



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2023

Delivered on : 08.12.2023

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.No.531 of 2021
and
C.M.P.No.11100 of 2021

1. Ramalingam (died)

2. R.Rajammal

3. R.Selvaraj

4. R.Mani

5. R.Vijayakumari

6. R.Vijayalakshmi

7. R.Ilavarasu

(Appellants 2 to 7-brought on record
as LR's of the deceased sole appellant
vide order dated 6.2.2023 made in
C.M.P.No.12911 and 12916 of 2002)

Appellants

vs.

1. Kalai Bharathi Economic
Development Trust,
rep. by its Managing Director
Kalaikumar
No.62, Venkatraya Pillai Street,
Sholinghur Town and Post,
Walaja Taluk, Vellore District.

2. Devan

Respondents

Second Appeal filed under Section 100 of CPC against the
Judgment and Decree dated 18.2.2021 passed in A.S.No.50 of 2017



on the file of the II Additional District Judge, Vellore @ Ranipet reversing the Judgment and decree dated 20.7.2016 passed in O.S.No.82 of 2014 on the file of the Subordinate Judge, Arakkonam.

For Appellants : Mr.A.Gouthaman

For R1 : Mr.M.K.Hidayathullah

JUDGMENT

Second defendant in the suit, who suffered a decree of specific performance passed by the first appellate court while reversing the finding of the Trial Court, is the appellant in the present Second Appeal.

2. The Second Appeal came to be admitted on 5.8.2021 on the following substantial questions of law:-

(i) Whether the Lower Appellate Court was right in granting an equitable remedy for Specific Performance, when it is well settled law that the relief of Specific performance of Contract is equitable remedy and discretionary remedy of Court passing it, the relief shall have not been granted to a person who came to Court with unclean hands?

(ii) Whether the Lower Appellate Court was right in granting a relief of Specific Performance of Contract, when it is well settled proposition of Law that the plaintiff who sought a relief of Specific



performance or contract, mandatorily has to prove his readiness and willingness from the date of Agreement till execution of Sale Deed irrespective of time fixed for performance in the Agreement of Sale?

(iii) Whether the Lower Appellate Court is right to granting a relief of Specific Performance ignoring Law that as per Section 20 of the Specific Relief Act, the Court is not bound to grant such relief merely because it is lawful to do so?

3. The case of the first respondent/plaintiff, in brief, is as under:-

i) The schedule property is belonged to the 1st defendant.

An agreement of sale was entered on 18.07.2005 between the plaintiff and the first defendant in respect of the the suit property for a sale consideration of Rs.2,06,125/- on receipt of an advance amount of Rs.15,000/- by the first defendant with an arrangement that the plaintiff had to pay the balance amount of Rs.1,91,125/- within three months from the date of Sale agreement. Time was not made as essence of the contract. The father of the 1st defendant, namely Subramania Reddy was also one of the attestors to the sale agreement.

ii) Subsequently, the 1st defendant's father received a sum of



Rs.35,000/- from the plaintiff on 13.08.2005 and another sum of Rs.10,000/- on 27.8.2005 towards part of sale consideration by affixing his Left Thumb impression on the verso of the said agreement of sale on behalf of the first defendant and thus, the plaintiff has totally paid Rs.60,000/- to the first defendant.

iii) The plaintiff was ready and willing to pay the balance sale consideration and get the sale deed executed in his name, but the first defendant was protracting the same with ulterior motives. Ultimately, on 29.05.2006, the plaintiff came to know that the first defendant has created a false and vexatious sale deed dated 9.5.2006 in respect of the suit properties in favour of the 2nd defendant colluding with him to defraud the plaintiff.

iv) The plaintiff obtained a certified copy of the sale deed dated 9.5.2006 alleged to have been executed by the first defendant in favour of the second defendant and found that it was executed for a low price of Rs.1,70,000/-.

v) Having aggrieved over the same, the plaintiff had issued a legal notice on 03.06.2006 to the defendants demanding them to execute a registered sale deed as per the suit sale agreement in favour of the plaintiff. The defendants, though received the notice, they did



not send any reply to the plaintiff and thereby the plaintiff has come up with the suit.

