



S.A.No.187 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.187 of 2018 and
C.M.P.No.4834 of 2018

1. Chandrasekaran
2. Venu
3. Kuppusamy

... Appellants

Vs.

1. Purushothaman
 2. Gunasekaran
 3. Saravanan Muthu Kumarasamy
 4. Subramania Gounder
 5. Arumuga Gounder
 6. Chandramohan @ Gobi
 7. Gomathi
 8. Kumari
 9. Neelakantan
 10. Vimala
 11. Sandhya
 12. Minor Kowsalya
 13. Arivazhagan
 14. Minor Manikandan
- (Minors 12 and 14 are represented by Court
Guardian R.Natarajan, Advocate,Vedaiya
Complex, 1st Flor, Thiruchitramabalam
Koot Road, Vanur Taluk 605 111.)

... Respondents



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Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.11.2017 passed in A.S.Nos.15 and 46/2015, on the file of the Principal Sub Court, Tindivanam upholding the decree and judgment dated 30.04.2015 passed in O.S.No.134/2008, on the file of the District Munsif cum Judicial Magistrate, Vanur.

For Appellants : Mr.R.P.Ruban Chakravarthy for
Mr.S.Kaithamalai Kumaran

For R1 to R5 : Mr.T.Dhanasekaran

JUDGMENT

The appellants are the defendants 11 to 13 in O.S.No.134/2008 on the file of the District Munsif cum Judicial Magistrate, Vanur. The Respondents 1 to 5 filed the said suit for specific performance of contract and for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.



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3. The case of the plaintiffs in a nutshell is as follows :

The plaintiffs 1 to 3 are the sons of one Ganesa Gounder and the plaintiffs 4 and 5 are the brothers of Ganesa Gounder. One Sundara Murthy Mudaliyar, (the husband of the 1st defendant), Neelakanda Mudaliyar (5th defendant) and Chandrasekara Mudaliyar (husband of the 6th defendant) executed a sale deed in favour of Ganesa Gounder during the year 1988 (Ex.A1) in the presence of witnesses in respect of the suit properties measuring 0.62 1/2 cents in old survey no.234/4 (new survey no.166/4) and 0.70 cents in old survey no.236/4 (new survey no.168/6) of Thiruvakkarai Village, Vanur Taluk, Tindivanam. The sale consideration of Rs.6,500/- was paid by Ganesa Gounder to them on the date of Ex.A1 and he was also put in possession of the suit properties. Ever since the date of purchase, Ganesa Gounder was in possession and enjoyment of the suit properties by paying necessary tax to the Government. After the death of Ganesa Gounder, his sons, the plaintiffs 1 to 3 inherited the suit properties and are also in possession and enjoyment of the same. The sale Deed (Ex.A1) was an unregistered document. While so, the defendants 1 to 5 executed a Power of Attorney, dated 06.02.2008



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(Ex.B1) in favour of the eleventh defendant. The eleventh defendant executed a registered sale deed in favour of the twelfth defendant on 11.02.2008 (Ex.B2) and the twelfth defendant in turn executed a registered sale deed, dated 05.11.2008 (Ex.B3) in favour of the thirteenth defendant. According to the plaintiffs, Ex.B1 to Ex.B3 are not valid documents and in any event the same would not bind them. The plaintiffs also issued a lawyer's notice dated 01.11.2008 (Ex.A4) to the defendants. Though the defendants received the said notice as evidenced by the postal acknowledgment cards (Ex.A5 and Ex.A6), they did not send any reply notice. They have therefore filed the suit for specific performance of contract.

4. The defendants 1 to 4 and 6 remained absent and were set exparte. The suit was resisted by the other defendants on the following grounds:

- i. The unregistered sale agreement (Ex.A1) does not contain the date, month or year on which it was executed.
- ii. According to the plaintiffs, the sale agreement was executed in the



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year 1988. The suit is filed after a lapse of twenty years and therefore it is barred by limitation.

- iii. Even if Ex.A1 is construed as a Sale deed, as per the averments in the plaint, the same would not create any title as it has not been registered.
- iv. The suit properties belonged to one Seethapathi Mudaliyar and he had three sons by names Sundara Murthy Mudaliyar, Neelakanda Mudaliyar and Chandrasekara Mudaliyar. The defendants 1, 3 and 5 and Chandrasekara Mudaliyar were in possession of the suit properties and executed a general Power of Attorney dated 06.02.2008 (Ex.B1) in favour of Chandrasekara Gounder (D11). Based on the Power of Attorney, the properties were sold in favour of Venu Gounder (D12) through a registered sale deed, dated 11.02.2008 (Ex.B2). Venu Gounder in turn sold the suit property in favour of Kuppusamy (D13) through a registered sale deed, dated 05.11.2008 (Ex.B3). They therefore prayed for dismissal of the suit.



