



A.S.No.376 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2024

PRONOUNCED ON : 26.04.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

A.S.No.376 of 2016
CMP.Nos.8143 & 8144 of 2016

M.P.Nathan (deceased)
P.Arumuga Kani (deceased)

1.G.Ponmani Mala
2.P.Ramadoss
3.P.Radhakrishnan
4.P.Sasikumar

... Appellants/Plaintiffs

Vs

M.Subbaiah (Died)

1.Tmt.S.Thirupurasundari
2.S.Vinayagamoorthy
3.S.Kannan
4.S.Senthil Kumar
5.K.Latha

... Defendants/Respondents

PRAYER: These First Appeal have been filed Under Order 41 Rule 1 read with Section 96 of the Civil Procedure Code, against the judgment and decree dated 20.11.2015 made in O.S.No.14328 of 2010, on the file of the learned VII Additional Court, City Civil Court, Chennai.



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For Appellants : Mr.A.K.Sriram Senior counsel for

Mr.O.S.Karthikeyan

For Respondents : Mr.A.Prabhakaran for RR1 to 5

JUDGMENT

The present appeal had been preferred by the Plaintiffs as being aggrieved by the judgment and decree of the Court Below dismissing the suit for specific performance of sale agreement and for damages and for consequential relief of permanent injunction not to alienate the suit schedule property as well as not to interfere in the peaceful possession and enjoyment of the suit schedule property. For easy reference parties are referred as per their rank in the original suit.

2.The fact which lead to the present appeal in a nut shell is that the first defendant who is the husband of second defendant and father of defendants 3 to 6, entered into agreement of sale with the first plaintiff who is the husband of second plaintiff and father of plaintiff 3 to 6 on 08.03.1995 for a valuable sale consideration of Rs.6,00,000/- in respect of the suit schedule property. The above said sale agreement contains a



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condition precedent that the first defendant has to vacate the tenants in the said premises in order to surrender the possession of the suit schedule property to the first plaintiff. A sum of Rs.3,00,000/- was paid as advance for the above sale on the same date of the agreement. Subsequently, the first plaintiff has paid a sum of Rs.2,00,000/- to the first defendant on various dates. The first defendant had purchased building materials from the first plaintiff to a tune of Rs. 56,000/- which was set off with the sale consideration. Therefore, altogether a sum of Rs.5,56,000/- was paid and a sum of Rs.44,000/- has to be paid by the first plaintiff. Thereafter, the first defendant vacated the tenants and surrendered the possession of the suit schedule property to the first plaintiff on 27.09.1995. From that day onwards the first plaintiff is in the possession of the suit schedule property. But the same was denied by the first defendant that he had neither surrendered possession to the first plaintiff nor signed any document to that effect. There was a threat from the first defendant to the first plaintiff from enjoying the peaceful possession of the suit schedule property on several dates i.e., on 28.12.1995, 30.12.1995 and 07.01.1996 through his henchmen. Further, the first plaintiff has estimated a sum of Rs.4,10,000/- as damages for the injury caused by the first defendant. The suit was originally was filed before the Hon'ble High Court of Judicature at Madras



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in C.S.No.30 of 1996 for specific performance and for consequential relief and subsequently, the same was transferred to the file of City Civil Court and renumbered as O.S.No.14328 of 2010. During the lis pendens, both the first plaintiff and first defendant died and simultaneously, their legal heirs were brought on record and the present appeal came to be filed by the legal heirs of the parties to the subject matter sale agreement.

3. Considering the pleading and available evidence before the Trial Court, the following issues were framed by the Trial Court for consideration:-

- 1) Whether the plaintiff is entitled to get the relief of specific performance as such prayed in the plaint?*
- 2) Whether the plaintiff is entitled to claim damages as claimed in the plaint?*
- 3) Whether the plaintiff is entitled to get the relief of injunctions as prayed for in the plaint?*
- 4) Whether the suit transaction is hit by the provision of Section 22(A) of the Registration Act?*
- 5) Whether the defendant has disclaimed title to the suit property and claimed only possessory right and title?*



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6) *Whether the plaintiffs are entitled to a decree for possessory right and title and also for specific performance of the agreement dated 08.03.1995?*

7) *Whether the defendant had not executed any document for the delivery of the property and the alleged document is forget one?*

4. After considering the facts and evidence of both the parties submitted before the court below, the Court below dismissed the above suit on the basis of expert opinion Ex C1 to C4 and held that, Ex P7 is not genuine and the same is a fabricated document.

5. Heard M/s.A.K.Sriram, learned Senior Counsel for Mr.O.S.Karthikeyan, learned Counsel appearing for Appellants and Mr.A.Prabhakaran, learned Counsel appearing for Respondents.

