



S.A.No.351 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.09.2024
Pronounced on	28.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE N.SENTHIL KUMAR

Second Appeal No. 351 of 2011

N.Harikrishnan

... Appellant

Vs.

1.M.Harikrishnan

... 1st Respondent

2.M.Elumalai

... 2nd Respondent

Second Appeal filed under Section 100 of C.P.C to set aside the Judgment and Decree dated 19.08.2010 made in A.S.No.27/2009 on the file of Principal District Court at Chengalpattu, confirming the Judgment and Decree dated 01.04.2009 made in O.S.No.37/2006, on the file of the Subordinate Court at Madurantakam.

For Appellant : Dr.A.Thiyagarajan,
Senior Advocate
for Mr.D.Senthil Kumar

For Respondent 1 : Mr.K.Govi Ganesan



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For Respondent 2 : Mr.J.Lakshmi Narayanan

J U D G M E N T

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The second appeal is filed against the concurrent Judgment and Decree in A.S.No.27 of 2009 on the file of Principal District Court at Chengalpattu confirming the Judgment and Decree in O.S.No.37 of 2006 on the file of Sub Court, Maduranthakam.

2. For the sake of convenience, the parties are referred as plaintiff and defendants as referred in the original suit.

3. The suit was originally filed by the first respondent/plaintiff against the appellant and the second respondent herein. The suit was filed by the plaintiff praying a decree of specific performance directing the defendants to execute the sale deed in favour of the plaintiff in respect of the suit properties failing which, the Court may execute the sale deed on behalf of the 1st defendant in favour of the plaintiff and deliver possession of the same. The plaintiff also sought for an order of injunction restraining the defendants not to encumber or alienate the suit properties and a further direction to the



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defendants to pay the cost of the suit to the plaintiff.

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4. The suit schedule property is situated at Chithamur village, Cheyyar Taluk, Kanchipuram District comprised in Dry S.No.71/5 to an extent of 800 Sq.ft and Dry S.No.71/5 to an extent of 1440 sq.ft.

5. The case of the plaintiff is that on 27.03.2006, the first defendant M.Elumulai had agreed to sell the suit schedule properties to the plaintiff for a sum of Rs.2,90,000/-. He received a sum of Rs.25,000/- as advance from the plaintiff and thereby an agreement was entered between the plaintiff and the first defendant on 27.03.2006. The first defendant had agreed to receive the balance sale consideration within a period of 90 days and handed over the xerox copy of the sale deed bearing Doc.No.186 of 2021.

6. The plaintiff contended that the first defendant had received a further sum of Rs.75,000/- on 02.04.2006 from the plaintiff and he has also made an endorsement in the agreement which was originally entered on 27.03.2006. In total, the defendant has received a sum of Rs.1,00,000/- out of the said Rs.2,90,000/-. The plaintiff had requested the first defendant to



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execute the sale deed. However, the defendant had not heeded to the request made by the plaintiff. The plaintiff issued a legal notice on 31.05.2006 to enforce the sale agreement and requested the first defendant to appear before the Sub-Registrar, Acharapakkam on 05.06.2006 without fail.

7. The first defendant has chosen not to give any reply to the legal notice given by the plaintiff dated 31.05.2006. The plaintiff was waiting in the Sub-Registrar Office at Acharapakkam on 05.06.2006, till 3.00 p.m., but the first defendant failed to come and comply with the terms of the sale agreement dated 27.03.2006.

8. The plaintiff subsequently came to know that the first defendant has registered a sale deed in favour of the second defendant/appellant herein in respect of the 2nd item of the suit schedule properties on 05.06.2006 after the plaintiff left the Sub-Registrar Office in the evening.

9. The plaintiff has issued a legal notice on 06.06.2006 to both the defendants. The first defendant had given a reply to the plaintiff's notice on



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09.06.2006. The plaintiff contended that he was always ready and willing to execute the sale deed, whereas the first defendant was not interested in executing the sale deed in favour of the plaintiff and as such the plaintiff instituted the suit for the aforesaid reliefs.

10. The defendants in the suit have filed written statements separately and denied the allegations made in the plaint. The first defendant contended that the agreement between the plaintiff and the first defendant is only in respect of the first item in the suit schedule properties. In respect of the second item of the suit schedule properties, there was a sale agreement between the second defendant and the first defendant dated 01.03.2006 for a valid sale consideration of Rs.40,000/-. The first defendant contended that the plaintiff was well aware of the agreement between the first defendant and the second defendant.

