



S.A No.329 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A No.329 of 2013

CMP. No.1 of 2013

1.Murugan
2.Indirani
3.G.Solai

... Appellants

Vs.

1.M.Kasi
2.R.Rajendran
3.C.R.Ramalingam
Valli (Died)

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree of the learned District Judge, Tiruvannamalai made in A.S No. 8 of 2011 dated 22.03.2012 reversing the judgement and decree of the learned Additional Subordinate Judge, Tiruvannamalai made in O.S No. 19 of 2008 dated 16.11.2010.

For Appellant: Mr.J.Ramakrishnan



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For R1 : Mr.R.Rajarajan
For R2 & R3: No Appearance

JUDGMENT

The Appellant herein are the defendant in Suit O.S No. 19 of 2008 on the file of the Sub Judge, Tiruvannamalai, filed by the first respondent/plaintiff herein for the relief of specific performance against the defendant 1 to 6 and direct them to register sale deed as per the sale agreement dated 25.09.2006 and also for delivery of possession and other consequential relief. The contention of the plaintiff was that the suit property originally belongs to the defendant 1 to 5. The fifth defendant is the father of the defendant's 1 to 4. The defendant 1 to 3 and 5 executed registered power deed in favour of the the fourth defendant on 27.07.2006 authorizing the fourth defendant to alienate the suit property on their behalf. Thereafter, the plaintiff offered to purchase the suit property for sale consideration of Rs. 1,50,000/- and paid Rs1,00,000/- as advance to the fourth defendant and entered into sale agreement on 25.09.2006 with fourth defendant as per that terms of sale agreement the plaintiff has to pay remaining Rs.50,000/- later. Subsequently the plaintiff approached the fourth defendant and requested him to receive the balance consideration and



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execute the sale deed but the fourth defendant evade to execute the sale deed as per the sale agreement dated 25.09.2006. Then, the alleged power deed dated 27.07.2006 executed by the defendant's 1 to 3 and 5 was cancelled on 08.01.2007 and also the defendant 1 to 3 executed a un-registered sale deed in favour of the sixth defendant on 15.06.2006, but the said un-registered sale deed was registered in the deed dated 08.01.2007 hence sale deed dated 15.06.2006 was invalid. Hence the plaintiff filed suit for specific performance.

2. The written statement filed by the 6th defendant are as follows:

The suit property was originally belongs to Ramalingam, his son Murugan, Rajendran and his daughter Indirani and Valli. On 15.06.2006, under the sale agreement dated 15.06.2006 Murugan, Valli and Indirani agreed to sold 3/5 share in the suit property for sale consideration of Rs. 6,73,375/- and paid advance Rs.75,000/- from the sixth defendant on the date of sale agreement itself and agreed to receive balance consideration when executing sale deed in favour of this defendant and he ready to perform his part of the agreement. While so, he came to know about the



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power deed dated 27.07.2006 executed by the defendant 1 to 3 in favour of the fourth defendant conferring him the power to alienate their share of the suit property. Thereafter, on 08.01.2007 the defendant 1 to 3 cancelled the above power deed in order to alienate their 3/5 share of the suit property in favour of the sixth defendant as per the sale agreement dated 15.06.2006 executed in favour of him. Hence the defendants 1 to 3 executed sale agreement dated 15.06.2006 which is much prior to the plaintiff's power dated 27.07.2006 and also sale agreement dated 25.09.2006. Therefore the alleged sale agreement deed dated 25.09.2006 would not bind this defendant.

3. After considering oral and documentary evidence the Trial Court concluded that the plaintiff failed to prove the sale agreement dated 25.09.2006 through material evidence, on the other side the sixth defendant proved his sale agreement through material evidence. Accordingly dismissed the suit as no merits.

4. Challenging the said findings the plaintiff preferred an appeal before the District Court, Thriuvannamalai, in A.S No. 8 of 2011, it independently analysed the facts and evidence held that alleged sale



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agreement stands in the name of the sixth defendant dated 15.06.2006 marked as Ex.B1 is not valid agreement since because the stamp vendor not possessed valid stamp vendor license to sell the same. Therefore it came to the conclusion that in order to evade sale agreement with the plaintiff said sale agreement Ex.B1 was fraudulently created it would not bind the plaintiff based on the alleged sale deed stands in the name of the sixth defendant also not valid and not bind the plaintiff. Finally held that sixth defendant is not a bonafide purchaser for valid consideration. Accordingly first appeal was allowed.

5. Aggrieved and dissatisfied over the same the sixth defendant preferred this second appeaal.

6. The learned counsel for the appellant submitted that first appellate Court failed to take note of the fact that plaintiff not proved his sale agreement Ex.A2 through oral and documentary evidence. In spite of that the suit decreed in his favour as such is totally misconception of law and facts liable to be set aside. Further he also argued that plaintiff failed to prove Ex.A2 since because he has not produced any witness to prove the same though it was denied by the defendant. But the lower appellate Court give much weightage to the Ex.B2 sale agreement. Hence he prayed to set



aside the findings of the lower appellate Court.

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7. This Court admitted the second appeal with the following substantial questions of law:

i. When the alleged Ex.A2 sale agreement is dated 20.02.2006 whereas the stamp paper in that document is dated 25.09.2006, whether in law the judgment and decree of the learned Appellate Judge in decreeing the plaintiff's suit thereby upholding Ex.A2 the ante dated document is sustainable?

ii. Whether in law the learned first appellate judge is right in decreeing the plaintiff's suit when the plaintiff miserably failed to plead and prove his continuous readiness and willingness as mandated under Section 16 (c) of Specific Relief Act?

iii. When the sale agreement of the 3rd appellant/6th defendant (EX.B1) was prior in time to that of the alleged agreement in favour of plaintiff/ respondent under Ex.A2, whether the learned Appellate Court was right in upholding the Ex.A2 sale agreement in favour of the plaintiff/respondent, moreover is a bonafide purchaser by virtue of Ex.B3?