4. A written statement was filed by the first defendant, which was adopted by the second defendant, contending as under:-

i) The allegation that the first defendant had entered into a Sale agreement on 18.07.2005 is false. The first defendant's father did not receive any amount from the plaintiff and even if any amount was received by the first defendant's father with regard to the alleged sale agreement, it will not be binding on the first defendant.

ii) The suit is bad for non-joinder of necessary party as the father of the first defendant was not added as party to the suit.

iii) There is no necessity for the first defendant to sell the suit property to the plaintiff for a lower price and the first defendant did not execute the sale agreement dated 18.07.2005 and it is a rank forgery.

iv) Neither the first defendant nor his father had received any amount as alleged by the plaintiff.

v) The first defendant had sold the suit property to the second defendant for a valid sale consideration through a registered sale deed dated 09.05.2006 and delivered possession of the property to him and



ever since the second defendant is in peaceful possession and enjoyment of the same as the absolute owner of the suit properties.

vi) The first defendant has not received any notice from the plaintiff. Only on the advice of first defendant, the second defendant did not issue any reply to the notice received by him. Only in order to get unlawful enrichment, the plaintiff has created a forged sale agreement and thus, the suit liable to be dismissed.

5. During the trial, on the side of the plaintiff, three witnesses were examined as P.Ws.1 to 3 and seven documents were marked as Exs. to A7 while the second defendant had examined himself as DW1 and marked two documents as Exs.B1 and B2.

6. On analysing the oral and documentary evidence adduced by both sides, the Trial Court dismissed the suit holding that the plaintiff has failed to prove his case for grant of the equitable relief of specific performance.

7. However, in the Appeal Suit filed by the plaintiff, the first appellate court had set aside the judgment and decree passed by the



Trial Court and decreed the suit granting the relief of specific performance. Aggrieved against the same, the second defendant, the subsequent purchaser of the suit property from the first defendant, has come up with the present Second Appeal.

8. The crux of the submission made by Mr.A.Gouthaman, learned counsel appearing for the appellants/legal representatives of the second defendant is as under:-

i) The plaintiff had claimed the relief of specific performance based on an unregistered agreement of sale, which is also a created one and the burden to prove its genuineness is heavily on the plaintiff, especially, when the defendants have denied its execution and the advance sale consideration alleged to have been received by the first defendant and his father, however, he has failed to discharge such burden. The father of the first defendant, having no right or title to the suit property, is not the proper person to acknowledge any payment on behalf of the first defendant and thus, the acknowledgment, if at presumed to be true, is not binding upon the first defendant, being the true owner of the suit property. This has been rightly appreciated by the Trial Court while dismissing the suit, however, the first appellate



court erred in decreeing the suit.

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ii) There are many material contradictions insofar as the alleged agreement of sale, Ex.A1 and the endorsements therein, A6 and A7 are concerned to arrive at a conclusion that they are forged and created ones, which have been rightly taken into consideration by the Trial Court to disbelieve the case of the plaintiff, however, the same have been simply ignored by the first appellate court and thereby a grave error has been committed by the appellate court in shifting the burden on the defendants to disprove the case of the plaintiff when the documents relied on by the plaintiff are surrounded by suspicion.

iii) The first appellate court has also failed to note that the plaintiff has come to court with unclean hands and thereby he is not entitled to the relief of specific performance.

iv) The first appellate court has erred in ignoring the settled law that the plaintiff, who sought for the equitable relief of specific performance, has to prove his readiness and willingness to perform his part of the contract from the date of contract as contemplated under Section 16(c) of the Specific Relief Act and the conduct of the plaintiff throughout should be taken note of to decide the genuineness of the claim and the bona fides of the plaintiff.



v) The agreement of sale alleged to have been entered by the plaintiff with the first defendant being an unregistered one, the encumbrance certificate showed nil encumbrance in respect of the suit property and thereby, the appellant/second defendant, having purchased the suit property for a valid consideration after verifying the encumbrance certificate and satisfied that it has no encumbrance, is a bona fide purchaser, however, the first appellate court failed to consider the same and decreed the suit in favour of the plaintiff causing injustice to the second defendant holding that he is in collusion with the first defendant and thereby the first appellate court erred in exercising the discretion under Section 20 of the Specific Relief Act in its proper perspective and proceeding to grant decree of specific performance in favour of the plaintiff enforcing the same against the subsequent purchaser, especially, when the plaintiff has not even sought for cancellation of the sale deed executed by the first defendant in favour of the second defendant.

