



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.81 of 2002
and C.M.P.No.522 of 2002

Venkatasamy (Died)

2.Marimuthu

3.Sarabalan

4.Sumathi

5.Malarvizhi

6.Muthamizh

...Appellants

Vs.

1.Kalia Perumal

2.Jayamurthy

3.Kannan

4.Suseela

... Respondents

(Appellants 2 to 6 brought on records as LR's of the deceased sole appellant vide order of Court dated 20.02.2023 made in C.M.P.Nos.2381, 2382 & 2385/2020 in S.A.No.81/2002)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.07.2001 passed in A.S. No.67 of 1993, on the file of the Principal Sub Court, Villupuram, upholding the decree and judgment dated 13.02.1992 passed in O.S. No.1351 of 1984, on the file



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

of the Additional District Munsif, Villupuram.

For Appellants : Mr. T.S.Baskaran
For RR1 to 3 : Mr. M.Krishnappan, Sr. Counsel
for Mr.S.Ravichandran

JUDGMENT

The second defendant (since deceased) who failed before both the courts below has filed this present Second Appeal.

2. During the pendency of the second appeal the appellant died and therefore, his legal heirs were impleaded as appellants 2 to 6. One Duraisamy Gounder (since deceased) filed the suit in O.S. No.1351 of 1984, before the Additional District Munsif, Villupuram, for specific performance of contract dated 05.06.1984 between him and the first defendant (Meenambal Ammal) or in the alternative directing the second defendant to pay a sum of Rs.6,000/- to him towards compensation. The suit was decreed by the learned District Munsif, Villupuram, vide his decree and judgment dated 13.02.1992, as against which the second



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

defendant (Venkatasamy) who is the purchaser of the suit property from the first defendant, Meenambal Ammal filed an appeal in A.S. No.67 of 1993, on the file of the Principal Sub Court, Villupuram. During the pendency of the first appeal the plaintiff, Duraisamy Gounder died and his legal heirs were impleaded as respondents 1 to 3 in the present second appeal. The first respondent (Meenambal Ammal) also died and her legal heir is the fourth respondent.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4. The brief facts of the case of the plaintiff are as follows:

The suit property originally belonged to the first defendant/Meenambal Ammal. On 05.06.1984, Meenambal Ammal offered to sell the suit property in favour of the plaintiff for sale consideration of Rs.6,277.50/-. They entered into a sale agreement (Ex.A1) on the same day. A sum of Rs.1,000/- was paid by the plaintiff



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

towards advance. The time for performance of contract was fixed as three months. The first defendant did not come forward to receive the balance sale consideration from the plaintiff and to execute the sale deed in his favour. On the contrary, she executed a sale deed dated 30.06.1984 (Ex.B1) in favour of the second defendant in respect of the suit property. The plaintiff issued a lawyer's notice dated 22.07.1984 (Ex.A2) to both the defendants. In the said notice, the plaintiff had specifically contended that the sale in favour of the second defendant is not bonafide. The first defendant did not send any reply notice. On the contrary, the second defendant issued a reply notice dated 25.07.1984 (Ex.A3) which contained false allegations. The sale deed in favour of the second defendant was created only to defeat the lawful claim of the plaintiff and hence, the suit for specific performance of contract or in the alternative directing defendants to pay a sum of Rs.6,000/- towards compensation. The first defendant remained absent before both the Courts below.

5. The suit was resisted by the second defendant on the following grounds.



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

- i. All the allegations contained in the plaint are false.
- ii. There was no agreement of sale in existence on the date when the first defendant sold the suit property in favour of the second defendant.
- iii. Even if the agreement is true it should have been created subsequent to the sale in favour of the second defendant by antedating the same. In any event, the plaintiff has not performed his part of the contract as he has not deposited the balance sale consideration in to Court. He therefore, prayed for dismissal of the suit.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. "Whether the sale agreement dated 05.06.1984 is true and valid?
- ii. Whether the second defendant is a bonafide purchaser for value?
- iii. Whether the plaintiff is entitled for a decree as prayed for by him?
- iv. To what relief, the plaintiff is entitled?"



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

7. In the trial Court, the plaintiff examined himself and two other witnesses and marked Ex.A1 to Ex.A3. The second defendant examined himself and marked Ex.B1.

