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A.S.No.362 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SENTHIL KUMAR**

A.S.No.362 of 2018

K.Saminathan ... Appellant

-Vs-

Pappathi @ Vembayee ... Respondent

Prayer : Appeal under Section 96 and Order XLI Rule 1 of CPC to set aside the judgment and decree of the learned Additional District and Sessions Judge, Tiruppur in O.S.No.57 of 2014 dated 17.09.2016.

For Appellant	:	Mr.T.V.Ramanujam, Senior Counsel for Mr.G.Karthikeyan
For Respondent	:	Mr.S.Mukunth, Senior Counsel for M/s.Sarvabhauman Associates

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The plaintiff is on appeal. Challenge is to the dismissal of the suit for specific performance laid by the plaintiff in O.S.No.57 of 2014. The plaintiff would claim that one Kandasamy S/o Palanisamy who owned the suit property had agreed to sell the same for a consideration of Rs.40 lakhs and has entered into an agreement of sale



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with the plaintiff on 06.01.2011. According to the plaintiff, an advance of Rs.30 lakhs was paid on the date of the agreement and a period of two years was fixed for payment of the balance amount. In the interregnum, the agreement vendor viz., Kandasamy died on 27.07.2012 leaving behind his mother Vembayee, defendant in the suit, to succeed him. The plaintiff issued a notice seeking performance of the agreement dated 06.01.2011, for which a reply was sent by the defendant denying the very agreement. The plaintiff laid the suit on 05.04.2014. The plaintiff would claim that he was always ready and willing to perform his part of the contract and therefore he is entitled to a decree for specific performance.

2. The suit was resisted by the defendant contending that the suit agreement itself has been created by the plaintiff. According to the defendant, the deceased Kandasamy was doing chit business and he had invested monies in the chits run by the son-in-law of the plaintiff one Thangaraj in the name and style of Shri Kadeswara Chits. The details of the chit transactions are set out in the written statement and it was contended that the plaintiff had, in collusion with his son-in-law, created the agreement of sale using the blank stamp papers left with the son-in-law at the time when the chit transactions were in vogue. The defendant also claimed that the agreement was created after the death of Kandasamy to snatch the only residential house in which the defendant is residing.



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3. On the above pleadings, the learned trial Judge framed the following issues:

- (i) Whether the plaintiff is entitled to specific performance of the contract?
- (ii) To what other relief is the plaintiff entitled to?

4. At trial, P.Ws.1 to 3 were examined in the side of the plaintiff and Exs.A1 to A4 were marked. The suit agreement was marked as Ex.A1. D.Ws.1 and 2 were examined in the side of the defendant and Exs.B1 to B13 were marked. On consideration of the evidence of P.Ws.1 to 3, the learned trial Judge found that the plaintiff has not proved the execution of the agreement of sale. Pointing out the inconsistencies in the evidence of P.W.1 and P.Ws.2 and 3, who were the attesting witnesses to the sale agreement Ex.A1, the learned trial Judge concluded that the plaintiff has not proved the agreement. The factors that were pointed out by the learned Judge are that the agreement is written on a stamp paper purchased at a far away place viz., Thuraiyur on the very date of the agreement, the fact that P.Ws.2 and 3 have claimed that the stamp papers were purchased at Tiruppur, the evidence regarding the payment of consideration also was unsatisfactory according to the learned trial Judge. The trial Judge faulted the plaintiff for not producing his bank statements to show that he was possessed of large sums of money on the date of agreement, which he claimed to have paid in cash. The admissions by P.W.1 that though he has a bank account, the maximum balance in that account at any point of time was only Rs.50,000/- was also taken note of by the learned trial Judge in concluding that the entire case of the plaintiff has not been established by satisfactory and reliable evidence. On the above conclusion, the learned trial Judge



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dismissed the suit. Aggrieved, the plaintiff is on appeal.

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5. Shri T.V.Ramanujam, learned Senior Counsel appearing for the appellant would vehemently contend that the trial Judge has overlooked the fact that it was the specific case of the plaintiff that the agreement was prepared by the deceased Kandasamy and the plaintiff has no role to play in the preparation of the agreement. Learned Senior Counsel would also point out that the long period of two years for performance was fixed since the deceased Kandasamy wanted time to vacate the tenants and hand over vacant possession to the plaintiff. Learned Senior Counsel would also rely upon the evidence of P.Ws.2 and 3 to buttress the submission that an advance of Rs.30 lakhs was paid on the date of the agreement.

6. Contending contra, Mr.S.Mukunth learned Senior Counsel appearing for the respondent would submit that it is incumbent upon the plaintiff to prove the agreement, more so when the execution of the agreement by Kandasamy has been denied by the defendant. Learned Senior Counsel would submit that the circumstances pointed out by the trial Court for disbelieving the evidence of P.Ws.1 to 3 regarding execution of the agreement and payment of advance, are very reasonable circumstances, which would lead any normal person to the conclusions that the trial Court has reached.