6. M/s.A.K.Sriram, learned Senior Counsel appearing on behalf of the appellants would at the outset submit that the Trial Court have rightly held that exhibit P1 Agreement of Sale dated 08.03.1995 was executed by the first defendant in favour of the first plaintiff for an extent of 1,500 sq.ft.



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for Rs.6,00,000/-. He also contented that the endorsements made by the first defendant that he has received Rs.5,00,000/- from the first plaintiff on 08.03.1995, 05.04.1995, 26.04.1995, 09.08.1995, 21.08.1995 as sale consideration and those endorsements were marked as exhibit P1 to P6 by way of receipt. He would contend that when the execution of the sale agreement and the receipt of part sale consideration of Rs.5,00,000/- were admitted by the defendants which has also been proved by the plaintiffs through exhibit Ex P1 to P6 and plaintiffs had proved their readiness and willingness by making pay order for remaining sale consideration as Ex P12, on the very ground the above suit for specific performance ought to have been decreed. The learned senior Counsel relied upon a Division Bench Judgment of the Apex Court in the case of ***P.Ramasubbamma Vs V.Vijayalakshmi and Others reported in (2022) 7 SCC 384***, wherein it has been held that, once execution of agreement of sell and payment/receipt of advance substantial sale consideration was admitted by vendor, thereafter nothing further was required to be proved by plaintiff for the releif of specific performance. The Trial Court ought not to have held that plaintiffs cannot seek Specific Performance based on Ex P7 which shows the possession was surrendered by the first defendant to the first plaintiff, on the alleged ground it is forged document when the plaintiffs has not sought



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for Specific Performance based on Ex. P7. Therefore, though the Ex. P7 was rebutted by Ex C1 (Advocate Commissioner Report), Ex C3 (Inspection Report) and Ex C4(Reasoning Sheet), the Trial Court should have taken note that the first defendant had admitted in Para 8 of his written statement that first plaintiff is in possession and enjoyment of the suit property. He also contended that the Trial Court should have brushed aside the experts opinion who was not examined and should have taken note of the deposition of PW2 (Mr.M.Ravi) that he witnessed the first defendant signing the agreement in his examination. In that context, the learned Counsel for Appellant relied upon a Judgment of the Apex Court in the case of ***Padum Kumar Vs State of Uttar Pradesh in Criminal Appeal No.87 of 2020***, wherein it was held that the expert who gave opinion and has not cross examined, that expert's report cannot be looked into and the evidence of hand-writing experts is only a corroborative piece of evidence.

7. The learned counsel argued that the Trial Court have rightly held that suit transaction is not hit by Section 22(A) of the Registration Act, but, the Trial Court had committed gross irregularity in holding that transfer of interest in immovable property in Ex P1 is involved and therefore proper sanction would have to be obtained from Wakf Board Authorities,



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overlooking the fact that there was no pleading by the first defendant and no issues was framed by the trial court to that aspect. Moreover, the said provision of Section 22 A of Registration Act was struck down as unconstitutional and ultra vires Article 14 and 226 of Constitution. The above provision was struck down by Judgment of Division Bench of Madras High Court in the case of ***1.Captain Dr.R.Bellie, 2.Dr.Smt.Seetha Bellie and another Vs The Sub-Registrar, Registration Office, Sulur, Coimbatore District and others reported in 2007 (3) CTC 513.***

8. The learned counsel made submissions that the trial Court failed to consider that the first plaintiff has proved that he has suffered mental agony, hardship and loss in consequences of which the first plaintiff has to incur hiring expenses in seeking assistance of various persons to avoid dispossession. The principle to prove plaintiffs case is preponderance of probability. Hence, when there is a prima facie case on the side of the plaintiff that the first defendant avoided executing of sale deed, then the relief of Rs.4,10,000/- can be granted as damages for the mental agony, hardship and loss sustained by the first plaintiff. Hence, he would contend that the Appeal Suit would have to be allowed and the Judgment and decree of the Court Below would have to be set aside.



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9. Countering his arguments Mr.A.Prabhakaran, the learned counsel for the Respondents submitted that the plaint schedule described property is not an absolute property owned and possessed by the first defendant, he only purchased super structure with lease hold rights in the land by registered sale deed 19.02.1986, which is marked as ExD1, Wherein the land was owned by a Waqf coming under Supervisory control of Tamil Nadu Waqf Board. The learned counsel for the respondents would submit that the first defendant and first plaintiff entered into sale agreement Exp1 dated 08.03.1995 in respect of the suit schedule property for a sale consideration of Rs.6,00,000/- and a sum of Rs.3,00,000/- was paid toward advance on the date of agreement of sale and further sum of Rs.2,00,000/- was received by the first defendant on various dates and the nature of the property was wantonly not disclosed correctly in the Sale Agreement Exp1. He made submissions that though the first defendant accepted a receipt of Rs.5,00,000/-, he denied that the first defendant purchased building material worth the sum of Rs.56,000/- from the first plaintiff and agreed to set off the amount with the balance sale consideration. Therefore, the first plaintiff ought to have paid Rs.1,00,000/- as balance sale consideration. Since, the first plaintiff not come forward to pay the balance sale



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consideration, the first defendant offered to return the advance amount received along with 18% interest. However, the deceased Plaintiff not come forward to accept the payment. Further, the Trial Court rightly pointed out that the first plaintiff not produced any material evidence to substantiate the said plea and hence, discarded the pleading.

