



S.A.No.878 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.01.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.878 of 2021  
and  
C.M.P.No.16704 of 2021

Jagadeesan

.....

Appellant

Vs

V.K.Subramaniam

.....

Respondent

**Prayer :-** This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 16.09.2019 made in A.S.No.57 of 2019 on the file of the Principal District Judge, Erode, confirming the Judgment and Decree dated 05.02.2019 made in O.S.No.56 of 2015 on the file of the II Additional Subordinate Judge, Erode.

For Appellant : Mr.R.Nalliyappan

For Respondent : Mr.S.Kaithamalai Kumaran

**JUDGMENT**

This Second Appeal is directed as against the Judgment and Decree dated 16.09.2019 made in A.S.No.57 of 2019 on the file of the Principal District Judge, Erode, confirming the Judgment and Decree dated



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05.02.2019 made in O.S.No.56 of 2015 on the file of the II Additional Subordinate Judge, Erode, thereby dismissing the suit for specific performance.

2. The learned counsel appearing for the appellant would submit that they have already given a change of vakalath along with the bundle. Even the appellant failed to engage any counsel in order to represent on behalf of before this Court and this appeal is pending for past two years, even without admission. Therefore, this Court is inclined to pass orders on merits.

3. The appellant is the plaintiff and the respondent is the defendant. The case of the appellant is that the suit property belongs to the respondent herein as per the partition deed dated 11.12.1987. On 25.11.2011, the respondent entered into a sale agreement with the appellant, thereby agreeing to sell the suit property for a total sale consideration of Rs.7,50,000/- and also received a sum of Rs.6,00,000/- as advance as part of the sale consideration. It was registered vide document No.7526 of 2011. Three years time is fixed for the execution of the sale deed. The respondent agreed to execute the sale deed immediately after receipt of the



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balance sale consideration. However, the defendant was postponing the execution of sale deed by giving unnecessary reasons, though the appellant was ready and willing to perform his part of the contract. Therefore, the appellant had issued legal notice on 27.09.2014. Even then, the respondent did not come forward to execute the sale deed. Hence, the present suit filed for specific performance with alternative relief of refund of advance amount with interest.

4. The respondent resisted the suit and filed a written statement stating that the suit property is an ancestral joint family property consisting of the respondent and his daughter. In fact, on receipt of the legal notice, the respondent replied by way of reply notice dated 27.09.2014 and specifically mentioned that the suit property is a joint family property and even then his daughter was not impleaded as a party in the suit. Therefore, the suit itself is bad for non joinder of necessary parties. The respondent approached the appellant for a hand loan of Rs.4,00,000/- and he also had agreed to lend loan. On the compulsion of the appellant, the respondent had executed an agreement for sale as if he agreed to sell his property. The respondent had no intention to sell the suit property.



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5. On the basis of the pleadings, the Trial Court framed the

following issues :-

- i) Whether the suit sale agreement is true and valid ?
- ii) Whether the suit is bad for non joinder of necessary party ?
- iii) Whether the plaintiff is entitled to a relief of specific performance as prayed for ?
- iv) Whether the plaintiff is entitled to a alternative relief as prayed for ?
- v) Whether the plaintiff is entitled to a charge over the suit property as prayed for ?
- vi) To what other relief ?

6. On the side of the appellant, he had examined P.Ws.1 and 2 and marked Exs. A1 to A5. On the side of the respondent, he himself examined as D.W.1 and marked Exs.B1 to B4.

7. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.57 of 2019 before the Principal District Judge, Erode and the same was also dismissed and the Judgment



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and Decree of the Trial Court was confirmed. Aggrieved by the same, the present second appeal.