11. The first defendant had conveyed the second item of the suit schedule property to the second defendant by way of registered sale deed dated 05.06.2006 in Doc.No.1217 of 2006 before the Sub-Registrar Office,



Acharapakkam. The second defendant in his written statement has contended that from the date of execution of the aforesaid sale deed, he is in exclusive possession and enjoyment of the same and he is the bonafide purchaser in respect of the second item in the suit schedule properties and the agreement between the first defendant and the plaintiff is only with regard to the first item and not the second item in the suit schedule properties as contended by the plaintiff.

12. In view of the same, the defendants contended that the plaintiff is not entitled for any relief and prayed for dismissal of the suit.

13. The Trial Court in consideration of the plaint and the written statement filed by the plaintiff and defendants 1 & 2, framed the following issues for consideration:

- 1) Whether the plaintiff is entitled for the relief of specific performance as against the defendants?
- 2) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?



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3) Whether the second defendant is a bonafide purchaser of the second item of the suit schedule property?

4) Any other relief ?

13. The Trial Court has also framed an additional issue for consideration which is as follows:

1)Whether the first defendant has entered into the sale agreement with the plaintiff only in respect of the first item of the suit schedule property as claimed by the first defendant?

14. The Trial Court had examined the plaintiff as P.W.1 and the plaintiff has marked Ex.A1 to A9 and on the side of the defendants, the first defendant was examined as DW1 and the second defendant who is the appellant herein was examined as D.W.2. The defendants marked Ex.B.1 and B.2.

15. The sale agreement entered between the plaintiff and the first defendant is marked as Ex. A1 and the endorsement made in Ex.A1 which shows the receipt of advance amount is marked as Ex.A2. The Trail Court



while considering issue No. 1 and the additional issue has taken note of the fact that the first defendant has not denied the exhibits A1 and A2 but has admitted the same. The case of the first defendant is that while Ex.A1 is entered only in respect of the 1st item of the suit property, the plaintiff has fraudulently added the 2nd item of the suit property in Ex. A1 and the defendant has not noted the same while signing the Ex.A1.

16. The Trial Court disbelieved the said contention of the first defendant as the first defendant failed to mention the same in the written statement. The Trial Court noted that such a stand was taken by the first defendant only during his cross examination. The first defendant has not denied the signatures of the witnesses in Ex. A1 and A2 who are his close relatives. The Trail Court has found that the plaintiff has proved that the Ex.A1 is genuine and valid and that the plaintiff was ready and willing to perform his part which is evident from Ex.A3, which is the legal notice issued by the plaintiff to the first defendant. The Trial Court came to the conclusion that the plaintiff is entitled to the relief of specific performance as prayed for.



WEB COPY 17. While considering Issue No. 3, the Trial Court noted that Ex. B1 which is the agreement between the defendants is prepared in Dindivanam, however the stamp paper was purchased in Arani. The Trial Court disbelieved the evidence of DW2. That apart, the sale consideration fixed in Ex. B1 is much lesser than the sale consideration fixed in Ex. A1 which are admittedly the lands in the same survey number. As there is no explanation from the side of defendants on the difference in sale consideration in the said sale agreement and sale deed, the Trial Court came to the conclusion that the sale in Ex. B2 is made to defraud the plaintiff and as such the sale is not binding on the plaintiff. Therefore, the trial court decided that the second defendant is not a bonafide purchaser of the 2nd item of the suit schedule properties.

18. Based on the above findings, the Trial Court answered the Issue Nos. 2 and 4 also in favour of the plaintiff. The suit was decreed as prayed for with costs.

19. Challenging the same, the appellant filed the appeal before the Principal District Court, Chengalpattu in A.S.No.27 of 2009. The first



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appellate Court while examining the correctness of the judgment and decree passed in O.S.No.37 of 2006 dated 01.04.2009 on the file of the Sub-Court, Maduranthagam, has considered the rival submissions on either side and has taken four points for determination viz.,

- 1) Whether the plaintiff is entitled for the specific performance on the suit agreement dated 27.03.2006?
- 2) Whether the sale deed dated 05.06.2006 in favour of the second defendant is true and valid?
- 3) Whether the appeal has to be allowed by setting aside the Judgment and Decree of the Trial Court?
- 4) To what other relief the appellant is entitled?

20. The First Appellate Court has noted the total sale consideration mentioned in Ex.A1 in respect of the suit schedule properties i.e., item No.1 & 2. The sale consideration was fixed as Rs.2,90,000/- and the extent of the first item is 800 sq.f.t and the extent of the second item is 1440 sq.ft. The evidence of P.W.1 would categorically show that the price for 1 cent is fixed as Rs.58,000/- while the first defendant sold the second item of the suit



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schedule property to the second defendant only for Rs.40,000/-. Therefore, it is clear that item 1 and 2 of the suit schedule properties are the subject matter of Ex.A1 and as such the First Appellate Court disbelieved the case of the defendants.

