



SA.No.968 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HON'BLE MS.JUSTICE P.T.ASHA

S.A.No.968 of 2006

and

CMP.No.9529 of 2006

Shanmugam

... Appellant

Vs.

1.Simhakutty

2.Muthusamy Pillai (Died)

3.Desingu

(R3 name changed as per the
memo SR.No.6575/2021
vide order of Court dated
24.02.2021 made in
S.A.No.968/2006)

4.Narayanasamy

5.Dhanaselvi

6.Anandhan

7.Mohan

... Respondents

(Respondents 3 to 7 brought on
record as LR's of the deceased 2nd
respondent viz., Muthusamy Pillai vide
order of Court dated 03.02.2021 made
in CMP.No.9140, 9141 & 9143/2020
in SA.No.968 of 2006)



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PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.10 of 2001 on the file of the Principal District Judge, Chengalpattu dated 15.10.2001 confirming the judgment and decree in OS.No.16 of 1995 on the file of the Additional Subordinate Judge, Chengalpattu, dated 27.11.2000.

For Appellant : Mrs.V.Srimathi

For Respondents : Mr.V.Subramani
for Mr.N.Sankaravadivel for R3 to R7
R1- not ready in notice
R2-Died

JUDGMENT

The plaintiff before the Additional Subordinate Judge, Chengalpattu, who filed a suit in O.S.No.16 of 1995, is the appellant before this Court challenging the concurrent judgments against him.

2. It is necessary to briefly allude to the facts of the case in



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order to appreciate the grievance of the plaintiff against the judgments under appeal and for the ease of understanding, the parties are referred in the same rank as before the trial Court.

3. The plaintiff has filed the above suit for specific performance in respect of an alleged agreement of sale dated 14.09.1994. It is the case of the plaintiff that the suit property belonged to the first defendant, he having purchased the same under the registered sale deed dated 29.12.1984. The total extent that had been conveyed under the above sale deed in S.No.312 was an extent of 0.87 cents from and out of an extent of 1.87 cents. After the updation Survey No.312 was subdivided as S.No.312/3 measuring an extent of 0.78 cents and 312/4 measuring an extent of 0.07 cents out of an extent of total 0.12 cents and 312/2 covering an extent of 0.04 cents. Therefore, the S.No.312 was subdivided into 312/3, 312/2 and 312/ 4. The first defendant, according to the plaintiff, had borrowed a sum of Rs.8,000/- from the plaintiff on 18.10.1992 and as security for the said loan had mortgaged the suit property. The contention of the plaintiff was that the mortgage was an usufructuary mortgage and the plaintiff was put in possession of the



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property with the understanding that the interest would be adjusted from and out of the income from the property.

4. The plaintiff would further contend that the loan was not discharged when the period had come to an end and when repayment by the first defendant was requested by the plaintiff. Ultimately the first defendant had requested the plaintiff to purchase the suit property as he was unable to discharge the debt and further his daughter's marriage was also to be celebrated. The plaintiff had, in fact, arrived at this agreement at Chennai, where the first defendant had temporarily shifted residence. The plaintiff agreed to the request and after negotiation, the sale consideration was fixed at a sum Rs.31,450/-. On 04.07.1994, the plaintiff once again proceeded to Chennai and paid a sum of Rs.4,000/- to the first defendant, thereby paying an advance of Rs.12,000/-, the parties agreed that the balance amount would be paid within three months. The plaintiff would further submit that the agreement of sale was signed at Chennai by one Vadivel and the first defendant had affixed his signature on the revenue stamp fixed on the agreement. It was further submitted that the sum of Rs.4,000/- has been paid by the plaintiff to the



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first defendant in the presence of one Ramachandran and Sekar.

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5. It is also the case of the plaintiff that as a consequence of the sale agreement, the possession of the property was handed over to the plaintiff by the first defendant. However, despite this agreement of sale, the plaintiff came to learn that the first defendant was attempting to alienate the property to the third party. Therefore, the plaintiff was constrained to issue a legal notice on 20.09.1994 directing the had defendant not to sell the property to third party. The first defendant had received the notice and issued a reply notice on 02.10.1994, which was received by the plaintiff's counsel on 04.10.1994. The reply notice contains details contrary to the agreement of sale. As per the agreement between the parties, the time for executing the sale deed had expired on 04.10.1994. The plaintiff thereafter came to learn on 03.10.1994 that the first defendant had sold the property to the second defendant without even receiving any sale consideration for the same and this sale is a collusive one made with an intent of depriving the plaintiff of the property which he had agreed to purchase.



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6. The plaintiff would submit that the second defendant is not a bona fide purchaser for value and since the sale deed is not supported by consideration. The plaintiff would submit that he was all along ready and willing to perform his part of the contract and to prove his readiness and willingness, he had paid entire balance sale consideration into an account with the bank of Baroda Chengalpattu Branch on 04.10.1994. Therefore, the plaintiff has come forward with the above suit.

7. The first defendant remained *ex parte* and the second defendant had filed written statement *inter alia* denying the case of the plaintiff. He had denied the execution of the agreement of sale. He denied that the parties entered into an agreement, in and by which, the first defendant agreed to sell the suit property to the plaintiff. He would further submit that the first defendant, in his reply notice, has himself denied the execution of the agreement of sale and he had claimed that for the purchase of fertilizers at subsidy, the first defendant was made to sign blank papers by the plaintiff, which has now been used to create the agreement of sale.



