



SA(MD)No.536 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.(MD)No.536 of 2017

and

C.M.P.(MD)No.11598 of 2017 & 2158 of 2018

N.Arumugam ... Appellant/ Respondent /Defendant

Vs.

1.Rathinamala

2.Manonmani

3.Rajeswari ... Respondents / Appellants /Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 27.01.2017, passed in A.S.No.141 of 2013, on the file of the II Additional Subordinate Judge, Trichy, in modifying the judgment and decree, dated 21.06.2013, passed in O.S.No.1671 of 2009, on the file of the 1st Additional District Munsif, Trichy.

For Appellant : Mr.A.Arumugam

For Respondents : Mr.S.Meenakshi Sundaram,Senior Counsel,
for Mr. A.Arul Rayan



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JUDGMENT

The appellant herein is the respondent / defendant and the respondents herein are the appellants / plaintiffs before the Court below.

2. For the sake of convenience, the parties are referred to as per their rank before the Court below.

3. The brief averments of the plaint are as follows:

The plaintiffs submit that the suit property and the another property consisting a total extent of 50 cents belong to the defendant, by virtue of a registered sale deed, dated 10.12.1997. The plaintiffs further submit that the defendant has sold a portion of the property, namely, 25 cents to a third party on 27.05.1996. In respect of remaining eastern portion, the defendant agreed to sell the same to the plaintiffs, and a sale agreement dated 05.06.1996 was entered into. According to the sale agreement, 25 cents of property was agreed to be purchased for a total sum of Rs.75,000/-, at the rate of Rs.3,000/- per cent. The defendant did not execute the sale deed and has delayed the same for one reason or the other. However, since the plaintiff has handed over the original title deed of the



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suit property, they reposed confidence upon the defendant. In the meanwhile, the third plaintiff's husband was transferred to Ooty. Therefore, their family also shifted to Ooty. In the meanwhile, the defendant has changed his mind and stated that in view of the escalation of price, he wants to retain the portion of the property, which were agreed to sold to the plaintiffs. As such, a fresh agreement of sale, dated 19.02.2007 was entered into between the plaintiffs and the defendant, in respect of the B schedule property. The plaintiffs submit that they have been ready and willing to perform their part of the contract and that they have performed their part of the contract fully. The plaintiffs have also issued a letter dated 09.10.2009 and 31.10.2009, requesting the defendant to execute the sale deed. However, the defendant neither sent any reply nor came forward to execute the sale deed and also took hectic attempt to alienate the property. It is also pertinent to mention here that, since the plaintiffs have performed their part of the Contract fully by paying the entire sale consideration, and it is only the defendant has to perform the execution of the sale deed. Hence, the plaintiffs come forward with the suit for specific performance.



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4. Brief averments of the written statement is as follows:

The defendant submits that the defendant and his brothers one Ganesan and Sivasankar have been doing business in the suit schedule property. They disputed the sale agreement, dated 05.06.1996. The defendant also disputed the issuance of notice and also other contentions made in the plaint. It is also the submission of the defendant that he had no occasion to sell the schedule mentioned property. It is the specific submission of the defendant that, during 1996, he requested the third plaintiff's husband to arrange for an agricultural loan. During such time, the third plaintiff's husband received the original sale deeds and also obtained signature in the unfilled documents with the promise to arrange agricultural loan. This defendant stoutly disputed the very execution of the agreement, dated 19.02.2007. Therefore, the defendant prayed to dismiss the suit.

5. Before the trial Court, the plaintiffs have marked 6 documents as Ex.A1 to Ex.A6 and on behalf of the defendant, one document was marked as Ex.B1. On behalf of the plaintiffs, 2 witnesses were examined as



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P.W.1 and P.W.2 and on behalf of the defendant, one witness was examined as D.W.1.

6. After considering oral and documentary evidence and after considering the pleadings, the trial Court did not grant a relief of specific performance, however, by way of an alternative relief granted the relief for refund of the loan amount. It is the finding of the trial Court that the alleged sale agreement could only be construed as an agreement to pay the time barred debt. Thus, the trial Court granted a decree of payment of Rs. 75,000/- with interest at the rate of 12% to the plaintiffs.

7. Aggrieved with the finding of the trial Court, the plaintiffs have approached the First Appellate Court by preferring an appeal in A.S.No.141 of 2013. Wherein the first Appellate Court reversed the finding of the trial Court and decreed the suit with the observation that Ex.A2 - sale agreement will bind the defendant and that the reticence to the pre-suit notice would probablise admission of fact by the defendant over the execution of sale agreement - Ex.A2 and thereby, granted the relief of specific performance.