7. Drawing our attention to the evidence of P.Ws.1, 2 and 3, learned Senior



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Counsel would submit that all the three witnesses have given three different versions regarding the execution of the agreement, purchase of stamp papers and the time at which the agreement was written and signed. Learned Senior Counsel would also draw our attention to the evidence of P.W.1 where P.W.1 has stated that he did not measure the property before entering into the agreement and he did not see the mortgage document, which was supposed to be in existence on the date of the agreement. These circumstances, according to the learned Senior Counsel, would demonstrate that the agreement was prepared after the death of Kandasamy.

8. We have considered the rival submissions made by the learned Senior Counsel appearing for both sides and have perused the materials placed on record.

9. On the arguments of the learned Senior Counsel on either side, the following points arise for consideration:

- (a) Whether the plaintiff has proved the execution of the agreement by Kandasamy?
- (b) Whether the plaintiff is entitled to the relief of specific performance?

ON THE POINTS:

10. In order to succeed in a specific performance suit, it is incumbent upon the plaintiff to prove that there was a valid agreement of sale and that he was always ready and willing to perform his part of the contract. Every circumstance will have to be looked into by the Court, particularly when the person who executed the



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agreement is not alive and the execution of the agreement by the said person is specifically denied. As we have already pointed out, this is a case where there is a specific denial of the execution of the agreement. Once the execution of the agreement is specifically denied, the plaintiff has to prove to the satisfaction of the Court that the agreement was in fact executed by the person by whom it purports to have been executed.

11. We have the evidence of P.Ws.1, 2 and 3 in support of the case of the plaintiff. As regards execution, P.W.1 would claim that the document was executed between 4.00 p.m. and 5.00 p.m on 06.01.2011 at Tiruppur. He would also state that Kandasamy visited the plaintiff at 8.00 a.m., on 06.01.2011 and agreed to execute the agreement on the same day and had stated that they would purchase the stamp papers and come back. He claimed to have visited the plaintiff's house at 4.00 p.m., and within one hour, the typed document was brought and thereafter Kandasamy signed the same. He claims to have paid a sum of Rs.30 lakhs in cash on the same day. P.W.2, the attesting witness to the instrument and who claims to have played an active role in the transaction, would in his evidence state that the stamp paper for Ex.A.1 was purchased at around 3.00 p.m., by him and Kandasamy from a stamp vendor near Tiruppur Sivan Theatre. He also gives the value of the stamp paper as Rs.100/-. He claims to have been present when the stamp paper was purchased. Immediately thereafter, he would depose that, the stamp paper that was purchased was already typed. During the further cross examination, he



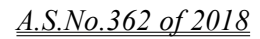
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has deposed that the stamp vendor was available only near Sivan Theatre, which is about 5 kilometres away from the suit property which is situated at Thennampalayam. He claims that the agreement was signed between 4.00 p.m., and 4.30 p.m., at Kandasamy's house on 06.01.2011.

12. P.W.3 is the other attesting witness. His evidence on the execution of the document is that, Kandasamy and P.W.2 went to purchase stamp papers at 5.00 p.m., and they came back around 6.30 p.m., and the document was signed after that. The signatures were made between 6.30 p.m and 7.15 p.m. on the same day. He also claimed that a sum of Rs.30 lakhs was paid in cash. This is the evidence that is available on the execution of the document.

13. The stamp paper on which Ex.A1 is typed has been shown to have been purchased at Thuraiyur on 06.01.2011. Attempts made by the defendant to have the register of the stamp vendor summoned failed, because the stamp vendor claimed that the registers have been lost.

14. Learned trial Judge also disbelieved the case of the plaintiff because the plaintiff is not shown to have taken enough care as any normal person, who is purchasing property for Rs.40 lakhs, is expected to do. P.W.1 in his evidence has stated that two years time was fixed because there were tenants and there was a mortgage. He has in his evidence claimed that he does not know what was the



16. We have gone through the evidence of P.Ws.1 to 3. A reading of the evidence and the features pointed out above would impel us to agree with the conclusion of the trial Court. We do not find any reason to take a different view. As we had already pointed out, the trial Court had pointed out various circumstances from the evidence to disbelieve the claim of the plaintiff that he had entered into the agreement on 06.01.2011 and he has parted with an amount of Rs.30 lakhs in cash on the said date. The plaintiff has not produced any document to show that he was in possession of Rs.30 lakhs on the date of the agreement itself, which is the fundamental requirement. On the other hand, the plaintiff has admitted that his



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bank account did not have a credit balance a sum of over Rs.50,000/- at any point of time. Therefore, the claim that the plaintiff had Rs.30 lakhs on 06.01.2011 and he has paid the same as advance to Kandasamy on the said date itself becomes highly doubtful. Specific performance is a discretionary relief. The plaintiff will have to plead and prove that there is a valid agreement before we embark upon the next level viz., to see whether the agreement is enforceable or not. On the evidences available, we find that the plaintiff has miserably failed to prove that there is a valid agreement of sale itself.

17. We are therefore unable to fault the trial Court for having dismissed the suit. We see no reason to interfere with the reasonings of the trial Court. The appeal fails and it is accordingly dismissed. However, in the circumstances there will be no order as to costs.

(R.S.M.,J.) (N.S.,J.)
31.10.2023

Index : Yes/No
Internet : Yes/No
KST

To

1.I Additional District and Sessions Judge
Tiruppur.
2.V.R.Section, High Court, Madras.



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