



AS.No.17 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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1.R.Gokilam(deceased)

2.Rajamanickam

3.Jothiraman

4.Vimala

5.Sukumaran

6.Sankar

7.Gopu

(Appellants 2 to 7 brought on record as LR's of the deceased sole appellant vide order of court dated 20.02.2020 made in CMP.Nos.5236 to 5238 of 2017 in AS.No.17 of 2012)

... Appellants

Vs.

1.S.Veerajothi Murugan

2.D.Shanmuga Sundaram

...Respondents

PRAYER:

Appeal Suit is filed under Section 96 of CPC to set aside the judgment and decree dated 25.02.2011 made in OS.No.118 of 2007 on the file of the Additional District Court(Fast Track Court-2) at Cuddalore



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For Appellants : Mr.T.Girish

For Respondents

For R1

: Mr.T.Murugamanickam,
Senior Counsel
for Ms.Zeenath Begum

For R2

: Mr.L.Mouli

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 25.02.2011 made in OS.No.118 of 2007 on the file of the Additional District Court(Fast Track Court-2) at Cuddalore, thereby allowed the suit for specific performance.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The first respondent herein filed the suit for specific performance and the appellant is the first defendant. The case of the plaintiff is that the suit



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property belongs to the first defendant and the same was purchased by the registered sale deed dated 12.12.1996. In order to deal with the property, the first defendant had executed power of attorney in favour of the second defendant on 17.06.2004. The second defendant had entered into an agreement for sale with the plaintiff under the registered sale agreement dated 12.02.2007. As per the agreement for sale, the total sale consideration was fixed at Rs.18,00,000/- and received a sum of Rs.17,00,000/- as an advance on the date of agreement for sale. As per the terms of the agreement, the plaintiff has to pay the balance sale consideration of Rs.1,00,000/- within a period of six months from the date of the agreement for sale. The first defendant is being the principal had received the entire advance amount from the second defendant and also issued receipt. When the plaintiff was always ready and willing to perform his part of contract by paying the balance sale consideration of Rs.1,00,000/- to the second defendant, the second defendant failed to execute sale deed. In the meanwhile, the first defendant also colluded with the second defendant and cancelled the power of attorney executed in favour of the second defendant by the cancellation deed dated 06.03.2007. Therefore, the plaintiff caused public notice on 14.04.2007 in a newspaper and filed the suit.



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4. Resisting the same, the first defendant filed written statement denying the receipt of advance amount of Rs.17,00,000/-. She further stated that the so called agreement for sale is not true and valid. It is false and fabricated one to grab the property with the collusion of the second defendant. The first defendant is living in abroad and she never received any advance amount and never intended to sell the property. Hence, she prayed for dismissal of the suit.

5. The second defendant filed written statement and stated that he did not have any knowledge about the cancellation of power of attorney by the first defendant even till filing of the written statement. After receipt of the advance amount from the plaintiff, the same was immediately paid to the first defendant on 12.02.2007. She also issued receipt for the same. Therefore, the agreement for sale dated 12.02.2007 is true, valid, lawful and the first defendant is bound to receive the balance sale consideration and perform her part of contract.

6. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-



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- 1) வழக்கு கிரய ஒப்பந்தம் உண்மையானதா, செல்லத்தக்கதா, ஏற்றுக்கொள்ளக்கூடியதா?
- 2) வழக்கு கிரய ஒப்பந்தப்படி வாதிக்கு ஏற்றதை ஆற்றுதல் பரிகாரம் கிடைக்கத்தக்கதா?
- 3) வழக்கின் தரப்பினர்களுக்கு கிடைக்கக்கூடிய பரிகாரங்கள் என்ன?

7. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and ten documents were marked as Ex.P.1 to Ex.P.10. On the side of the first defendant, D.W.1 to D.W.5 were examined and Ex.D.1 and Ex.D.2 were marked. The surveyor report on valuation of the property was marked as Ex.X1. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit as prayed for. Aggrieved by the same, the first defendant has preferred this appeal suit.

8. The learned counsel appearing for the first defendant would submit that the first defendant had no knowledge about the agreement for sale. Even according to the plaintiff, the advance amount was paid in the house of the first defendant. When it being so, they would have insisted the agreement to be



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signed by the first defendant. Therefore, the agreement itself is false and fabricated one in order to grab the property by the plaintiff and the second defendant. As such, the first defendant rightly canceled the power of attorney and the plaintiff is not entitled for any relief of specific performance. Further, the plaintiff also failed to prove his readiness and willingness to perform his part of contract. No prudent man would pay almost entire sale consideration and fix time for balance meager sale consideration as six months. That itself shows that no amount has been received as an advance from the plaintiff.