8. After full contest, the learned Additional District Munsif, Villupuram decreed the suit vide his decree and judgment dated 13.02.1992 filed by the plaintiff on the following grounds :

- i. Thiru.Rajendran (PW3) had deposed the sale agreement dated 05.06.1984 (Ex.A1) was executed and that the husband of the first defendant and one Dhanapal Gounder attested the said agreement. His evidence is trustworthy. The discrepancies found in the evidence of PW1 & PW3 are all minor in nature and do not go into the root of the case. Moreover, DW1 (second defendant) had admitted that there is no prior enmity between him and PW3. The second defendant (DW1) also did not examine the husband of his vendor (first defendant) as a witness.
- ii. PW2 (Thiru.Venkatasamy Reddiar) in his deposition had contended that there was a panchayat in the village between the



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

plaintiff and the defendants 1 & 2 in respect of the suit property in which the second defendant agreed to pay a sum of Rs.3,000/- towards compensation to the plaintiff and that though PW2 received the said amount from the second defendant, the plaintiff refused to receive the same. Since the second defendant knew the existence of the sale agreement between the plaintiff and the first defendant prior to his sale deed, he cannot be said to be a bonafide purchaser for value.

9. Aggrieved over the decree and judgment passed by the trial Court Judge, the second defendant filed an appeal in A.S. No.67 of 1993, on the file of the Principal Sub Court, Villupuram. The learned Principal Subordinate Judge, Villupuram, after analysing the oral and documentary evidence adduced on both sides upheld the findings of the trial court vide his decree and judgment dated 06.07.2001.

10. Now the present Second Appeal is filed by the second defendant and the following substantial questions of law were framed by



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

my learned predecessor.

- i. "Whether the Courts below were correct in holding that the second defendant was not a bonafide purchaser for value without notice when there was absolutely no evidence to show that he was put on notice about the suit agreement prior to his sale under Ex.B1?
- ii. Whether the Courts below erred in not appreciating the contradictions with reference to the recitals in Ex.A1 and evidence of PW1 which goes to show that the claim of the plaintiff was false?

11. Heard Mr.T.S.Baskaran, learned counsel for the appellants and Mr.M.Krishnappan, learned senior counsel assisted by Mr.S.Ravichandran, counsel for the respondents 1 to 3.

12. Mr.T.S.Baskaran, learned counsel for the appellants contended that both the courts below committed an error by holding that

(a) the sale agreement (Ex.A1) is true and valid.

(b) The second defendant is not a bonafide purchaser for value.



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY (c) The second defendant knew the existence of the sale agreement

(Ex.A1) prior to his sale deed (Ex.B1).

He drew the attention of this Court to the judgment of the First Appellate Court wherein the First Appellate Court had mainly relied on the evidence of PW2 who had deposed that there was a panchayat between the plaintiff and the defendants 1 & 2 in the village and that in the panchayat, it was agreed between the parties that the second defendant should pay a compensation of Rs.3,000/- to the plaintiff. He had further deposed that though he received the said amount from the second defendant, the plaintiff (PW1) refused to receive the same. The learned counsel's specific contention is that when there are no pleadings with regard to the panchayat in the plaint, both the Courts below had mainly based on the evidence of PW2, had held that the second defendant is not a bonafide purchaser for value as he already knew the existence of Ex.A1 by participating in the panchayat. Even if it is admitted, for the sake of arguments, that there was a panchayat in the village and the plaintiff agreed to received Rs.3,000/- towards compensation from the second defendant, the whole case of the plaintiff for specific performance of



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

contract fails as he was not ready and willing to perform his part of the contract.

13. Per contra, Mr.M.Krishnappan, learned senior counsel for the respondents 1 to 3 contended that both the courts below, after analysing the oral and documentary evidence adduced on both sides had decreed the suit in favour of the plaintiff and as per Section 100 CPC this Court cannot interfere with the findings of facts recorded by both the Courts below unless they are perverse. He therefore, prayed for dismissal of the present second appeal.

