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S.A.No.1426 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1426 of 2010

1.Sankari (Died)
2.Sumathi
3.Mahesh

...Appellants

(A1 Died, A2 & A3 (already on record)
are LR's of the Deceased A1 and they are
permitted to continue the second appeal
No.1426 of 2010, vide Court order dated
24.11.2022 passed in C.M.P.No.13163 of 2020
in S.A.No.1426 of 2010)

Vs.

Angayarkani

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.28 of 2008, dated 27.10.2009, on the file of the Sub Court, Poonamallee, reversing the judgment and decree passed in O.S.No.288 of 2004, dated 10.08.2007, on the file of the District Munsif Court, Poonamallee.

For Appellants : Mr.T.Easwardhas
For Respondent : Mr.J.R.K.Bhavanantham

J U D G M E N T



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Second Appeal has been filed against the judgment and decree passed in A.S.No.28 of 2008, dated 27.10.2009, on the file of the Sub Court, Poonamallee, reversing the judgment and decree passed in O.S.No.288 of 2004, dated 10.08.2007, on the file of the District Munsif Court, Poonamallee.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The case of the plaintiff, in brief, is that the suit property belongs to the defendants and one Selvaraj, who is the husband of the first defendant and father of the second defendant. On 04.03.1991, the defendants and Selvaraj entered into a sale agreement with the plaintiff agreeing to sell the suit property for Rs.71,120/- and on the date of sale agreement, Rs.13,000/- was paid as an advance. The time fixed was 11 months. But, the same was not essential because several legal formalities were to be fulfilled by the defendants. The defendants had also agreed to vacate the cultivating tenants, but they failed to do so. In these circumstances, Selvaraj also died. The plaintiff received a legal notice on



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04.03.1992, for which, she gave a reply on 10.03.1992. Subsequently, on 22.11.1992, a sum of Rs.10,000/- was paid by the plaintiff to the defendants. Again, on 02.06.1993, a sum of Rs.10,000/- was paid by the plaintiff to the defendants. The defendants promised to register the sale deed after receiving the sale consideration of Rs.38,120/-. The plaintiff is always ready and willing to perform her part of the contract. But, the defendants were not ready and evaded to execute the sale deed. Since the third defendant being a minor, the first defendant promised to arrange for getting legal permission from the concerned court of law, but, the first defendant never obtained the same. On 24.08.1995, the defendants issued a notice and the plaintiff sent a reply dated 26.08.1995, expressing her readiness and willingness. Now the defendants are making arrangements to sell the property to third parties. Hence the plaintiff was constrained to file the suit for specific performance.

4.The first and second defendants denied the allegations in the plaint and filed a written statement contending that the suit property belongs to the defendants and one Selvaraj. No agreement was entered into with the plaintiff as regards the suit property. The second defendant



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was not a party to the sale agreement. Hence, the agreement will not bind the second defendant. The plaintiff and her husband colluded together and forced Selvaraj, who was mentally affected, to execute the sale agreement along with the first and third defendant, who is a minor. Time is the essence of a contract. Therefore, 11 months time was fixed in the agreement. There is no mention about the tenancy or removing the cultivating tenants in the agreement. There is no cultivating tenant in the suit land and the defendants are cultivating the same. The first defendant's husband Selvaraj was mentally retarded and hence, he approached the plaintiff's husband for engaging labourers. Taking advantage of the family condition of Selvaraj, the plaintiff's husband was trying to create evidence to the extent that he is a cultivating tenant, but failed in his attempt. The plaintiff was never ready and willing to perform her part of the contract. The defendants gave maximum time to the plaintiff for payment of the balance sale consideration. Even the part payments made by her were by several installments and the plaintiff had not paid the balance amount. The defendants were always ready and willing to perform their part of the contract. Since the plaintiff failed to pay the balance sale consideration, the first defendant was forced to issue



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a legal notice dated 24.08.1995, thereby cancelled the agreement and forfeited the advance amount paid. There was no cause of action for the suit since time was the essence of the contract. Due to the non performance of the contract by the plaintiff, the agreement was cancelled. The time for performance was fixed as 11 months and that expired on 03.02.1992. The limitation of three years expires on 03.02.1995. But the suit has been filed long after the period of limitation. Earlier the plaintiff had committed fraud on the first defendant and her husband without paying any sale consideration, on the pretext of redeeming the mortgage deed dated 24.01.1974, he obtained their signature in stamped papers and executed sale deed in favour of the plaintiff. Hence the first defendant and third defendant filed O.S.No.491 of 1997 praying to set aside the sale deed dated 18.02.1987. Other suits are also pending between the parties. Hence, the defendants pray to dismiss the suit with exemplary cost.