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8. Aggrieved with the judgment and decree of the First Appellate Court, the defendant has preferred this Second Appeal.

9. After hearing the either side, on 18.12.2017, this Court has framed the following substantial questions of law:

“1. Whether the First Appellate Court is justified in allowing the First Appeal without considering the validity of the Sale Agreement under Ex.A2, dated 19.02.2007?

2. Whether the First Appellate Court has committed an error without considering that the alleged Sale Agreement under Ex.A2 was only a contingent contract and not a concluded contract as claimed by the respondents?

3. Whether the First Appellate Court is correct in treating Ex.A2 is an Agreement of sale when both the parties to the agreement has not signed it?”

10. The learned counsel for the appellant / defendant would submit that the First Appellate Court has committed an error in relying upon the evidence of P.W.1, and that the very sale agreement cannot be construed as an agreement, only because of the admission by the defendant



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in respect of the signature found in Ex.A2 – sale agreement. It is also the submission of the learned counsel for the defendant that the First Appellate Court has failed to note that having entered into the sale agreement during 1996 and again obtaining a sale agreement during 2007 is improbable. Therefore, he would contend that the order of the First Appellate Court is liable to be set aside and prayed to restore the decree and judgment passed by the trial Court.

11. The learned counsel for the defendant / appellant has relied upon the following judgments:

- (i) 2022-7-SCC-1 (Veena Singh (dead) V. District Registrar / Additional Collector (F/R)
- (ii) 1995-LW-736 (M.Manoharan Chetty V. M/s. C.Coomaraswamy Naidu)
- (iii) AIR-1975 Madras 333 (DB) (N.Ethirajulu Naidu V. K.R.Chinnikrishnan Chettiar)

12. Per contra, The learned Senior Counsel appearing on behalf of the plaintiffs would contend that, though the defendant has disputed the



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execution of the sale agreement - Ex.A2, the very non-issuance of reply to the pre-suit notice would probablise the existence of the sale agreement. It is also the submission of the learned Senior Counsel that the very suit is not based upon the sale agreement of the year 1996 and the suit was only based upon the sale agreement, dated 19.02.2007. Therefore, the contention of the defendant that there was a huge delay in executing the sale agreement, cannot be countenanced. It is also the submission of the learned Senior Counsel that the conduct of the parties would play crucial role, and the defendant being the counsellor, has been in the active public life, therefore, the defendant's contention is that he did not read the sale agreement - Ex.A2, while he was signing the same, is unacceptable and illogical. Therefore, he would pray to confirm the order passed by the first Appellate Court.

13. The learned Senior Counsel for the plaintiffs has also relied upon the following judgments:

(i) 2018-6-CTC-686 (Hari Mohan Sharma V.

Charanjeet Singh Rekhi)

(ii) 2014-6-CTC-319 (Zarina Siddiqui V.



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A.Ramalingam alias R.Amarnathan)

(iii) 2013-1-LW-471 (Satya Jain (d) V. Anis Ahmed

Rushdie (d))

14. I have given my anxious consideration on either side submissions.

15. While considering the substantial questions of law, the first substantial question of law deals about the validity of the sale agreement under Ex.A2.

16. Before we embark into the validity of Ex.A2, let us consider whether the defendant has admitted the signature found in Ex.A2. In all fairness, the defendant has admitted the signature found in Ex.A2, which has also been extracted by the first Appellate Court. For ready reference, this Court would also like to extract the same :

“வ.சா.2-ல் உள்ளது எனது கையெழுத்து. ஆனால்

அதை நான் படித்துப் பார்க்கவில்லை.□



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17. However, they object the due execution. The learned counsel for the defendant relied upon the judgments reported in **2022-7-SCC-1 (Veena Singh (dead) V. District Registrar / Additional Collector (F/R), 1995-LW-736 (M.Manoharan Chetty V. M/s. C.Coomaraswamy Naidu)** and **AIR-1975 Madras 333 (DB) (N.Ethirajulu Naidu V. K.R.Chinnikrishnan Chettiar)** cited supra and would contend that mere signature found in the alleged sale agreement is not sufficient to prove due execution and to bind the defendant. The learned counsel would further submit that, the mere signature alone will not be construed as a factor for due execution. It is the submission of the learned counsel for the defendant that the execution of a document implies signing of the document after understanding the contents there of. In view of the above settled legal principle, the learned counsel for the appellant would contend that at the time of signing Ex.A2-sale agreement, he did not go through the content.

