



S.A.No.843 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.843 of 2023

and

C.M.P.No.26724 of 2023

Ramdoss (Died)

1. Sumathi
2. Sakthi
3. Saraswathi
4. Selvakumar
5. Asothai

... Appellants

Vs.

1. Akilandam @ Kalaivani
2. Devi @ Amaladevi
3. Arul Prakash
4. P.Manimekalai
5. Jothilakshmi
6. C.T.Natarajan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 14.07.2017 in A.S.No.24 of 2013 passed by the learned I Additional District and Sessions Judge, Cuddalore, reversing the judgment and decree of O.S.No.160 of 2010 dated 28.02.2013 passed by the learned I Additional Subordinate Judge, Cuddalore.

For appellants

: Mrs.P.Veena Suresh
Mr.S.T.Bharath Gowhtam

For respondents

: No appearance



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JUDGMENT

The plaintiff is the appellant before this Court challenging the dismissal of his suit filed for specific performance of an agreement of sale or in the alternative for refund of the advance amount.

2. The facts of the case are briefly set out hereinbelow and for the ease of understanding, the parties are referred to in the same ranking as before the Trial Court.

PLAINTIFF'S CASE:

2.1. It is the case of the plaintiff that the first item of the suit property was purchased by one Raju Pathar, father-in-law of the first defendant, under two registered sale deeds dated 12.06.1980 and 19.04.1984 respectively. As regards the second item of the suit property, it is the case of the plaintiff that one Ganapathy Chettiar had sold the same to one Vaithianathasamy under a sale deed dated 07.05.1990. Vaithianathasamy, in turn, sold the second item of the property to one Gunasekaran, husband of the first defendant, under a



sale deed dated 25.08.1992.

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2.2. The plaintiff would further submit that under the agreement of sale dated 03.11.1997, Gunasekaran had undertaken to sell the second item of the suit property to the plaintiff for a total sale consideration of a sum of Rs.10,000/- (Rupees Ten Thousand only) and the time for performing the agreement was scheduled as one year. Since the sale deed did not go through, another agreement was entered into on 02.11.1998 and once again, the time schedule was fixed as one year. It appears that even this agreement did not go through and third agreement of sale was entered into on 03.11.1999 and the time schedule was fixed as two years. However, the second item of the property was not sold within the stipulated time.

2.3. Thereafter, Gunasekaran agreed to sell the first item of the suit property. However, there was a mortgage deed dated 08.11.1983 subsisting in respect of the first item of the suit property and the



plaintiff requested him to first discharge the mortgage deed.

Accordingly, on 23.10.2001, the mortgage deed was discharged and Gunasekaran had obtained the discharge receipt.

2.4. Thereafter, under an agreement of sale dated 05.11.2001, Gunasekaran, his mother, who is the second defendant herein and his minor children represented by the second defendant as their guardian, had agreed to sell the first and second item of the suit property for a total sale consideration of Rs.4,10,000/-(Rupees Four Lakhs and Ten Thousand only). On the day of execution of the agreement of sale, a sum of Rs.4,00,000/- (Rupees Four Lakhs only) was paid as advance by the plaintiff and three years period was fixed for paying the balance of Rs.10,000/-(Rupees Ten Thousand only).

2.5. Gunasekaran failed to execute the sale deed and on 14.04.2003, he had passed away. Therefore, the plaintiff had approached the legal heirs of the Gunasekaran to proceed with the



execution of the sale deed which was not complied with. This constrained the plaintiff to issue a legal notice dated 04.05.2003 which did not evoke the desired result. Thereafter, the plaintiff had issued yet another notice dated 20.10.2004. Meanwhile, he came to learn that the defendants had mortgaged the first item of the property to the fifth defendant for a sum of Rs.1,65,000/-(Rupees One lakh Sixty Five Thousand only) and had executed a mortgage deed dated 23.05.2002.

2.6. It is also the case of the plaintiff that Raju Pathar had executed a will in favour of his son Gunasekaran. Therefore, this suit in O.S.No.160 of 2010 was filed on the file of the I Additional Subordinate Court, Cuddalore, for the relief stated *supra*.

DEFENDANT'S CASE:

2.7. A written statement was filed by the first defendant and the same was adopted by the defendants 2 to 4. They had contended that the plaintiff is not known to them. The plaintiff is the father-in-



law of one Manickam, who is a close friend of the first defendant's deceased husband Gunasekaran.

2.8. The defendants, in their written statement, had stated that the names of the defendants had been wrongly given and it had to be corrected. However, the plaintiff had not deemed it fit to amend the names of the defendants. That apart, Gunasekaran had two other daughters who had not been impleaded. Therefore, the defendants had pleaded dismissal of the suit on account of non-joinder of necessary parties.

2.9. The defendants had denied the contention of the plaintiff that Raju Pathar had executed the will. On the contrary, it is their specific case that Raju Pathar died intestate and his property would devolve on all his legal representatives and the agreement of sale executed only by Gunasekaran would not be binding upon on the other defendants. They had sought for the dismissal of the suit.



