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S.A.Nos.550 and 563 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.550 and 563 of 2017
and C.M.P.Nos.13407 and 13926 of 2017

S.A.No.550 of 2017

S.Dhanasekar

...Appellant

Vs.

1.K.Meenakshi Sundaram

2.T.Mani

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Cheyyar, Tiruvannamalai District dated 14.12.2016, in A.S.No.8 of 2013, reversing the judgment and decree of the learned Principal District Munsif, Cheyyar, Tiruvannamalai District in O.S.No.92 of 2007, dated 20.12.2012.

For Appellant : Mr.S.Senthamil Selvan

For Respondents : Mr.Abibullakhan for R1
Mr.P.Mani for R2



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S.A.No.563 of 2017

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S.Dhanasekar

...Appellant

Vs.

1.T.Mani

2.K.Meenakshi Sundaram

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Cheyyar, Tiruvannamalai District dated 14.12.2016, in A.S.No.9 of 2013, reversing the judgment and decree of the learned Principal District Munsif, Cheyyar, Tiruvannamalai District in O.S.No.92 of 2007, dated 20.12.2012.

For Appellant : Mr.S.Senthamil Selvan

For Respondents : Mr.P.Mani for R1
Mr.Abibullakhan for R2

COMMON JUDGMENT

The plaintiff in a suit for specific performance is the appellant.

The suit filed by the plaintiff was decreed by the trial Court. Aggrieved by the same, the first respondent/first defendant filed the First Appeal in O.S.No.9 of 2013 on the file of the Subordinate Court, Cheyyar. The second respondent/second defendant filed another appeal in A.S.No.8 of 2013 on the file of the Subordinate Court, Cheyyar. Both the appeals were allowed by the



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First Appellate Court and the suit was dismissed. Aggrieved by the same, the appellant has come by way of these second appeals. The parties are referred to as per their ranking in S.A.No.563 of 2017.

2. According to the appellant/plaintiff, he and the first respondent entered into a sale agreement dated 13.10.1999. As per the terms of agreement, he agreed to purchase two items of properties covered under the agreement for a total sale consideration of Rs.54,340/-. An advance amount of Rs.10,000/- was paid on the date of agreement and it was agreed that remaining sale transaction shall be paid and sales transaction shall be completed within a period of three months. The agreement was entered into in respect of two items of the properties. The first item of agreement property belonged to the first respondent and the second item of agreement property belonged to the second respondent. The first respondent purchased the second item of the property from second respondent orally and therefore, he entered into a sale agreement in respect of second item also. In the terms of agreement, he agreed at the time of execution of sale deed, he would bring the second respondent for execution of proper sale deed.



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3. It was further averred by the appellant that on 11.12.1999 he paid a further sum of Rs.10,000/- to first respondent and got an endorsement in the agreement. Likewise on 20.12.1999, he paid further sum of Rs.20,000/- to the first respondent and got another endorsement. It was also averred on 20.12.1999 possession of the agreement mentioned property was also delivered to the appellant by the first respondent. It was further alleged that on 23.04.2004, the plaintiff paid a sum of Rs.14,000/- to the first respondent and got an endorsement in the agreement. Thus, almost the entire sale consideration has been paid by the appellant to the respondents and inspite of the same, the respondents failed to complete the sale transaction. Later on, the respondents attempted to sell the suit agreement mentioned property to the 3rd parties. Therefore, the appellant was constrained to file a suit for specific performance. He also prayed for injunction restraining the respondents from alienating the agreement mentioned property to the 3rd parties. He also sought for an injunction restraining the 3rd defendant/Sub Registrar in the suit from registering any document pertains to the agreement mentioned property.

4. The first respondent in S.A.No.563 of 2017, the first defendant



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filed a written statement admitting the execution of the suit sale agreement and denying the last endorsement dated 23.04.2004 stating that the same had been created by the appellant/plaintiff. Therefore, he raised the defence of limitation. The first respondent also denied the readiness and willingness of the appellant to perform his part of the contract within the time stipulated in the agreement. The first respondent also denied the allegations in the plaint, as if he delivered possession of the suit property to the appellant. The specific case of the first respondent/first defendant was that the suit agreement was lapsed by efflux of time and hence the suit is barred by limitation.

