



S.A(MD).No.419 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.419 of 2022
and C.M.P(MD)No.5161 of 2022

1.Radhakrishanan
2.Deiveeswaran

.... Appellants/Respondents/Defendants

Vs.

Gunasekar

... Respondent/Appellant/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 11.04.2019 passed in A.S.No.12 of 2015 on the file of the III Additional District Judge, Tiruchirappalli, confirming the judgment and decree dated 06.11.2012 passed in O.S.No.116 of 2004 on the file of the I Additional Sub Judge, Tiruchirappalli.

For Appellants : Mr.R.S.Sivaram

For Respondent : Mr.K.S.Kathiravan

J U D G M E N T

This Second Appeal has been filed challenging the judgment and decree dated 11.04.2019 of the lower Appellate Court namely,



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III Additional District Court, Tiruchirappalli, passed in A.S.No.12 of 2015.

The appellants are the defendants in the suit in O.S.No.116 of 2004 on the file of the I Additional Sub Court, Tiruchirappalli. The respondent is the plaintiff in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for specific performance of an agreement of sale entered into between the plaintiff and the defendants. The defendants, as seen from the written statement filed by the defendants, contended that the suit schedule property is not owned by them but by their mother and therefore, the plaintiff is not entitled to seek specific performance of the agreement of sale from them. The suit was filed for specific performance and in the alternate for refund of advance amount together with interest.

3. The suit was partly decreed by the trial court namely, the I Additional Sub Court, Tiruchirappalli in its judgment and decree dated 06.11.2012 passed in O.S.No.116 of 2004 by granting alternate relief of refund of advance amount together with interest to the plaintiff. However, the trial court denied the relief of specific performance to the plaintiff. Aggrieved by the denial of specific performance, the plaintiff filed a first



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appeal before the lower Appellate Court namely, the III Additional District Court, Tiruchirappalli in A.S.No.12 of 2015. The lower Appellate Court reversed the findings of the trial court by granting the relief of specific performance to the plaintiff by giving the following reasons:

a) The defendants have not specifically pleaded the hardship they would face if the sale agreement is executed in favour of the plaintiff.

b) The defendants have not produced any documentary evidence to substantiate their claim that their mother is the owner of the suit schedule property and that all the legal heirs of the deceased mother have not been impleaded as the party defendants in the suit.

c) Based on the agreement of sale standing in favour of the plaintiff, the lower Appellate Court has reversed the findings of the trial court by granting the relief of specific performance.

d) There were no pleadings in the written statement that the mother of the defendants is the absolute owner of the suit schedule property and after her death, her legal heirs became the absolute owners.

4. Admittedly, no parent title deed was filed by the plaintiff before the trial court to substantiate his claim that the defendants alone are the exclusive owners of the suit schedule property and therefore, they have right to convey the same to the plaintiff as they have a marketable title over the



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same.

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5. During the cross-examination of the plaintiff's witness (P.W.2), has admitted that prior to entering into the agreement of sale (Ex.A.1) with the defendants, he had not obtained encumbrance certificate and has also not seen the original parent document. Admittedly, in the plaint, the plaintiff has not pleaded as to how he traces title of the suit schedule property by the defendants. The only documents filed by the plaintiff before the trial court are as follows:

S.No	Date	Exhibits	Nature
1	15.08.2003	A.1	Sale agreement between the plaintiff and the defendants
2.	05.01.2004	A.2	Legal notice with postal cover
3.	Nil	A.3	Returned cover

As a prudent purchaser, the plaintiff ought to have obtained encumbrance certificate for the suit schedule property and should have satisfied himself with regard to the title of the suit schedule property of the defendants and only thereafter, he ought to have entered into an agreement of sale with the defendants. It is to be noted that no parent documents of the title deeds have been filed by the plaintiff and the encumbrance certificate has also not been filed by him to prove that the defendants are the absolute owners of the suit



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schedule property and there are no other co-owners apart from the defendants. The defendants have contended that their mother is the owner of the suit schedule property while that be so, the plaintiff ought to have produced the documentary evidence to prove that the defendants are having the title to convey the suit schedule property to the plaintiff under the subject agreement of sale. The trial court has rightly granted the alternate relief of refund of advance amount together with interest to the plaintiff and has rightly denied the relief of specific performance. The defendants have admitted the receipt of the advance amount as per the agreement of sale (Ex.A.1) and therefore, they are liable to refund the same together with interest as rightly held by the trial court in its judgment and decree.