9. In support of his contentions, the learned counsel for the appellants relies on the following decisions:-

i) ***Shenbagam and others vs. K.K.Rathinavel*** (2022 SCC OnLine SC



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ii) **Mehboob-Ur-Rehman (Dead) through L.Rs. vs. Ahsanul Ghani**

((2019) 195 SCC 415)

iii) **B.Vijaya Bharathi vs. P.Savitri and others** (2017 SCC OnLine SC 938)

iv) **Farooque Dadabhoy vs. Usha S.Bhat** (2014(4) CTC 290)

v) **V.Ayyappan vs. G.R.Thiagasundara Mudaliar** (2023(3) CTC 525)

vi) **D.R.Rathna Murthy vs. Ramappa** ((2011) 1 SCC 158)

vii) **Padmakumari and others vs. Dasayyan and others** ((2015) 8 SCC 695)

viii) **P.Jaswant Kumar vs. M.Rajashekar** ((2013) 7 MLJ 688).

10. The submission of Mr.M.K.Hidayathullah, learned counsel for the first respondent/plaintiff, in brief, is as under:-

i) The plaintiff has proved the execution of Ex.A1 and its genuineness by adducing oral and documentary evidence. Though there are certain alterations in the documents, they will not totally falsify the case of the plaintiff and the first appellate court, after thoroughly analysing the factual aspects and re-appreciating the oral



and documentary evidence had set aside the judgment and decree of the Trial Court and decreed the suit, which needs no interference.

ii) The plaintiff had clearly averred about his readiness and willingness to perform his part of the contract and he had also sent legal notice to the defendants, however, they have not chosen to reply the same, which would go to show that the plaintiff was ready and willing to perform his part of the contract, but, it was only the defendants, who were protracting the execution of the sale deed. Merely because there was some delay in filing the suit, it cannot be inferred against the plaintiff if the suit was filed within the period of limitation and the entire attending circumstances of each case have to be considered to determine the readiness and willingness.

iii) The proper person to deny the execution of the agreement of sale being the first defendant and the the proper person to deny receipt of further amounts being the father of the first defendant, their non-examination on the side of the defendants is fatal to their case leading to draw an adverse inference against them.

iv) The agreement of sale having been entered between the plaintiff and the first defendant for a sale consideration of Rs.2,06,125/-, the sale deed executed by the first defendant in favour



of the second defendant for a lesser price of Rs.1,70,000/- would establish the intention of the first defendant to defraud and thwart the claim of the plaintiff and therefore, the appellate court had rightly granted the restitutionary relief in favour of the plaintiff.

v) Only analysing those aspects, the first appellate court had set aside the judgment and decree of the Trial Court and decreed the suit and thereby, it needs no interference by this court and the Second Appeal is liable to be dismissed.

11. The learned counsel for the first respondent/plaintiff relied upon the following decisions in support of his contentions:-

- i) ***R.Lakshmi Kanthan vs. Devaraj*** (2019 (8) SCC 62)
- ii) ***Vijay A.Mittal & others vs. Kulwant Rai (Dead) through LRs and another*** (2019 (3) SCC 520)
- iii) ***Ravi Setia vs. Madan Lal and others*** (2019 (9) SCC 381)

12. The issue to be resolved in the present Second Appeal is as to whether the first appellate court is justified in granting the relief of specific performance to the plaintiff when the Trial Court has held that the plaintiff has not proved his case.



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13. The relief sought for by the plaintiff in the case being one of specific performance, a few basic things need to be proved viz., execution of the agreement of sale, payment of consideration thereof, readiness and willingness of the parties thereof, etc.

14. A perusal of the judgments of the courts below and the oral and documentary evidence adduced by the parties would disclose that the plaintiff has approached the court seeking the relief based on an unregistered agreement of sale, Ex.A1 entered by him with the first defendant by making an advance amount of Rs.15,000/- and the endorsements made on the same under Exs.A6 and A7 towards further advance amounts of Rs.35,000/- and Rs.10,000/-, alleged to have been received by the father of the first defendant on behalf of the first defendant, however, the execution and receipt of the amounts have been totally denied by the first defendant in the written statement filed by him. When the execution of the agreement of sale itself has been denied in toto by the first defendant, the foremost question that requires an answer is whether the plaintiff has proved the genuineness and execution of the documents relied on by him to substantiate his



claim so as to shift the burden on the first defendant to prove his case of fabrication of the documents. In search of an answer for this question, if we traverse through the oral and documentary evidence, it could be seen that there are many ambiguities.