5. The first respondent in S.A.No.550 of 2017, the second defendant filed a written statement denying the right of first defendant to enter into a suit agreement in respect of second item of the property. He denied the allegations that he orally sold second item of the suit property to the first defendant and hence he claimed that the first defendant had no right to enter into the sale agreement so as to bind him. He also claimed that he was in possession and enjoyment of the second item of suit property by denying the possession of the property by the plaintiff.



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6. The parties went to the trial on these pleadings and before the trial Court, the appellant was examined as PW.1 and attestor to suit sale agreement was examined as PW.2 and two other witnesses were examined as PW.3 and PW.4 to prove his possession. Ten documents were marked on behalf of the appellant as Exs.A1 to A10. On behalf of the respondents, the defendants 1 and 2 were examined as D.W.1 and D.W.2.

7. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant/plaintiff was entitled to specific performance and granted a decree for specific performance but the prayer of the appellant for permanent injunction against 3rd defendant had been dismissed. Aggrieved by the said judgment and decree, the respondents 1 and 2 preferred two separate appeals in A.S.Nos.9 and 8 of 2013. The first Appellate Court on re-appreciation of evidence available on record came to the conclusion that the main relief of specific performance was barred by limitation and consequently, dismissed the suit. Aggrieved by the same, the plaintiff has come up by way of these Second Appeals.



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8. At the time of admission, this Court formulated the following substantial question of law by order dated 13.10.2017:

”Whether or not the lower appellate Court erred in law in substituting its own opinion in construction of documents to that of the reasonable and just conclusion of the trial Court?”

Elaborating the substantial question of law framed at the time of admission, the learned counsel appearing for the appellant submitted that under the terms of the agreement, the time was fixed only for payment of balance sale consideration and no time was fixed for execution of sale deed in pursuance of the agreement. Therefore, the First Appellate Court erred in coming to the conclusion that the suit was barred by limitation.

9. The learned counsel further submitted that the endorsement dated 23.04.2004 was proved by the appellant by examining attestor to the document as PW.2 and the respondents who pleaded forgery failed to prove the same by sending their signature for the opinion of handwriting expert. In such circumstances, the findings rendered by the First Appellate Court, as if the suit is barred by limitation is liable to be set aside.



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10. The suit agreement was entered into on 13.10.1999, the appellant pleaded three endorsements subsequent to the execution of suit sale agreement on 11.12.1999, 20.12.1999 and 23.04.2004. The execution of the agreement, the payment of advance amount on the date of agreement and subsequent two agreements dated 11.12.1999 and 20.12.1999, are admitted by the first respondent. However, the last endorsement relied on by the appellant dated 23.04.2004 was specifically denied by the first respondent. When the last endorsement dated 23.04.2004 is denied by the first respondent it is incumbent on the appellant/plaintiff to prove the same. In order to prove the endorsement dated 23.04.2004, the appellant examined attestor to the document as PW.2. Though he deposed in his chief examination that the endorsement was signed by the first respondent in his presence and the appellant had been in possession and enjoyment of the same from the date of agreement, during cross examination, he deposed that the possession of the appellant was not known to him directly as he sold his property. It was further deposed by him that he heard from 3rd party that the appellant had been in possession of the agreement mentioned property. Therefore, the answer of PW.2 in his cross examination goes against his own evidence in chief examination. In these circumstances, the evidence of PW.2 is not trustworthy



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and based on his evidence, it cannot be safely presumed that the endorsement dated 23.04.2004 was proved by the appellant.

