



SA.No.91 of 2005 and 1515 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.Nos.91 of 2005 and 1515 of 2007

and

M.P.No.1 of 2012

1. Krishnan ... Appellant in S.A.No.91 of 2005

2. Lakshmi ... Appellant in S.A.No.1515 of 2007

- Vs -

1. Lakshmi ... Respondent in S.A.No.91 of 2005

2.. Arumugam (died)

3. Krishnan ... Respondents in S.A.No.1515 of 2007

Prayer in S.A.No.91 of 2005: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and decree dated 18.09.2003 in A.S.No.25 of 2003 on the file of the Additional District Judge, Salem confirming the Judgment and decree dated 13.01.2003 in O.S.No.685 of 2002 on the file of the Principal District Munsif Court, Salem.



SA.No.91 of 2005 and 1515 of 2007

WEB COPY

Prayer in S.A.No.1515 of 2007: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and decree of the learned Additional Subordinate Judge, Salem in A.S.Nos.44 of 2006 and A.S.No.66 of 2007 dated 24.09.2007 reversing the Judgment and decree of the learned Principal District Munsif of Salem in O.S.No.1117 of 2004 dated 05.07.2006.

In S.A.No.91 of 2005

For Appellant : Mr. D. Shivakumaran
For Respondent : Mr.A.K. Kumarasamy (Senior counsel)
for M/s S. Kaithamalai Kumaran

In S.A.No.1515 of 2007

For Appellant :Mr.A.K. Kumarasamy (Senior counsel)
for M/s S. Kaithamalai Kumaran

For Respondent : Mr. D. Shivakumaran

COMMON JUDGMENT

The Second Appeal in S.A.No.91 of 2005 has been filed at the instance of one Mr.Krishnan who was the plaintiff in O.S.No.685 of 2002 and also the second defendant in O.S.No.467 of 2002 renumbered as O.S.No.1117 of 2004. In O.S.No. 685 of 2002 Mr.Krishnan, the plaintiff therein prayed for a relief of injunction against the plaintiff in O.S.No.1117 of 2004, based upon



SA.No.91 of 2005 and 1515 of 2007

his sale deed dated 18.09.2002.

WEB COPY

2. The second appeal in S.A.No.1515 of 2007 has been filed at the instance of the plaintiff in O.S.No.1117 of 2004 by and in which he sought the relief of specific performance against the defendant therein namely Arumugam and Krishnan.

3. For the sake of convenience, parties will be referred according to their litigative status in O.S.No.1117 of 2004,:

4. **The Brief facts which give rise in both the second appeal is as follows:-**

According to the plaintiff, the plaintiff has entered into a sale agreement with the first defendant on 07.08.2000 agreeing to purchase the suit property for a total sale consideration of Rs.50,000/- and has paid an advance amount of Rs.40,000/- on the date of the sale agreement. It is the further submission of the plaintiff that, the time for performance was fixed as 27 months. Since the defendant refused to execute the sale deed he had come forward with the suit for specific performance directing the defendant to execute the sale deed in respect of the suit property after receiving a sum of



SA.No.91 of 2005 and 1515 of 2007

Rs.10,000/- being the balance sale consideration. It is the submission of the plaintiff that on the date of sale agreement itself she has been handed over with the actual physical possession of the suit property.

5. The said suit was resisted by the first defendant by contending that the Ex.A1/sale agreement dated 07.08.2000 is the security for a loan transaction and that at the time of borrowing loan the plaintiff obtained signature of the first defendant in empty stamp papers and that, by using the said empty stamp papers, now the plaintiff has fabricated the sale agreement. Therefore, it is the submission of the first defendant that the suit is liable to be dismissed.

6. The said suit was also resisted by the second defendant who is the subsequent purchaser disputing the very sale agreement. Even prior to filing of the suit for specific performance the second defendant in O.S.No.1117 of 2004 who is the subsequent purchaser has filed the suit for permanent injunction against the plaintiff in O.S.No.685 of 2002 based upon the sale deed dated 18.09.2002. In the said suit for permanent injunction the second defendant would submit that, in pursuance of sale deed dated 18.09.2002, the first defendant has handed over possession to the second defendant. Both the



SA.No.91 of 2005 and 1515 of 2007

suits were tried separately and suit in O.S.No.1117 of 2004 was decreed.

