



S.A.(MD) No.85 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **29.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.85 of 2021

1.Amutha

2.Karthigeyan

3.Premalatha

4.Thirumoorthy

..Appellants

Vs.

T.P.Chandiragasa Udayar

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 21.12.2009 made in A.S.No.1 of 2008 on the file of the Principal Subordinate Judge, Tiruchirappalli, confirming the judgment and decree dated 26.06.2007 made in O.S.No.369 of 1996 on the file of the District Munsif Court, Thuraiyur.

For Appellants

: Mr.N.Mohan

For Respondent

: Mr.H.Lakshmi Shankar



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JUDGMENT

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Challenging the concurrent judgments in A.S.No.1 of 2008 on the file of the Principal Sub Court, Tiruchirappalli in O.S.No.369 of 1996 on the file of the District Munsif Court, Thuraiyur, this second appeal is filed.

2.The respondent/plaintiff has filed the suit for specific performance on the basis of the sale agreement dated 23.08.1993. The case of the respondent/plaintiff is that the suit property belonged to the deceased first defendant. The plaintiff and the deceased first defendant had entered into a sale agreement on 23.08.1993 with regard to the suit property. The sale consideration was fixed at Rs.18,000/- per month and a sum of Rs.10,000/- was paid as advance on the date of the sale agreement. The deceased first defendant agreed to receive the balance sale consideration of Rs.8,000/- at the time of giving delivery of the suit property. When the sale agreement was executed, one Sarasuammal was residing in the suit property as a tenant. The deceased first defendant initiated proceedings under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for evicting Sarasuammal. Since possession could not be immediately delivered because of the eviction proceedings, no time limit was fixed in the sale agreement. After taking possession of the suit property through Court, the deceased first defendant evaded to execute the sale deed.



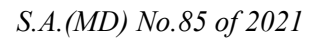
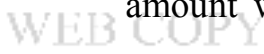
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3.The plaintiff owns a house in another place. The deceased first defendant owns a property on the north of the plaintiff's property. He entered into a sale agreement with one Akilambal for selling the property. In the said sale agreement, the northern wall of the plaintiff was shown as common wall. Therefore, the plaintiff sent a notice to the deceased first defendant and Akilambal on 04.07.1994. In reply to this notice, the deceased first defendant disputed the genuineness of the sale agreement and receipt of Rs.10,000/- as advance.

4.On 01.01.1996, when the plaintiff met the deceased first defendant and questioned about his conduct, he admitted the execution of the sale agreement and receipt of the advance amount and promised to give possession of the suit property. However, he said that after the dispute in connection with other property detailed above is settled, he would execute the sale deed and deliver the possession of the suit property to the plaintiff. Even thereafter, he has not executed the sale deed. During the pendency of the suit, he died and therefore, his legal heirs were impleaded as defendants 2 to 5.

5.In the written statement filed by the deceased first defendant, it is stated that there was no sale agreement executed between the plaintiff and the deceased first defendant. It is specifically stated that the sale agreement dated



6. On the basis of the above pleadings, the trial Court framed the following issues:

7. On the side of the plaintiff, P.W1 and P.W2 were examined and Ex.A1 to Ex.A8 were marked. On the side of the defendants, D.W1 was examined and no exhibit was marked. Apart from that, Ex.X1 was marked.

8. Based on the oral and documentary evidence, the learned trial Judge found that the plaintiff has proved the execution of the sale agreement and payment of Rs.10,000/- as advance and thus, decreed the suit for specific performance on condition of depositing the balance sale consideration within a



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period of one month in the Court. Against this judgment, the defendants 2 to 5 have filed an appeal in A.S.No.1 of 2008. The learned appellate Judge based on the oral and documentary evidence, the judgment of the trial Court and the Commissioner report, concurred with the findings of the trial Court and dismissed the appeal. Thus, the appellants are before this Court by way of this second appeal.

9.At the time of admission of this second appeal, the following substantial questions of law are framed:

“i) Whether the Courts below were justified in granting a decree for specific performance, when the description of property in the suit agreement evidently does not include the construction existing in the property?

ii) Whether the Courts below were right in concluding that the plaintiff was always ready and willing to do his part of contract?”

10.The learned counsel appearing for the appellants submitted that the specific defence of the defendants is that the sale agreement is a forged document. The deceased first defendant specifically denied his signature in the sale agreement. The sale agreement was sent to the handwriting expert's opinion. The handwriting expert sent an opinion stating that no conclusive opinion could be given as to whether the signature in Ex.A1 sale agreement is the signature of the



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deceased first defendant. When no conclusive opinion is given that the signature in Ex.A1 is that of the deceased first defendant, the finding based on Ex.C1 is not correct. He also submitted that the handwriting expert opinion was not marked as exhibit before the trial Court, but in the appeal, it was marked as Ex.C1. There is also a discrepancy in the description of property in the sale agreement in the sense that when the house is in existence, the property was shown as vacant land in the sale agreement.

