



S.A.No.405 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.405 of 2017

Ramamani

...Appellant

Vs.

Sampath

...Respondent

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.10 of 2015, on the file of the Principal Subordinate Judge, Krishnagiri, dated 30.01.2017 in setting aside the judgment and decree in O.S.No.357 of 2008, on the file of the District Munsif, Krishnagiri, dated 24.09.2014.

For Appellant : Mr.V.Raghavachari
Senior Advocate
for Mr.V.Balaji

For Respondent : Mr.V.Nicholas

J U D G M E N T

The unsuccessful defendant is the appellant. The respondent herein filed a suit for specific performance of sale agreement dated 10.10.2005.



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The suit was dismissed by the trial Court. On appeal filed by the respondent, the findings of the trial Court were reversed by the First Appellate Court and the suit was decreed. Aggrieved by the same, the defendant has come by way of this second appeal.

2. According to the respondent/plaintiff, he entered into a sale agreement on 10.10.2005 with appellant for purchasing property covered under the agreement, the total sale consideration agreed was Rs.81,000/-. On the date of the agreement itself, a sum of Rs.76,000/- was paid by the respondent and he agreed to pay the balance of Rs.5,000/- within a period of ten months (on or before 09.08.2006). It was also claimed by the respondent that he had been ready and willing to perform his part of the contract and approached the appellant/defendant with balance sale consideration and requested him to execute the sale deed. However, the appellant evaded his request under some pretext or other. He also filed a suit for declaration of title and for consequential relief against the respondent in O.S.No.112 of 2006. As the appellant continued to evade the request of the respondent to complete the sale transaction, he was constrained to file a suit for specific performance.



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3. The appellant/defendant filed a written statement denying the execution of the suit sale agreement. It was averred by the appellant that she and wife of the respondent were sisters. The suit properties and some other properties were settled in their favour by their mother on 04.09.1974 under sale deed, thereafter, there was a partition during September 1993 and the suit property was allotted to the share of the appellant. As there was some dispute between them with regard to the well and Motor pump in the property, a complaint was given by the appellant against the respondent and his wife. In these circumstances, the appellant also filed a suit for declaration of her title in O.S.No.112 of 2006 against the respondent. The appellant also issued a notice on 29.04.2006 stating that the respondent created some forged documents, as if she executed a sale agreement in his favour. She never executed any sale agreement in favour of respondent and those documents are forged documents. The appellant further stated that the suit was filed by the respondent belatedly as he was not having sufficient money to pay the balance sale consideration. On these pleadings, the appellant sought for dismissal of the suit.

4. Before the trial Court, the respondent was examined as PW.1



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and one of the attestors of Ex.A1 suit sale agreement was examined as PW.2

and yet another witness was examined as PW.3. Three documents were marked on behalf of the respondent as Exs.A1 to A3. On behalf of the appellant/defendant, she examined herself as DW1. Twenty documents were marked on behalf of the appellant as Exs.B1 to B20.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant herein failed to prove his readiness and willingness and consequently dismissed the suit. Aggrieved by the same, the respondent filed an appeal in A.S.No.10 of 2015, on the file of the Principal Subordinate Judge, Krishnagiri. The First Appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the defendant who suffered a decree for specific performance has come by way of the second appeal.

6. At the time of admission, this Court formulated the following substantial questions of law by order dated 20.07.2017:

1. *When the stamp paper is purchased in the year 1993 and the agreement is said to be in the year 2005 and*



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the plaintiff is unable to explain the apparent discrepancy, is the lower Appellate Court right in decreeing the suit for specific performance?;

2. Whether the admission of the signature in a document proves the document, when on the facts and circumstances of the case the appellant had explained the manner in which the signatures was taken?;

3. Whether the Court below is right in decreeing the suit for specific performance without even framing an issue as regards readiness and willingness?.