10. The learned Counsel would submit that the first defendant had never executed any document on 27.09.1995 under which he handed over the delivery of physical possession of suit schedule property to the first plaintiff. The said document dated 27.09.1995 was rebutted by Ex C1, C3 and C4. The Trial court has considered that the first defendant did not execute Ex P7 document and the first defendant had not executed any document for delivery of the property and the said alleged document Ex. P7 is forged document. Therefore, the Trial Court rightly decided the said suit that based upon the forged document Ex P7 the first plaintiff cannot seek equitable relief of specific performance and dismissed the suit. The relevant portion from the said Judgment as quoted by the learned counsel as follows:

“... It would relevant to mention in C3 that A1 to A9 are the admitted signatures of 1st Defendant in ExP1 to P6 and Q1 and



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Q2 are the disputed signatures of the 1st defendant. It is found in Ex.C4 reasoning sheet dated 13.02.2009 which would shows that A1 to A9 did not write the signatures marked Q1 and Q2.

The standard signatures have been freely written and they agree in the handwriting characteristics on interse comparison. The questioned signatures have been imitated and they show inherent signs of forgery like slow drawn movement and careful execution of letters and they differ significantly from the standard signatures in the handwriting characteristics. The characteristic differences include among other things the following:

- 1. The skill of writing.*
- 2. The alignment between the letters M. ஈ ஸ் and strokes of the signatures.*
- 3. The relative sizing between the letters 'M' & 'ஈ', 'ஈ', 'ஸ்' ஸ்*
- 4. The manner of terminating the letters M' 'ஸ்', 'ஸ்', and signatures.*
- 5. In the detailed designs such as the beginning and the formation of loops and curves in the letters M' & 'ஈ', 'ஸ்' ஸ் and strokes of the signatures.”*



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Therefore, it is crystal clear from Ex.C3 and C4 that the 1st defendant did not execute the Ex.P7 document in favour of the 1st plaintiff. Therefore, this court has considered view that the 1st defendant did not execute Ex.P7 document dated 27.09.1995 from which he did not handover and delivery of the suit schedule property to the 1st plaintiff and the 1st defendant had not executed any document for delivery of the property and the said alleged document Ex P7 is forged document. Hence, the issue No.7 is answered accordingly”....

11. The learned Counsel further contend that though as per the said verdict of Hon'ble Apex Court for consideration of expert opinion and his report, the examination of said expert is mandatory. However the Appellant herein being the plaintiff in the suit have not taken any steps for examination of the expert before the Trial Court. The initial burden of proof is on the plaintiff, since he has not taken any effective steps in that regard. The trial court by applying its judicial mind, and by taking consideration of Exhibit C1 to C4 and has given cogent and convincing reason in rejecting Ex P7 and in the result dismissed the suit. The learned counsel further submit that the relief sought for in the suit is an equity relief of specific performance, the Appellant being the plaintiff miserably failed in discharging his initial burden with regard to ExP7. Since no



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alternative relief is prayed, the trial court inspite of admission with regard

to receipt of advance amount had not passed any order for refund. In

respect of expert opinion, the respondent relied upon Judgments of

Division Bench of Madras High Court in the case of ***D.Pandi Vs The***

Dhanalakshmi Bank Limited reported in 2001 AIR 243, Single Bench

Judgment of Madras High Court in the case of ***B.Rajeswari and another***

Vs B.Vinayagam and others reported in 2020(1) CTC 515 and Single

Bench Judgment of Madras High Court in the case of ***K.Sivakumar Vs***

Ezhilarasi @ Jessulla Ezhilarasi and others reported in 2021 (5) CTC

419. Relying upon the said judgments, the learned counsel contented that

the Hon'ble Division Bench and Single Bench of this Hon'ble Court have

categorically held that, the initial burden vest only upon the plaintiff and

the trial court is vested with jurisdiction to decide the veracity of the expert

opinion. In furtherance of which, the Trial court had given cogent and valid

reasons for not taking considering of Exp7. Though the trial court has

referred that, there are two Sale Agreements; but the findings of the Court

below is only in respect of Exp7. Since, the Appellants/plaintiffs

approached the Trial Court with unclean hands and fabricated Exp7,

dismissed the suit in entirety.