However, the O.S.No.685 of 2002 was dismissed. In O.S.No.1117 of 2004, the plaintiff had examined two witnesses as P.W.1 and P.W.2 and marked twenty five documents as Exs.A1 to A25. On behalf of the defendant three witness were examined as D.W.1 to D.W.3 and marked nine documents as Ex.B1 to Ex.B9 and also as a Court documents three documents were marked as C1 to C3. Similarly in O.S.No.685 of 2002 the witness were examined and documents were subsequently marked. On behalf of the plaintiff two witness were marked as P.W.1 and P.W.2. On behalf of the defendant three witness were marked as D.W.1 to D.W.3. On behalf of the plaintiff 9 documents were marked as Ex.A1 to Ex.A9. On behalf of the defendant 8 documents were marked as Ex.B1 to Ex.B8. As 3rd party document Ex.X1 marked.

7. After having considered the submissions of either side and based upon the documents, the Trial Court in O.S.No.1117 of 2004 found that the Sale agreement dated 07.08.2000 is valid and binding and directed the first defendant to execute the sale deed. However, the suit in O.S.No.685 of 2002 was dismissed. Aggrieved with the same, the second defendant who is the subsequent purchaser has preferred the First Appeal in A.S.No.44 of 2006.

Wherein the First Appellate Court found that the plaintiff has approached the



S.A.No.91 of 2005 and 1515 of 2007

WEB COPY

Court with unclean hands, and declined to exercise discretion and thereby dismissed the suit for specific performance. Aggrieved with the same the plaintiff has filed the instant second appeal in S.A.No.1515 of 2007. Similarly second defendant in O.S.No.1117 of 2004, who was the plaintiff in O.S.No.685 of 2002 filed First Appeal in A.S.No.25 of 2003 against the dismissal of the suit for permanent injunction.

8. At the time of admitting the second appeal in S.A.91 of 2005 this Court has framed the following substantial questions of law.

a) *When the respondent has not specifically denied the statement of P.W.1 in his cross examination with regard to the possession of the suit property, are the Court below correct in law in rejecting such evidence and thereby dismissing the suit?*

b) *Are not the Judgment and decree of both the Courts below are perverse and vitiated due to non-appreciation of the available material evidence on record?*

9. Similarly at the time of admitting S.A.No.1515 of 2007 this Court has framed the following substantial questions of law.



WEB COPY



SA.No.91 of 2005 and 1515 of 2007

1. Is the Lower Appellate Court justified in holding that the findings given in the suit O.S.No.685 of 2002 between the same parties are not binding and have no relevance to the issues raised in the suit?

2. Whether the Lower Appellate Court is correct in holding that the execution of the agreement of sale deed dated 07.08.2000 by the first respondent herein is not proved overlooking the admission of first respondent that signature found therein is his signature?

10. Since both the second appeal are in respect of the same suit property, this Court deem it appropriate to dispose both the appeals by way of a common order.

11. The learned senior counsel who appear on behalf of the plaintiff would submit that the findings recorded by the Trial Court is based upon the materials and that the Trial Court has given elaborate findings in respect of ready and willingness of the plaintiff and also in respect of the due execution of the Ex.A1/sale agreement. However, in the appeal the First Appellate Court without framing any issues in respect of ready and willingness have wrongly concluded that the plaintiff is not entitled for the specific



SA.No.91 of 2005 and 1515 of 2007

WEB COPY

performance. The learned senior counsel would also submit that the order of the First Appellate Court in declining to exercise the discretion is without any basis. Hence, prayed to interfere with the order of the First Appellate Court and prayed to allow the second appeal thereby prayed to restore the decree in O.S.No.1117 of 2004. It is also the submission of the learned senior counsel that the finding of fact recorded in O.S.No.685 of 2002 which was confirmed in A.S.No.25 of 2003 is based on material therefore, the Second Appeal in S.A.No. 91 of 2005 is liable to be dismissed..

12. The learned counsel for the plaintiff would also invite the attention of this Court that as per Ex.A1/Sale Agreement, though the sale consideration of Rs.50,000/- qua 80% of the sale consideration having been paid on the date of the agreement, the performance period fixed for 27 months would only exemplify and fortify the defence case of the loan transaction. The learned senior counsel would also submit that the First Appellate Court did not give any finding in respect of the ready and willingness.

