



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD)No.15 of 2017

M.Anuratha

... Appellant/Plaintiff

Vs.

Senthil (Died)

1.R.Usharani

2.N.Rajeswari

3.R.Santhi

4.R.Duraipandian

5.R.Thirugnanam

6.S.Chithira

7.R.Sumathi

8.Senthamarai

9.Minor Padmalakshmi

... Respondents/Defendants 2 to

10

(Rep. by her Mother 8th Respondent/Senthamarai)

Prayer : Appeal Suit filed under Order 41 Rule 1 r/w. Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.13 of 2013 on the file of Additional District Court (Fast Track Court), Kumbakonam dated 29.11.2016.

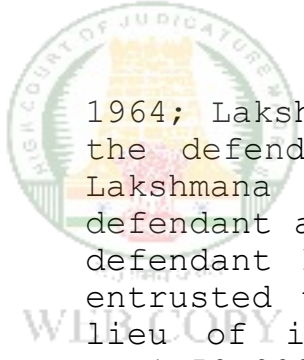
For Appellant : Mr.V.K.Vijayaragavan

For Respondents : Mr.M.V.Santharaman for R2 to R7
Mr.S.Srinivasa Raghavan for R8

JUDGMENT

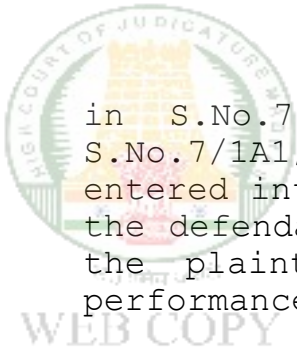
This Appeal Suit has been preferred challenging the judgment and decree of the learned Additional District Judge (Fast Track Court), Kumbakonam, dated 29.11.2016 made in O.S.No.13 of 2013.

2.The appellant is the plaintiff; the suit has been filed for the relief of specific performance on the basis of the sale agreement dated 16.02.2012 entered into between the first defendant for himself and the power agent for second defendant and the plaintiff; the subject matter of the sale agreement, which is the suit property herein was originally owned by Lakshmana Moopanar by virtue of a partition deed dated 26.03.1964 vide Document No.247 of



1964; Lakshmana Moopanar died intestate on 20.05.2008 leaving behind the defendants 1 and 2 as his legal heirs; after the death of Lakshmana Moopanar, the second defendant appointed the first defendant as her power agent on 20.06.2008; on 30.09.2009, the first defendant borrowed a sum of Rs.3,00,000/- from the plaintiff and entrusted the possession of the suit property to the plaintiff in lieu of interest; the first defendant borrowed another sum of Rs.1,50,000/- on 14.11.2011 and this loan was also endorsed on the earlier loan agreement dated 30.09.2009; subsequently both the defendants offered to sell the suit property to the plaintiff; so, the first defendant for himself and the power agent for second defendant entered into a sale agreement dated 16.02.2012 for the sale consideration of Rs.16,20,000/-; on the date of sale agreement, a part sale consideration of Rs.1,00,000/- was paid; the loan amount of Rs.4,50,000/- already availed under the loan agreement dated 30.09.2009 was also treated as part sale consideration; the time for performance of the contract was fixed as three months; the plaintiff was ready and willing to perform her part of the contract; on 26.02.2012, when the plaintiff approached the first defendant for getting the sale deed executed, she was told that there is an excess of land on the ground; the plaintiff agreed to pay excess amount for the area more than 9000 sq. ft, which was the subject matter of the sale agreement; the plaintiff paid a further sum of Rs.1,00,000/- on 26.02.2012 and got endorsement in the sale agreement; suddenly, the second defendant cancelled her power in favour of the first defendant; when the plaintiff enquired about that, the first defendant assured that the second defendant would come in person and execute the sale deed in favour of the plaintiff; but the defendants 1 and 2 did not come forward to execute the sale deed as agreed; she issued legal notice on 15.01.2013 and that was received by the first defendant; the plaintiff has sufficient means to pay the balance sale consideration also; hence, the plaintiff has filed the suit for specific performance or in the alternative to return the advance amount with interest.

3.The first defendant died during the pendency of the suit; the second defendant did not file any written statement; the defendants 3 to 8 claimed that the suit property belonged to them and impleaded themselves as parties to the suit and contested the suit; the defendants 9 and 10 were also impleaded as parties under the order of the Court; as per the statement of the contesting defendants, the suit property was originally belonged to the joint family property comprised of Ayyakannu, Ramasamy and Lakshmana Moopanar; they entered into a family partition on 26.03.1964; in the said partition, Ramasamy Moopanar was allotted 14 ares comprised in S.No.7/1 including the suit property measuring 12 ares comprised in S.No.7/1A1 and 11 ares comprised in S.No.7/1A was allotted to the share of Lakshmana Moopanar; in the sub division, the property allotted to Lakshmana Moopanar was given with S.No.7/1; the property allotted to Lakshmana Moopanar was acquired by the Government; a portion of the property allotted to Ramasamy Moopanar was acquired



in S.No.7/1A and the remaining the property was given with S.No.7/1A1; this fact was suppressed when the sale agreement was entered into between the plaintiff and the defendants 1 and 2; since the defendants 1 and 2 did not have right to execute the sale deed, the plaintiff is not entitled to get the relief of specific performance.

