



S.A.No.443 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2024

PRONOUNCED ON : 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.443 of 2012

K.Sikkandhar Basha .. Appellant

Vs.

1. J.Basha

2. Jerin Taj .. Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the judgment and decree dated 21.10.2011 passed in A.S.No.1 of 2010 on the file of the Additional District Court, Krishnagiri in confirming the judgment and decree dated 30.10.2009 passed in O.S.No.10 of 2006 on the file of the Sub Court, Hosur.

For Appellant : Mr.P.Mani

For Respondents : Ms.V.Srimathi

JUDGMENT

Challenge in this second appeal is made as against the judgment and decree dated 21.10.2011 passed in A.S.No.1 of 2010 on the file of the Additional District



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Court, Krishnagiri, confirming the judgment and decree in O.S.No.10 of 2006 dated 30.10.2009 on the file of the Sub Court, Hosur.

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

3. The plaintiff in O.S.No.10 of 2006 on the file of the Sub Court, Hosur is the appellant herein.

4.1. The case of the plaintiff, in brevity, is that the subject suit property originally belonged to one Fathima Bi, wife of Bakkodu @ Imam Sahib. Fathima Bi and Imam Sahib died in the year 1979 and in 1991 respectively, leaving their children Rasool Sahib, Samsuddin Sahib, Roshan Bi and Maqbul Bi, as their legal heirs to succeed the suit properties as per the Muslim Law.

4.2. Consequently, Rasool Sahib and samsuddin Sahib were entitled to 1/3rd share each in the suit land and Roshan Bi and Maqbul Bi were entitled to 1/6th share each in the suit land as per the Muslim Law. Rasool Sahib, Samsuddin



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Sahib, Roshan Bi and Maqbul Bi were in joint possession and enjoyment of the subject suit properties as co-owners.

4.3. Subsequent thereto, Samsuddin Sahib sold his share of 1/3rd of the suit property in favour of the plaintiff vide a registered Sale Deed dated 12.05.1992 for a valuable consideration amount of Rs.37,300/-, entitling the plaintiff to take possession of the 1/3rd of the share in the subject suit property. The plaintiff, Rasool Sahib, Roshan Bi and Maqbul Bi enjoyed joint possession of the subject suit property as co-owners thereof.

4.4. Thereafter, in the year 1994, the defendants claim to have purchased the suit lands from Rasool Sahib, Samsuddin Sahib, Roshan Bi and Maqbul Bi under a registered Sale Deed dated 04.03.1994 and took possession of the suit property. After taking possession, the defendants attempted to dispossess the plaintiff, but taking note of the registered sale deed dated 12.05.1992, the defendants, realizing the folly of getting the sale deed from Samsuddin, though Samsuddin already conveyed his share of 1/3rd of the suit land in favour of the plaintiff, accepted the plaintiff as a co-owner and continued the joint possession and enjoyment of the



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suit land.

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4.5. After efflux of time, in the year 2006, the plaintiff sought partition and separate possession of his share of 1/3rd of the subject suit property and demanded the defendants to effect partition of the suit land in the second week of January, 2006. On the strength of the registered sale deed executed in favour of the defendants, the defendants denied partition proposed by the plaintiff.

5.1. The defendant contested the suit, denied the allegations in the plaint and filed a written statement contending that, Imam Sahib, husband of Fathima Bi and his children entered into an agreement of sale on 25.06.1990, where the possession of the property was given to the defendants. Subsequently, Imam Sahib and his children refused to execute the said sale deed. After the death of Imam Sahib, the defendants filed a suit for specific performance of the registered contract between the parties in O.S.No.70 of 1992, renumbered as O.S.No.134 of 1992 on the file of Sub-Court, Krishnagiri.

5.2. In the said suit, no written statement was filed on behalf of the children



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of Imam Sahib and they were set ex parte. Samsuddin, the vendor of the plaintiff, was also a party in the said suit instituted before the Sub-Court at Krishnagiri and it is averred that no written statement was filed by Samsuddin in the said suit to substantiate the sale executed in favour of the plaintiff on 12.05.1992.