7. The learned counsel appearing for the appellant submitted that the suit sale agreement was entered into on 10.10.2005 and as per the admitted case of the respondent, he paid a sum of Rs.76,000/- out of Rs.81,000/- on the date of agreement itself and balance amount was only Rs.5,000/-. Therefore, it is the contention of the learned counsel for the appellant that the respondent has not explained the long delay of nearly three years in filing the suit. The learned counsel further submitted that in the facts and circumstances of the case, the readiness and willingness on the part of the respondent/plaintiff was



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not proved and therefore, the First Appellate Court committed a serious error in decreeing the suit for specific performance.

8. The learned counsel appearing for the respondent submitted that though the appellant denied the execution of the suit sale agreement, when she was examined as DW.1, she admitted her signature found in the suit sale agreement. Therefore, the execution of the suit sale agreement is duly proved. The learned counsel further submitted that substantial portion of the sale consideration has been paid by the respondent on the date of agreement and in spite of several demands made by the respondent, the appellant evaded execution of the sale deed by not receiving the balance sale consideration. Therefore, the respondent also proved the readiness and willingness on his part.

9. Even as per the admitted case of the respondent/plaintiff, suit sale agreement was entered into on 10.10.2005, the total sale consideration fixed as per the agreement was Rs.81,000/-. According to the respondent, a sum of Rs.76,000/- was paid on the date of agreement itself. Therefore, the balance amount to be paid is only Rs.5,000/-. Absolutely, there is no



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explanation on the part of the respondent as to why he waited for nearly 3 years to file a suit on 26.09.2008. Moreover, the appellant herein issued a legal notice under Ex.B5 on 29.04.2006 stating that she never executed any sale agreement in favour of respondent and he created forged documents, as if she executed sale agreement. The receipt of said legal notice was admitted by PW.1. The said legal notice was marked as Ex.B5 through PW.1. The plaintiff atleast on receipt of legal notice should have filed a suit for specific performance immediately. However, even after receipt of the said legal notice, he waited nearly for two years and then filed a suit for specific performance. When the very execution of sale agreement itself is disputed by the other side, absolutely, there is no plausible explanation on the side of the respondent for having waited for two years to file a suit for specific performance. Hence, the respondent miserably failed to prove his readiness and willingness to perform his part of the contract under the sale agreement.

10. Further the failure of the respondent/plaintiff to issue any legal notice rebutting the averments made by the appellant in Ex.B5, raises a serious doubt with regard to the genuineness of Ex.A1-sale agreement. As rightly pointed out by the trial Court, the stamp papers used for preparing



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Ex.A1 was dated 03.09.1993 and the suit sale agreement was entered into only on 10.10.2005. Why stamp papers purchased ten years back were used for preparing a suit sale agreement was not at all explained by the respondent. The trial Court, also pointed out several infirmities in the evidence of PW.2 and PW.3 and came to the conclusion that the execution of suit sale agreement was not proved. However, the first Appellate Court was carried away by the admission of DW.1, regarding the signature in Ex.A1. If really, the suit sale agreement was a genuine document, the respondent should have issued a reply to the legal notice issued by the appellant under Ex.B5. Non-reply by respondent for the notice issued by the appellant under Ex.B5 coupled with other facts like old stamp papers used in the suit sale agreement create a doubt over the genuineness of the suit sale agreement marked as Ex.A1. In any event, for the reasons discussed above, this Court comes to the conclusion that the respondent/plaintiff miserably failed to prove his readiness and willingness to perform his part of the contract under the agreement. Consequently, a decree for specific performance granted by the first Appellate Court is liable to be set aside.



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11. In view of the discussions made earlier, the substantial questions of law framed at the time of admission are answered in favour of the appellant and consequently, the Second Appeal is allowed and judgment and decree passed by the first Appellate Court in A.S.No.10 of 2015 on the file of the Principal Subordinate Judge, Krishnagiri, is set aside and the judgment and decree passed by the trial Court in O.S.No.357 of 2008, on the file of the District Munsif, Krishnagiri, is restored.

12. In nutshell,

a) The Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court;

b) The judgment and decree passed by the Trial Court is restored;

c) In the facts and circumstances of the case, there shall be no order as to costs;

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

1. The Principal Subordinate Judge, Krishnagiri.
2. The District Munsif, Krishnagiri.

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