4.Basing of the above pleadings, the learned trial Judge framed the following issues:-

“1.வாதி வழக்கில் கோரியுள்ள ஏற்றதை ஆற்றுகப் பரிகாரம் வாதிக்கு கிடைக்கக் கூடியதா?

2.வாதி மாற்று பரிகாரமாக கோரியுள்ள ரூ.7.13.000/-ஐ வட்டியுடன் தர வேண்டுமென்று கேட்டுள்ள பரிகாரம் வாதிக்கு கிடைக்கத் தக்கதா?

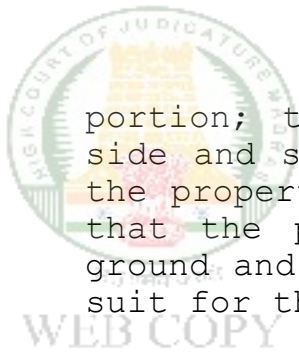
3.வாதிக்கு கிடைக்கூடிய இதர பரிகாரம் என்ன?”

5.During the course of trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A9 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B13 were marked.

6.At the conclusion of the trial and on considering the evidence available on record, the learned trial Judge decreed the suit for refund of Rs.7,13,000/- along with interest at the rate of 12% per annum from the date of plaint till the disposal of the suit and at the rate of 6% per annum from the date of disposal of the suit till the date of realization and the suit was dismissed in respect of the relief of specific performance; aggrieved over that, the plaintiff had filed this Appeal Suit.

7.Heard the learned counsel for the appellant and the learned counsel for the respondents and went through the evidence on record.

8.The learned counsel for the appellant submitted that the defendants 3 to 10 are unnecessary parties to the suit for specific performance because they are not parties to the sale agreement/Ex.A1; as per the partition deed dated 26.03.1964 and the boundary recitals found therein, it can be seen that the suit property was allotted under 'C' schedule to the share of Lakshmana Moopanar and not Ramasamy Moopanar; the defendants 1 and 2 had colluded with their cousins namely, the legal heirs of Lakshmana Moopanar and filed the suit to defeat the interest of the appellant; subsequent to the sale agreement, the patta stood in the name of the first defendant was cancelled and that will not affect the right of the appellant to get the relief of specific performance; the subject matter of the acquisition made by the Government does not include the suit property; the suit property in S.No.7/1 was apportioned between Moopanar and Lakshmana Moopanar in the east-west



portion; the western portion had fixed boundaries on the eastern side and southern side and it includes a sougandi; the features of the property allotted to the share of Lakshmana Moopnar would show that the property subject to the sale agreement is available on ground and hence, the learned trial Judge ought to have decreed the suit for the relief of specific performance.

9.The contesting defendants had also filed a suit against the defendants 1 and 2 in O.S.No.105 of 2013 before this Sub Court, Kumbakonam and it is still pending; hence, with abundant caution a preliminary decree for specific performance can be passed subject to the outcome of the above suit pending between the contesting defendants and the defendants 1 and 2; subsequent to the execution of the sale deed in favour of the plaintiff, the second defendant had wantonly cancelled the power in favour of the first defendant and thereafter, the patta in the name of the first defendant also was cancelled; since the patta stood in the name of the first defendant at the time when the sale agreement was entered into, the subsequent cancellation will not impact the interest of the appellant; in the suit for specific performance, the Court cannot decide about the title between the executant of the sale agreement and third parties; hence, the Appeal Suit should be allowed.

10.The learned counsel for the respondents 2 to 7 submitted that the appellant cannot purforth argument for the pleadings, which were not pleaded by them in the suit; the first defendant entered into a sale agreement in respect of the suit property in favour of the appellant without having any title; the suit property was allotted to the share of the ancestor of the defendants 3 to 8 namely, Ramasamy Moopnar; the property belonged to Lakshmana Moopnar was acquired in the land acquisition proceedings and he also received compensation from the Government; the patta was created subsequent to the sale agreement; when the suit was pending between the parties in respect of title to the suit property in O.S.No.105 of 2013, this suit ought to have been stayed; even if any decree is passed in favour of the appellant, that can only be a non-executable decree; the learned trial Judge is correct in granting the relief of refund of the advance amount; the proceedings to cancel the patta was passed after giving notice to the appellant herself; Exs.B1 and B2 would show that the appellant also participated in the patta cancellation proceedings; the appellant colluded with the defendants 1 and 2 and created the sale agreement in order to defeat the interest of the contesting defendants; hence, the Appeal Suit should be dismissed.

11.Though the defendants 1 and 2 did not contest the suit, the learned counsel for the second defendant had made his appearance and expressed his willingness to comply with the decree by way of refunding the advance amount as decreed by the trial Court.



12.Point for consideration:

"Whether the judgment and decree passed the leaned trial Judge is fair and proper?"

