



S.A.No.574 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.574 of 2017
and C.M.P.Nos.14362 and 14416 of 2017

Chellammal

... Appellant

vs.

Mathivannan

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Decree and Judgment passed in A.S.No.62 of 2012 dated 06.02.2014 on the file of III Addl District and Session Judge, Salem confirming the Decree and Judgment passed in O.S.No.100 of 1997 dated 10.12.2011 on the file of Subordinate Judge at Athur.

For Appellant : Mrs.R.T.Sundari
M/s.D.Malarvizhi

For Respondent : Mr.L.Mouli

J U D G E M E N T

The unsuccessful defendant in the suit for specific performance is the appellant. The suit for specific performance of the Sale Agreement dated 21.07.1991 filed by the respondent/plaintiff was decreed by the Trial Court. The first appeal filed by the appellant was also dismissed by the First Appellate Court. As against the concurrent findings, the appellant/defendant



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has come by way of this second appeal.

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2. According to the respondent, the appellant herein was the original owner of the suit property having purchased the same under the registered Sale Deed dated 18.07.1990. The appellant entered into a Sale Agreement with the respondent for purchase of the property covered by the Sale Agreement dated 21.07.1991 for sale consideration of Rs.1,75,000/-. The respondent paid an advance of Rs.1,60,000/- to the appellant. As per the terms of agreement, the balance consideration of Rs.15,000/- shall be paid within a period of two years from 21.07.1991. The possession of the subject matter of agreement was also handed over to the respondent on the date of agreement itself. The respondent carried out various developmental activities in the suit property like deepening of the well and reclamation of lands etc. Though the respondent was ready and willing to perform his part of the contract, the appellant evaded performance of her part of the contract and hence, a lawyer notice was issued by respondent on 08.09.1992 calling upon the appellant to receive the balance sale consideration and execute the sale deed. In spite of receipt of said notice, the appellant failed to execute the Sale Deed and hence, the respondent was constrained to file a suit for



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specific performance of the Suit Sale Agreement.

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3. The appellant herein filed a written statement and denied the very execution of the suit sale agreement, receipt of advance amount etc. It was also averred by the appellant that possession of the suit property was not handed over to the respondent. The appellant also disputed the readiness and willingness of the respondent. On these pleadings, the appellant sought for dismissal of the suit.

4. Before the Trial Court, the respondent was examined as PW.1 and scribe of the Suit Sale Agreement was examined as PW.2. On his behalf, 8 documents were marked as Exs.A1 to A8. The Power Agent of appellant was examined as DW.1 and two attestors to the Suit Sale Agreement were examined as DW.2 and DW.3. On behalf of the appellant, 3 documents were marked as Exs.B1 to B3.

5. Since there was a dispute with regard to the signature of the appellant found in the Sale Agreement, the signature of the appellant found in the Sale Agreement was sent for the expert opinion for comparison with



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the admitted signature of the appellant in Ex.C2. The report of the Forensic Expert was marked as Ex.C1.

6. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the execution of the Suit Sale Agreement was duly proved by the respondent/plaintiff and consequently, decreed the suit for specific performance as prayed for. Aggrieved by the same, the appellant preferred an appeal in A.S.No.62 of 2012 on the file of III Addl District and Session Judge, Salem. The First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.

7. The learned counsel appearing for the appellant submitted that when the very execution of the Sale Agreement is seriously disputed by the appellant, the respondent should have proved due execution of the same by leading cogent evidence. In the case on hand, the Courts below came to the conclusion that the execution of Sale Agreement was duly proved due to non-examination of appellant. The learned counsel further submitted that



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due to ill health, the appellant could not appear before the Court below and depose. But however, her Power Agent was examined as DW.1. In such circumstances, without appreciation the evidence of the Power Agent of appellant in proper perspective both the Courts below erroneously came to the conclusion that due to non-examination of appellant before the Trial Court, the respondent is entitled to succeed.

8. In order to prove the due execution of Suit Sale Agreement, the respondent examined himself as PW.1 and the scribe of the document was examined as PW.2. The scribe of the Suit Sale Agreement clearly deposed that parties to the agreement signed the document only after knowing the contents. In fact, after chief examination of PW.2, he failed to appear before the Court below and thereafter, the respondent had taken coercive steps against the witness. Then only, he appeared for cross examination after issuance of warrant of arrest.

9. As far as two attestors of Suit Sale Agreement were concerned, though the respondent had taken steps to examine them as witnesses, they failed to appear before the Court below inspite of service of notice.



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Thereafter, they appeared at the instance of the appellant as witnesses and deposed that they had seen the signature of both the respondent and his vendor in the document even before their attestation. Having regard to the conduct of the attestors namely DW.2 and DW.3 much reliance cannot be placed on their evidence, however, the execution of Suit Sale Agreement has been proved by respondent by examining the scribe of the document.

10. It is the specific case of the appellant that he has not executed Suit Sale Agreement and the signature found in the Suit Sale Agreement is not that of her. However, she failed to appear before the Courts below and deposed in support of her averment in the written statement. The Power Agent of the appellant was examined as DW.1. He was appointed as Power Agent only in the year 2010 nearly 20 years after the Suit Sale Agreement. In such circumstances, he may not aware of the happenings that had taken place at the time of execution of Suit Sale Agreement. DW.1 in his evidence clearly admitted that regarding the genuineness of Suit Sale Agreement only appellant could give evidence and he could not give evidence regarding the genuineness or otherwise of Suit Sale Agreement. Therefore, the Courts below rightly had drawn the adverse instance against the appellant for her



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failed to appear before the Courts, denying the execution of Suit Sale Agreement.

11. The signature of the appellant found in the Suit Sale Agreement was sent for expert's opinion for comparison with the admitted signature of the Chellammal. The report of the experts has been marked as Ex.C1. The Expert in his report clearly mentioned that the signature found in the Suit Sale Agreement is that of the appellant/Chellammal. By taking into consideration the expert opinion and the evidence of scribe of the document and also fact that the appellant failed to enter the witness box, the Courts below rightly came to the conclusion that the Suit Sale Agreement was executed by the appellant. The said factual finding requires no interference by this Court.

12. As per the terms of agreement, two years time limit was fixed for performance of sale. The said period expired on 21.07.1993. The respondent herein without waiting for expiry of full period, issued lawyer notice as early as 08.09.1992 calling upon the appellant to execute the Sale Deed by receiving balance sale consideration of Rs.15,000/-. In such circumstances,



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the respondent also proved the readiness and willingness on his part. The witnesses examined on behalf of the appellant are not competent to speak about readiness and willingness. Therefore, the Courts below correctly came to the conclusion that the Suit Sale Agreement is genuine one and granted decree for specific performance in favour of the respondent. I do not find any question of law much less substantial question of law to enable this Court to interfere with the concurrent findings of facts rendered by the Courts below. Accordingly, the second appeal stands dismissed.

In Nutshell:-

- (i) The Second Appeal is dismissed.
- (ii) Consequently, the connected miscellaneous petitions are closed.
- (iii) In the facts and circumstances of the case, there will be no order as to costs.

13.10.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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To

1.The III Addl District and Session Judge,
Salem.

2.The Subordinate Judge, Athur.



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S.SOUNTHAR, J.

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