



S.A.No.116 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2023

CORAM

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

S.A.No.116 of 2021
and C.M.P.No.2452 of 2021

1.A.Soundararajan
2.Kamalam

...Appellants

Vs.

1.S.Kamala
Dhanapal(died)
2.Dineshkumar
Ravi(died)
3.R.Sangeetha
4.J.Shopa
5.T.Thiyagarajan
6.Indhirani
7.R.Bhuvaneswari
8.Minor Vibuna
9.Minor Kiruthika
(respondents 8 and 9 are minors and represented
by their natural friend/mother R.Bhuvaneswari)

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.07.2020 passed in AS.No.54 of 2019 on the file of the Principal District Judge, Salem confirming the judgment and decree dated 28.02.2019 passed in OS.No.17 of 2010 on the file of the Subordinate Judge, Attur.

For Appellants : Mr.M.Senthilkumar



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For Respondents : Mr.K.S.Vishwanathan,
Senior Counsel
for Mr.Ali Hassan Khan

JUDGMENT

This second appeal is directed as against the judgment and decree dated 24.07.2020 passed in AS.No.54 of 2019 on the file of the Principal District Judge, Salem confirming the judgment and decree dated 28.02.2019 passed in OS.No.17 of 2010 on the file of the Subordinate Judge, Attur, thereby dismissed the suit for specific performance.

2. The appellants are the plaintiffs and the respondents are the defendants. The case of the appellants is that the suit property belongs to the respondents by ancestrally. They had approached the appellants offering to sell the suit property. The appellants also agreed to purchase the suit property and entered into an agreement for sale on 30.08.1996 and the same was registered vide document No.926 of 1996. The first and second defendants extended the sale agreement for themselves and for defendants 3 to 6 who were away from them at the time of agreement extensions. On the date of the agreement itself, the possession of the suit property was delivered to the appellants herein. As per the agreement for sale, the appellants agreed to purchase the suit properties for a total sale



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consideration of Rs.1,43,000/- and they had paid a sum of Rs.10,000/- as an advance on the date of agreement for sale. The remaining amount to be paid on or before Tamil month Aani 30th of Tamil year Easwara. Thereafter the plaintiffs are in possession and enjoyment of the suit schedule property and they cultivated all crops. Though the appellants approached the defendants several times and requested to execute the sale deed after receipt of balance sale consideration, they requested to pay a part of the remaining sale consideration on 28.09.1998. On the same day, they also paid a sum of Rs.1,05,000/- and after extending the sale agreement without specifying the date for registration of sale deed. Again on 30.08.2001, the respondents extended the agreement time after receipt of another part of sale consideration of Rs.10,000/-. However, on 09.12.2002, the person who received the advance amount i.e. one, Sekar expired.

2.1 After demise of the said Sekar, the appellants brought the agreement to the first defendant as legal heir to the said demised Sekar. She also agreed and came forward for registration of the sale deed. Because of quarrel in between the second defendant and his wife, the second defendant was unable to come to Registrar Office to register the sale deed. Again on 25.07.2004, the sale agreement was extended after receipt of Rs.5,000/- and



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again extended on 23.06.2007 on receipt of another Rs.5,000/- as part of the sale agreement amount. Even then, the defendants failed to perform their part of contract. While being so, the respondents also attempted to trespass into the suit property. Therefore, the appellants filed suit for specific performance and also permanent injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the suit schedule properties. Hence, the suit.

3. Resisting the same, the defendants filed written statement stating that the said Sekar never approached the appellants for offering to sell the suit properties. No agreement for sale was reduced into writing on 30.08.1996. On the date of agreement, no possession of any suit property was handed over to the appellants herein. They never delivered the possession of the suit property in favour of the appellants. The subsequent extension of time was also not endorsed by the defendants. The entire agreement for sale and the subsequent endorsements are nothing but fabricated one. As such, they prayed for dismissal of the suit.

4. On the basis of the pleadings, the trial court framed the following issues.



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(a) Whether the plaintiffs are entitled to get the relief of specific performance?

(b) Whether the plaintiffs are entitled to get the relief of permanent injunctions?

(c) Whether the plaintiffs are entitled to get the reliefs as prayed for in the plaint?

(d) To what relief?

5. In support of the plaintiffs' case, P.W.1 to P.W.6 were examined and eight documents were marked as Ex.A.1 to Ex.A.8. On the side of the defendants, D.W.1 was examined and Ex.B.1 was marked. 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 for specific performance and directed the respondents to refund the advance amount of Rs.1,35,000/- with interest at the rate of 9% from the date of the plaint till the date of the decree and 6% interest from the date of the decree till realisation of the entire amount with cost. Aggrieved by the same, the appellants preferred appeal suit in AS.No.54 of 2019 on the file of the Principal District Judge, Salem and the same was dismissed and confirmed the judgment and decree passed by the trial court, against which the plaintiffs have come forward with the present second appeal.



