



SA.No.157 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.02.2023**

CORAM

**THE HONOURABLE MS. JUSTICE P.T.ASHA**

**SA.No.157 of 2003**

- 1.Govindaraj (died)
- 2.G.Visalashi
- 3.G.Rajendran
- 4.G.Sekar
- 5.G.Sundarajan

... Appellants

Vs.

- 1.Padmavathy
- 2.Sabapathy
- 3.Pandithurai
- 4.M.Shantha
- 5.M.Chandra
- 6.G.Rani
- 7.R.Malaikodi

... Respondents

*[Appellants 2 to 5 and Respondents 4 to 7 brought on record as LR's of the deceased sole appellant viz; Govindaraj vide Court order dated 09.09.2022 made in C.M.P.No.339 of 2009 in S.A.No.157 of 2003 (KRJ)]*



SA.No.157 of 2003

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**PRAYER:** Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 05.09.2002 and made in A.S.No.106 of 2001 on the file of the Court of Addl. Subordinate Judge, Mayiladuthurai in confirming the judgement and decree in OS.No.96 of 1998 dated 19.10.2001 on the file of the Court of District Munsif, Sirkali.

For Appellants : Mr.A.Muthukumar

For Respondents : Mr.L.S.M.Hasan Faizal [R.1]

No appearance [R.2,R.4 and R.6]

Not ready in notice [R.3, R.5 and R.7]

### **JUDGEMENT**

This Second Appeal is filed by the 2nd defendant challenging the judgement and decree in A.S.No.106 of 2001 on the file of the Additional Sub Judge, Mayiladuthurai in and by which the learned Judge had confirmed the judgement and decree passed by the District Munsif, Sirkali in OS.No.96 of 1998. The said suit OS.No.96 of 1998 was filed by the 1<sup>st</sup> respondent for specific performance and for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit schedule property.



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2. It is the case of the plaintiff that on 15.04.1997, she and the 1<sup>st</sup> defendant had entered into an agreement of sale. The sale consideration was fixed at a sum of Rs.27,315/- and it is her case that even prior to the sale agreement a sum of Rs.5,000/- was paid to the 1<sup>st</sup> defendant as advance. It is the further case of the plaintiff that the 1<sup>st</sup> defendant had undertaken to pay a sum of Rs.6,178/- that was due to the Government since the suit lands which were assigned in favour of the 1st defendant was the excess lands declared under the Land Ceiling Laws.

3. Thereafter, the 1<sup>st</sup> defendant had requested the plaintiff to pay a further advance to meet urgent family expenses and a sum of Rs.10,022/- was paid. Therefore, in all a sum of Rs.21,200/- was paid and what remained to be paid was a sum of Rs.6,115/-. The time for the performance of the contract was fixed at 15 months. It is also the case of the plaintiff that on the date of the agreement, the 1<sup>st</sup> defendant had delivered possession of the property. Thereafter, it appears that the 1<sup>st</sup> defendant had sold the property to defendants 2 and 3 who started interfering with the plaintiff's



peaceful possession and enjoyment of the property and therefore, the plaintiff had come forward with the suit in question.

4. The 1<sup>st</sup> defendant had filed a written statement inter alia contending that the sale agreement is a fraudulent document and a fabricated one. It was his contention that the appellant did not have the wherewithal to purchase the property and further possession was never handed over to the plaintiff since the 2<sup>nd</sup> defendant was occupying the lands as a cultivating tenant. The 1<sup>st</sup> defendant prayed for the dismissal of the suit.

5. Defendants 2 and 3 had filed a written statement inter alia contending that the 2<sup>nd</sup> defendant is a cultivating tenant under the 1<sup>st</sup> defendant and they had bonafide purchased the property from the 1<sup>st</sup> defendant. The 5<sup>th</sup> item of property was purchased by the 2<sup>nd</sup> defendant under a sale deed dated 28.05.1998 and likewise, items 1 to 4 were purchased by the 3<sup>rd</sup> defendant under a sale deed of the very same date. The 3<sup>rd</sup> defendant would submit that he had a prior agreement of sale with the 1<sup>st</sup> defendant on 05.12.1997. Therefore, they had sought for the dismissal of



the suit.

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6. The Trial Court had framed the issues hereinunder which is translated into the English language:-

*1. Whether the agreement of sale dated 15.04.1997 entered into between the plaintiff and the 1<sup>st</sup> defendant is true?*

*2. Whether the plaintiff was ready and willing to perform his part of the obligation under an agreement of sale dated 15.04.1997?*

*3. Whether the purchase of the suit property in portions by the 2<sup>nd</sup> and the 3<sup>rd</sup> defendants was correct and whether it is correct that they are bonafide purchasers?*

*4. Whether the suit property is in the possession of the plaintiff?*

*5. Whether the plaintiff is entitled to the relief of specific performance?*



SA.No.157 of 2003

6. *Whether the plaintiff is entitled to the relief of*

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7. *To what other reliefs the plaintiff is entitled to?*

7. The plaintiff had examined herself as P.W.1 and one Chandrasekaran, Velusamy and Somasundaram as P.W.2 to P.W.4. The 2<sup>nd</sup> defendant had examined himself as D.W.1 and one Elambaruthi as D.W.2. The plaintiff had marked only one document namely, the agreement of sale as Ex.A.1 and the defendant on their part had marked Ex.B.1 to B.20.