18. Let us consider whether the alleged ignorance about the contents of Ex.A2 has any semblance of truth to consider the same.



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19. In this regard, this Court would like to refer to the plaint. In the plaint, at paragraph No.7, the plaintiffs have stated about the execution of the fresh sale agreement on 19.02.2007. In this regard, the defendant has disputed the said agreement in his written statement as the same is false. However, in paragraph No.11 of the written statement, the defendant contended that during 1996, when he requested the third plaintiff's husband to arrange for agricultural loan, under the guise of obtaining agricultural loan, the third plaintiff's husband has obtained his signature in certain blank papers.

20. If we harmoniously go through the written statement, the specific objection in respect of Ex.A2 is that he had an occasion to sign during 1996, in a blank paper. In this back ground, the learned Senior Counsel would draw the attention of this Court in respect of Ex.A2 - sale agreement and would submit that the sale agreement, dated 19.02.2007 was engrossed in a stamp paper purchased on 19.02.2007. Therefore, on the face of it, the very pleading that the plaintiffs have fabricated the sale agreement, based upon the signature which were obtained in blank papers during 1996 is evidently false.



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21. The above finding could be further vindicated through the conduct of the defendant. If we look at the document submitted by the plaintiffs, prior to filing of the suit, he sent two letters to the defendant in Ex.A3, dated 09.10.2009, and Ex.A5, dated 31.10.2009. Admittedly those two letters have not been specifically denied by the defendant. But made a passing reference that he has not received such notices. However, in all fairness, he did not depose any oral evidence, denying the receipt of the two letters. Furthermore, while cross examining the plaintiffs, through whom the pre-suit notice were marked, there is no challenge either for issuance of notice to the defendant or for receipts of the same. Therefore, from the above discussion, it is clear that if really the defendant had not execute any sale agreement qua Ex.A2, after receipt of such notices, namely, pre-suit notice, Ex.A3 and Ex.A5, the natural tendency of any persons would be refuting the contention raised in the said notices. Here, the defendant has not responded the said notice. The same would probablise the case that only because of the existence of the sale agreement - Ex.A2, the defendant did not think fit to send reply.



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22. At this juncture, this Court would deem it appropriate to mention that the original sale deed of the suit property, has already been handed over to the defendant during 1996 itself. Generally, a natural doubt would arise as to the agreement since there is a alleged delay in getting the sale deed. Though original sale agreement is of the year 1996, it is the submission of the defendant that, had there been any agreement during 1996, the plaintiffs would have got the sale deed directly from the defendant on the date of Ex.A2, instead of getting another sale agreement. Therefore, he would contend that the subsequent sale agreement is fabricated one. Though the defendant has pleaded as stated hereinabove, the defendant's pleading eventually became complete, by saying that he has signed only in a blank paper during 1996. Therefore, Ex.A2 agreement cannot be construed as a document executed by the defendant. Such contention is found to be incorrect, in view of the foregoing discussions.

23. Apart from that, both the Courts have given a finding of fact about the existence of Ex.A2 - sale agreement. However, the trial Court found that Ex.A2-sale agreement is nothing but a loan transaction. The first Appellate Court has also given finding of fact about the existence of



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Ex.A2, but hold that Ex.A2 - sale agreement is really intended to sell the suit property. Therefore, when there is a finding of fact in respect of the existence and execution of an agreement, this Court do not want to interfere with such well considered finding of fact, though there is a variation between the trial Court and the First Appellate Court in respect of the nature of the document Ex.A2 as to whether the same is a sale agreement or loan transaction.

24. Coming to the nature of Ex.A2- sale agreement, as discussed hereinabove, the very sale agreement was engrossed in a stamp paper purchased during 2007. Whereas, the defendant would only say that he signed in a blank paper during 1996, which is found to be incorrect, in view of the discussions supra. To put it differently, there is no dispute as to the document engrossed in the stamp paper purchased during 2007.

25. At this juncture, this Court deems it appropriate to refer to the judgment relied upon by the respondents. The learned Senior Counsel would rely upon the judgment reported in **2023-SAR-Civil-1 (P.Daivasigamani V. S.Sambandan)**. In the above judgment, the Hon'ble



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Supreme Court explained that the delay in enforcing the agreement alone cannot be a ground to deny the specific performance. The relevant portion of the judgment is as follows:-

“11. As regards, the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In Mademsetty Satyanarayana vs. G. Yelloji Rao AIR 1965 SC 1405 it has been observed as under:

“7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems — English and Indian - qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the



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period of limitation. If the suit is in time, delay is sanctioned by law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”

12. The aforesaid ratio has also been followed recently by this Court in R.Lakshmikantham V. Devaraji (2019) 8 SCC 62. We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time limit by the respondent- plaintiff.”