14. At the outset, it may be observed that the plaintiff has filed the suit for specific performance of contract or in the alternative to pay a sum of Rs.6,000/- towards compensation by the defendants 1 & 2. His specific contention is that the first defendant, Meenambal Ammal executed a sale agreement dated 05.06.1984 (Ex.A1) agreeing to sell the suit property in his favour and also received a sum of Rs.1,000/- from him towards advance. The time for performance of contract was fixed as



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

three months and that though he was always ready and willing to perform his part of the contract, the defendant was evading and subsequently, the latter sold the suit property in favour of the second defendant on 30.06.1984. Thereafter, the plaintiff issued a notice to the defendants 1 & 2 and the first defendant did not send any reply to the plaintiff. The second defendant had issued a reply notice and contended that he is a bonafide purchaser for value and also contended that the sale agreement between the plaintiff and the first defendant is not genuine.

15. In order to prove the execution of the sale agreement the plaintiff relied on his evidence as well as the evidence of the scribe Venkatasamy Reddiar (PW2). It is pertinent to point out that the first defendant who is said to have executed the sale agreement (Ex.A1) remained absent and was set *ex parte*. Her husband is one of the attestors to Ex.A1. While, sale agreement is dated 05.06.1984 and the time fixed for completing the contract was three months, the first defendant had sold the suit property in favour of the second defendant through a registered sale deed dated 30.06.1984 (Ex.B1). The second defendant in his written statement as well as in his oral evidence had contended that he is a



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

bonafide purchaser for value and that the sale agreement (Ex.A1) has been created for the purpose of filing the present suit. Both the Courts below had held that the sale agreement (Ex.A1) is true and valid and that the second defendant is not a bonafide purchaser for value. For arriving at this conclusion, both the Courts below had mainly relied on the evidence of Venkatasamy Reddiar (PW2) who had deposed that there was a panchayat in the village between the plaintiff and the defendants 1 & 2 in which the plaintiff agreed to receive a sum of Rs.3,000/- towards compensation from the defendants 1 & 2. During the course of cross examination, PW2 had admitted that the plaintiff agreed to receive the compensation as per the decision of the panchayat and that he (PW2) received the said amount from the second defendant. His further deposition is that when he handed over the same to the plaintiff, the plaintiff refused to receive the said amount. Merely based on the evidence of PW2, both the Courts below had concurrently and wrongly held that the second defendant already knew the sale agreement between the plaintiff and the first defendant. It is also intriguing to note that there is absolutely no pleadings in the plaint with regard to the panchayat



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

WEB COPY

between the plaintiff and the defendants 1 & 2. It is settled position of law that no amount of oral evidence can be looked into in the absence of a specific pleading. The trial Court had not only recorded the evidence without pleadings in the plaint, but also relied upon the same and held that the second defendant already knew the existence of the sale agreement between the plaintiff and the first defendant through the said panchayat and therefore, he cannot be termed as a bonafide purchaser for value. This observation of the trial Court was upheld by the First Appellate Court. Even assuming that there was a panchayat as contended by PW2 between the plaintiff and the defendants 1 & 2 and that in the panchayat it was agreed between the parties that the defendants 1 & 2 should pay the compensation of Rs.3,000/- to the plaintiff and the plaintiff agreed to receive the same, the plaintiff now cannot contend that he was ready and willing to perform his part of the contract. The property has been sold out in the year 1984 through a registered sale deed dated 30.06.1984 (Ex.B1) by the first defendant in favour of the second defendant. The approach made by both the Courts below in analysing the oral and documentary evidence is totally perverse and therefore, the same



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

warrant interference by this Court. Moreover, there are contradictions with regard to the recitals in Ex.A1 and the evidence of PW1 and this aspect has not at all been looked into by both the Courts below. In view of the same, substantial questions of law 1 & 2 are answered in favour of the appellants and therefore, the appeal is allowed.

16. In the result,

- i. the Second Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. The decree and judgment dated 06.07.2001 passed in A.S. No.67 of 1993, on the file of the Principal Sub Court, Villupuram, is set aside.
- iii. The suit in O.S. No.1351 of 1984, on the file of the Additional District Munsif, Villupuram, is dismissed with costs.

16.06.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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WEB COPY



S.A.No.81 of 2002
and C.M.P.No.522 of 2002

R. HEMALATHA, J.
mtl

To

1. The Principal Sub Court, Villupuram.
2. The Additional District Munsif, Villupuram.
3. The Section Officer, VR Section, High Court, Madras.

S.A.No.81 of 2002
and C.M.P.No.522 of 2002

16.06.2023