



S.A.No.429 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 429 of 2017 and
C.M.P.No.10523 of 2017

1.Kasi
2.Duraikannu
3.Thavamani

...Appellants

Vs.

1.Sagunthala Ammal
2.Susilabai
3.The Sub-Registrar I,
Sub Registrar Office,
Cheyyar.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 22.01.2016 made in A.S.No.4 of 2015 on the file of the learned Sub-Court, Cheyyar confirming the judgment and decree dated 22.03.2013 made in O.S.No.284 of 2009 on the file of the learned Principal District Munsif Court, Cheyyar.

For Appellant : M/s.N.Manokaran



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For Respondent 1 : Mr.K.A.Mariappan

For respondents 2 & 3 : Not ready in notice

JUDGEMENT

The defendants 1, 2 and 4 are the appellants. The 1st respondent herein filed a suit for specific performance of an unregistered agreement dated 04.03.1993. The suit was decreed by the Trial Court and the findings of the Trial Court were affirmed by the first Appellate Court. Aggrieved by the concurrent findings, the appellants are before this Court.

2. According to the 1st respondent/plaintiff, she entered into suit sale agreement on 04.03.1993 with her father one Kannappa Naidu and her brothers Kasi and Duraikannu, the appellants 1 and 2 herein. As per the terms of agreement, the sale consideration was fixed at Rs.7000/- and an advance amount of Rs.5,000/- was paid on the date of agreement. The time fixed for payment of the balance amount was two months. It was further averred by the 1st respondent that balance amount of Rs.2000/- was also paid within two months from the date of agreement. Though 1st respondent requested the agreement vendors to execute the sale deed, the same was postponed by them on the ground that possession of



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the property was delivered to 1st respondent. Just prior to filing of the suit, it came to the knowledge of the 1st respondent that appellants 1 and 2/defendants 1 and 2 sold the suit property to 3rd appellant/4th defendant. Therefore, she filed a suit for specific performance of the agreement.

3. The appellants 1 and 2 filed a written statement denying the execution of agreement. The appellant 1 and 2 also denied the averment in the plaint that the suit properties was delivered to 1st respondent on the date of agreement. It was also alleged that father of the parties namely Kannappa Naidu died 17 years back and the present suit has been filed with the help of forged agreement. The appellants 1 and 2 also raised a plea of limitation.

4. The 3rd appellant/4th defendant filed a separate written statement and claimed that suit sale agreement was forged one. He also raised a plea that he purchased the property after proper verification of title of the appellants 1 and 2 and hence, he was bonafide purchaser.

5. Before the Trial Court, the 1st respondent/plaintiff was examined as P.W.1. One of the attestor of the suit sale agreement and sister of the parties was



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examined as P.W.2. The wife of another attesor of the suit sale agreement was examined as P.W.3. On behalf of the 1st respondent/plaintiff, 4 documents were marked as Ex.A1 to A4. The 2nd and 4th defendants were examined as D.W.1 and D.W.2. On behalf of the defendants, no documents were marked.

6. The Trial Court, on consideration of evidence available on record, came to the conclusion that due execution of suit sale agreement was proved and the 1st respondent was entitled to decree for specific performance. Aggrieved by the same, the appellants herein preferred an appeal in A.S.No.4 of 2015 on the file of learned Sub-Ordinate Judge, Cheyyar. The First Appellate Court also affirmed the findings of the Trial Court and hence, the appellants have come by way of second appeal.

7. This Court at the time of admission formulated the following substantial questions of law vide order dated 13.10.2023 and the same reads as follows:-

“(i) Whether the Courts below are justified in granting a decree for specific performance based on an agreement, whose terms are uncertain?;



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(ii) Whether the Courts below are justified in granting a decree for specific performance, when there is unreasonable delay on the part of the appellant in filing a suit for specific performance?”