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TRIAL COURT:

3. The Trial Court, on considering the pleadings on either side, had framed the following issues:

“ (1) *Whether the plaintiff is entitled to the equitable relief of specific performance as prayed for?*

(2) *Whether the plaintiff is entitled for alternative relief of refund of sale consideration?*

(3) *Whether the sale agreement dated 05.11.2001 is obtained by the plaintiff under threat and coercion is true?*

(4) *Whether the suit is bad for non-joinder of necessary parties?*

(5) *To what relief?”*

4. The plaintiff had examined himself as P.W.1 and one Chakaravarthy and one Karumpaiyiram as P.W.2 and P.W.3



respectively, and marked Exs.A1 to A19. On the side of the defendants, the first defendant had examined herself as D.W.1 and marked Exs.B1 to B9.

5. The Trial Court, on considering the evidence, has proceeded to decree the suit.

LOWER APPELLATE COURT:

6. Aggrieved by the same, the defendants had filed A.S.No.24 of 2013 on the file of the I Additional District and Sessions Court, Cuddalore.

POINTS FOR CONSIDERATION:

7. The points for consideration framed by the Lower Appellate Court are as follows:

“(1) Whether the plaintiff is entitled to the equitable relief of specific performance as prayed for?”



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(2) Whether the plaintiff is entitled for alternative relief of refund of sale consideration?

(3) Whether the sale agreement dated 05.11.2001 is obtained by the plaintiff under threat and coercion?

(4) Whether the judgment and decree passed by the learned I Additional Subordinate Judge, Cuddalore, in O.S.No.160/2010, dated 28.02.2013 is liable to be set aside ?

(5) To what relief the appellants are entitled? ”

8. The lower Appellate Court, on considering the evidence and judicial precedents, held that from the conduct of the plaintiff, particularly, the extension of the agreements of sale in respect of second item of the suit property where the sale consideration was only Rs.10,000/- (Rupees Ten Thousand only) and Ex.A2 - agreement of sale in respect of the both items of the property for which notice had been issued only on 04.05.2003, expressing the plaintiff's intent to



execute the sale deed, clearly shows that the agreements were never intended to be acted upon. They appear to have been executed it only as a security and further, it clearly shows the lack of readiness and willingness on the part of the plaintiff and declined to grant the relief of specific performance.

9. The learned Judge went on to hold that the suit is one for specific performance and the conduct of the plaintiff is not satisfactory. The plaintiff is, therefore, not also entitled to the alternative relief. Challenging the same, the plaintiff is before this Court.

10. Heard the learned counsel appearing for the appellants who has made her submission for the admission.

DISCUSSION:

11. As rightly held by the lower Appellate Court, the plaintiff who claims that he has entered into an agreement of sale to purchase



the property, originally entered into an agreement for purchasing the second item of the property for just a sum of Rs.10,000/- (Rupees Ten Thousand only) for which, the agreement was entered into on 03.11.1997 where the time for completing the agreement was fixed as one year. Since the plaintiff was not able to complete the sale, a fresh agreement of sale dated 02.11.1998, was claimed to be entered into between the parties once again giving a time of one year to the plaintiff to pay the balance and have the sale deed executed.

12. Thereafter, a third agreement dated 03.11.1999 was entered into and the time for paying the sum of Rs.10,000/- (Rupees Ten Thousand only) was extended by 3 years. Subsequently, the parties have entered into the agreement of sale on 05.11.2001 in respect of both the items of the property. Once again, the total sale consideration was shown as Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) and this agreement would read that the sum of Rs.4,00,000/- (Rupees Four Lakhs only) was paid as advance and once



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again, the balance of Rs.10,000/- (Rupees Ten Thousand only) will be paid within a period of three years.

13. Therefore, it is seen that from the year 1997 till 2001, the plaintiff has not proceeded to have the sale deeds registered. The agreement dated 05.11.2001 (Ex.A8) which covers both items of the property would read that 99% of the sale consideration had been paid and what remains was only a sum of Rs.10,000/- (Rupees Ten Thousand only) for which the time for performance was fixed as three years. This clearly displays the fact that the agreement of sale was never intended to be acted upon since any ordinary prudent man who had entered into an agreement with an intention of purchasing the property would immediately pay the balance sale consideration which is a pathy sum and get the sale deed registered. The plaintiff had however, not proceeded to do so.

14. Even in the case of the last agreement of sale, no notice



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was issued seeking specific performance of the agreement during the lifetime of Gunasekaran. It was only after Gunasekaran passed away on 14.04.2003, that the legal notice has been issued on 04.05.2003, even thereafter, no proceedings were initiated and yet another notice was issued on 20.10.2004 and ultimately, the suit came to be filed only in the year 2004. Therefore, the plaintiff's conduct clearly demonstrates his lack of readiness and willingness and the lower Appellate Court has therefore, rightly reversed the judgment and decree of the Trial Court.

In the result, this second appeal stands dismissed as it does not involve any substantial question of law and judgment and decree of the learned I Additional District and Sessions Judge, Cuddalore, in A.S.No.24 of 2013 is confirmed. Consequently, the connected C.M.P. stands closed. No costs.

24.11.2023

Index : Yes/No
Speaking order/non-speaking order
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13/15



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To

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1. The I Additional District Judge, Cuddalore.
2. The I Additional Sub Judge, Cuddalore.
3. The Section Officer,
V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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