



A.S.No.180 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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1. R.S.Ranganathan (died)
 2. R.Rajesh Babu
 3. R.Suresh Babu
 4. R.Shanthi
 5. D.Amul
 6. R.Amaravathi
- (Appellants 4 to 6 brought on
record LR's of the deceased
1st appellant viz., R.S.Ranganathan
vide Court order dated 22.09.2021
in C.M.P.No.5168 of 2021
in A.S.No.180 of 2013)

...Appellants

-Vs-

1. R.Rangarajan
represented by Power Agent, Kittusamy
 2. Kannammal (died)
 3. R.Gunasekar
 4. R.Saroja
 5. R.Dhamodaran
 6. R.Dhili
 7. R.Mani
 8. R.Lakshmi
 9. R.Suresh
- (Respondents 3 to 9 brought on record
as LR's of the deceased R2
Viz., Kannammal vide Court order
dated 22.02.2022 made in
C.M.P.Nos.11184, 11188 and



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11180 of 2021 in A.S.No.180 of 2013)

... Respondents

Prayer: First Appeal filed under Section 96 of CPC to allow the appeal by setting aside the Judgment and Decree dated 18.01.2013 passed in O.S.No.168 of 2006 on the file of the 2nd Additional District Judge, Thiruvallur at Poonamallee, with costs.

For Appellants : M/s.R.V.Rukmani
for M/s P.B.Ramanujam and Associates

For R1 : Mr.S.Thanka Sivan

R2 : Died (steps taken)

For R3, R6, R7
and R9 : No appearance

For R4, R5 and R8 : Mr.S.Venkatesh

JUDGMENT

This appeal suit has been filed as against the Judgment and Decree dated 18.01.2013 passed in O.S.No.168 of 2006 by the II Additional District Judge, Thiruvallur at Poonamallee, thereby decreed the suit for specific performance.

2. The first respondent is the plaintiff and the appellants 1 to 3 and the second respondent are the defendants. The respondents 3 to 9 herein are the legal heirs of the 4th defendant. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.



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3. The case of the plaintiff is that defendants 1 to 3 offered to sell the suit property for a valuable sale consideration of Rs.13,04,100/-. They represented that the suit property was originally owned by their father and thereafter, the suit property was taken over by the Military Department. Thereafter, it was released in favour of them and compensation for the period in which the property was possessed by the Military was also paid. However, the Revenue Department wrongly classified the suit property as Anadheenam. Therefore, the first defendant was constrained to file a suit in O.S.No.1656 of 1990, on the file of the District Munsif Court, Poonamallee, for declaration. It was decreed in favour of the first defendant and in pursuant to the decree, the first defendant filed an application for correcting the revenue records viz., for correcting the wrong classification of the suit property. In the meanwhile, they intended to sell the property and entered into an agreement with the plaintiff and received a sum of Rs.3,50,000/- as an advance, on 15.03.2004. Accordingly, they had executed an agreement for sale which was registered before the concerned Registration Office. As per the clause 10 of the said agreement, the defendants agreed to execute the sale deed on receipt of the balance sale consideration. On receipt of the advance amount, the possession of the suit property was also handed over in favour of the plaintiff along with the original documents. The plaintiff insisted to file a writ petition for ratification of revenue records and on his expenses, the



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first defendant filed a writ petition before this Court in W.P.No.12820 of 2004 for issuance of patta in respect of the suit property. The Writ Petition was ordered by this Court, by an order dated 30.04.2004, whereby this Court directed the authorities to consider the request made by the first defendant and to grant patta, within a period of 12 weeks from the date of receipt of the order. However, no patta was granted. The plaintiff awaited till December 2005 for execution of the sale deed. However, as per the agreement of sale, the pendency of patta proceedings and mutation of revenue records are not impediments for the defendants 1 to 3 to execute the sale deed in favour of the plaintiff. Even then, the defendants did not execute any sale deed and as such, the plaintiff caused legal notice dated 07.09.2006. Though the said notice was returned with an endorsement “addressee not found”, they issued reply notice. In fact, though the fourth defendant is not a party to the agreement of sale, she had replied that she offered to sell her share in favour of the plaintiff. Thereafter, the plaintiff came to know that, without the knowledge of the fourth defendant, the defendants 1 to 3 had entered into an agreement for sale with the plaintiff. Hence, the suit.

