



S.A.Nos.442 & 443 of 1997

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.Nos.442 and 443 of 1997

S.A.No.442 of 1997:

Sokkayee

... Appellant/Appellant/
2nd Defendant

Vs

1.Periyasamy (Died)

... 1st Respondent/
1st Respondent/Plaintiff

2.Raju Ambalam

... 2nd Respondent/
2nd Respondent/1st Defendant

3.Vijayabaskar

4.Chandra

5.Soundararajan (Died)

6.Manoharan

7.Kalaiyarasi

8.Karunakaran

... Respondents 3 to 8/
LRs of deceased R1

*[RR3 to 8 brought on record as LRs of the deceased
1st respondent vide order dated 22.09.2020 made in
M.P.(MD) Nos.1 to 3 of 2015 in S.A.No.442 of 1997]*

9.Anitha

10.Mayakannan

11.Deepalakshmi

... Respondents 9 to 11/
LRs of deceased R5



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***[RR9 to 11 brought on record as LR's of the deceased
5th respondent vide order dated 04.01.2022 made in
C.M.P.(MD) Nos.10012, 10015 & 10016 of 2021 in
S.A.No.442 of 1997]***

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 29.03.1996 made in A.S.No.94 of 1995 on the file of the Principal District Court, Madurai, confirming the judgment and decree dated 04.11.1994 made in O.S.No.140 of 1988 on the file of the III-Additional Sub Court, Madurai.

For Appellant : Mr.D.P.Sundar Raj
for Mr.A.Sivaji

For Respondents : Mr.T.C.S.Thillainayagam
for RR3, 4 & 6 to 11

: No appearance for R2

S.A.No.443 of 1997:

Sokkayee ... Appellant/Appellant/
Plaintiff

Vs

1.Periyasamy (Died) ... 1st Respondent/
Respondent/Defendant

2.Vijayabaskar

3.Chandra

4.Soundararajan (Died)

5.Manoharan



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6.Kalaiyarasi
7.Karunakaran

... Respondents 2 to 7/
LRs of deceased R1

***[RR2 to 7 brought on record as LRs of the deceased
1st respondent vide order dated 22.09.2020 made in
M.P.(MD) Nos.1 to 3 of 2015 in S.A.No.442 of 1997]***

8.Anitha
9.Mayakannan
10.Deepalakshmi

... Respondents 8 to 10/
LRs of deceased R4

***[RR8 to 10 brought on record as LRs of the deceased
4th respondent vide order dated 04.01.2022 made in
C.M.P.(MD) Nos.10005, 10006 & 10007 of 2021 in
S.A.No.443 of 1997]***

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 29.03.1996 made in A.S.No.171 of 1995 on the file of the Principal District Court, Madurai, confirming the judgment and decree dated 04.11.1994 made in O.S.No.616 of 1992 on the file of the III-Additional Sub Court, Madurai.

For Appellant : Mr.D.P.Sundar Raj
for Mr.A.Sivaji

For Respondents : Mr.T.C.S.Thillainayagam
for RR2, 3 & 5 to 10



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COMMON JUDGMENT

1. There are two suits and the details are as below:

- A certain Periyasamy had filed O.S.No.140 of 1988 for specific performance of Ext.A1 sale agreement dated 17.05.1983 against one Raju Ambalam, and Sokkayee, who respectively the first and the second defendants in the suit. The second defendant is the subsequent purchaser of the suit property under Ext.B3 and Ext.B2 sale deeds from the first defendant even as Ext.A1 was pending its due performance.
- The second defendant in the aforesaid suit for specific performance had laid an independent suit in O.S.No.616 of 1992 against the plaintiff in that suit for injunction with an alternate prayer for recovery of possession.
- Both the suits came to be tried jointly and the evidence was recorded in O.S.No.140 of 1988. By a common judgment, the trial Court decreed the suit for specific performance and dismissed Sokkayee's



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suit in O.S.No.616 of 1992.

- This gave rise to two first appeals in A.S.Nos.94 and 171 of 1995, both filed at the instance of Sokkayee and they met the same fate as were the suits. Hence, these twin appeals. The parties would be referred to by their rank in O.S.No.140 of 1988.

2. The facts fall within narrow compass and are as follows:

- The suit property is described as an agricultural piece of property measuring about two acres in R.S.No.171/5 of Kulasekaran Kottai Village, Vadipatty Sub Division, Dindigul. This property originally belonged to a Trust known by the name of “*Malayalam Krishna Iyer Vedapada Salai*” at Cholavanthan.
- The first defendant, Raju Ambalam, was a tenant under the Trust. Sometime in mid 1982 Raju Ambalam entered into a sale agreement for the purchase of the suit property with the Trust (there is some difference in stating the month of execution of this sale agreement, as the same is admitted by both sides). Since the property belonged to



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the Trust, necessary leave might have to be obtained by the Trust from the appropriate Court for effecting sale in favour of the first defendant.

