



A.S.No.45 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.45 of 2011

Judgment reserved on 08.03.2024	Judgment pronounced on 19.03.2024
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A.G.Dakshinamoorthy

...

Appellant

Vs.

1.Krishnamoorthy
2.Aruljothi
3.Raja
4.Ramu @ Ramachandran
5.Vijayalakshmi
6.Veerappadurai
7.Viji @ Vijaykumar
8.Manjula Devi
9.Umarani
10.Valavan

...

Respondents

Prayer: This First Appeal is filed under Section 96 and Order XLI Rule 1 of Code of Civil Procedure to set aside the judgment and decree dated 23.09.2010 in O.S.No.57 of 2006 on the file of the Court of the Additional District Court (Court No.2) Cuddalore.



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For Appellant : Mrs.G.Sumitra
For R1 to R8 : No appearance
For R9 & 10 : Mr.D.Ravichander

J U D G M E N T

The unsuccessful plaintiff is the appellant herein. He filed a suit in O.S.No.57 of 2006 before the Additional District Court, Cuddalore seeking specific performance of the suit sale agreement Ex.A1. The defendants 5, 8, 9 & 10 filed written statement and others have remained ex-parte.

2. The brief facts of the case are as under:-

It is the specific case of the plaintiff that they have entered into agreement of sale with all the defendants except defendants 9&10 who are the owners of the property. The property originally belonged to one Vaiyapuri and his son Pakkiri died. The defendants 1 to 4 are the legal heirs of Vaiyapuri and defendants 5 to 8 are the legal heirs of the pre-deceased son Pakkiri. Defendants 9 & 10 are the purchasers from Defendants 1 to 8.



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WEB COPY3 (a) As per the plaint, the plaintiff and all the defendants 1 to 8 have entered into Ex.A1 - suit sale agreement on 23.06.2006 for sale of the suit schedule property and the sale consideration was Rs.11,40,000/- and paid Rs.1,00,000/- as advance. Duration for completion of the sale agreement is five months. Since Manjula Devi - D8 was admitted in hospital for delivery and Vijayalakshmi - D5, mother of Manjula Devi accompanied to hospital, they have not signed Ex.A1 agreement.

(b) The defendants 1 to 8 have executed General Power of Attorney Ex.B1 on 20.07.2006, having come to know the same, he issued a notice by way of telegram under Exs.A7 & A8 to Manimaran, the Power of Attorney holder. Despite the same, Manimaran, General Power of Attorney of the other defendants had executed a sale deed Ex.B18 and Ex. B24 in favour of his wife Uma Rani and her brother Valavan on 27.07.2006. Since the parties are getting ready for registration before the Sub Registrar, Kurincipadi, the appellant/plaintiff had filed the suit on the very same day, i.e.,27.07.2006.



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4. From the records, I find that the suit and the sale deeds Exs.B18 and B25 are on the very same date. The signatory to the Ex.A1 - sale agreement have remained ex-parte. While D5 - Vijayalakshmi and D8 - Manjula Devi had filed written statement alleging that they are not the signatory to the said suit sale agreement and hence the same is not binding upon them and also pleaded that the suit sale agreement is bogus one, created after execution of the sale deed in favour of Defendants 9 & 10. The defendants 9 & 10 have filed separate written statements alleging that they are bonafide purchasers for valuable consideration and Ex.A1 was subsequently created for the purpose of this case.

5. On behalf of the plaintiff, he examined himself as P.W.1 and the scribe of Ex.A1 suit sale agreement (unregistered) was examined as P.W.2 Venkatesan and P.W.3 - Sivaji and P.W.4 -Udayasuriyan are the attestors of Ex.A1 - suit sale agreement. Exs.P1 to P12 were marked. On behalf of the defendants, 8th defendant examined himself as D.W.1 and purchasers 9th and 10th defendants - Umarani and Valavan respectively were examined as D.W.2



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and D.W.3 and Manimaran who is the husband of D.W.2 and Power of Attorney holder and attester of the Sale Deed in favour of D9 and D10 (P.W.2 and P.W.3) is examined as D.W.5.

6. On consideration of both oral and documentary evidence, the trial Court had come to the conclusion that the co-owner of the property were not signatory to the Ex.A1 suit sale agreement and Ex.A1 agreement is doubtful and the sale in favour of the defendants 9 & 10 is true and valid and is not hit by doctrine of *lis pendence* and the plaintiff is not ready and willing to perform his part of contract accordingly dismissed the suit and hence the appeal.

7. On hearing the learned counsel for the plaintiff/appellant, this Court has arrived at the following points for determination-

(i) Whether the suit sale agreement is true and valid as pleaded by the plaintiff (or) bogus, as pleaded by the defendants?

(ii) Whether the plaintiff is ready and willing to perform his part of contract?



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(iii) Whether the agreement Ex.B1 is binding upon defendants 5 & 8?