4. Resisting the same, the defendants filed their written statement stating that only because of the plaintiff and non production of the original documents, the revenue authorities were not be able to ratify the revenue records and issue



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patta in respect of the suit property. On the date of agreement of sale itself, the original documents were handed over in favour of the plaintiff and the possession of the property was also handed over in favour of the plaintiff. Even then, the plaintiff failed to produce the original document before the revenue authorities for issuance of patta and mutation of revenue records. Therefore, the defendants are always ready and willing to perform their part of contract. In fact, the defendants caused notice, thereby revoking the agreement for sale and filed a suit in O.S.No.514 of 2006, on the file of the District Munsif Court, Ambathur.

5. After completion of pleadings, the Trial Court framed the following issues:-

- “ 1. Whether the time is the essence of contract?*
- 2. Whether the defendants have cancelled the suit sale agreement on 22.06.2006?*
- 3. Whether the suit property is in possession of the plaintiff?*
- 4. Whether the plaintiff has spent huge amount in fencing and leveling the suit property?*
- 5. Whether the plaintiff has spent huge amount in filing a writ petition in getting patta to the suit property?*
- 6. Whether there is a supervening impossibility of performance of contract at the time and also subsequent to the sale agreement?*
- 7. Whether the plaintiff is ready and willing to perform*



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his part of contract?

8. Whether the plaintiff is entitled to the decree for specific performance as prayed for?

9. To what relief?"

6. On the side of the plaintiff, they had examined P.W.1 and marked Exs.A1 to 14. On the side of the defendants, they had examined D.Ws.1 to 3. and marked Exs.B1 to 7. Ex.C1 was marked as Court side document. On perusal of oral and documentary evidence, the Trial Court decreed the suit and directed the defendants to execute the sale deed in favour of the plaintiff. Hence, this Appeal suit.

7. The learned counsel for the defendants 1 to 3 would submit that only on the fault of the plaintiff, the sale deed was not executed by the defendants. Admittedly, the original parent documents were handed over in favour of the plaintiff and as such, the plaintiff ought to have produced the same before the revenue authorities for ratification and mutation of revenue records. In fact, the first defendant only filed a writ petition and obtained direction from this Court for considering the application for mutation of revenue records. Therefore, the defendants are always ready and willing to perform their part of the contract. The suit is filed by the Power of Attorney of the plaintiff and as such, he has no personal knowledge to depose before the Court. The Principal failed to get into the box to prove his case.



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8. In support of her contention, she relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2010 10 SCC 512** in the case of ***Man Kaur (Dead) by LRs. Vs Hartar Singh Sangha***, in which the Hon'ble Supreme Court of India held that the Power of Attorney holder, who has no personal knowledge, cannot be examined under the place of the plaintiff. The relief of specific performance is equity and discretionary relief. When the Principal failed to get into the box, he/she is not entitled for any relief which is discretionary in nature. The plaintiff had never been put in possession and the plaintiff did not approach the Trial Court with clean hands and as such, he is not entitled for any relief. The steps taken for obtaining patta were only at the instance of the plaintiff and he cannot take any undue advantage of the same to explain the delay and non performance at this end. The property cannot be conveyed in view of the classification as Punjai Anadheenam. Even then the Trial Court without considering the same decreed the suit.

9. She further submitted that the agreement of sale itself revoked by the defendants. Therefore, the plaintiff ought to have prayed for declaration declaring that the termination of agreement is barred by law.

10. She also relied upon the Judgment of the Hon'ble Supreme Court of



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India reported in **2013 15 SCC 27** in the case of ***I.S.Sikandar (dead) by LRs***

Vs. K.Subramani and others, wherein the Hon'ble Supreme Court of India held that in the absence of such prayer by the plaintiff, the original suit filed by him before the Trial Court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

11. She further submitted that the contract itself is a contingent one and as such, without fulfilling the contingency, it cannot be executed. It is directly hit by Section 31 of the Indian Contract Act, 1872. In support of her contention, she relied upon the Judgment reported in **1992 SCC OnLine Del 221** in the case of ***Shri Baij Nath Vs M/s Ansal and Saigal Properties Pvt. Ltd***, wherein the High Court of Delhi held that the contract between the parties was in the nature of the contingent contract which was dependant on sanction of additional FAR in favour of the defendant by the appropriate authorities. Unless that contingency was fulfilled, the contract was not capable of specific enforcement as stated under Section 31 of the Indian Contract Act, 1872.