9. Per contra, the learned Senior Counsel appearing for the plaintiff submitted that the power of attorney was executed by the first defendant in favour of the second defendant as early as on 17.06.2004. On the strength of the power of attorney, the second defendant had entered into an agreement for sale on 12.02.2007. Within a period of one month from the date of the agreement for sale, the first defendant wantonly canceled the power of attorney by the cancellation deed dated 06.03.2007. The first defendant colluded with the second defendant and canceled the power of attorney in order to cheat the plaintiff. The plaintiff proved his readiness and willingness and as such, the trial



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court rightly allowed the suit. After the suit, the balance sale consideration was duly deposited before the trial court and accordingly in the execution petition, sale deed was executed in favour of the plaintiff on 19.10.2011. Thereafter, the entire revenue records were mutated in his favour.

10. Heard, the learned counsel appearing on either side.

11. On the strength of the submissions made on either side, the following points arise for consideration of this appeal suit:

(i) Whether the first defendant had knowledge about the agreement for sale entered between the plaintiff and the second defendant?

(ii) Whether the receipt issued by the first defendant is genuine for the advance amount paid by the plaintiff?

(iii) Whether unilateral cancellation of power of attorney is valid or not?

12. In respect of the suit property, the first defendant had executed power of attorney in favour of the second defendant to deal with the same on



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17.06.2004. On the strength of the power of attorney, on 12.02.2007, the second defendant offered the suit property for sale and the plaintiff had agreed to purchase the suit property for a total sale consideration of Rs.18,00,000/- and paid a sum of Rs.17,00,000/- as an advance on 12.02.2007 itself. Even assuming that the first defendant was present at the time of payment of advance amount, the second defendant who is being the power of attorney can sign the agreement for sale. The signature of the principal does not require when the power of attorney is in very much force in favour of the second defendant. The second defendant categorically admitted that when the power of attorney was in force, he had entered into the agreement for sale with the plaintiff and received a sum of Rs.17,00,000/- as an advance out of the total sale consideration of Rs.18,00,000/-. On the same day itself, the entire amount was paid to the first defendant and she issued receipt for the said amount. The receipt dated 12.02.2007 was marked as Ex.D2.

13. It is also to be noted that the power of attorney was executed by the first defendant in favour of the second defendant as early as on 17.06.2004. Immediately after the agreement for sale entered between the plaintiff and the



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second defendant, the plaintiff cleverly cancelled the power of attorney on 06.03.2007 unilaterally without even notice to the second defendant. It shows that the first defendant had knowledge about the agreement for sale between the plaintiff and the second defendant and immediately, that too unilaterally cancelled the power of attorney. When the power of attorney was all along in force from 17.06.2004, there is absolutely no reason for the first defendant to cancel the power of attorney, that too immediately after the agreement for sale dated 12.02.2007 by cancellation deed dated 06.03.2007. Therefore, when the power of attorney was in force, the agreement for sale was executed by the second defendant in favour of the plaintiff and as such, any cancellation of power of attorney cannot bind the plaintiff. In fact, the plaintiff also caused pre-suit notice to the defendants on 14.04.2007. On receipt of the same, the defendants did not even reply. Subsequent to the cancellation of power of attorney dated 06.03.2007, the plaintiff caused public notice in a newspaper on 14.04.2007. Therefore, the plaintiff had proved his readiness and willingness to perform his part of contract as per the agreement for sale dated 12.02.2007.

14. Further, after the judgment and decree passed by the trial court,



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the plaintiff had deposited the balance sale consideration and filed execution petition to execute the decree. In the execution petition, sale deed was registered in favour of the plaintiff. Therefore, all the points are answered in favour of the plaintiff and this Court finds no infirmity or illegality in the judgment and decree passed by the trial court for interference by this Court.

15. Accordingly, this appeal suit is dismissed and the judgment and decree dated 25.02.2011 made in OS.No.118 of 2007 on the file of the Additional District Court(Fast Track Court-2) at Cuddalore is confirmed. There shall be no order as to costs.

11.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The Additional District Court(Fast Track Court-2) at Cuddalore
- 2.Section Officer,
V.R.Section,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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