15. The agreement of sale being an unregistered one, the burden to prove its execution heavily lies on the plaintiff. Further, it is found that the name of the executant of Exs.A6 and A7 endorsements made on Ex.A1 agreement of sale was originally written as the first defendant and it was subsequently altered to one of his father. Such material alterations would go to the root of the case, however, the plaintiff has not bothered to explain the same, especially, when it is the stand of the plaintiff that such endorsements and the transactions thereof were entered on different dates viz., on 13.8.2005 and 27.8.2005. The evidence of one of the attestors to Ex.A1 viz., Venkatesan, PW3 is with much contradictions with regard to time fixed in Ex.A1 for execution of the sale deed. When it is stated therein as three months, the witness says that it is one year and thereby the trustworthiness of the witness is very much doubtful. Further, the scribe of the agreement of sale, Ex.A1 is stated to be one Sampath



Narasimhan, however, the plaintiff has not chosen to examine the scribe to prove the execution of the unregistered agreement of sale, Ex.A1.

16. The defendants deny not only execution of the document, Ex.A1, but, also receipt of advance payments alleged to have been made thereof. When receipt of advance amount of Rs.15,000/- specified in the agreement of sale, Ex.A1 itself has been denied by the first defendant, the plaintiff has chosen to contend that further sums of Rs.35,000/- and Rs.10,000/- have been received on different dates by the father of the first defendant on behalf of the first defendant, however, the plaintiff has not proved as to whether such payments have reached the first defendant and he had accepted such amounts towards further advance sale consideration so as to make him liable to execute the sale deed.

17. Coming to the endorsements made on Ex.A1 is concerned, though the father of the plaintiff viz., Arjunan, who is said to have written the first endorsement, Ex.A6 regarding the payment of Rs.35,000/- has been examined as PW2, one Saraswathi, who is said



to have written the second endorsement, Ex.A7 regarding the payment of Rs.10,000/-, has not been examined as a witness to prove the case of the plaintiff, especially when the material alteration found in Ex.A7 has been a replica of the one found in Ex.A6. These aspects have been rightly observed by the Trial Court to draw an adverse inference against the plaintiff to come to a conclusion that the plaintiff has not proved Exs.A1, A6 and A7 to claim the equitable relief of specific performance.

18. With regard to readiness and willingness, the plaintiff has not proved with substantiating materials that he was always ready and willing to perform his part of the contract, except issuing a legal notice, Ex.A3, that too after more than a year from the date of agreement of sale. In this regard, the learned counsel for the respondent/plaintiff had relied on the decision of the Apex Court in **R.Lakshmi Kanthan vs. Devaraj** (2019 (8) SCC 62), wherein it has been held that merely from the delay in filing of suit after accrual of cause of action, it cannot be inferred against the plaintiff that he was not ready and willing to perform his part, if the suit was filed within the period of limitation. However, the Apex Court has held in **Ravi Setia vs. Madan Lal and**



others (2019 (9) SCC 381) that merely because a suit is filed within the prescribed period of limitation, it does not absolve the plaintiff from showing as to whether he was ready and willing to perform his part of agreement.

19. Of course, in the case on hand, the agreement of sale, Ex.A1 was alleged to have been entered on 18.7.2005 and the suit was filed in the year 2006 after issuing the legal notice, Ex.A2 on 9.5.2006, well within the period of limitation. However, the plaintiff cannot be said to have proved that he was always ready and willing to perform his part of the contract throughout from the date of agreement of sale, merely on the sole ground that he had approached the court within the period of limitation unless he proves his readiness and willingness by his conduct. In this regard, this court feels that it would be appropriate to note that the Apex Court in **Shenbagam and others vs. K.K.Rathinavel** (2022 SCC OnLine SC 71) has held that in a suit for specific performance, the plaintiff must allege and prove a continuous readiness and willingness to perform the contract on his part from the date of the contract and the onus is on the plaintiff and even in the absence of specific plea by the opposite party, it is the mandate of the



statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit.

20. On the aspect of readiness and willingness, this court in ***Farooque Dadabhoy vs. Usha S.Bhat*** (2014(4) CTC 290) has held that since remedy of specific performance is discretionary one on equitable grounds, the plaintiff has to produce materials with respect to his readiness and willingness at all point of time.

21. In the case on hand, the plaintiff has not proved with any solitary evidence that he had approached the first defendant seeking execution of sale deed except issuing the legal notice, Ex.A3. It is further relevant to note that the plaintiff was able to prove service of such notice only to the second defendant, who is a subsequent purchaser, by producing the acknowledgment card, Ex.P4. Therefore, it has to be inferred that virtually, the plaintiff has never expressed his readiness and willingness to the first defendant. Analysing all these



aspects, the Trial Court has rightly dismissed the suit declining to grant the relief of specific performance, however, the first appellate court, brushing aside all such vital aspects, has allowed the appeal and thereby decreed the suit.