5.3. It is the case of the defendants that the sale deed relied by the plaintiff in the suit for partition is a fraudulent and forged document, since as per the registered agreement of sale dated 25.06.1990, the possession of the subject suit property was delivered to the defendants and the sale deed was executed on 04.03.1994 in light of the suit filed for specific performance in O.S.No.134 of 1992.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues and additional issues were framed by the trial Court for consideration:

“1. வாதி வழக்குரையில் கோரியுள்ளபடி பாகப்பிரிவினை பரிகாரம் பெற தகுதியுடையவரா?

2. தாவா கிரயப்பட்டதிரம் உருவாக்கப்பட்டதாக பிரதிவாதிகள் கூறவது சரியா?



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3. வாதி வழக்குரையில் கோரியுள்ளபடி பாகபரிகாரம் பெற
தகுதியற்றவர்கள் என்று பிரதிவாதிகள் கூறவது சரியா?

4. வேறு என்ன பரிகாரம்?”

7. Before the Trial Court, in support of the plaintiff's case, PW 1 and PW 2 were examined and 5 documents were marked as Ex.A.1 to Ex.A.5. On the side of the defendants, DW1 to DW4 were examined and 12 documents were marked as Ex.B.1 and Ex.B-12. Ex.C1 to C3 were also marked.

8. Upon considering the evidence and documents, the trial Court dismissed the suit filed by the plaintiff.

9. Aggrieved over the same, the plaintiff had filed A.S.No.1 of 2010, before the Additional District Judge, Krishnagiri. The First Appellate Court, after considering the entire materials and evidence on record, confirmed the Judgment and Decree of the trial Court and dismissed the appeal. Aggrieved by the same, the appellant has filed the present second appeal.

10. The second appeal has been admitted on the following substantial



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questions of law:

“a) Whether the plaintiff is entitled to 1/3rd share in the suit properties pursuant to Ex.A1 Sale Deed even though he is a subsequent purchaser who purchase the same subsequent to Ex.B1 sale agreement in favour of the defendants when the title with respect to the said 1/3rd share is remained with the plaintiff and no action for specific performance of the said sale agreement was initiated against the plaintiff within the period of limitation?

b) Whether one of the vendors of the defendants and executants of Ex.B2 sale deed dated 04.03.1994 could confer or convey any title in respect of the 1/3rd share in the suit properties which he had already sold to the plaintiff under Ex.A1 sale deed 12.05.1992?

c) Whether Ex.B1 sale agreement created any right in the suit properties in favour of the defendants and affected the passing of title in favour of the plaintiff under Ex.A1 sale deed?”

11.The learned counsel for the appellant submitted that the trial Court as well as the First Appellate Court erred in holding that Ex.B.1 Sale Agreement created right in the suit properties in favour of the defendants and Ex.A.1 Sale Deed is not a valid one. That finding is erroneous and unsustainable in law.



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Further, contended that the trial Court and the First Appellate Court failed to consider the fact that the alleged Sale Agreement Ex.B.1 in favour of the defendants was executed on 25.06.1990 and the suit for specific performance was filed subsequently on 20.05.1992. The plaintiff got the Sale Deed executed in his favour on 12.05.1992, before the filing of the suit. Without impleading the plaintiff, the suit was subsequently settled out of Court on 25.05.1994 and dismissed thereby. The Sale Deed Ex.A.1 in favour of the plaintiff is a valid one. The Sale Agreement Ex.B.1 does not create any right over the property in favour of the defendants. The trial Court and the First Appellate Court failed to consider the fact that the suit for specific performance is filed subsequent to the purchase of 1/3rd share by the plaintiff. One of the executants i.e, Samsuddin had already sold his 1/3rd share in favour of the plaintiff under Ex.A.1. He has no title over his 1/3rd share for subsequent sale in favour of the defendants.