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12. The learned Counsel further stated that the first plaintiff has to seek the assistance of several people to avoid dispossession and in this regard, the first plaintiff had incurred heavy expenses and sought for a relief of Rs.4,10,000/- as damages for mental agony, hardship and loss, but has not produced any material evidence to substantiate the said contention. Therefore, the trial court correctly rejected the relief of damages. Hence, the Trial Court judgment and decree requires no interference.

13.I have considered the rival submissions made by the learned counsels appearing for the respective parties and perused the materials available on record.

14. The following issues arise for consideration in this Appeal:-

- i) Whether the appellant/plaintiff is entitled to seek the relief of specific performance of Ex.P1 in the light of the additional written statement filed by the defendant denying his title to the property?*
- ii) Whether the claim of the appellant/plaintiff to decree the suit atleast in respect of the building which had been admittedly purchased by the defendant could be*



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entertained without any amendment to the pleadings?

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Issue Nos.(i) & (ii)

15.The deceased defendant under Ex.P1 had made a promise to sell the property described in the schedule. The said Ex.P1 is a document executed unilaterally by the deceased first defendant wherein, he had indicated to sell the suit schedule property to the deceased first plaintiff for a consideration for a sum of Rs.6,00,000/-. Under Ex.P.1 and the endorsements which had been marked as Ex.P2 to Ex.P6 the deceased defendant had admitted to have received a sum of Rs.5,00,000/-. The said facts has also been admitted by the deceased defendant in his written statement. Even though there has been no express acceptance of Ex.P1 by the deceased plaintiff by his conduct of paying further amounts, which had been specifically endorsed by the deceased defendant under Ex.P2 to Ex.P6 and as also being accepted in the written statement filed by the deceased defendant, there has been implied acceptance on the part of the deceased plaintiff for the promise that had been made by the deceased defendant.

16.It is also pertinent to note that on the death of the original plaintiff, the legal heirs of the deceased original plaintiff were brought on



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record, the deceased defendant had filed an additional written statement.

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On a perusal of the additional written statement filed by him, it is seen that it does not indicate any averment retracting his earlier averments made in the written statement, but surprisingly, he had made a claim that the property shown in the suit schedule property does not belong to him and that the same belongs to Wakf and he himself had only purchased the superstructure. To substantiate his claim, the defendant has also marked Ex.B1, the sale deed under which the deceased first defendant had purchased the superstructure. It could be seen that the deceased defendant had also not purchased the superstructure from the Wakf, but from a person, who had been in possession of the property on a contract with the Wakf. It is very surprising that even after such a additional written statement had been filed, the appellants/plaintiffs had neither taken any steps to amend the pleadings to restrict their claim only with regard to the superstructure nor have they sought for an alternative relief of the return of the part consideration paid by the deceased plaintiff.

17. When the deceased defendant did not have a right to sell a property which did not belong to him, such an agreement/promise cannot be sought to be specifically enforced by the promisee. In the present case,



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the plaintiffs have not proved through any evidence that the suit property in its entirety belonged to the deceased defendant. No attempt had also been made by any of the parties to produce the relevant revenue records to substantiate that the ownership of the property vested with the deceased defendant. As already found, the appellants inspite of specific averments made by the deceased defendant in its additional written statement that the land does not belong to him, had not taken any steps to amend the plaint either to restrict their claim with regard to the superstructure or sought refund of the advance amount paid to the deceased defendant.

18.A conjoint reading of the plaint, written statement together with Ex.P1 and the conduct of the deceased defendant in filing an additional written statement, denying his right of the suit land after the legal heirs of the deceased first plaintiff brought themselves on record creates a doubt in the mind of this Court on the genuineness of the alleged promise and its acceptance by the deceased defendant and the deceased plaintiff respectively.

19.In common parlance, when a person proposes to purchase an immoveable property which has been offered to be sold by a person



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claiming to be the owner, it is imperative on the part of the purchaser to look into the documents relating to the said property. I am not still able to comprehend the fact that if the property was not a property belonging to the deceased defendant, then why had the deceased plaintiff had paid the consideration of Rs.5,00,000/- for such purchase of the property. This creates a doubt in my mind that the deceased plaintiff as well as the deceased defendant had hatched a conspiracy to grab the property belonging to the Wakf by entering into a sham and nominal agreement based upon which they could hoodwink the Court to obtain a decree of specific performance and make the Court a *fait accompli* in their object of grabbing the land belonging to a third party.

20. In view of the said doubt this Court is restraining itself from granting any relief of specific performance whatsoever even in respect of the limited claim.

21. In fine, the Appeal Suit fails and accordingly dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.



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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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learned VII Additional Court, City Civil Court, Chennai



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K.KUMARESH BABU,J.

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