- While so, on 17.05.1983, vide Ext.A1, unregistered sale agreement, Raju Ambalam had entered into a sale agreement with the present plaintiff for sale of the suit property whose title he was yet to obtain. In other words, even before obtaining title under the agreement that he had entered into with the Trust, the first defendant had entered into Ext.A1 agreement with the plaintiff. The total consideration is determined at Rs.15,400/-, out of which, the plaintiff had paid a sum of Rs.2,000/- as advance. Critically, possession was handed over by the first defendant to the plaintiff. The agreement however, did not stipulate any time for performance, since the first defendant could obtain the sale deed from the Trust only upon the Trust obtaining necessary leave from the appropriate Court for the purpose.
- While so, the Trust had moved the concerned Court in I.A.No.42 of 1983 in O.S.No.773 of 1978 seeking leave to alienate the suit



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property. The Court had passed orders allowing the sale of the suit property by the Trust to the first defendant. In pursuant to the leave obtained, on 27.06.1984, the Trust had sold the suit property to the first defendant vide Ext.B1 sale deed.

- Be that as it may, the first defendant had sold the suit property to the second defendant, a stranger to Ext.A1 Agreement under two sale deeds: (a) Ext.B3 dated 30.11.1987, which deals with northern one acre; (b) Ext.B2 sale deed dated 01.12.1987, which deals with southern one acre.
- Subsequent to Ext.B2 and Ext.B3, sale deeds, the plaintiff had issued Ext.A4 suit notice to the first defendant. He had received it but he sent no reply to the same. In this backdrop, the plaintiff had laid the suit for specific performance.

3. The first defendant did not contest the suit whereas the second defendant, the subsequent purchaser of the suit property under Ext.B2 and Ext.B3 offered her defence. The contentions of the second defendant are two fold:



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(a) that she is a *bonafide* purchaser of the suit property for value without notice of Ext.A1-sale agreement; and (b) that the plaintiff was not ready to purchase the property even after the first defendant had obtained the leave of the Court for sale of the property.

4.1 The dispute went to trial, in which both the sides adduced oral and documentary evidence. For the plaintiff, he examined himself as P.W.1. He had also examined P.W.2, an adjacent land owner to speak about the possession and the cultivation that the plaintiff had been doing in the suit property. P.W.3 is the Village Administrative Officer. For the defendants, the second defendant examined herself as D.W.1. The first defendant, though chose to remain ex-parte, was examined by the second defendant as her vendor as D.W.2. She also examined an independent witness as D.W.3.

4.2 Turning to the documentary evidence that both sides have produced, the plaintiff had produced Ext.A1 to Ext.A7 of which material documents have already been introduced. Turning to the defendants' side documents, the



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second defendant had produced Ext.B1 to Ext.B22, of which, Ext.B1 to Ext.B3 have already been referred to in the narration above. A sizeable number of the second defendant's documents are adangal pertaining to the suit property for *fasali* 1392 to 1400.

5. On appreciating the evidence before it, the trial Court found that the second defendant indeed was not the *bonafide* purchaser for value. The matter was taken before the first appellate court in A.S.Nos.94 and 171 of 1995 by the second defendant. The first appellate Court concurred with the findings of the trial Court and dismissed the appeals. Hence, the second appeals at the instance of the second defendant.

6. These appeals are admitted on 16.04.1997 for considering the following substantial questions of law:

“i) Are the Courts below justified in decreeing the suit for specific performance when it is clearly barred by limitation either from 17.5.1983 or from 27.6.1984 under Ex.A1 and Ex.B1 respectively?



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ii) Whether the Courts below erred in law in granting a decree for specific performance when the suit claim is barred by limitation? Whether the Courts below erred in reckoning the period of limitation from the date of knowledge of sale deed in favour of the defendant?"

On 07.03.2022, the following additional substantial questions of law were framed:-

"i) Whether the Courts below are right in deciding the suit without framing a necessary issue that whether the first defendant, who is the agreement holder can enter into subsequent sale agreement with another person, who had not arrived title at the time of the execution of agreement as per Section 17 of the Specific Relief Act, 1963.

ii) Whether Courts below are right in decreeing the suit when the plaintiff has not sought the relief of declaration without cancelling the earlier sale deed dated 30.11.1987 executed another sale deed in favour of the 2nd defendant, which was executed before filing of the suit. "



7. The learned counsel for the appellant/second defendant argued:

(a) That the plaintiff though had pleaded his readiness and willingness to perform his part of the contractual obligation within the meaning of Section 16(c) as it stood prior to the Specific Relief (Amendment) Act, 2018 (Central Act 18 of 2018) (hereinafter referred to as “the Act” for brevity), yet he has not attempted to prove it. Indeed, neither of the Courts below have raised any pointed issue on the aspect. In support of his contention, the learned counsel placed reliance on *U.N.Krishnamurthy Vs A.M.Krishnamurthy* [C.A.No.4703 of 2022 dated 12.07.2022] and *Shenbagam & Ors. Vs K.K.Rathinavel* [AIR 2022 SC 1275].

(b) Admittedly, when the first defendant executed Ext.A.1-sale agreement with the plaintiff, the former did not have title in the suit property. In terms of Section 17 of the Act, no contract for sale of the immovable property can be enforced against the one who does not have any saleable interest in the suit. Therefore, Ext.A.1 cannot be enforced as against the first defendant.