8. The learned counsel for the appellant has raised the following substantial questions of law:

a) Whether the First Appellate Court was right in confirming the Judgment and Decree of the original suit mere on the fact that non mentioning about the earlier sale agreement (Ex.B1) and cancellation of sale agreement (Ex.B2) in the subsequently subject matter sale agreement (Ex.A2) is vital to the case.

b) Whether the First Appellate Court was right in confirming the Judgment and Decree of the original suit and dismissing the plea of alternative relief for return of money against the registered sale agreement (EX.A2) for advancing Rs.6,00,000/-.

c) Whether the First Appellate Court was right in confirming the Judgment and Decree of the original suit when the respondent/defendant himself had admitted about the money advanced to him through registered sale agreement (Ex.A2) but had alleged only Rs.4,00,000/- was received by



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him and repaid part amounts but could not establish the repayment of admitted amount.

d) Whether the First Appellate Court was right in confirming the Judgment and Decree of the original suit and dismissing the plea of specific performance of appellant/plaintiff on the ground that the appellant did not establish ready and willingness, whereas the legal notice and the suit itself was filed within the time specified in the sale agreement (Ex.A2)

e) Whether the First Appellate Court was right in confirming the Judgment and Decree of the original suit based on Ex.B3, compromise partition decree which is not binding on the appellant/plaintiff and also a collusive one.

9 . Heard, Mr.R.Nalliyappan, the learned counsel appearing for the appellant and Mr.S.Kaithamalai Kumaran learned counsel appearing for the respondent and perused the materials available on record.

10. The learned counsel appearing for the appellant raised grounds that both the Courts below failed to see that Ex.A2 is a registered agreement for sale. It was executed on receipt of a sum of Rs.6,00,000/- as advance, out of total sale consideration. Even then, both the Courts below, failed to



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discuss about Ex.A2 and on the basis of Exs.B1 and B2 which was the earlier sale agreement and cancellation of sale agreement, dismissed the suit. Only after cancellation of the agreement for sale, which was marked as Ex.B1, new sale agreement was executed by the respondent, which was marked as Ex.A2. After execution of sale agreement, in order to escape from liability, the respondent was hand and glove with his daughter Sivagami and filed collusive suit in O.S.No.533 of 2014 on the file of the Principal Subordinate Judge, Erode and it ended into compromise decree.

11. A perusal of the records reveals that the respondent had entered into an agreement for sale with the wife of the appellant herein on 15.10.2010 for the very same property. The sale value was fixed at Rs.2,50,000/-. But his wife had never came forward to execute the sale deed by paying balance sale consideration. After payment of the said sale amount, it was cancelled by the cancellation of agreement for sale on 25.11.2011. The agreement for sale was marked as Ex.B1. The cancellation deed was marked as Ex.B2. The present sale deed was also executed on the very same day i.e., on 25.11.2011, which was marked as Ex.A2.



12. A perusal of the deposition of the plaintiff also reveals that there was the first agreement for sale executed in favour of the wife of the appellant herein, which was marked as Ex.B1, in which the total sale consideration was fixed at Rs.2,50,000/- for the very same property. Thereafter, there was no steps have been taken by the wife of the plaintiff in order to execute the sale deed. She never expressed her willingness to purchase the suti property by paying the balance sale consideration. Thereafter, it was cancelled by a registered cancellation of agreement for sale, which was marked as Ex.B2. However, the appellant herein did not even whisper about Exs.B1 and B2. When the agreement for sale was cancelled by way of Ex.B2, no prudent man would execute agreement for sale in respect of the very same property in favour of the appellant herein.

13. However, a perusal of Ex.A2 dated 25.11.2011 reveals that the balance sale consideration of Rs.1,50,000/- was to be paid within a period of three years. However, the appellant failed to prove his readiness and willingness to pay the balance sale consideration. Therefore, the appellant failed to prove his case and both the Courts below rightly dismissed the suit.



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14. As such the Courts below have analyzed the evidences adduced by the parties, both the documentary and oral in detail and by giving cogent reasons, concluded rightly and dismissed the suit. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

15. In view of above, this Second Appeal is dismissed and the the Judgment and Decree dated 16.09.2019 made in A.S.No.57 of 2019 on the file of the Principal District Judge, Erode, confirming the Judgment and Decree dated 05.02.2019 made in O.S.No.56 of 2015 on the file of the II Additional Subordinate Judge, Erode, are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.01.2023

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

1. The Principal District Judge, Erode.
2. The II Additional Subordinate Judge, Erode.



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**G.K.ILANTHIRAIYAN, J.**

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