11.In response, the learned counsel appearing for the respondent submitted that both the Courts, on the basis of the oral and documentary evidence, rightly found that Ex.A1 sale agreement was executed by the deceased first defendant. D.W1 has not denied the signature of his wife in Ex.A1. Ex.C1, Commissioner report, establishes the fact that the deceased first defendant's wife, namely the second defendant, has signed in Ex.A1. The sale agreement was appropriately proved and thus, he prays for dismissal of this second appeal.

12.Considered the rival submissions and perused the records.

13.It is not in dispute that the suit property belonged to the first defendant. Ex.A1 the sale agreement is dated 23.08.1993 and the sale consideration was fixed at Rs.18,000/-. On the date of the sale agreement, a sum



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of Rs.10,000/- was received as advance. The remaining amount of Rs.8,000/- was agreed to be paid at the time of delivering the possession of the suit property. Admittedly, there is no time limit fixed for execution of the sale deed. The reason for not fixing the time limit, according to the case of the plaintiff, is that one Sarasuammal was the tenant in the suit property and eviction proceeding was pending.

14.The suit was filed on 21.08.1996 within three years from the date of execution of the sale agreement. Thus, it is clear that the suit was filed in time. There is no defence taken by the deceased first defendant that the suit is barred for not expressing the readiness and willingness on the part of the plaintiff to execute the sale deed. In the said circumstances, when there is no time limit fixed for the completion of sale and when the suit was filed in time, this Court is of the view that the filing of the suit is maintainable.

15.The primary question involved in this case is whether Ex.A1 sale agreement was executed by the deceased first defendant? In support of the execution of the sale agreement, P.W1 gave his evidence and he also examined P.W2, one of the attestors in proof of the sale agreement. Both the Courts have concurrently found that the evidence of P.W1 is cogent and reliable with regard to the execution of the sale agreement. With regard to the signature of the deceased



first defendant found in the sale agreement, it is true that the Commissioner report was not marked before the trial Court, but was only marked in the first appellate Court.

16.The learned first appellate Judge found that from the expert opinion, no reliable opinion could be given about the signature of the deceased first defendant. However, the expert did not deny that the signature in Ex.A1 document is not that of the deceased first defendant. That apart, the handwriting expert gave a reliable opinion about the signature of the second defendant, who also attested in the sale agreement. The learned trial Judge found that the second defendant had attested in Ex.A7 and Ex.A8 and therefore, it is possible and probable that she could have attested in Ex.A1 sale agreement. This finding of fact was approved by the learned first appellate Judge on the basis of Ex.C1, Commissioner report.

17.One important thing is that after the death of the first defendant, the defendants 2 to 5 were impleaded as defendants. The second defendant is the wife of the deceased first defendant. It is the case of the plaintiff that she had also attested the sale agreement as one of the witnesses. When that be the case, the second defendant is expected to file an additional written statement disputing this claim. Even in the written statement filed by the deceased first defendant, there is no specific denial made with regard to the signature of the second defendant



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found in Ex.A1 sale agreement. Thus, from the oral and documentary evidence produced, this Court is of the considered view that the plaintiff has proved the execution of the sale agreement and receipt of advance of Rs.10,000/- for the sale of the suit properties in favour of the plaintiff. Both the Courts below have rightly decreed the suit and this finding of fact does not require any interference.

18.In this view of the matter, this Court answers that when the execution of Ex.A1 sale agreement is proved, omission to have proper description of property will not deprive the plaintiff of a suit for specific performance, for substantial question of law No.i.

When there is no specific pleading was made with regard to the readiness and willingness in the written statement, when the suit was filed in time and when the plaintiff has always been pursuing the sale agreement even by buying stamp papers, this Court is of the view for the substantial question of law No.ii that the Courts below were right in concluding that the plaintiff was always ready and willing to perform his part of the contract.

19.In fine, this Court confirms the judgment and decree in A.S.No.1 of 2008 on the file of the Principal Subordinate Judge, Tiruchirappalli, dated 21.12.2009 confirming the judgment and decree in O.S.No.369 of 1996 on the file



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of the District Munsif Court, Thuraiyur dated 26.06.2007 and dismissed this second appeal. No costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

29.11.2023

mm

To

- 1.The Principal Subordinate Judge,
Tiruchirappalli.
- 2.The District Munsif,
Thuraiyur.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.CHANDRASEKHARAN, J.

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