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S.A.No.622 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 622 of 2017
and
C.M.P.No.15384 of 2017

1.S.Rajeshwari
2.S.Suresh

...Appellants

Vs.

1.P.Selvi
2.S.Loganathan
3.S.Pushpavalli

4.The Tamil Nadu Housing Board,
Rep. by its Executive Officer and
Administrative Officer,
Surampatty Four Roads,
Erode-9.

5.The Manager,
Marketing and Service,
Tamil Nadu Housing Board,
Surampatty Four Roads, Erode-9.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 23.12.2016 made in A.S.No.01 of 2016 on the file of II Additional District Court, Erode, confirming the judgment and decree dated 11.09.2015 against O.S.No.120 of 2013 on the file of the I Additional Sub-Court, Erode.



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For Appellants : Mr.K.Vasantha Nayagan
for M/s.Kaavya Silambanan

For Respondent 1 : Mr.G.Karthikeyan
Senior Counsel

For Respondent 2 & 3 : No appearance

For Respondent 4 & 5 : Mr.C.Kalaichelvan
Standing Counsel for TNHB

JUDGEMENT

The unsuccessful defendants 3 and 4 are the appellants. The 1st respondent herein/plaintiff filed a suit for specific performance of sale agreement dated 07.06.2004 entered by her for purchase of the property covered by the suit sale agreement. The said sale agreement was entered between the 1st respondent and Power of Attorney of one Sreerangam under whom the present appellants are claiming title. The suit property was originally allotted to said Sreerangam by Tamil Nadu Housing Board, the 4th and 5th respondents herein. He entered into a sale agreement dated 04.05.2001, with 3rd respondent agreeing to sell the suit property to her for a sale consideration of Rs.2,80,000/-. On the date of agreement dated 04.05.2001, he received an amount of Rs.2,79,000/- and agreed to receive the balance sale consideration of Rs.1000/- and execute pucca sale deed within a period of three months from the date of execution of sale deed in his favour by Housing Board. On the very



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same date, the said Sreerangam had also executed General Power of Attorney deed in respect of very same property in favour of 2nd respondent. Later on, the 2nd and 3rd respondents entered into suit sale agreement with 1st respondent/plaintiff agreeing to sell the suit property on behalf of Sreerangam. In the suit sale agreement also the agreed sale consideration was Rs.2,80,000/- and an amount of Rs.2,79,000/- was paid on the date of agreement itself. It was also agreed that balance sale consideration of Rs.1000/- would be paid and sale transaction should be completed in favour of 1st respondent within a period of three months from the date of execution of pucca sale deed by Housing Board in favour of Sreerangam. It is seen from the averments found in the plaint that said Sreerangam died on 03.05.2010 leaving behind the appellants herein, wife and son and also one daughter namely Latha as his legal representatives. It appears that subsequently, the Housing Board executed pucca sale deed in favour of one of the legal representatives of Sreerangam namely Rajeshwari, 1st appellant on 05.03.2013 under Ex.B1. Thereafter, the present suit has been laid by 1st respondent/plaintiff seeking specific performance of sale agreement dated 07.06.2004 entered with Power of Attorney of Sreerangam namely 2nd respondent herein and his wife/ 3rd respondent.



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2. The appellants herein filed a written statement and denied entitlement of the 1st respondent to maintain a suit for specific performance. It was their specific case that neither Sreerangam nor the appellants herein was aware of the character of the document entered between said Sreerangam and 2nd and 3rd respondents. It was specifically averred by the appellants that the said Sreerangam was affected with stroke in the year 1996 and since they were in need of money, the 2nd respondent herein offered him to pay a sum of Rs.1,50,000/- and as a security for the said sum a mortgage deed was executed in favour of 2nd and 3rd respondents. Therefore, the appellants raised a plea that Sreerangam did not execute the General Power Deed in favour of 2nd respondent with the knowledge about the character of the document and consequently prayed for dismissal of the suit.

3. The Tamil Nadu Housing Board filed a written statement denying the right of the said Sreerangam to enter into the sale agreement before the execution of pucca sale deed in his favour. It was their case that as per the Lease-cum-Sale agreement entered with allottee namely Sreerangam, he was prevented from assigning or conveying the property allotted to him before



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execution of sale deed in his favour. Therefore, the suit sale agreement entered by him with respondents 1 to 3 are not valid in the eye of law. Hence, sought for dismissal of the suit.

4. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that appellants herein failed to prove their specific plea that sale agreement and power deed were executed without knowing the character of the document and therefore, the suit sale agreement is not binding on the appellants. The Trial Court also came to the conclusion that the 1st respondent proved her readiness and willingness in performing her part of contract and consequently, decreed the suit. Aggrieved by the same, the appellants herein preferred an appeal in A.S.No.01 of 2016 on the file of II Additional District Court, Erode. The First Appellate Court also concurred with the findings of the Trial Court. Aggrieved by the same, the appellants are before this Court by way of second appeal.