5.The third defendant denied the allegations in the plaint and filed a written statement contending that the suit property is an ancestral property. Hence, this defendant is having a right in the suit property by birth. Since he was a minor on the date of the sale agreement, no one has



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right to sell or mortgage the same without the permission of the concerned Civil Court. The said agreement was not entered into for the benefit of the third defendant. This agreement will not bind the third defendant. The third defendant's father was mentally retarded, hence, the plaintiff and her husband conspired with each other to grab the suit property and filed the suit. The suit is also barred by limitation. Hence, the third defendant prays to dismiss the suit with exemplary costs.

6.Before the Trial Court, in support of the plaintiff's case, PWs 1 & 2 were examined, 20 documents were marked as Ex.A.1 to Ex.A.20. On the side of the defendants, DW1 was examined and no document was marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court dismissed the suit with costs.

8.Aggrieved over the same, the plaintiff had filed A.S.No.28 of 2008, on the file of the Sub Court, Poonamallee. The First Appellate



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Court, after considering the entire materials and evidence on record, allowed the appeal and set aside the judgment and decree of the Trial Court. Aggrieved by the same, the defendants have filed the present second appeal.

9.The second appeal has been admitted on the following substantial questions of law:

1.Whether the suit was filed within limitation?

2.While there is a written agreement between the parties whether the lower appellate court is legally correct in permitting oral evidences and gave its finding based on the oral evidence, which are contradicting to the contents of the written agreement between the parties?

3.While the plaintiff herself admitted that she was not ready with funds to execute the sale deed until the date of the filing of the suit, whether the lower appellate court is correct in holding that the plaintiff was ready



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and willing to perform her part of contract giving goby to her own admission?

4.Whether the finding of the lower appellate court is legally valid on the ground that the lower appellate court giving goby to the written agreement between the parties dated 04.03.1991 and gave its finding on the ground that since the 3rd defendant is a minor and it required court permission and the same may be the reason for no execution of the sale deed as per the agreement, while there is no such condition stipulated in the written agreement?

5.Whether the lower appellate court is correct in giving its finding based on surmise that “the plaintiff may be under the impression that court permission required for the execution of the sale deed since the 3rd defendant is a minor and that may be the cause for the delay”, while there is no such conditions stipulated in the written agreement?



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6. Whether the finding of the lower appellate court is legally valid in holding that the defendants may be delayed to execute the sale deed after receiving the amount part by part without giving any finding based on evidence that whether the plaintiff was ready and willing to perform her part of the contract from the date of written agreement?

10. The learned counsel for the appellants/defendants submitted that there is no reason assigned by the First Appellate Court for ordering the specific performance of the agreement. The First Appellate Court failed to consider the fact that the defendants were ready and willing to perform the contract. It is proved that the plaintiff is not having sufficient funds on the particular date and she was paying the sale consideration partly. There is no reason to reverse the well considered judgment of the Trial Court, the findings of the First Appellate Court is erroneous and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

11. The learned counsel for the respondent/plaintiff supported the judgment of the First Appellate Court and submitted that though the sale agreement is of the year 1991, the sale deed has not been executed. Now,



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the plaintiff is ready to receive the advance amount with reasonable interest. The learned counsel for the appellants/defendants has also expressed that the defendants are ready to return the advance amount of Rs.33,000/- received from the plaintiff with reasonable interest.

12.Considered the rival submissions and perused the materials available on record.

13.It is not disputed that the property belongs to the defendants. The execution of the sale agreement, dated 04.03.1991 and the receipt of the advance amount of Rs.33,000/- are also admitted. The sale agreement is of the year 1991 and the sale deed has not been executed. Now, the defendants are ready to refund the advance amount and the plaintiff is also ready to receive the advance amount with reasonable interest. Therefore, in the said circumstances, the judgment and decree of the First Appellate Court is liable to be set aside and is accordingly set aside.

14.In view of the same, this second appeal is allowed and the defendants are directed to return the advance amount received from the plaintiff i.e., Rs.33,000/- with 6% interest per annum from the date of plaint till the date of repayment within a period of three months from the



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date of receipt of a copy of this order. No costs. Consequently,
connected miscellaneous petitions, if any, are also closed.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

- 1.The Sub Court, Poonamallee.
- 2.The District Munsif Court, Poonamallee.

V.SIVAGNANAM, J.

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