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8. The second defendant would submit that this statement of the first defendant appears to be correct since the document does not describe the suit property properly. The witnesses to the deed are also the close associates of the plaintiff. That apart, the second defendant had submitted that the plaintiff was not a man of means to pay the said amounts. The second defendant had denied that the plaintiff was in possession of the suit property and he would submit that he has been put in possession of the property. In fact, the chitta produced by the plaintiff would show that he is cultivating only an extent of 19 cents in S.No.33/7 and 0.04.5 ares in S.No.167/B. The second defendant would submit that he is a bona fide purchaser for value from the first defendant under the sale deed dated 03.10.1994 for total consideration of a sum of Rs.68,400/- and he had no knowledge about the agreement of sale. The second defendant would submit that he has paid the entire consideration. He has prayed for dismissal of the suit.

9. The Additional Sub Judge had framed the issues as follows:

*“1. Whether the suit agreement is true, and
valid?”*



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2. *Whether the payment of Rs.12,000/- as advanced by the plaintiff is true?*

3. *Whether the sale deed in favour of the 2nd defendant is valid?*

4. *Whether the 2nd defendant is a bonafide purchaser?*

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

6. *Whether the plaintiff was in possession and enjoyment of the suit property?*

7. *To what relief the plaintiff is entitled to?"*

Additional issues:

“1. *Whether the plaintiff is entitled to possession?*

2. *Whether the Court fee paid on the amended plaint is correct?"*

10. The plaintiff had examined himself as PW1 and examined two others as PW2 & PW3 and marked Exs.A1 to A7. The second defendant examined himself as DW1 and one Asimuthu as DW2 and marked Exs.B1 to B6.

11. The learned Additional Sub-Judge, by the judgment and



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decreed dated 27.11.2000, was pleased to return a finding that the agreement of sale Ex.A1 was not a true and valid document, nor had the plaintiff proved the payment of Rs.12,000/-. The learned judge also held that the suit property was not in possession and enjoyment of the plaintiff. The learned Judge also held that the second defendant was bona fide purchaser for the value and ultimately proceeded to dismiss the suit.

12. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.10 of 2001 on the file of the Principal District Judge, Chengalpattu. The learned Judge, by his judgment and decree dated 15.10.2001, was pleased to dismiss the appeal and confirm the judgment and decree of the trial Court.

13. Aggrieved by the same, the plaintiff is before this Court. When the matter had been taken up for admission, this Court had ordered notice to the respondents, the respondents have been served and they have entered appearance through counsel.

14. Heard the counsels on either side.



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15. The plaintiff has come forward with the case that he had extended a loan of Rs.8000/- to the plaintiff. However, the reason for the borrowal is not stated in the plaint. It is the further case of the plaintiff that, since the first defendant was unable to discharge the loan, he had agreed to sell his property for which an agreement of sale Ex.A1 came to be executed on 04.07.1994 and the total consideration was fixed at Rs.31,450/- and on the date of the agreement, a further sum of Rs.4000/- had been paid by the plaintiff to the defendant thereby the plaintiff totally had paid a sum of Rs.12,000/- and what remains was only the balance amount Rs.9450/- which was to be paid within a period of three months.

16. A perusal of Ex.A1-agreement of sale would show that what is filed is only a carbon copy and not the original agreement of sale. The description of the suit property has not been properly provided in the document and this assumes significance since the very nature of the document appears to be suspicious. In the agreement of sale, the first defendant has signed on two revenue stamps and the entire document, on a careful perusal, appears to be more in the format of a promissory note,



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and does not contain the details of the property which is sought to be sold.

17. The Courts below have found that the witnesses who have been examined on the side of the plaintiff to prove the execution of the document have contradicted each other. The plaintiff has not taken any steps to examine the first defendant who according to them is the agreement holder. The first defendant in his reply notice Ex.A4 has categorically denied the execution of the agreement of sale and the receipt of the money. Therefore, the onus was upon the plaintiff to prove the same and this burden has not been properly discharged by the plaintiff.

18. That apart, the plaintiff would claim that the total consideration was a sum of Rs.31950/- in the year 1994. However, in the very same year, within few months, the second defendant has purchased the suit property for total sum of Rs.68400/-, which would also go to show that the agreement of sale is only a created one. The plea taken by the plaintiff that the property was mortgaged to him, cannot be believed



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for the simple reason that the deed has not been registered. The plaintiff has not been able to prove the execution of the agreement of sale as pleaded by them. Though the plaintiff has stated that he had been put in possession pursuant to this agreement of sale, the Courts below have considered the evidence and come to the conclusion that the possession continues to remain with the first defendant till he had handed over possession to the second defendant after the sale deed was executed by him in favour of the second defendant.

19. The plaintiff has not made out any case warranting interference by this Court and that apart no substantial question of law has been made out and consequently, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2023

Index : Yes/No
Internet : Yes/No
dna



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To

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- 1.The Principal District Judge, Chengalpattu
- 2.The Additional Subordinate Judge, Chengalpattu.



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