WEB COPY (iv) Whether the defendants 9 & 10 are bonafide purchasers for valuable consideration?

(v) Whether the plaintiff is entitled for the relief of specific performance of contract?

(vi) Whether the order of the Trial Court is sustainable in law?

8. Mr.D.Ravichander, learned counsel for the contesting respondents R9 and R10 contended that the alleged panchayatar whom said to have been advised to enter into Ex.A1 agreement were not examined and it is a specific case of the contesting defendant before the trial Court that Ex.A1 is an anti dated document, after coming into the existence of the sale deed in favour of these respondents in Ex.P18 and P24 and made submissions in support of the judgment of the trial Court.

9. After hearing the rival submissions and after perusing the oral and documentary evidence and the citations relied on by the respective counsel, this Court finds that Ex.A1 dated 23.06.2016 is a unregistered sale agreement



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said to have been entered between the plaintiff and the defendants D1 to D8.

D1 to D4 are none other than the legal representatives of Vaiyapuri Achari.

since, one of the son of Vaiyapuri Achari by name Pakkiri died, his legal representatives D5 to D8 were arrayed as parties and I find that D9 and D10 have purchased from D1 to D8.

10. The plaint proceeds on the basis that the plaintiff Dhakshinamoorthy had entered into an agreement of sale of the suit property under Ex.A1 dated 26.03.2006 wherein, the terms of the agreement are to the extent that the total sale consideration is Rs.11,40,000/- and paid Rs.1,00,000/- as advance and 5 months has been stipulated for the completion of the sale deed.

11. On perusal of Ex.A1, I find that D5 (Vijayalakshmi) and D8 (Manjula Devi) were not signed the document. Admittedly, they are the co-owners of the property.



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12. In the plaint there is an averment that since at the relevant point of time Manjula Devi was in hospital for her delivery and her mother Vijayalakshmi was looking after her. Since both Manjula Devi and her mother was in Pondicherry, their signature could not be obtained.

13. Ex.A1 sale agreement dated 23.06.2016, Ex.B1, is a General Power of Attorney executed by D1 to D8 in favour of one Manimaran husband of D9 dated 20.07.2006.

14. Based upon Ex.B2 General Power of Attorney, the said Manimaran as a power of attorney, on behalf of all the defendants D1 to D8 had executed a sale deed in favour of his wife D9 and D10 under Exs.B18 and B24. Thus, I find that the sale agreement was on 23.06.2006. Power of attorney is on 27.07.2006. Sale Deed was on 24.07.2006. Suit was filed before the trial Court on 27.07.2006. The plaint papers from the lower Court records was returned for deficient in Court fee and time was granted, subsequently, deficit Court fee has been filed.



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15. On perusal of the plaint and P.W.1 evidence, I find that he had not came to the Court with clean hands. In the cross-examination, P.W.1 plaintiff had admitted that he had the knowledge of defendants D9 and D8 were running Tea shop in the suit property. It is further admitted in the cross-examination that D9's husband Manimaran is running a tea stall and D10 Valavan is the brother in law of the said Manimaran and brother of the 9th defendant and all the 3 persons are in the suit property as a lessee. Though in the plaint, he has stated that he said to have been received information that some power deed was executed in favour of Manimaran, in the cross-examination he admitted that he had knowledge that the document has been registered. He further admitted in the cross-examination that execution of the sale deed in favour of D9 and D10 were also known to him. Thus, I find the contention of the learned counsel for the respondents R9 and R10 as contained in the plaint is not the true facts and found to have force.

16. On perusal of the plaint, I find that with deficit Court fee, the suit has been filed. Subsequently, it has been complied with within the time limit stipulated by the Registry of the filing section of the lower Court. The



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balance sale consideration is to be Rs.10,40,000/- However, neither at the filing of the suit nor during the trial of the suit, even after order passed by the lower court or during the pendency of the appeal, the appellant/plaintiff has not chosen to deposit the said amount nor shown any financial strength to purchase the property by paying the alleged balance of Rs.10,40,000/- and hence, I find that the contention raised by the learned counsel for the respondent is that the appellant/plaintiff is not having sufficient financial sources to complete the sale transaction. Furthermore, based upon the above evidence, I find that the plaintiff is not ready with money and hence the readiness as required under the Section 16(3) of the Specific Relief Act appears to be very much lacking on the part of the appellant/plaintiff.

17. On coming to the willingness of the party, the case of the plaintiff is that after entering into the sale agreement Ex.A1 with the defendants, all the defendants D1 to D8 gave the power to Manimaran who in turn sold the property to D9 and D10 on 24.07.2016 and hence he filed a suit on 24.07.2006.



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WEB COPY 18. Per contra, it is a specific case of the contesting previous owner D1 to D8 that they remained ex-parte. Those persons who have not signed a suit agreement namely D5 and D8, they have filed a written statement alleging that the agreement is an anti dated agreement, so is the stand of D9 and D10 the purchaser and hence, it is for the plaintiff to show that the agreement is enforceable.