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The learned counsel for the appellants raised the following substantial questions of law:

a) Whether or not the lower courts right in holding that the plaintiffs were not ready and willing to perform their part of contract, especially when the plaintiffs had paid a major portion of the sale consideration to the defendants as per the recitals under Ex.A1, Ex.A5 to Ex.A8 and they issued the legal notice under Ex.A2 within the time fixed for performance of the agreement?

b) Whether are not the lower courts right in declining to grant the relief of specific performance on the ground of mere delay and equity, ignoring that the defendants had mutually agreed for the extensions of time and made endorsements Ex.A5 to Ex.A8 and received major portion of the sale consideration?

c) Whether the lower appellate court right in dismissing IA.No.1/2020 filed under Order 41 Rule 27 of CPC to receive additional evidence viz., the possession certificate issued by the Tahsildar Office ignoring that the said document is a public document and came into existence only during the pendency of the appeal?



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d) Whether the lower courts right in declining to grant a decree for permanent injunction especially when the plaintiffs are in possession and enjoyment of the suit property and the defendants are living far away from the suit property?

e) Whether the lower courts right in declining to grant a decree for specific performance, ignoring that the possession of the plaintiffs is well protected as per Section 52A of the transfer of property Act?

6.1 The learned counsel appearing for the appellants submitted that both the courts below held that Ex.A1 is valid and executed by the respondents for the purpose of selling the suit property, but without any reason refused to decree the suit for specific performance. Subsequent endorsements were made thereon which were marked as Ex.A5 to Ex.A8. It was proved by the appellants in the manner known to law. It is not the case of the respondents that the said agreement for sale was executed only for security purpose while borrowing the loan. As per the subsequent endorsements which were marked as Ex.A5 to Ex.A8, the suit is well within the time and it is not barred by any limitation. After the subsequent endorsements i.e.Ex.A5 to Ex.A8, the suit was filed within a period of three



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years from the date of the last endorsement. Hence, the suit is not barred by limitation. He further submitted that when the courts below believed that the respondents received Rs.1,35,000/- and ordered to refund the same, the courts below ought to have decreed the suit for specific performance since the appellants proved their readiness and willingness in order to perform their part of contract.

6.2 He further submitted that the Thasildar from Attur had issued the certificate which stated that the appellants are in possession and enjoyment of the suit property. Based on the report of the Village Administrative Officer and Revenue Inspector, the above document was marked by the appellants before the court below, which was rejected. The above document is a public document and the same was issued by the Public Officer. There was no reason assigned for rejecting the above document by the court below. Further, after registering the sale agreement, the respondents were threatened by the appellants and they are trying to evict them from the suit property. Hence, the appellants lodged a complaint before the Thalaivasal Police Station requesting to take action against the respondents, which clearly shows the motive of the respondents to not execute sale deed in favour of the appellants. The learned counsel for the



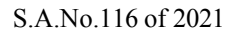
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appellants also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***P.Ramasubbamma Vs. V.Vijayalakshmi & others*** reported in ***(2022) 7 SCC 384***.

7. Heard, Mr.M.Senthilkumar, learned counsel appearing for the appellants and Mr.K.S.Vishwanathan, learned Senior Counsel appearing for the respondents.

8. This Court considered the rival submissions made by the learned counsel on either side.

9. On perusal of records, revealed that the appellants filed suit for specific performance on the strength of the agreement for sale dated 30.08.1996. According to the plaintiffs, though no specific time was mentioned in the agreement, subsequently, period of time was extended by subsequent endorsements in the agreement for sale, which were marked as Ex.A5 to Ex.A8. The suit was filed in the year 2010. However, the respondents denied the very execution of the agreement for sale and subsequent endorsements. The first endorsement was made on 28.09.1998, second endorsement was made on 30.08.2001 and the third endorsement



10. As per Section 24 of Limitation Act, 1963, the calculation of time for limitation should be made in all instrument as per Gregorian calendar. The English calendar was derived from the Gregorian calendar. Therefore, the date of English calendar have to be necessarily mentioned in the agreement for sale. However in the Ex.A1, they mentioned only Tamil year, month and date. They failed to state the date of the English calendar. As per Article 54 of the Limitation Act, 1963, the period of limitation is



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three years from the date of performance fixed, or, if no such date is fixed when the plaintiff has notice that performance is refused. In the case on hand, the cut off date is not property mentioned in Ex.A1. The time for performance was extended several times by making several endorsements. The suit was filed in the year 2010 i.e. after the period of four years from the date of agreement for sale i.e. 30.08.1996. As such, the appellants are not entitled to the relief of specific performance on the basis of Ex.A1 and the courts below rightly directed the respondents to refund the advance amount which was received with interest. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons and concluded rightly. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal. Be that as it may. All the substantial questions of law raised in this Second Appeal, are answered in favour of the respondents/defendants.

11. Accordingly, this Second Appeal is dismissed and the judgment and decree dated 24.07.2020 passed in AS.No.54 of 2019 on the file of the Principal District Judge, Salem confirming the judgment and decree dated



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28.02.2019 passed in OS.No.17 of 2010 on the file of the Subordinate

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Judge, Attur are confirmed. Consequently, connected miscellaneous petition

is closed. There shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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To

- 1.The Principal District Judge,
Salem
- 2.The Subordinate Judge,
Attur.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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