13.The deceased first defendant had entered into a sale agreement in favour of the appellant for herself and as power agent for the second defendant on 16.02.2012, the sale agreement has been marked as Ex.A1. The property is said to be belonging to the father of the defendants 1 and 2 namely, Lakshmana Moopanar under a family partition deed dated 26.03.1964. The copy of the partition deed was produced as Ex.A6. In the said partition deed, both Lakshmana Moopanar and Ramasamy Moopanar were allotted with properties in S.No.7/1 with proper boundaries. The extent of the property allotted to Lakshmana under 'C' schedule was 25 cents and the extent of property allotted to Ramasamy Moopanar under 'B' schedule was 36 cents. In the year 1993 itself, there was land acquisition proceedings in which, the property of both Lakshmana Moopanar and Ramasamy Moopanar was acquired. As seen from Ex.B3/land acquisition award an extent of 0.12.0 ares in S.No.7/1A1 was acquired from Ramasamy Moopanar and an extent of 11 ares in S.No.7/1B was acquired from Lakshmana Moopanar. It was claimed by the contesting defendants that 11 ares acquired from Lakshmana Moopanar would be equivalent to 25 cents and that was the property allotted to his share in the partition deed. So, it is submitted that the legal heirs of Lakshmana Moopanar did not have any right in respect of the suit property to enter into a sale agreement in favour of the appellant. In the sale agreement/Ex.A1, there is no mention about the land acquisition proceedings and in the description of the property also, it is shown that 9000 sq. ft. in S.No.7/1A was the subject matter of sale. The said extent was less than 25 cents allotted to the share of Lakshmana Moopanar in Ex.A6/partition deed. However, in the sale agreement, there was no details as to why only 9000 sq. ft. was included. It is submitted by the learned counsel for the appellant that there was Soukandi in the property allotted to the share of Lakshmana Moopanar and that would serve as landmark for the property allotted in Ex.A6/partition deed. It is further submitted that such Heard the learned counsel for the appellant and the learned counsel for the respondents and went through the evidence on record. was demolished by the contesting defendants on the strength of the injunction order obtained by them in a subsequent suit filed in respect of the suit property.

14.From the arguments of both side counsels and records produced before the Court, it is seen that a suit in O.S.No.105 of 2013 is pending before the learned Principal Sub Court, Kumbakonam between the contesting defendants and the parties to the sale agreement. In fact, this suit ought to have been stayed until the result of the suit in O.S.No.105 of 2013 or atleast, the learned trial Judge ought to have conducted simultaneous trial in both the



suits. But this suit was disposed earlier, even though the contesting defendants were parties to the present suit as well. Unless the other suit is disposed, no executable decree can be granted even if it is found that the appellant is entitled to the relief of specific performance. The materials and contentions raised in this suit are relevant and appropriate only to decide the title suit pending in O.S.No.105 of 2013. Despite there is land acquisition proceedings in the same survey numbers, the Government was not arrived as party to the suit for title in O.S.No.105 of 2013. It is advisable that the Government can also be added as a party to the suit in order to avoid multiplicity of proceedings. If any finding is rendered about the title or incidental to the tile of the parties, that would prejudice the rights in the other suit pending in O.S.No.105 of 2013. If the question of title is not adverted in this suit and mere decree for specific performance is granted, that cannot be an executable decree because of the pending suit with regard to the title of the suit property.

15.In this context, I feel it is appropriate to remand the matter to the file of the trial Court itself in order to deliver judgment after the disposal of the suit in O.S.No.105 of 2013 and subject to the outcome of that suit. Though the trial is completed, the learned trial Judge can wait and deliver the judgment in this suit after the disposal of the other suit in O.S.No.105 of 2013. Since the result of O.S.No.105 of 2013 would have an impact in this suit, I deem it appropriate to remand the matter to the file of the trial Court in terms of the observations made as above.

16.In the result, the Appeal Suit is allowed and the judgment and decree of the learned Additional District Judge (Fast Track Court), Kumbakonam, dated 29.11.2016 made in O.S.No.13 of 2013 is set aside and the matter is remitted back to the file of the learned trial Judge for considering the materials afresh and delivering the judgment after the disposal of the suit in O.S.No.105 of 2013. Since the Government also seems to be a necessary party in O.S.No.105 of 2013, it is advisable that appropriate steps be taken to implead the Government as a party to the above proceedings. Since the trial is already concluded, it is not obligatory on the part of the learned trial Judge to try the suit afresh. It is open to the learned trial Judge to deliver the judgment basing on the evidence already recorded and the evidence already received. However, the judgment in this suit should be delivered only after the disposal of O.S.No.105 of 2013. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To:

The Additional District Judge (Fast Track Court),
Kumbakonam.

Copy to:

1.The Principal Sub Judge,Kumbakonam.

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

+6 ccs to M/s.T.R.Subramanian, Advc, SR 19055,20172

+1 cc to M/s.V.K.VijayaragavanAdvC, SR19461

+1 cc to M/s.S.Srinivasa Raghavan,AdvC, SR18797

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13.04.2022

MGJ(11.05.2022) 7P 13C