8. The learned counsel for the appellants submitted that the suit sale agreement does not specify the property regarding which the same was entered into. When there is no schedule of property in the suit sale agreement identifying the subject matter of the agreement, the agreement shall be treated as void under Section 29 of Indian Contract Act, 1872 and therefore, the same cannot be specifically enforced. The learned counsel further submitted that when 1st respondent claimed that entire sale consideration was paid within two months from the date of agreement, there is no explanation on the part of the 1st respondent why she waited for nearly 16 years to file the present suit. Therefore, the 1st respondent failed to prove her continuous readiness and willingness so as to claim specific performance of the agreement. In support of his contentions, the learned counsel for the appellants relied on following judgments:-

(i) *Nahar Singh Vs Harnak Singh and others* reported in 1996 (6) SCC

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(ii) *Pawan Kumar Dutt and another Vs Shakuntala Devi and others* reported in **2010 15 SCC 601**.

(iii) *A.Nithiyanandan Vs.M.Maylsamy and others* reported in **2022 (3) LW 181**.

(iv) *Ganesh Industries by its sole proprietor, Padikkas Vs M/s.V.Bharath Rubber Company by its partner S.V.T.Sivaraman, 2. S.V.T.Sivaraman* reported in **2006 (2) LW 191**.

9. The learned counsel for the 1st respondent submitted that even though the subject matter of the contract was not mentioned in the agreement, when the same is identifiable by the parties, the Court can very well grant a relief for specific performance. The learned counsel also submitted that as per the admission of 2nd appellant as D.W.1, the subject matter of the suit property was the only property available in the family. Therefore, there is no dispute with regard to the identity of the property when the suit sale agreement was entered into. The learned counsel further submitted that the entire sale consideration was paid by the 1st respondent within two months from the date of entering into agreement and therefore, there was no obligation on her part to be fulfilled under



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the contract. In such circumstances, the Courts below rightly came to the conclusion that 1st respondent's readiness and willingness was proved and hence, she was entitled to relief of specific performance. In support of his contentions, the learned counsel for the 1st respondent relied on the judgment reported in **1985 MPLJ 1** in the case of ***Mithu Khan Chotey Khan Vs Pipariyawali and others.***

10. The suit sale agreement was seriously disputed by the appellants as forged one. In order to prove the due execution of suit sale agreement, one of the attesor to agreement was examined as P.W.2 who is none other than the sister of appellants 1, 2 and 1st respondent/plaintiff. The wife of another attesor who said to have died was examined as P.W.3. Both the Courts below, based on the evidence of P.W.2 and P.W.3, came to the conclusion that due execution of suit sale agreement was proved by 1st respondent. The said factual conclusion reached by the Trial Court is not vitiated by any perversity. Therefore, it requires no interference by this Court.

11. A reading of the Ex.A1, the suit sale agreement would suggest that the subject matter of the agreement was not at all mentioned. It only says that



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agreement was entered into in respect of housing plot for sale consideration of Rs.7000/- and an advance amount of Rs.5000/- was paid by vendee to vendors.

Therefore, it is clear that the agreement does not specify what is the subject matter of the agreement in respect of which the suit sale agreement was entered into.

12. Section 29 of Indian Contract Act, 1872 reads as follows:-

“29. Agreements void for uncertainty.—Agreements, the meaning of which is not certain, or capable of being made certain, are void”.

Illustrations (a) and (c) of Section 29 of Indian Contract Act, 1872 reads as follows:-

(a) A agrees to sell to B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(c) A, who is a dealer in coconut-oil only, agrees to sell to B “one hundred tons of oil”. The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut-oil”.

13. A reading of Section 29 together with illustration (a) and (c) of Indian Contract Act, 1872 would indicate that even if the meaning of the agreement is



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not certain, if it is capable of being made certain, the agreement cannot be termed as void. In other words, the terms of the agreement though uncertain, if it is capable of being made certain, the agreement can be treated as a valid agreement.