12. The learned counsel for the plaintiff would submit that the defect in



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title cannot be a plea for the owner of the property. Now, as per the decree, the entire balance sale consideration was already deposited by the Trial Court. In fact, the defendants 1 to 3 without the knowledge of the 4th defendant, who is also one of the legal heirs, had entered into an agreement for sale. The 4th defendant alone replied that she is ready and willing to perform the contract insofar as her share in favour of the plaintiff. Further, the non ratification of revenue records and non issuance of patta are not an impediment for the defendants to perform their part of the contract.

13. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1952 2 SCC 124** in the case of **Kannappa Chettiar Vs Abbas Ali and others**, wherein the Hon'ble Supreme Court of India held as follows:-

“ Whatever may be the real truth about the title, it does not fall to be decided in these proceedings, as pointed out already, firstly because the father was no made a party, and secondly the defendant cannot be allowed to urge his own defective title as an answer to a suit for specific performance by the purchaser. He is bound in law to execute a conveyance in accordance with the terms of the agreement, and his right, title or interest, whatever it might be, will pass under the same.”

14. Heard the learned counsel for the appellants, the learned counsel for



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the first respondent and the learned counsel for the respondents 4, 5 and 8 and perused the materials available on record.

15. Having regard to the pleadings, evidence and submissions made by the learned counsel appearing on either side, the following points arise for consideration in this appeal:-

“ (i) Whether the Power of Attorney can depose on behalf of the Principal in suit for specific performance?

(ii) Whether the suit for specific performance is maintainable when the contract itself is terminated?

(iii) Whether the unfulfilled contract can be enforceable?”

16. A perusal of records revealed that the defendants never raised any plea before the Trial Court that the Power of Attorney cannot represent the Principal in a suit for specific performance. No issue was framed by the Trial Court in that regard. In fact, the Power of Attorney had knowledge about the execution of agreement for sale and as such, he is fully conversant with the agreement for sale entered by his Principal and the defendants 1 to 3. That apart, he is only looking after the subject property and as such, he can very well depose on behalf of his Principal. Therefore, the Judgment cited by the learned counsel for the defendants 1 to 3 are not helpful to the case on hand.



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17. A perusal of the agreement for sale, which was marked as Ex.A7 dated 15.03.2004, revealed that it never consist of any contingent clause to obtain patta, mutation of revenue records and ratification of classification of the suit property. In fact, pending proceedings before the revenue officials, the defendants 1 to 3 offered to sell their property. After knowing these facts, the plaintiff agreed to purchase. In fact, the plaintiff only insisted the first defendant to file a writ petition before this Court. Even before that, the first defendant filed a suit in O.S.No.1656 of 1990, on the file of the District Munsif Court, Poonamallee, for declaration. It was decreed in his favour. Only thereafter, he applied for ratification of classification and mutation of revenue records. When it was pending before the revenue officials, the defendants had entered into an agreement for sale with the plaintiff on 15.03.2004. Thereafter, the writ petition was filed by the first defendant in W.P.No.12820 of 2004. Therefore, the agreement for sale would not be hit by Section 31 of the Indian Contract Act.

18. The learned counsel for the plaintiff rightly pointed that the defect in title cannot be a plea for the owner of the property to avoid execution of a sale deed. Therefore, the defendants are bound in law to execute the conveyance in accordance with the terms of the agreement and their title, right or interest, whatever it might be, will pass under that instrument. That apart, a pre-suit



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notice was issued by the plaintiff on 07.09.2006. In fact, on receipt of the same, the fourth defendant alone replied by way of reply notice dated 14.09.2006, thereby agreed to execute a sale deed in respect of her share in favour of the plaintiff. By way of a reply, the defendants 1 to 3 had sent a reply notice dated 22.09.2006. Therefore, it would not amount to termination of agreement for sale. As stated supra, they cannot take a plea of defect in title. They ought to have executed a sale deed as per the terms and conditions of the registered agreement for sale dated 15.03.2004. Therefore, the Judgment cited by the learned counsel for the defendants 1 to 3 are not helpful to the case on hand.



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19. In view of the above discussions, the Trial Court had rightly decreed the suit and this Court finds no infirmity or illegality in the Judgment and Decree dated 18.01.2013 passed in O.S.No.168 of 2006 by the II Additional District Judge, Thiruvallur at Poonamallee, for interference by this Court and all the points are answered in favour of the plaintiff.

20. Accordingly, this Appeal Suit is dismissed. No costs.

12.12.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

To

The II Additional District Judge, Thiruvallur at Poonamallee.



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G.K.ILANTHIRAIYAN. J.

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