11. It is seen from the records, no steps have been taken to send the questioned endorsement dated 23.04.2004 for comparison with admitted endorsement available in Ex.A1 by the handwriting expert. The First Appellate Court also pointed out certain variations in the signature of the first respondent available in endorsement dated 23.04.2004 and his signature in other endorsements. In such circumstances, it cannot be held that the appellant has proved that the first respondent put his signature on 23.04.2004 in the third endorsement. Even otherwise, the third endorsement dated 23.04.2004 falls beyond the period of three years from the date of second endorsement dated 20.12.1999. If third endorsement is also disbelieved the suit filed by the appellant on 21.02.2007 is hopelessly bared by limitation. As per the terms of agreement, three months time was fixed for the payment of balance sale consideration and execution of sale deed. The relevant recital of the agreement reads as follows:

இன்று தேதியில் நான் தங்களிடமிருந்து அட்வான்சாக ரொக்கம் பெற்றுக்கொண்ட ரூபாய் 10000-00. கிரையத்தொகையில் மிகுதித் தொகை ரூ.44340-00 நாற்பத்து நான்காயிரத்து முன்னூற்று நாற்பதை - இந்த



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அக்கிரிமெண்டு எழுதிய தேதியிலிருந்து மூன்று மாத கால கெடுவான
13.01.2000 தேதிக்குள் தாங்கள் என்னிடம் செலுத்தி தங்கள் சொந்த
செலவில் கிரைய ஆவணம் எழுதி சம்பத்தப்பட்ட சார் பதிவகத்தில் பதிவு
செய்து கொள்ள வேண்டியது.

12. A perusal of recital in Ex.A1 would make it clear, three months time was fixed for execution of sale deed and the said period expired on 30.01.2000. Under Article 54 of Limitation Act, if time is fixed for performance of agreement, the limitation shall start running from the date fixed for performance of the agreement. Therefore, the suit should have been filed on or before 30.01.2003. However, the suit has been filed only on 21.02.2007. Therefore, the First Appellate Court is right in coming to the conclusion that the suit filed by the appellant is hopelessly bared by limitation. Further, for granting a decree of specific performance, the appellant has to prove his continuous readiness and willingness from the date of agreement to the date of filing of the suit. In the case on hand, the agreement was entered into on 13.10.1999, even as per the agreement, entire sale consideration except Rs.340/- was paid as early as 2004. However, the suit was filed only on 21.02.2007, the appellant has not issued any pre-suit notice calling upon the respondents to execute the sale deed, after receiving balance consideration.



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Absolutely, there is no explanation on the part of the appellant as to why he waited for hearing nearly seven years for filing the suit of specific performance after payment of substantial portion of the sale consideration.

13. In such circumstances, the appellant also miserably failed to prove readiness and willingness from the date of agreement to the date of filing of the suit. Therefore, the findings reached by the first Appellate Court, regarding non-entitlement of the appellant to get a decree for specific performance is liable to be confirmed on this reasoning also.

14. As far as the appeal filed by the second defendant in S.A.No.550 of 2017 is concerned, as per the admitted case of the appellant, the second item of the suit property belonged to the second defendant. Though it was pleaded that the appellant in S.A.No.550 of 2017 orally sold the second item to first defendant, the said oral sale is not proved by any acceptable evidence. Even, assuming oral sale is proved, it cannot convey any title to the first defendant in the absence of any registered document. Therefore, on the date of agreement, the first defendant has no right to enter into an agreement with appellant for conveying the same. In such circumstances, the appellant is



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not entitled to seek enforcement of agreement against the second defendant who was not a party to the suit sale agreement.

15. In view of the discussions made earlier, the question of law framed at the time time of admission is answered against the appellant and the Second Appeals are dismissed by confirming the judgment and decree passed by the First Appellate Court.

16. In nutshell,

The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.Nos.9 and 8 of 2013 on the file of the Subordinate Judge, Cheyyar, Tiruvannamalai District, 14.12.2016, affirming the judgment and decree in O.S.No.92 of 2007 on the file of the Principal District Munsif, Cheyyar, Tiruvannamalai District, dated 20.12.2012.



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b) In the facts and circumstances of the case, there shall be no

order as to costs;

c) consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Subordinate Judge, Cheyyar, Tiruvannamalai District
2. The Principal District Munsif, Cheyyar,
Tiruvannamalai District.



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S.SOUNTHAR, J.

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