14. In the case on hand, in the agreement there is no indication as to what was the subject matter of the sale. Therefore, for the first look, the agreement appears to be void for its uncertainty. However, when 2nd appellant was examined as D.W.1, he clearly admitted that except the suit property, all other properties were sold even at the time of his father. Therefore, the suit property was the only property at the time of entering into Ex.A1, suit sale agreement. Therefore, there may not be any difficulty in coming to the conclusion that parties entered into suit sale agreement only in respect of the property described in the plaint schedule. When family was left with only property, any agreement between appellants 1 and 2 and 1st respondent (who are siblings) can only be in respect of only property available with them. They would have entered into agreement fully under standing correct subject matter of the agreement. Hence, the *consensus ad idem* gets established with regard to subject matter.



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15. In my considered opinion in the light of the admission made by P.W.1, the meaning of suit agreement is capable of being made certain and therefore, it is not hit by Section 29 of Indian Contract Act. In view of the said conclusion reached by this Court, the citations relied on by the learned counsel for the appellants for the proposition, the agreement is void for its uncertainty are not applicable to the facts of the case. Accordingly, the 1st substantial question of law is answered against the appellants and in favour of the 1st respondent.

16. The suit sale agreement was entered into on 04.03.1993. It is the case of the 1st respondent that an amount of Rs.5000/- was paid on the date of agreement itself. It was also claimed by the 1st respondent that the balance amount of Rs.2000/- was paid within two months from the date of agreement and the same was also supported by evidence of P.W.2 and P.W.3. If the entire sale consideration was paid within two months from the date of sale agreement, what prevented the 1st respondent to wait for nearly 16 years for filing a suit for specific performance till 07.09.2009 is not explained. Merely because 1st respondent paid the entire sale consideration, we cannot jump to the conclusion that she was ready and willing to perform her part of the agreement. The



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payment of the sale consideration would show her readiness. However, her failure to get the pucca sale deed executed in her favour for the past 16 years would show lack of willingness on her part to complete the sale transaction by getting the pucca sale deed.

17. It is also admitted case that 17 years ago, the father of the parties passed away. At least after passing away of father, the 1st respondent could have approached the appellants 1 and 2 for execution of pucca sale deed. Her failure to lead any evidence to explain the reason for her failure to get the sale deed executed for 16 years goes against the 1st respondent. It is settled law that in a suit for specific performance, the person seeking performance of agreement must specifically plead and prove his continuous readiness and willingness from the date of agreement to the date of filing of the suit. In the case on hand, what prevented the 1st respondent from getting sale deed from 1993 to 2008 is not at all explained. Therefore, this Court comes to the conclusion that 1st respondent failed to prove her continuous readiness and willingness from the date of agreement to the date of filing of the suit. Therefore, the Courts below are not justified in granting a decree for specific performance when 1st respondent failed to prove her readiness and willingness to perform her part of the contract. The



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2nd substantial question of law is answered in favour of the appellants and against the 1st respondent.

18. In view of the answer to the 2nd substantial question of law, the judgment and decree passed by the Courts below are set aside.

19. Since there is no prayer for return of advance, as per the law declared by Hon'ble Apex Court in the case of *Desh Raj and Others Vs Rohtash Singh* reported in *MANU/SC/1615/2022: (2023) 3 SCC 714*, this Court is not inclined to grant decree for return of advance amount also.

20. With these observations, the second appeal stands allowed.

a) by setting aside the judgment and decree dated 22.01.2016 passed in A.S.No.4 of 2015 on the file of the learned Sub-Court, cheyyar confirming the judgment and decree dated 22.03.2013 passed in O.S.No.284 of 2009 on the file of the learned Principal District Munsif Court, Cheyyar, as a consequence, the suit filed by the 1st respondent stands dismissed.



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b)In the above facts and circumstances of the case, there will be no order as to costs.

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Index : Yes
Internet : Yes
Neutral Citation Case : Yes
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To

- 1.The learned Sub-Court, Cheyyar.
- 2.The learned Principal District Munsif Court, Cheyyar.



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S.SOUNTHAR, J.

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