



S.A.No.687 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.687 of 2021

and

C.M.P.No.13827 of 2021

N.Indira

... Appellant

Vs.

1. M.Srinivasan

2. Minor.Sneha

3. Minor.Tharun

4. Manjula

5. The Executive Engineer,

Hosur Town, Tamil Nadu Housing Board,

Krishnagiri District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 25.02.2021 in A.S.No.36 of 2018 passed by the learned Additional Subordinate Judge, Dharmapuri, reversing the judgment and decree dated 29.06.2017 made in O.S.No.82 of 2013 by the learned District Munsif, Dharmapuri.

For appellant

: M/s.V.Sakkarapani

J.Thilagavathy

For respondents

For R1 to R4

: Mr.N.Manoharan

For R5

: No appearance



JUDGMENT

The unsuccessful plaintiff in a suit in O.S.No.82 of 2013 on the file of the District Munsif Court, Dharmapuri, whose suit for permanent injunction was decreed by learned District Munsif, Dharmapuri and reversed in an appeal in A.S.No.36 of 2018 by the learned Additional Subordinate Judge, Dharmapuri, is the appellant before this Court.

2. The brief facts which have culminated into the filing of the above second appeal are set out hereinbelow with the parties referred to in the same litigative status as before the Trial Court.

FACTS OF THE CASE:

2.1. It is the case of the plaintiff that the suit property belongs to the 5th defendant, the Tamil Nadu Housing Board, Hosur Unit. The 5th defendant had allotted the property to the first defendant. The first defendant had agreed to sell the suit property to the plaintiff and a sale agreement dated 13.10.2008 was entered into between the plaintiff



and the defendants.

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2.2. Under the said sale agreement, the first defendant had agreed and offered to sell the suit property for a total consideration of Rs.13,00,000/- and an advance amount of Rs.8,00,000/- was paid and the balance amount was payable under 51 monthly instalments of Rs.9641/- per month to the fifth defendant towards the instalments due to the 5th defendant. It was agreed that on the completion of the above said payment, the 1st defendant would execute the sale deed in favour of the plaintiff.

2.3. The plaintiff had been put in possession of the suit property pursuant to the sale agreement dated 13.10.2008 and she had made improvements in the suit property and was paying all the taxes in respect of the same. It is the further case of the plaintiff that she had paid the instalments from 07.05.2008 to 20.07.2012 to the tune of a sum of Rs.4,18,524/- to the fifth defendant with the knowledge of the



defendants 1 to 4. Therefore, as per the agreement of sale, the plaintiff was due to pay a balance of Rs.81,476/- to the defendant, which amount the plaintiff is ready and willing to pay and have the sale deed executed.

2.4. The plaintiff would further submit that she had approached the defendants 1 to 4 several times to pay the balance sale consideration and execute the sale deed. However, every time when the plaintiff had approached the defendants 1 to 4, they denied to perform their part of contract and tried to create encumbrance over the suit property. Therefore, she had issued a legal notice dated 04.10.2012 calling upon the defendants 1 to 4 to receive the balance sale consideration and execute the sale deed. The defendants 1 to 4 who received notice, have not come forward to perform their part of contract. Similarly, the 5th defendant has not sent any reply to the notice. The plaintiff is the second wife of the first defendant. The second defendant is the first wife and defendants 3 and 4 are the son



and daughter of the defendants 1 and 2.

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2.5. The plaintiff apprehends that once the sale deed is executed in favour of the first defendant by the fifth defendant then, they would rush to alienate the suit property in favour of a 3rd party. Therefore, the plaintiff has come forward with the suit for permanent injunction against the defendants.

2.6. The first defendant has filed a written statement which was adopted by the defendants 3 and 4. The defendants had denied the allegations contained in the plaint. It is the case of the defendants that the first defendant had neither executed a sale agreement dated 13.10.2008 in favour of the plaintiff nor received the advance amount of Rs.8,00,000/- from the plaintiff. The defendants would submit that there was no cause of action for filing this suit and the suit is liable to be dismissed.



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2.7. The fifth defendant had filed a written statement denying the allegations contained in the plaint. The defendants would admit the fact that the suit property belonged to the fifth defendant which had been allotted to the first defendant by the fifth defendant on 19.03.2013 for a sum of Rs.9,13,900/- with a condition that a part of the amount would be paid as advance within 11.04.2008 and the remaining amount would be paid in instalments. Accordingly, the first defendant has paid a sum of Rs.2,87,050/- till 19.03.2013. The fifth defendant would submit that once the entire payment is made, the fifth defendant would execute the sale deed in favour of the first defendant.

TRIAL COURT:

3. The learned District Munsif, Dharmapuri, has framed the issues and additional issues for consideration and has ultimately, decreed the suit.



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LOWER APPELLATE COURT:

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4. Challenging the said judgment and decree, the defendants 1, 3 and 4 have filed an appeal in A.S.No.36 of 2018 on the file of the Court of the Additional Subordinate Judge, Dharmapuri.

5. The learned Judge, on considering the evidence on record, held that the plaintiff has not filed a suit for specific performance and had only sought for the relief of permanent injunction to protect her possession of the suit property.

6. The claim was made on the basis of the sale agreement dated 13.10.2008 which was marked as Ex.A1, which, admittedly is an unregistered document. Though the plaintiff claims that she was put in possession of the property under this agreement of sale and claims the benefit of Section 53-A of the Transfer of Property Act, the agreement of sale has not been registered.



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7. The learned Judge has considered the provisions of Section 53-A of the Transfer of Property Act and also taken note of the provisions of Section 17(1A) of the Registration Act, which has been amended vide Amendment Act, 2001, which clearly states that it was mandatory that all the documents containing a contract to transfer the consideration of any immovable property for the purpose of Section 53-A of the Transfer of Property Act, shall be registered and if documents are not registered, they would have no effect for the purpose of the said Section 53-A of the Transfer of Property Act.

8. Therefore, the lower Appellate Court had clearly held that the plaintiff cannot claim injunction on the basis of the unregistered sale agreement. Further, the lower Appellate Court has also observed that the plaintiff had filed a petition under Order II Rule 2 of C.P.C. to subsequently file a suit for specific performance which was allowed, but, she has not taken any step whatsoever in this regard and this would clearly show that the plaintiff is neither ready nor willing to



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perform her part of the contract. On these two grounds, the first appeal was allowed and the judgment and decree of the Trial Court was set aside.

9. Challenging the same, the plaintiff is before this Court.

10. Heard the learned counsel on either side.

DISCUSSION:

11. The appeal lies within a very narrow compass, whether the plaintiff can seek to have her possession protected on the basis of an unregistered document. Considering the provisions of Section 17(1A) of the Registration Act and Section 53-A of the Transfer of Property Act and the fact that the plaintiff has come to the Court seeking to protect her possession on the basis of the unregistered document, this document cannot be received as evidence in the light of the judgment



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of the Hon'ble Supreme Court in the case of the **Balram Singh vs Kelo Devi** reported in **2022 LiveLaw (SC) 800**. In this judgment, it was held that the plaintiff cannot get the relief of permanent injunction on the basis of an unregistered document/sale agreement. The lower Appellate Court has rightly allowed the appeal and I see no reason to differ with this finding of the Lower Appellate Court. The plaintiff has not made out a question of law and further the Lower Appellate Court has rightly allowed the appeal on a question of land.

Accordingly, the second appeal stands dismissed. Consequently, the connected C.M.P. stands closed. However, there shall be no order as to costs.

01.12.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The District Munsif, Dharmapuri.
2. The Additional Sub Judge, Dharmapuri.

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3.The Section Officer,
V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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