5. The learned counsel for the appellants mainly submitted that when the suit sale agreement was entered into between the Power of Attorney of Sreerangam and 1st respondent, the said Sreerangam did not have any title over



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the suit property and therefore, the suit sale agreement is not a valid document.

The learned counsel further submitted that as per the conditions stipulated in Lease-cum-Sale agreement entered between Sreerangam and the Tamil Nadu Housing Board, he cannot convey or assign his interest in property to third party before execution of pucca sale deed in his favour. In such circumstances, the suit sale agreement which was entered into prior to execution of sale deed in favour of Sreerangam shall be treated as a void document. In support of his contentions, the learned counsel for the appellants relied a judgment of this Court in *S.A.Nos.624 and 626 of 2019* in the case of *P.M.Thangavel Vs M.Ramamoorthy and others* reported in *CDJ 2019 MHC 3786*. The learned counsel also relied the judgment of this Court in *S.A.No.1303 of 2013* in the case of *Radha Lakshmanan Vs M.S.Gurusamy* reported in *CDJ 2014 MHC 6056*.

6. It is the specific contention of the learned counsel for the appellants that the suit sale agreement which was entered into prior to execution of sale deed in favour of Sreerangam is a void document as Sreerangam had no title to convey to the 1st respondent/plaintiff on the date of agreement. Though it was submitted by the learned counsel for the appellants that in the Lease-cum-Sale



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agreement entered between Sreerangam and Tamil Nadu Housing Board, there was a prohibition restraining the allottee from alienating property to third parties, the said Lease-cum-Sale agreement has not been marked by the appellants before the Courts below. Therefore, this Court is not in a position to come to the conclusion that what was the nature of prohibition contained in the said Lease-cum-Sale agreement between Sreerangam and Tamil Nadu Housing Board. Even assuming that there was a prohibition as mentioned by the learned counsel for the appellants, it will only enable the Housing Board to cancel the allotment in favour of Sreerangam. However, as per the admitted facts in this case, the Tamil Nadu Housing Board has not taken any steps against the said Sreerangam. However, proceeded to execute pucca sale deed in favour of 1st appellant, wife of Sreerangam under Ex.B1 subsequent to the death of Sreerangam. In such circumstances, the contention raised by the learned counsel for the appellants that sale agreement entered into between Sreerangam's power agent and 1st respondent is not a valid contract in view of the prohibition contained in the Lease-cum-Sale agreement entered with Housing Board is not acceptable to this Court.



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7. Section 13(1)(a) of the Specific Relief Act, 1963 reads as follows:-

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13. Rights of purchaser or lessee against person with no title or imperfect title.

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:-

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

8. A reading of the above act makes it clear that in a case where a person enters into a sale agreement with another person having imperfect or no title over the subject matter of the agreement and the agreement vendor acquires any interest in the property subsequent to the agreement, the agreement vendee can very well compel him to make good the contract out of such interest acquired by him subsequently. Therefore, in the case on hand though on the date of suit sale agreement Sreerangam did not have any right to convey in respect of subject matter of the agreement, subsequently, on 05.03.2013, the Housing Board executed pucca sale deed in favour of 1st appellant, wife of



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deceased Sreerangam. In such circumstances, the 1st appellant, who is a legal representative of the deceased Sreerangam, acquired good title over the subject matter of the agreement subsequently by execution of pucca sale deed in her favour. In such circumstances, by virtue of Section 13(1) (a) of Specific Relief Act, the 1st respondent/plaintiff is entitled to compel specific performance of the agreement by one of the legal representatives of the deceased Sreerangam who acquired good title.

9. It is seen from the admitted facts that the sale consideration was fixed at Rs.2,80,000/- and nearly 99% of the sale consideration namely Rs.2,79,000/- was paid on the date of agreement. The remaining amount to be paid is only Rs.1000/-. The Courts below, by taking into consideration the evidence available on record, came to the conclusion that 1st respondent/plaintiff proved his readiness and willingness in performing her part of contract. The said factual finding requires no interference by this Court. The Courts below, by taking into considering the subsequent event, directed the 1st respondent/plaintiff to pay the balance sale consideration as well as the amount paid by 1st appellant to Housing Board at the time of execution of sale deed as per Ex.B2 and directed the 1st appellant to execute the



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sale deed on deposit of the amount as directed.

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10. In such circumstances, I do not find any substantial question of law arising for consideration in this Second Appeal for interfering with the findings rendered by the Courts below.

11. Accordingly, the second appeal stands dismissed

a) by affirming the judgment and decree dated 23.12.2016 made in A.S.No.01 of 2016 on the file of II Additional District Court, Erode confirming the judgment and decree dated 11.09.2015 made in O.S.No.120 of 2013 on the file of the I Additional Sub-Court, Erode.

b) In the above facts and circumstances of the case, there will 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

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1. The II Additional District Court, Erode
2. The I Additional Sub-Court, Erode.



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