12.Learned counsel for the appellant further contended that, this plaintiff purchased his vendor's 1/3rd in the suit property by way of Sale deed Ex.A.1 dated 12.05.1992. Though the defendants got Sale Agreement Ex.B.1 dated 25.06.1990, that Agreement was subject to the result of the pending suit in O.A.No.60 of 1987,



which was ended against them and they have to refund the advance amount of Rs.30,000/- as per the judgment and decree dated 31.03.1992. They have also refunded the advance amount in pursuance of the decree. Therefore, the 1st defendant has no right to get the Sale Deed on the basis of Ex.B.1 Sale Agreement. However, he filed this suit for specific performance upon Ex.B.1 Sale Agreement in O.S.No.134 of 1992 on the file of Sub-Court, Krishnagiri. Pending suit, they got the Sale Deed Ex.B.2 dated 04.03.1994 by settling the dispute out of Court and thereby suit was dismissed as settled out of Court. Before the Sale Deed Ex.B.2 executed on 04.03.1994, plaintiff purchased the 1/3rd share of Samsuddin, by way of Sale Deed Ex.A.1 dated 12.05.1992. Thus, it confers absolute title on the plaintiff.

13.The learned counsel further contended that the contract for Sale of immovable property does not create any interest in the immovable property. The vendor could enter into a Sale transaction with the plaintiff and confer absolute title on him upon his 1/3rd share. There is a valid transfer of ownership and the title is conferred to the plaintiff. In this case, the plaintiff purchased the 1/3rd share on 12.05.1992 i.e, Ex.A.1. Therefore, the plaintiff is entitled to 1/3rd share in the suit



properties. The trial Court as well as the First Appellate Court failed to consider the fact and misapplied the law. Therefore, the findings is erroneous and unsustainable and liable to be set aside and reiterated the other grounds raised in the grounds of appeal and thus pleaded to allow the second appeal.

14.Learned counsel for the respondents supported the judgment of the trial court and the First Appellate Court and contended that the plaintiff purchased the properties by way of Sale Deed Ex.A1 on 12.05.1992, subsequent to the Sale Agreement Ex.B.1 dated 25.06.1990 in favour of the defendants. On the date of the agreement, they were put in possession. So with the knowledge of the earlier agreement, plaintiff purchased the properties without possession and he is not having any right and possession over the plaint schedule properties and not entitled to claim the 1/3rd share as a owner and suit is not maintainable. The trial Court rightly dismissed the suit which is confirmed by the First Appellate Court. There is no ground to interfere with the findings of the trial Court and the First Appellate Court. There is no merit in this Appeal. There is no irregularity and no substantial question of law is involved in this case and thus, pleaded to dismiss the Appeal.



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15.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

16.On perusal of the records and evidence, it is seen that the plaint schedule properties originally belongs to Fathima Bi, wife of Bakkodu @ Imam Sahib. The said Fathima Bi died in the year 1979 leaving behind her husband namely Bakkodu @ Imam Sahib and her children namely Rasool Sahib, Samsuddin Sahib, Roshan Bi and Maqbul Bi as her legal heirs to succeed to the suit lands as per Muslim Law. Subsequently, on 08.04.1991, Imam Sahib died leaving behind him his sons and daughters namely Rasool Sahib, Samsuddin Sahib, Roshan Bi and Maqbul Bi as his legal heirs to succeed to his share in the suit lands. Consequently, Samsuddin Sahib became entitled to 1/3 share in the suit lands as per Muslim Law. The said Rasool Sahib, Samsuddin Sahib, Roshan Bi and Maqbul Bi had been in joint possession and enjoyment of the suit lands as co-owners. The said Samsuddin Sahib sold away his common 1/3 share in the suit lands in favour of the plaintiff under a registered sale deed dated 12.05.1992 for a valuable consideration amount of Rs.37,300/- and consequently, the plaintiff



became entitled to 1/3rd share in the suit lands. Subsequently, the plaintiff entered into possession of the suit lands as a co-owner along with the remaining co-owners namely Rasool Sahib, Roshan Bi and Maqbul Bi.

17. According to the plaintiff, the defendants in the middle of the year 1994, claimed to have purchased the suit property from Rasool Sahib, samsuddin Sahib, Roshan Bi and Maqbul Bi under a registered Sale Deed dated 04.03.1994 (Ex.B.2). Hence, he filed a suit for partition and claimed his 1/3rd share in the plaint schedule properties.

