- from her on 25.04.1979 and mortgaged the suit property by executing a deed dated 25.04.1979. On 25.06.1987, after receiving a further sum of Rs.6,375/-, the defendant delivered possession of the suit property to her and also delivered the parent document. She agreed to



execute a registered sale deed as and when demanded. The 2nd respondent issued notice dated 16.06.1997 calling upon the 1st respondent to return the title documents, since the mortgage debt stood discharged by operation of law. The plaintiff issued a reply contesting her stand. Thereafter, the plaintiff is said to have approached the 2nd respondent for executing a sale deed in April, 2003. Since the 2nd respondent denied, the suit in question came to be laid. The defendant/2nd respondent herein filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined herself as P.W.1. One Gandhi was examined as P.W.2. Ex.A1 to Ex.A6 were marked. On the side of the defendant, no evidence was adduced. The trial court, however, came to the conclusion that no case for granting specific performance was made out and dismissed the suit by judgment and decree dated 25.07.2006. Aggrieved by the same, the plaintiff filed A.S.No.47 of 2006 before the Sub Court, Devakkottai. In the meanwhile, the defendant/2nd respondent herein sold the suit property in favour of the appellant herein. The appellant herein filed I.A.No.39 of 2010 and got herself impleaded in the first appeal. After hearing both sides, the first appellate court, by the impugned judgment and decree dated 07.07.2010, reversed the decision of the trial court and decreed the suit as prayed for and allowed the appeal. Challenging the same, this second appeal came to be filed.

2. The second appeal was admitted on 18.04.2022 on the following substantial questions of law:-

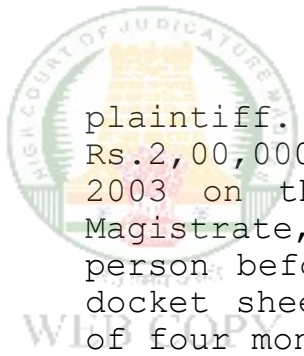
- "(i) Whether the plaintiff has satisfied the statutory requirement set out in Section 16(c) of the Specific Relief Act, 1963? and
- (ii) Whether the suit is hit by limitation?"

3. The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial court.

4. Per contra, the learned counsel appearing for the 1st respondent submitted that no interference is called for.

5. I carefully considered the rival contentions and went through the evidence on record.

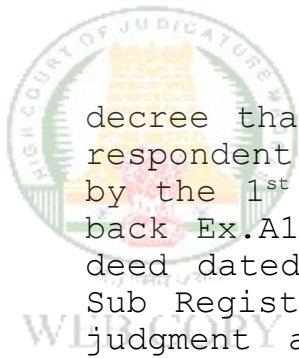
6. Before commencement of the arguments, it was brought to the notice of this Court that after the disposal of the first appeal, E.P.No.5 of 2011 was filed and sale deed was also executed in favour of the plaintiff. The plaintiff had spent a sum of Rs.1,50,000/- towards registration and stamp duty expenses. It is also beyond dispute that the suit property had already been mortgaged and the appellant had received a sum of Rs.11,000/- from the



plaintiff. Therefore, the appellant undertook to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the credit of O.S.No.54 of 2003 on the file of the Principal District Munsif cum Judicial Magistrate, Karaikudi. The appellant, Mrs.Selvi is present in person before me and she has also made written endorsement in the docket sheet agreeing to deposit the aforesaid sum within a period of four months. The said undertaking is recorded.

7. The question that falls for consideration is whether the plaintiff was entitled to the relief of specific performance. Even according to the plaintiff, the sale agreement was entered into with the defendant on 25.06.1987. I went through the contents of Ex.A2. It is obviously a sale deed. It is well known that an immovable property worth beyond Rs.100/- can only be sold through a registered instrument. Through an unregistered sale deed, an immovable property cannot be sold. Therefore, probably to overcome the same, the plaintiff had chosen to treat Ex.A2 as a sale agreement. It is true that in Ex.A2, there is a sentence to the effect that the defendant had agreed to execute a sale deed as and when demanded. Even to naked eye, the said clause appears to be an interpolation. Only on the strength of this interpolation, the suit was laid.

8. Even though the sale agreement is of the year 1987, the suit was filed only on 28.04.2003. Thus, there is a gap of full 16 years between the date of agreement and the date of filing of the suit. That is not the only aspect. As rightly pointed out by the learned counsel appearing for the appellant, there was exchange of notices between the plaintiff and the defendant in the year 1997. The defendant had categorically repudiated her liability and demanded that the plaintiff should return the parent document. The suit was filed six years later. There is nothing on record to show that the plaintiff was continuously ready and willing to conclude the transaction right from the inception. That is why the trial court rightly came to the conclusion that the plaintiff has not fulfilled the requirements of readiness and willingness as envisaged by Section 16 of the Specific Relief Act and that the suit was clearly barred by limitation. The first appellate court, without taking into account any of these aspects, had erroneously reversed the well considered decision of the trial court. I answer the substantial questions of law in favour of the appellant. The impugned judgment and decree of the first appellate court are set aside. The decision of the trial court is restored. However, in view of the written undertaking given by the appellant both in person and also through her counsel, the appellant is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the credit of O.S.No.54 of 2003 on the file of Principal District Munsif cum Judicial Magistrate, Karaikudi within a period of four months from the date of receipt of a copy of this judgment and decree. This amount of Rs.2,00,000/- has been quantified by taking note of the registration and stamp duty expenses incurred by the plaintiff. <https://hcservicescourts.gov.in/hcservices/> Rs.50,000/- has also been paid over and above, I also



decree that the mortgage stands discharged. It is open to the 1st respondent herein to withdraw the said amount. Upon such withdrawal by the 1st respondent, it is open to the appellant herein to take back Ex.A1 dated 24.05.1979 and Ex.A4 dated 21.05.1977. The sale deed dated 29.03.2012 (Document No.3152/2012 on the file of Joint Sub Registrar-II, Karaikudi) was executed pursuant to the impugned judgment and decree. Since the same has been set aside, the jurisdictional Sub Registrar is directed to make appropriate entries in the Register of encumbrances. The Second Appeal is allowed on these terms. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

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 Sub Judge, Devakkottai.
- 2.The Principal District Munsif cum
Judicial Magistrate, Karaikudi.
- 3.The Joint-Sub Registrar-II, Karaikudi.

Copy to:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.R. SUNDAR SRINIVASAN, Advocate (SR-19937[F] dated 21/04/2022)

+1 CC to M/s.A. CHANDRA KUMAR, Advocate (SR-20649[F] dated 22/04/2022)

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_RD(07.06.2022) 4P 8C