22. It is also relevant to note that the first appellate court had proceeded to grant the decree of specific performance without considering the third party right created upon execution of the sale deed, Ex.B1 by the first defendant in favour of the second defendant. On this aspect, the learned counsel for the first respondent/plaintiff relied on the decision in ***Vijay A.Mittal & others vs. Kulwant Rai (Dead) through LRs and another*** (2019 (3) SCC 520), wherein it has been held that the proper form of decree is to direct specific performance of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee. Relying upon the above decision, the learned counsel for the first respondent/plaintiff would submit that the court has every power to grant a decree of specific performance by way of restitutionary relief.



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23. To obtain a decree of specific performance by way of restitutionary relief, the plaintiff is bound to seek the relief of cancellation of the subsequent sale deed executed by the first defendant in favour of the second defendant and it is not an automatic one. This aspect has been clarified in the decision in **B.Vijaya Bharathi vs. P.Savitri and others** (2017 SCC OnLine SC 938), wherein it has been held as under:-

"It must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by Defendant No. 1 to Defendant No.2, and thereafter by Defendant No.2 to Defendant No.3 are set aside, no decree for specific performance could possibly follow."

24. The right of the subsequent purchaser, who purchased the property in good faith, has been protected by the Apex Court in the decision in **Padmakumari and others vs. Dasayyan and others**



((2015) 8 SCC 695). The relevant portion of the decision is extracted hereunder for ready reference:-

"23. *The last contention urged is whether Defendants 12 to 15 (the appellants herein) are protected under Section 19(b) of the Specific Relief Act as they being the bona fide purchasers. The learned counsel for Defendants 12 to 15 has rightly invited our attention that the non-compliance with the contract regarding payment of balance consideration to Defendants 1 to 11 on the part of the plaintiff within nine months is an undisputed fact and further the agreement of sale is not registered, as is evidenced from the encumbrance certificate obtained by Defendants 12 to 15 before they entered into an agreement (Ext. B-1). Both the courts below have erroneously recorded an erroneous finding on the non-existent fact holding that the agreement of sale in favour of the plaintiff is a registered document which, in fact, is not true. The same is evidenced from the encumbrance certificate. More so, Defendants 12 to 15 before entering into the agreement with Defendants*



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1 to 11 have made proper verification from the competent authority to purchase the part of the suit scheduled property and got the agreement of sale (Ext. B-1) executed in their favour, from Defendants 1 to 11 and thereafter, they got the sale deed registered by paying sale consideration amount. As could be seen from the agreement of sale and registered sale deed, which is marked as Ext. B-3, it is very clear that Defendants 12 to 15 have paid the sale consideration amount of the property, therefore, the reliance placed upon Section 19(b) of the Specific Relief Act as they being the bona fide purchasers, the specific performance of contract cannot be enforced against the transferees. Defendants 12 to 15 being the transferees as they have purchased the suit scheduled property for value and have paid the money in good faith and without notice of the original contract.

24. *In view of the aforesaid facts, the purchase of the suit scheduled property by Defendants 12 to 15 for a valuable consideration is established by the above*



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defendants by adducing evidence on their behalf before the trial court. Both the courts below have omitted to consider this important piece of pleadings as also the material evidence on record thereby the concurrent finding recorded on the contentious issues has been rendered erroneous in law and is liable to be set aside. Accordingly, we answer the said issues in favour of Defendants 12 to 15."

25. In the case on hand, it is seen that the agreement of sale, Ex.A1 being an unregistered one, the appellant/second defendant, could not have knowledge about the same from the encumbrance certificate and thereby, this court does not find any reason to suspect the bona fide of the appellant, the subsequent purchaser and as a consequence, this court is of the view that specific performance cannot be enforced against him and he is entitled to protection under Section 19(b) of the Specific Relief Act.

26. In view of the foregoing discussion, all the three substantial questions of law are answered in favour of the appellant.



Consequently, this court is of the view that the judgment and decree rendered by the first appellate court is liable to be set aside and the judgment and decree of the Trial Court is liable to be restored.

27. In the result, the Second Appeal is allowed, setting aside the judgment and decree rendered by the first appellate court and restoring the judgment and decree of the Trial Court and as a consequence, the suit is dismissed. No costs. The connected Miscellaneous Petition is closed.

08.12.2023.

Index: Yes.
Internet: Yes.
ssk.

To

1. II Additional District Judge,
Vellore,
Ranipet.
2. Subordinate Judge,
Arakkonam.



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A.D.JAGADISH CHANDIRA, J.

Ssk.

P.D. JUDGMENT IN
S.A.No.531 of 2021

Delivered on
08.12.2023.