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5. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. *Whether the plaintiffs 1 to 3 proved that Ganesa Gounder got the unregistered sale deed in respect of the suit properties from the children of Seethapathi Mudaliyar during the year 1988?*
- ii. *Whether the plaintiffs are entitled to specific performance of contract?*
- iii. *Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for by them?*
- iv. *To what relief the plaintiffs are entitled?*

6. In the Trial Court, the first plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A8. The thirteenth defendant examined himself and marked Ex.B1 to Ex.B3.

7. After full contest, the learned District Munsif cum Judicial Magistrate, Vanur vide his decree and judgment dated 30.04.2015, partly decreed the suit. The plaintiffs were granted permanent injunction



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restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties. However, the Trial Court dismissed the suit for specific performance of contract.

8. Aggrieved over the decree and judgment passed by the Trial Court Judge, the defendants 11 to 13 filed an appeal in A.S.No.15/2015 and the plaintiffs filed cross objection in A.S.No.46/2015 before the Principal Sub Court, Tindivanam. The learned Principal Sub Judge Tindivanam, after analysing the oral and documentary evidence adduced on both sides, allowed the cross objection filed in A.S.No.46/2015 and decreed the suit filed by the plaintiffs vide her decree and judgment dated 06.11.2017, as against which the present second appeal is filed.

9. The second appeal was admitted by this Court on 01.11.2019 on the following substantial questions of law:

- i. Whether the suit filed in 2008 for specific performance of an undated agreement of sale, said to have been executed in 1988, is maintainable?*



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ii. *In the absence of any documentary evidence of proof of possession since 1988, whether the decree for permanent injunction is legally sustainable on the basis of oral evidence?*

10. Heard Mr.R.P.Ruban Chakravarthy for Mr.S.Kaithamalai Kumaran, learned counsel for the appellants and Mr.T.Dhanasekaran, learned counsel for the Respondents 1 to 5.

11. Mr.R.P.Ruban Chakravarthy for Mr.S.Kaithamalai Kumaran, learned counsel for the appellants contended that though the plaintiffs stated that Sundara Murthy Mudaliyar, Neelakanda Mudaliyar and Chandrasekara Mudaliyarar who are the sons of Seethapathi Mudaliar executed the unregistered sale deed (Ex.A1) in favour of Ganesa Gounder, father of the plaintiffs 1 to 3, the same is not valid in the eye of law. The learned counsel for the appellants also drew the attention of this Court to the sale agreement (Ex.A1) and contended that no date or month or year is mentioned in Ex.A1 and the survey numbers



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of the suit properties are also not indicated. Thus there are several lacunae in the case of the plaintiffs. It is also his contention that the eleventh defendant (first appellant herein) based on the power of attorney given to him, had executed a sale deed in favour of the twelfth defendant who in turn executed a sale deed, dated 05.11.2008 (Ex.B3) in favour of the thirteenth defendant. In the circumstances, the first appellate Court had committed a serious error in concluding that the plaintiffs are entitled for a decree of specific performance of contract based on Ex.A1. He therefore prayed for allowing the present appeal.

12. Per contra, Mr.T.Dhanasekaran, learned counsel for the respondents contended that through no date, month or year was indicated in the sale agreement (Ex.A1) it was executed in the year 1988 as is seen from the purchase of the Stamp paper and on the date of sale agreement itself, the entire sale consideration of Rs.6,500/- was paid by the father of the plaintiffs 1 to 3. He also contended that the properties mentioned in the sale deeds executed in favour of the defendants 12 and 13 and the properties mentioned in the Sale agreement (Ex.A1) are one and the



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same. His specific contention is that in the plaint schedule, though boundary descriptions are not given, in the sale agreement (Ex.A1) boundary descriptions are mentioned. According to him, on the date of sale agreement (Ex.A1) possession of the suit properties was handed over to the father of the plaintiffs 1 to 3 as per the recitals in Ex.A1 and therefore the appellants cannot contend that possession was never handed over to Ganesa Gounder in view of the provisions of Sections 91 and 92 of the Indian Evidence Act. He therefore prayed for dismissal of the Second Appeal.

13. The plaintiffs have filed the suit for specific performance of contract based on the agreement (Ex.A1) allegedly executed in the year 1988 (Ex.A1). Ex.A1 is an unregistered sale agreement. The Stamp paper was purchased on 15.02.1988, based on which the plaintiffs contend that the agreement of sale was executed on 15.02.1988. However, no date, month or year of execution of sale agreement is mentioned in Ex.A1. Moreover, the survey numbers of the suit properties which are agreed to be conveyed to Ganesa Gounder by Sundara Murthy



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Mudaliyar, Neelakanda Mudaliyar and Chandrasekara Mudaliyar are not indicated. However, the boundaries are described in Ex.A1 as under:

- West : Government land and land of Dhanusu Mudaliar
- North : land of Chandrasekara Mudaliar
- East : land of Balakrishnan and others and the pathway leading to Crematorium
- South : land of Sreenivasa Pillai

The total extent of the properties is indicated as 1.87 Acres in Ex.A1. However, in the plaint schedule, survey numbers are indicated as in old survey no.234/4 and new survey no.166/4 (measuring 0.62 1/2 cents) and old survey no.236/4 and new survey no.168/6 (measuring 0.70 cents) of Thiruvakkarai Village, Vanur Taluk, Tindivanam. The boundaries are not described in the plaint. The total extent as per the plaint is 1.32 1/2 cents. Thus the extent of land mentioned in the sale agreement and the plaint schedule varies.