8. It is admitted fact that the suit property is belongs to the defendants 1 to 5. The contention of the plaintiff is that the power deed was executed by defendants 1 to 3 and 5 in favour of the fourth defendant on 27.07.2006 authorising him to alienate the suit property on their behalf and it was admitted by the defendant 1 to 3 and 5. Following which, based on the power deed/Ex.A1 there was a sale agreement/Ex.A2 was entered between the plaintiff and the fourth respondent on 25.09.2002(date was wrongly mentioned as 20.02.2006 in the document) for valid consideration



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of Rs.1,50,000/- and the plaintiff paid Rs.1,00,000/- as advance.

Subsequently, the defendant 1 to 3 cancelled Power deed/Ex.A1 with a view to evade the plaintiff's claim, they sold the 3/5 shares in the suit property to sixth defendant. When it was questioned by the plaintiff the fourth defendant informed that power deed/Ex.A1 was cancelled by the defendant 1 to 3 and sold 3/5 share of the suit property to the sixth defendant. Therefore the contention of the plaintiff is that his agreement is earliest one and also it was not informed about the cancellation of power deed hence he filed suit directing the defendant to execute the sale deed as per the sale agreement/Ex.A2. On the other side, the sixth defendant filed written statement adopted by defendant 1 to 3, in which it was stated that defendants 1 to 5 are close relatives and also the plaintiff is brother-in-law of the 4th defendant. The contention of the sixth defendant is that power deed/Ex.A1 was cancelled on 08.01.2007 and also through sale agreement dated 15.06.2006, 3/5 share of the suit property was sold in his favour by the defendant 1 to 3. Apart from that, his sale agreement was much prior to the alleged sale agreement dated 25.09.2006. First of all, when the plaintiff approached the Court for specific performance he has to prove his readiness and willingness to perform his part of the sale agreement dated



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25.09.2006 as per manner known to law. The plaintiff by relying Ex.A2 stated that he always ready and willing to perform his part of the sale agreement dated 25.09.2006 but in the plaint he has not mentioned as to what was time fixed by them to execute the sale deed nor he produce any material to prove his willingness and readiness to perform his part of the sale agreement. On bare perusal of the plaint, he only raised allegation against the sixth defendant. Admittedly, he issued notice on 05.02.2007 but the power deed stands in the name of the fourth defendant was cancelled on 08.01.2007. If he really ready to perform his part of the agreement he should have taken steps to execute the part of the agreement but before cancellation of the power deed he has not issued any notice to the defendants expressing his willingness to pay the remaining sale consideration. Further, the main objection of the plaintiff is that sale agreement dated 15.06.2006 is not valid for the reason that date of Stamp paper of the Ex.B1 was purchased on 25.09.2006. Whereas the sale agreement Ex.A2 was said to have executed on 20.02.2006 but the said claim has not been proved by the plaintiff by examining witness on his side. On perusal of the records, it reveals that the plaintiff mentioned in the plaint that date was wrongly mentioned as 20.02.2006 but the sale agreement/Ex.A2 executed on 25.09.2006. Though



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it was registered on 25.09.2006 to substantiate that no witness was adduced on the side of the plaintiff that it was not wrongly typed as 20.02.2006.

Mere registration of sale agreement on 25.09.2006 is not sufficient to conclude that said document was executed only on 25.09.2006 the plaintiff bound to give satisfactory explanation before the Court that as to why it was not wrongly typed as 20.02.2006 because lot of possibility to create fake sale agreement to grab the property. Moreover, he is very close relative to fourth defendant with whom power of attorney was executed by other defendants in respect of suit property. To avail relief of specific performance the plaintiff bound to prove his **readiness and willingness to perform the agreement because it is culpable remedy equally accepted by the plaintiff to prove his prime facie before the Trial Court** except plaintiff no witness was examined to prove his readiness and willingness.

9. The foremost contention of the plaintiff is that he is ready and willing to perform of the terms of the sale agreement/Ex.A2 but the defendant in order to evade his sale agreement they executed sale deed in favour of the sixth defendant by selling their 3/5 share in the suit property. When that being so, the plaintiff has to prove his readiness and willingness.



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Further there is no evidence on the side of the plaintiff to prove his readiness and willingness to perform of his part of the sale agreement. Mere allegation is not sufficient to prove his claim, he ought to have adduced material evidence to prove the said fact. Thus the plaintiff failed to prove his case but the lower appellate Court without appreciating above aspect held that Ex.B2 sale agreement would not bind the plaintiff. The basic principle is that the plaintiff not to be depend upon loop holes of the defendant's case. As discussed above, the plaintiff failed to prove Ex.A2/Sale agreement with material evidence. Thereby, he is not entitled for specific performance. But the lower appellate Judge give much weightage to the stamp paper produced by the sixth defendant in respect of sale agreement Ex.B2 dated 15.06.2006 is not relevancy as the plaintiff failed to prove his case. Accordingly questions of law are answered. The findings of the First appellate Court is liable to be set aside and findings of the Trial Court is confirmed. Thus the suit is dismissed.

10. In result, the second appeal is allowed. There shall be no order as to costs. Consequentially connected miscellaneous petition is closed.



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To

1. The District Court, Tiruvannamalai.
2. The Sub Court, Tiruvannamalai.
3. The Section Officer,
V.R Section,



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T.V.THAMILSELVI,J.

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