21. Based on the oral and documentary evidences, the First Appellate Court has taken a view that the sale deed in Ex. B2 is executed by the first defendant to circumvent the agreement executed between the plaintiff and the first defendant which is marked as Ex.A1. As the plaintiff has proved the validity of Ex. A1 in respect of item 1 and 2 of the suit schedule properties, all the points are answered in favour of the plaintiff and the first appeal was dismissed with cost and the Judgment and Decree in O.S.No.37 of 2007 was confirmed. Challenging the same, the present Second Appeal is filed by the second defendant.

22. Dr.A.Thiyagarajan appeared on behalf of the appellant who is the second defendant in the suit. Learned Senior Counsel would contend that Ex.B1 is the sale deed entered between the defendants 1 & 2. The Ex.B1



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refers only to the second item of the suit schedule properties and it is for a valid sale consideration which cannot be disputed for any reason and moreover, the appellant/second defendant is a bonafide purchaser.

23. The counsel for the appellant would contend that the agreement between the first respondent and the second respondent had not clearly stated about the second item of the suit scheduled properties. In the absence of any clear demarcation, the sale executed in favour of the appellant herein is valid and binding on the 1st Respondent/Plaintiff.

24. Learned senior counsel for the appellant cited the judgment of the Hon'ble Supreme Court of India in the case of ***Padmakumari and others Vs. Dasayyan and Others*** to emphasize that the specific performance of contract cannot be enforced against the transferees.

25. Learned senior counsel for the appellant relief on the judgment of this Court in ***R.Rajaram and Another Vs. T.R.Maheswaran*** to argue that continuous readiness and willingness on the part of the plaintiff is a condition



precedent to grant the relief of specific performance and the first respondent has not proved his continuous readiness and willingness. The senior counsel would contend that the grant of a decree for specific performance of contract is not automatic and the Court should meticulously consider all facts and circumstances of the case and motive behind the litigation.

26. Learned counsel for the first respondent would contend that the courts below have carefully examined the Ex. A1, A2 and evidence of witnesses on either side and rightly came to the conclusion that the appellant herein is not a bonafide purchaser and Ex.B1 and B2 are executed to defraud the 1st Respondent/Plaintiff. Therefore the courts below have held in favour of the plaintiff and directed the 2nd Respondent/1st Defendant to execute the sale deed in favour of the 1st Respondent/plaintiff in respect of the items 1 and 2 of the suit schedule properties.

27. When the second appeal was listed for admission, this Court has only ordered notice and the second appeal was not admitted on any substantial question of law. As there is no substantial question of law for consideration, this court proceeded to decide the appeal based on the



materials available on record and argument advanced on both the sides. It is seen from the Judgment of the courts below that the first defendant in the suit has admitted the execution of Ex.A1 but has taken a plea that the Ex.A1 sale agreement is only in respect of the 1st item of the suit schedule property, therefore the 1st defendant has sold the 2nd item to the 2nd defendant/appellant herein.

28. It is clear that the 1st defendant/2nd Respondent herein has failed to substantiate his stand with oral and documentary evidence. On the other hand, the plaintiff/1st Respondent has proved that the Ex.A1 is executed in respect of both the items of the suit schedule properties. As the defendants/2nd respondent and appellant failed to give a clear explanation about the difference in sale consideration mentioned in Ex.A1 and Ex.B2, the courts below have rightly come to the conclusion that the Ex.B2 is executed only to defraud the 1st Respondent herein and the appellant herein is not a bonafide purchaser.

29. The appellant derived title in respect of the second item of the suit schedule property vide Ex.B2 which is executed subsequent to the execution of Ex.A1 in favour of the 1st Respondent herein and a considerable



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portion of the total sale consideration has been received by the first defendant/second respondent, which is evident from Ex.A2. The 2nd Respondent herein has also admitted the execution of Ex.A1. Therefore, the courts below have rightly arrived at a conclusion that the 1st Respondent herein is entitled for the relief of specific performance as prayed for and the Judgments of the Courts below need not be interfered with.

30. In view of the above, the second appeal is dismissed and the Judgment and Decree in A.S. No. 27/2009 dated 19.08.2010 passed by the Principal District Court, Chengalpattu is confirmed. Consequently, connected miscellaneous applications are closed. No costs.

28.10.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No



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