14. The learned counsel for the Respondents relied on the sale deeds executed in favour of the defendants 12 and 13 and contended that



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the boundary description mentioned in the sale deeds tally with the boundary description mentioned in the sale agreement (Ex.A1). The boundaries in Ex.B3 is described as under:

- West : School land and land of Dhanusu Mudaliar
- North : land of Chandrasekara Mudaliar and Murugesu Mudaliyar
- East : land of Yagajanani and others and the pathway leading to Crematorium
- South : land of Yagajanani and others.

The total extent is indicated as 1.17 1/2 cents.

Thus it is seen that the boundaries mentioned in Ex.B3 does totally with the boundaries in Ex.A1.

15. As already observed, in the sale agreement (Ex.A1) the survey numbers are not indicated and in the plaint schedule, the boundaries are not described. Thus, the plaintiffs have not established which properties were agreed to be conveyed to Ganesa Gounder



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16. Moreover, the defendants have denied the execution of Ex.A1 in the written statement. In order to substantiate the genuineness of Ex.A1, the plaintiffs have relied on the evidence of one of the attestors of Ex.A1 as P.W.2. However P.W.2 had disowned his signature on Ex.A1. His deposition is that he never signed as an attesting witness in Ex.A.1. Thus the evidence of P.W.2 is not helpful to the case of the plaintiffs. Initially, the plaintiffs in their plaint had contended that the suit properties were sold in favour of Ganesa Gounder through Ex.A1. Subsequently, the plaint was amended and the plaintiffs have contended that though the suit properties were sold in favour of Ganesa Gounder, a registered sale deed was not executed. On the contrary, Sundara Murthy Mudaliyar, Neelakanda Mudaliyar and Chandrasekara Mudaliyar executed a sale agreement and also promised to execute the sale deed whenever Ganesa Gounder demands so. Thus the plaintiffs are not clear about their own case.

17. It is pertinent to point out that the plaintiffs though had claimed that the entire sale consideration of Rs.6,500/- was paid by the



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Ganesa Gounder on the date of sale agreement (Ex.A1), it is not known as to why they did not demand the defendants to execute the sale deed in their favour. The suit has been filed after a lapse of twenty years. The first legal notice was issued only on 01.11.2008 (Ex.A4) to the defendants which is after twenty years from the date of sale agreement itself. There is no explanation in this regard by the plaintiffs. There is absolutely no pleadings with regard to the willingness of the plaintiffs or Ganesa Gounder for getting the sale deed executed in their favour. In the absence of this pleading, the first appellate Court was totally erroneous in granting the relief of specific performance of contract in favour of the plaintiffs and that too based on Ex.A1 which no date or month or year of execution of the sale agreement is indicated. The suit properties have not also been described properly in the plaint. It is settled law that when the suit properties are not described properly the plaintiffs cannot claim any relief against the defendants.

18. Both the Courts below have held that on the date of agreement of sale, possession was handed over to Ganesa Gounder and



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therefore the plaintiffs are in possession of the suit properties. It is pertinent to point out that the plaintiffs have not adduced any documentary evidence to show that right from the date of sale agreement (Ex.A1) Ganesa Gounder was in possession of the suit properties and on his death, the plaintiffs were in possession. According to the respondents / plaintiffs, the suit properties are agricultural lands and that they were cultivating the suit properties. The plaintiffs have not adduced a copy of the Adangal extract to show that they are actually cultivating the suit properties. In the absence of any evidence in favour of the plaintiffs, both the Courts below had concurrently committed an error by concluding that the plaintiffs are in possession of the suit properties as per the recitals of the sale agreement (Ex.A1). The genuineness of Ex.A1 has not also been proved by the plaintiffs. As already observed, one of the attestors to Ex.A1 had stated that he did not sign as a witness on Ex.A1. Therefore, the substantial questions of law are answered in favour of the appellants.



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19. In the result,

- i. The Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. The decree and judgment dated 06.11.2017 passed in A.S.No.15/2015 and Cross objection in A.S.No.46/2015, on the file of the Principal Sub Court, Tindivanam and the decree and judgment dated 30.04.2015 passed in O.S.No.134/2008, on the file of the District Munsif cum Judicial Magistrate, Vanur, are hereby set aside.
- iii. The suit in O.S.No.134/2008 on the file of the District Munsif cum Judicial Magistrate, Vanur, is dismissed with costs.

03.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Principal Sub Court, Tindivanam.
2. The District Munsif cum Judicial Magistrate, Vanur.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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