5. The discretion to grant the relief of specific performance by the lower Appellate Court namely, the III Additional District Court, Tiruchirappalli in its judgment and decree dated 11.04.2019 in A.S.No.12 of 2015 by reversing the findings of the trial court has not been exercised on sound judicial principles in view of the fact that the plaintiff has not been able to establish through oral and documentary evidence that the defendants alone are the absolute owners of the suit schedule property. The plaintiff in his oral evidence through P.W.2 has admitted that prior to entering into the



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agreement of sale (Ex.A.1) with the defendants, he had not obtained encumbrance certificate and he has also not seen the original parent documents by which the defendants have set the claim title over the suit schedule property. When the defendants have pleaded in their written statement that they have never entered into the subject agreement of sale (Ex.A.1) with the plaintiffs, necessarily the plaintiff ought to have produced the other documentary evidence apart from the agreement of sale (Ex.A.1) and the legal notice (Ex.A.2) and the returned cover (Ex.A.3) to substantiate their claim that the defendants are the absolute owners of the suit schedule property. They had in fact entered into an agreement of sale (Ex.A.1) with the plaintiff and the plaintiff was always ready and willing to perform his part of obligation as per the agreement of sale (Ex.A.1) having failed to produce any other documents apart from the sale agreement and the legal notice. Therefore, this Court is of the considered view that the lower Appellate Court has exercised its discretion arbitrarily and the said discretion exercised by the lower Appellate is not guided by sound judicial principles. A party claiming enforcement of agreement of sale must necessarily produce the parent documents and an encumbrance certificate to prove that the defendants are the absolute owners of the suit schedule property that too when the defendants in their written statement have



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specifically pleaded that they never entered into an agreement of sale (Ex.A.1) with the plaintiff. Since the amount received by the defendants under the agreement of sale (Ex.A.1) has been admitted but the defendants having denied the execution of the agreement of sale (Ex.A1), this Court is of the considered view that the trial court was right in granting the alternate relief of refund of advance amount together with interest instead of specific performance of the agreement of sale in favour of the plaintiff. The lower Appellate Court has erroneously reversed the findings of the trial court by granting the relief of specific performance in favour of the plaintiff.

6. This Court is admitting the Second Appeal on the following substantial question of law:

"Whether the lower Appellate Court has exercised its discretion correctly by granting the relief of specific performance in favour of the plaintiff?"

7. In view of the reasons stated supra, the substantial question of law has to be answered in favour of the appellants/defendants by holding that the lower Appellate Court has erroneously exercised its discretionary power by granting the relief of specific performance in favour of the plaintiff in



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view of the fact that as a prudent purchaser, the plaintiff has miserably failed to obtain encumbrance certificate and obtained copies of the parent document to satisfy himself that the appellants/defendants are the only owners of the suit schedule property.

8. For the foregoing reasons, the judgment and decree of the lower Appellate Court namely, the III Additional District Court, Tiruchirappalli in its judgment and decree dated 11.04.2019 in A.S.No.12 of 2015 is hereby set aside and the Second Appeal is allowed by confirming the judgment and decree of the trial court namely, the I Additional Sub Court, Tiruchirappalli in O.S.No.116 of 2004 dated 06.11.2012. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet: Yes/No

CM

To,

1.The III Additional District Judge, Tiruchirappalli

2. The I Additional Sub Judge, Tiruchirappalli.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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