26. It is pertinent to mention here that though the original sale agreement was entered during 1996, now what we are concerned is only about the sale agreement of the year 2007. And during 2007, there was a change in terms of the agreement and the extent of the property has also been modified. Therefore, though originally the agreement entered to purchase an extent of 25 cents of the property, due to subsequent developments, a fresh agreement came into existence during 2007. Therefore, this Court could not find any long delay in filing the suit.



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27. Apart from that, here the plaintiffs have already fulfilled his part of the Contract and has paid entire sale consideration. If at all the delay is the reason, it must be only viewed against the defendant. Because, according to the plaintiffs, the defendant only delayed the execution of the sale deed, which could be evidenced through Ex.A3 and Ex.A5. In the above judgment, it has also been held that the expression, readiness and willingness used under Section 16(c) of the Specific Relief Act, does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea.

28. Here, as discussed hereinabove, the plaintiffs have already fulfilled their obligation and therefore, this Court holds that the plaintiffs all along have been ready and willing to execute the sale deed. It is relevant to refer to the judgment relied upon by the learned counsel for the respondent in ***2013-1-LW-471 (Satya Jain (d) V. Anis Ahmed Rushdie (d))*** (cited supra), where, the Hon'ble Supreme Court has found that when there is a fault on the part of the defendant, even the delay of 40 years, will not come in the way to grant specific Performance.



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29. It is pertinent to mention here that in this case, the entire sale consideration has already been paid and from seeing the pleadings and also documents, more particularly, Ex.A3 and Ex.A5, the delay has occurred only by the defendant. In this regard, it is relevant to extract the relevant portion of the ***Satya Jain's*** case (cited supra) is as follow:

“27. The ultimate question that has now to be considered is whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22.12.1970. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

28. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped



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within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi and more recently in Narinderjit Singh v. North Star Estate Promoters Ltd. may be usefully recapitulated.”

30. The learned Senior Counsel has also relied upon the judgment reported in **2014-6-CTC-319 (Zarina Siddiqui V. A.Ramalingam alias R.Amarnathan)** and would contend that while considering the relief of specific performance, the conduct of the party will have role in granting discretionary relief of specific performance. In this case, the defendant has falsely pleaded that he signed only during 1996 in a blank paper. However, he admits the signature found in Ex.A2- sale agreement, which was



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engrossed in the stamp paper purchased during 2007 and furthermore, his contention that he did not read the sale agreement, is far from truth, in view of his reticence and non-issuance of reply to Ex.A3 and Ex.A5-notices. Besides there is a finding of fact as to the execution of Ex.A2, but only a variance at finding between the trial Court and the First Appellate Court as to the nature of the document.

31. Besides, the defendant being a person active in public life and also functioned as a counsellor that too as an independent candidate, this Court is having great apprehension to rely upon the words of the defendant that he has not read the sale agreement. Therefore, this Court is of the firm view that Ex.A2- sale agreement has been executed by the defendant in favour of the plaintiffs. Therefore, Ex.A2-sale agreement is valid and binding.

32. The learned counsel for the defendant would also raise a contention that the alleged Ex.A2- sale agreement would contain only the signature of the defendant and not that of the plaintiffs' signature. But, this Court is not carried away with the submissions made by the learned counsel



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for the defendant, on the simple ground that there are no such pleadings in the written statement. Apart from that, this is an agreement executed by the defendant. Therefore, absence of the signature of the plaintiffs have any role to play in a peculiar circumstance of this case and that he has already paid the entire sale consideration to the defendant. Therefore, this Court is of the firm view that the absence of the signature of the plaintiffs in Ex.A2 -sale agreement will in no way have any bearing in respect of the validity of the sale agreement.

33. Therefore, this Court is of the firm view that there are no substantial questions of law arising in this case and that there are no materials available so as to differ from the well considered finding of the First Appellate Court.

34. In the result, the instant Second Appeal stands **dismissed** by confirming the order of the First Appellate Court. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

NCC :Yes/No
Index :Yes / No
Internet :Yes / No
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C.KUMARAPPAN.,J.

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To

- 1.The II Additional Subordinate Judge,
Trichy.
2. The 1st Additional District Munsif,
Trichy.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.536 of 2017

26.09.2023