



S.A.No.1074 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1074 of 2022
and C.M.P.No.23155 of 2022

V.Govindaraj

.. Appellant

Vs.

Muthammal (Died)

1. C.Sampath

2. P.Vijayan

Murugesan (Died)

3. Amsa

4. Subathirai

5. Chakravarthy

6. Malar

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree passed in Appeal Suit.No.13 of 2021 by his Hon'ble Principal Subordinate Judge at Vellore, Dated 28.06.2022 confirming the Judgment and Decree in O.S.No.608 of 2007 dated 05.09.2017 passed by the Principal District Munsif Judge at Vellore.

For Appellant : Mr.M.Udaya Bhanu

JUDGMENT

This second appeal has been filed as against the Judgment and Decree passed in Appeal Suit.No.13 of 2021 by the learned Principal Subordinate Judge at Vellore, Dated 28.06.2022 confirming the Judgment and Decree



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passed in O.S.No.608 of 2007 dated 05.09.2017 by the learned Principal District Munsif Judge at Vellore, thereby dismissing the suit filed by the appellant for specific performance.

2. The appellant is the plaintiff and the respondents since deceased and the respondents 1 and 2 are the defendants in the suit. The appellant filed a suit for specific performance. The case of the plaintiff is that the deceased first defendant agreed to sell the suit property for a total sale consideration of Rs.88,750/- and executed an agreement for sale dated 16.03.2007. The total sale consideration was fixed at Rs.88,750/- in which, a sum of Rs.83,750/- was received by the deceased first defendant. As per the terms of agreement, the parties should have performed their part of contract, within a period of three months from the date of agreement. Though, the plaintiff was ready and willing to pay the balance sale consideration, the deceased first defendant evaded to perform her contract. Hence, the appellant issued legal notice and filed a suit.

3. Resisting the same, the first deceased defendant filed a written statement stating that she had never agreed to sell her property for a total sale consideration of Rs.88,750/-. She was 86 years old illiterate, innocent and helpless lady. In fact, the plaintiff had assaulted her and forcibly obtained her



thumb impression in the blank papers. From the blank papers, the plaintiff created an agreement for sale to his convenience to grab the property. Already the plaintiff and his brothers had obtained a sale deed from the deceased first defendant for the property ad-measuring 75 cents by force and also by assaulting her.

4. The second and third defendants filed a written statement stating that the first defendant died intestate leaving behind her only brother as her legal heir. The fourth defendant is none other than the paternal uncle of the plaintiff with whom they are living as separate family in a house. The appellant and 4th defendant are collusive parties. No property was left by the deceased first defendant and as such any development of the legal right on her legal heirs does not arise. The third defendant is a bonafide purchaser for a valid sale consideration in respect of the suit schedule property.

5. The fourth defendant filed a separate written statement stating that the suit may be decreed in favour of the plaintiff. The property comprised in S.No.61/1C ad-measuring 1.15 acres and the property comprised in S.No.62/1A ad-measuring 2.40 acres, totally 3.55 acres belong to the deceased first defendant. She had consulted with the fourth defendant and executed a Will for the land ad-measuring 88 $\frac{3}{4}$ cents in favour of her brother's sons. Likewise, she



had also executed another Will for the land ad-measuring 88 $\frac{3}{4}$ cents in favour of the fourth defendant's son.

6. On the side of the plaintiff, he had examined P.Ws.1 to 5 and marked Exs.A1 to 33. On the side of the defendants, they had examined D.Ws. 1 and 2 and marked Exs.B1 to 4. On a perusal of oral and documentary evidences, the Trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal suit and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this Second Appeal.

7. The appellant raised the following substantial question of law:-

“1. Whether the Exhibits marked by the Appellant/Plaintiff are relevant to the case?”

8. The learned counsel for the appellant would submit that the agreement for sale dated 16.03.2007 executed by the deceased first defendant in favour of the appellant herein is enforceable as against her Power of Attorney Document Ex.A28 dated 22.06.2007 executed by the deceased first defendant in favour of the second defendant in collusion with her agent and also against the subsequent sale deed dated 02.08.2007 executed by the second defendant which



was marked as Ex.B2. As all those documents are invalid, the said sale deed is also invalid. The Agreement for sale was framed only by the fourth defendant in O.S.No.608 of 2008 and also admitted the due execution and passing of consideration by witnessing the entire transactions. Therefore, there are substantial questions of law to entertain this appeal.

9. A perusal of records revealed that the appellant had produced Exs.A1 to 33 to substantiate his contention and a joint Trial was ordered in O.S.No.608 of 2007 and 705 of 2008 and common judgment and decree has been passed. A perusal of Ex.A1 revealed that it is a Will dated 02.06.1956 and another Will which was marked as Ex.A19 dated 14.09.2006. Both were executed by the deceased first defendant in favour of the appellant and his family members pertaining to the suit property. A perusal of Ex.A20, agreement for sale executed by the deceased first defendant revealed that it did not even whisper about the Will executed by the deceased first defendant. The Will which was marked as Ex.A19 executed in respect of the property comprised in S.No.61/1C and 62/1A is true. The deceased first defendant filed a written statement stating that the suit agreement itself was obtained from her by coercion. Admittedly, Ex.A20 was not registered one and it would raise serious doubts upon the very execution of agreement for sale itself. Therefore, both the Courts below, rightly



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held that the appellant is not entitled for any specific performance on the basis of the agreement for sale and dismissed the suit. This was also confirmed by the first appellate Court. This Court finds no substantial questions of law involved in this second appeal and this second appeal is liable to be dismissed.

10. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

20.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The Principal Subordinate Judge at Vellore.
2. The Principal District Munsif Judge at Vellore.

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