8. The learned Judge had partly decreed the suit granting the decree for specific performance and rejecting the claim for permanent injunction. Challenging the said judgment and decree in so far it was against them, the defendant 2 had filed A.S.No.106 of 2001 on the file of the Additional Sub Court, Mayiladuthurai. The plaintiff had not filed any appeal against the rejection of their relief of permanent injunction.

9. The lower Appellate Court also concurred with the judgment and



decree of the Trial Court and dismissed the appeal. Aggrieved by the same the 2<sup>nd</sup> defendant is before this Court. The 3<sup>rd</sup> defendant was arrayed as a 3<sup>rd</sup> respondent in the appeal. Pending the Second appeal, the 2<sup>nd</sup> defendant had died and his legal heirs were brought on record.

10. The Second Appeal has been admitted on the following Substantial Questions of law:-

*1. When the defendants 2 and 3 purchased the suit lands for valuable consideration under Ex.B.12, B.13 and B.20 which were preceded by sale agreement Ex.B.18 from the first defendant whether the Courts below erred in law in holding that the defendants 2 and 3 are not bona fide purchasers in the absence of any documents to show that the defendants 2 and 3 had knowledge about the sale agreement Ex.A.1?*

*2. Whether the plaintiff and the first defendant had colluded together and created Ex.A.1 to defeat the rights of the purchasers viz., defendants 2 and 3 in the*



SA.No.157 of 2003

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*absence of any proof for demand for execution of sale deed pursuant to Ex.A.1 by the plaintiff and when the first defendant remained ex parte before the Trial Court?*

11. Heard the counsels on either side.

12. In the plaint, it is the case of the plaintiff that he had entered into an agreement of sale on 15.04.1997 with the 1<sup>st</sup> defendant. It is also his case that an advance of Rs.5,000/- was already paid to the 1<sup>st</sup> defendant and that the plaintiff had undertaken to pay a sum of Rs.6,178/- on behalf of the 1<sup>st</sup> defendant to the Government as a ceiling amount for the lands held by him. Thereafter, Rs.10,022/- was received by the 1<sup>st</sup> defendant for family and education expenses. The balance payable was a sum of Rs.6,115/- which was to be paid within a period of 10 months from the date of agreement i.e; 15.07.1998.

13. It was also the case of the plaintiff that the possession had been



handed over on the date of the agreement. However in the course of the evidence let in on behalf of the plaintiff, the husband of the plaintiff as P.W.1 in his chief examination would submit that subsequent to the agreement of sale there was a Panchayat between the plaintiff and the defendants 1 to 3. It is his case that in the said Panchayat it was decided to give 26 cents to the 2<sup>nd</sup> defendant for cultivation and the remaining was to be cultivated by the plaintiff. He would submit that the terms of the Panchayat were accepted to them but however, the defendants 2 and 3 had not acted as per the said Panchayat. This pleading regarding holding of the Panchayat does not feature in the plaint. There also appears to be discrepancies in the evidence of PW.1 and the other witnesses with reference to the execution of the agreement of sale and the alleged passing of consideration.

14. Further, a mere perusal of Ex.A.1 would show that no amount whatsoever has been paid under the said deed. The deed would recite that Rs.5,000/- was paid prior to the agreement. Thereafter, a sum of Rs.6,178/- was payable to the Government. The plaintiff would contend that the amount was paid by him and the receipts was handed over to the 1<sup>st</sup>



defendant. However, there is no proof to substantiate the same and it is rather strange that the purchaser without retaining proof of payment would hand over the same to the 1<sup>st</sup> defendant. That apart, when and how the sum of Rs.5,000/- had been paid prior to the agreement of sale has not been recited in the agreement. Unfortunately, the Courts below have been swayed into accepting the same as true. The further sum of Rs.10,022/- said to have been paid had not been proved by the plaintiff. therefore, the plaintiff had not proved the passing of consideration.

15. Further, the plaintiff has not proved her readiness and willingness, on the contrary, P.W.3 in clear terms during cross-examination has stated that the plaintiff did not possess adequate funds at the time of entering into the agreement of sale and therefore, the witness would submit that 15 months time had been stipulated in the agreement for conclusion of the contract. Therefore, the plaintiff has also failed to prove the readiness and willingness.

16. Considering the fact that the agreement of sale itself is suspect, there is no question of defendants 2 and 3 having prior knowledge about the



SA.No.157 of 2003

sale agreement, Ex.A.1. Therefore, they are bonafide purchasers for value having purchased the property under Ex.B.12, B.13 and B.20 which is preceded by Ex.B.18, agreement of sale. Considering the above discussion, the Substantial questions of law are answered in favour of the 2<sup>nd</sup> defendant and the Second Appeal is allowed. Since the plaintiff has not challenged the dismissal of the suit with reference to the relief of permanent injunction, the same has now attained finality. No costs. Consequently, the connected Miscellaneous Petition is closed, if any.

**21.02.2023**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation :Yes/No  
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To

1. The Addl. Subordinate Judge, Mayiladuthurai.
2. The District Munsif, Sirkali.



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SA.No.157 of 2003

**P.T. ASHA, J,**

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**SA.No.157 of 2003**



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SA.No.157 of 2003

**21.02.2023**