13.This Court is not persuaded with the submissions made by the learned senior counsel, in view of the fact that the First Appellate Court based upon the false case in respect of long cultivation of the land, pleaded by the



SA.No.91 of 2005 and 1515 of 2007

plaintiff, declined to exercise its discretion. Therefore, the absence of finding in respect of the ready and willingness has no implication or impact in the order passed by the First Appellate Court. While considering the relief for specific performance, the First Appellate Court has found against the appellant on the ground that the plaintiff is not at all in possession of the property.

14. In this regard the learned counsel appearing on behalf of the defendant would invite the attention of this Court in respect of Ex.A1/Sale Agreement, wherein it is referred that the first defendant has handed over the actual physical possession of the suit property. In this regard the learned counsel for the respondent would submit that the suit property is an undivided share of $5/8^{\text{th}}$, therefore, there was no possibility for the first defendant to hand over the actual possession of the $5/8^{\text{th}}$ share, since the property is undivided.

15. Apart from that the learned counsel for the respondent would also submit that even according to the defence put forth by the plaintiff, she has been in possession of the property by way of a cultivating tenant, however, there are no documents submitted by her to prove her stand of cultivating



SA.No.91 of 2005 and 1515 of 2007

tenant. In this regard this Court deem it appropriate to refer the findings recorded by the First Appellate Court. The First Appellate Court having gone into this aspect have come to a right conclusion that if the plaintiff had been a cultivating tenant, there would have been some revenue document atleast some adangal could have been filed to prove his possession. Therefore, the First Appellate Court on the finding that the plaintiff did not file any document to prove the possession over the property and due to absence of filing of adangal to prove his case of cultivating tenant, found falsity and fallacy over the plaintiff's case and has held that since the plaintiff has not approached the Court with clean hands, is not entitled for the relief of specific performance.

16. This Court is of firm view, that the finding of fact recorded by the First Appellate Court is based on material and that this Court could not find any perversity on the First Appellate Court order in declining the discretionary relief of the specific performance on the basis of the falsity of the plaintiff's case. Thus, the second appeal in S.A.No.1515 of 2007 is liable to be dismissed by confirming the decree and Judgment of the First Appellate court.



SA.No.91 of 2005 and 1515 of 2007

WEB COPY

17. In respect of the Second Appeal in S.A.No.91 of 2005, it is the case of the second defendant that he is in possession of the property, whereas the plaintiff contention is that she is in possession over the suit property. While considering the order of the both the Trial Court as well as the First Appellate Court namely in O.S.No.685 of 2002 and A.S.No.25 of 2003, both the Court has misdirected by the evidence deposed by P.W.2 who is the first defendant in the specific performance suit. Wherein, he deposed before the Trial Court that he has handed over the possession on the next day of the sale deed. Based upon the said admission the Trial Court found that the sale deed executed in favour of the second defendant cannot be believed and thereby dismissed the suit.

18. This Court is of the firm view that the finding of fact recorded by the Trial Court on the basis of the first defendant slipshod evidence in respect of handing over the possession, by ignoring the sale deed is not legal. Apart from that, in the suit for specific performance this Court found that the plaintiff is not in possession of the suit property. Therefore, based upon the sale deed stands in the name of the second defendant, this Court is of the firm view that the order passed by the Trial Court as well as the First Appellate



SA.No.91 of 2005 and 1515 of 2007

WEB COPY

Court in O.S.No.685 of 2002 is contrary to the available materials. Hence the finding is perverse and the same is liable to be interfered with.

19. In the result S.A.No.91 of 2005 is allowed and thereby the decree and Judgment of the First Appellate Court dated 18.09.2003 in A.S.No.25 of 2003 on the file of the Additional District Judge, Salem and the decree and Judgment of the Trial Court in O.S.No.685 of 2002 on the file of the Principal District Munsif Court, Salem is set aside and the suit is decreed as prayed for.

20. The Second Appeal in S.A.No.1515 of 2007 is dismissed confirming the decree and Judgment passed by the learned Additional Subordinate Judge, Salem in A.S.Nos.44 of 2006 and A.S.No.66 of 2007 dated 24.09.2007. No order as to costs. Consequently the connected miscellaneous petition is closed.

20.11.2023



SA.No.91 of 2005 and 1515 of 2007

smn
To
WEB COPY

1. The Additional District Judge, Salem
2. The Principal District Munsif Court, Salem

C.KUMARAPPAN, J

smn

S.A.Nos.91 of 2005
and 1515 of 2007
and



WEB COPY



SA.No.91 of 2005 and 1515 of 2007

M.P.No.1 of 2012

20.11.2023