19. Admittedly, P.W.2 in his cross-examination has stated that the co-owners Vijayalakshmi (5th defendant), Manjula Devi (D8) were not signatory of the agreement. Thus I find that the parties who have signed Ex.A1 suit sale agreement have remained ex-parte in the suit, while the party who are not signatory to Ex.A1 sale agreement are contested the suit.

20. In respect of the sale in favour of D9 and D10 Ex.B2 sale consideration of Rs.10,40,000/- was filed. This is a receipt issued by all the previous land owners namely D1 to D8, assumes significance.



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21. The trial Court has considered the fact that there is a correction in Exs.B25 and B26 and has the presence of the alleged attester P.W.3 and P.W.4 at the time of signing of Ex.A1. While the evidence of P.W.3 and P.W.4 is that all the parties to the agreement signed the document, however on bare perusal of Ex.A1, D5 and D8 have not signed the document and the trial Court has rightly held that coming into the existence of Ex.A1 suit sale agreement is surrounded by suspicion.

22. On perusal of Ex.B1 power deed, I find that D1 to D7 have signed the Ex.B1 power deed in favour of Manimaran and the 8th defendant Manjula Devi for want of identification card, he has not signed in the power deed as well as in the receipt, however, she has been attesting witness to the said transaction. In this connection, she was examined as witness and she has categorically stated that since on the day, she did not carry the I.D card, she signed power deed as attesting witness and also stated that her husband running tea shop in the said property and thus, I find that the sale deed in favour of D9 and D10 is more and above the sale consideration fixed under



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Ex.A1 sale agreement and the payment of the sale consideration has been evidenced under Ex.B2. It is also duly attested by all the parties as spoken to by D.W.1 and D.W.2 and thus, I find that the defendants 9 and 10 are the purchasers for valuable consideration. On the date of their sale deed, it is pleaded that there is no such agreement and it is further pleaded that they are bonafide purchaser and the evidence of P.W.3 and P.W.4 attester does not inspire the confidence of the Court for the multiple reasons stated in the preceding paragraphs.

23. It remains to be stated that when one of the co-owner challenging the Ex.A1 suit sale agreement as bogus, it is for the plaintiff to prove the validity and genuineness of Ex.A1 sale agreement, but in the instant case he has miserably failed to do so.

24. On the contrary, defendants D9 and D10 have successfully demonstrated before this Court that they are bonafide purchaser for valuable consideration, as discussed in the presiding paragraphs.



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25. The learned counsel for the respondent also draw my attention to the fact that according to the plaintiff he has come forward with specific plea that since there was a dispute between the purchaser and the seller, a panchayat was conducted. In the said Panchayat, they are asked to execute the sale agreement, consequently thereto, Ex.A1 came into existence. In this connection, they have examined the attesor of Ex.A1 sale agreement as P.W.3 and P.W.4. They have admitted in the cross-examination that they are only the attesor and not the Panchayatar as projected by the plaintiff assumes significance.

26. The plaintiff having come forward with specific case about the conduct of the panchayat, non examination of the alleged panchayatar is also appears to be fatal to the plaintiff's case.

27. The evidence of attestors P.W.3 and P.W.4 was not inspiring the confidence of this Court as rightly held by the Trial Court in view of the inconsistency with the oral evidence of P.W.3 and P.W.4 with that of Ex.A1



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and accordingly, this Court holds that coming into the existence of Ex.A1 is doubtful and hence the defendants have successfully probablized their case through the cross-examination of P.W.3 and P.W.4 that Ex.A1 sale agreement came into existence subsequent to the sale deed in favour of D9 and D10 and hence Ex.A1 appears to be anti dated document.

28. As stated supra, the plaintiff seeking the relief of specific performance of Ex.A1, has to plead and prove that Ex.A1 is a true document and further he is ready and willing to perform his part of the contract. However in the instant case, for the reasons stated in the preceding paragraphs, the plaintiff has miserably failed to prove the pleadings that Ex.A1 is a true and genuine agreement and further about his readiness and willingness as required by the Law is also not proved in the manner known to law and therefore, all the points are answered against the plaintiff and in favour of the defendants. The order of dismissal passed by the trial Court is sustainable in law as the same does not suffer from any illegality or irregularity, warranting interference at this appellate stage.



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29. Accordingly, I find that no merits in this case and the Appeal Suit is dismissed and the judgment and decree passed in O.S.No.57 of 2006 on the file of the Court of the Additional District Court (Court No.2) Cuddalore. are confirmed. No costs.

19.03.2024

Index : Yes / No
Neutral Citation : Yes/No
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To

1.The Additional District Court (Court No.2) Cuddalore.
2.The Section Officer,
VR Section, High Court,
Madras.



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RMT.TEEKAA RAMAN, J.

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