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While Ext.A.1 was executed on 17.05.1983, the suit was laid in 1988 well beyond three years period prescribed for the purpose under Article 54 of the Limitation Act.

8. Per contra, the learned counsel appearing for the respondents made the following submissions:

(a) So far as the objection to the specific enforcement of Ext.A.1 is concerned, there are two situations contemplated under Section 17 of the Act and what is contextually relevant is Section 17(2) of the Act which provides that the contract for sale of the property cannot be enforced against the one who has no saleable title as on the date of executing the document. Here, admittedly, vide Ext.B.1-sale deed, the first defendant indeed obtained title to the property from the Trust and the performance of Ext.A.1-sale agreement was postponed till after the first defendant had obtained title to the suit property from the Trust. The contract is executory on both sides.

(b) Turning to Section 16(c) of the Act is concerned, the plaintiff had



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pleaded it and it is not mandatory that he had to jingle the coin before the Court.

(c) So far as the present case is concerned, the first defendant had opted to stay ex-parte but still he stepped into the witness box as the vendor of the second defendant to speak about it. Inasmuch as the second defendant had already entered the witness box, the first defendant's evidence as concerning the alleged lack of readiness and willingness on the part of the plaintiff might have to be ignored. Mere non-framing of specific issue is not fatal, as the parties knew what they are contesting for. Here, the conduct of the first defendant cannot be ignored.

(d) The second defendant in her testimony would depose that only her husband knew about all the facts attending the execution of Ext.B.2 and Ext.B.3-sale deeds, in her favour. However, she did not examine her husband. Instead, she examined her vendor, the first defendant as D.W.2 in the suit, who categorically stated that he had put both the second defendant as well as her husband on notice about the



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execution of Ext.A.1-sale agreement, and indeed had shown it to them.

(e) Before the Courts below, the principal argument was that they were *bona fide* purchasers for value of Ext.A.1-sale agreement. Before this Court, they changed the gear. Indeed the second defendant in her appeal memorandum in A.S.Nos.94 and 171 of 1995, had not even raised the issue pertaining to Section 16(c) of the Act anywhere. There the thrust was essentially on the point of limitation.

9.1 The writing is on the wall for the second defendant in O.S.No.140 of 1988/appellant. According to the testimony of D.W.2, both she (D.W.1) and her husband were informed about Ext.A1 sale agreement. Therefore, she could never be termed as a bonafide purchaser, unless the first defendant could be termed as a collusive partner of the plaintiff. However, there is no pleadings on this aspect and on facts, it is also not conceivable since the very first defendant had deposed only for the second defendant. Turning to the point that appropriate issues to prove whether the plaintiff was ready



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and willing to perform his part of the contract is concerned, if only the second defendant/appellant was truly aggrieved by that, then it would have been raised as a ground in the appeal memorandum before the first appellate Court. That was not done. Today, now after 35 years since the institution of the suit, if at all the second defendant is allowed to raise this ground to upset the decree passed by the Courts below, then she has to prove how she was particularly aggrieved by non-framing of a specific issue. The value of the property is a mere 15,400/-, and the balance to be paid is Rs.13,000/-, and at this distant point of time, remanding the matter would be a futile exercise. But it is not an huge amount that a person cannot mobilise.

9.2. Turning to the point of limitation, Ext.A1 agreement was careful enough not to stipulate a specific time frame for the performance of the contract since the first defendant himself had not obtained title, which in turn was dependant on the Trust in obtaining the leave of the Court for the sale of the property. This is a pre-condition for instituting a suit for specific enforcement of Ext.A1 agreement. Once the agreement became capable of



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being enforced, given the fact that there is no time stipulated for performance, the plaintiff can institute a suit within three years from the date of refusal to perform the said agreement by the first defendant. There is no case for the second defendant that the first defendant had promptly intimated the plaintiff about Ext.B1 sale deed, which he had obtained from the Trust.

9.3 Lastly to the point pertaining to Section 17 of the Specific Relief Act. Here the plaintiff cannot institute a suit against the first defendant before he obtained a sale in his favour. Here is the case where the first defendant had entered into a sale agreement with the original owner of the property, namely the Trust referred to above, and had entered into a back to back sale agreement with the plaintiff. In view of Section 17(2) of the Specific Relief Act, the plaintiff cannot institute a suit against the first defendant as long as his agreement with the Trust was not performed. Here, the plaintiff had laid the suit only after Ext.B1 sale deed was executed in favour of the first defendant.



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10. Looking from every considerable angle, this Court does not find any grounds to hold that the judgments of the Courts below are perverse and warrant an interference. All the substantial questions of law are decided against the appellant/second defendant.

11. In conclusion, these second appeals are dismissed. The plaintiff is directed to deposit the balance sale consideration, if not already deposited, within a period of two months from the date of receipt of a copy of the decree. No costs.

26.09.2022

Internet: Yes
Index: Yes/No
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To

1. The Principal District Judge, Madurai.

2. The III-Additional Sub Judge, Madurai.

3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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N.SESHASAYEE, J.

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