18. On perusal of the evidence and documents, it is seen that, initially on 25.04.1986, husband of Fathima Bi, namely Imam Sahib, along with his sons and daughters entered into the Sale Agreement with one Rahmed Sahib to sell the suit property for a sum of Rs.45,000/- and received an advance amount of Rs.20,000/-. Since they have not come forward to execute the Sale Deed, a suit has been filed in O.S.No.60 of 1987 on the file of Sub-Court, Krishnagiri on 05.03.1987 for refund of the advance amount of Rs.20,000/- with interest. Pending that suit, the defendants entered into a sale agreement with the husband, sons and daughters of



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Fathima Bi, for a sale consideration of Rs.90,000/- and received an advance amount of Rs.30,000/- on 25.06.1990. It is evidenced by Ex.B.1.

19.On perusal of Ex.B.1 Sale Agreement, a condition was imposed that the Sale Agreement would be executed subject to the result of the suit in O.S.No.60 of 1987 and if it ends in their favour, they will execute the Sale Deed. But, on perusal, it is noticed that the suit in O.S.No.60 of 1987 was decreed on 31.01.1992 and a charge was created which is evidenced by Ex. A3 and B3. Further, it is noticed that one of the share holder i.e Samsuddin executed a Sale Deed in favour of the plaintiff on 12.05.1992. It is evidenced by Ex.A1.

20.On perusal of Ex.A.1, the Sale deed contain the fact that, the plaintiff has to pay a sum of Rs.15,000/- (his vendor's share) for refund of money in O.S.No.60 of 1987 on the file of Sub-Court, Krishnagiri. One of the share holder namely Samsuddin sold his 1/3rd share in the suit property to the plaintiff on 12.05.1992. Further, the defendants pending suit in O.S.No.134 of 1992 settled the dispute out of Court and got Sale Deed in their favour on 04.03.1994. Therefore, the suit was dismissed as settled out of Court. It is evidenced by Ex.B.2 Sale Deed.



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21. The above evidence and records reveals the fact that, before execution of Sale Deed Ex.B.2 dated 04.03.1994, one of the party namely Samsuddin already sold his 1/3rd share to the plaintiff by way of Sale Deed Ex.A.1 on 12.05.1992. The settled position of law is that, a contract of sale of immovable property does not create any interest in such immovable property. Therefore, the vendor could enter into a sale transaction with a third party and confer absolute title on him, inspite of the agreement to sell. Therefore, the Sale Deed Ex.A.1 dated 12.05.1992 is a valid one. The question of law is clearly discussed in the Judgment relied on by the learned counsel for the appellant in the case of ***Managiri Village Panchayat Vs. The Government of Tamil Nadu*** reported in [1975 1 MLJ 263]. For better appreciation, the relevant portion of the judgment is reproduced as follows,

“4. A contract for sale of immoveable property does not create any interest in such immoveable property. Therefore the vendor could enter into a sale transaction with a third party and confer absolute title on him in spite of the agreement to sell. As between the subsequent purchaser and his vendor, there is a valid transfer of ownership and the title is conveyed to the subsequent purchaser. But if the purchase by the third party was with the knowledge of the agreement to sell, he will hold



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person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract. Thus, the obligation of holding it as a trustee is only to the extent necessary to give effect to the contract. It does not affect the passing of the title. In other words even where [Section 91](#) of the Act is applicable the transaction of sale is not made void, but the subsequent purchaser is under an obligation to convey the property to the agreement-holder as and when he establishes his rights. In fact the Supreme Court in [Durga Prasad v. Deep Chand](#) , held that it would not be proper in a suit for specific performance to declare the sale void or cancel the sale in favour of the subsequent purchaser but the proper decree that could be passed is "to direct the specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff". It is on this basis as noticed by this Court in [Thangavel Chettiar and Anr. v. Kuppu Bai and Anr.](#) , that the practice has grown in suits for specific performance to direct not only the person, who agreed to sell immoveable property but also the person to whom contrary to that agreement the owner had sold the property, should join in



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immoveable property but also the person to whom contrary to that agreement the owner had sold the property, should join in the execution of the sale deed in favour of the person entitled to specific performance. In [Marina Appa Rao v. Marina Veeranna](#) , this Court considered the effect of execution of a sale deed by the original owner alone without the subsequent purchaser joining the sale. After noting that the title of the subsequent purchaser with notice of the prior agreement in favour of another is subject to the obligation under [Section 91](#) of the Act, Subba Rao J. (as he then was), held that if the contract for the purchase of immoveable property with the original owner does not create any interest in him, the sale effected by the owner after he had already parted with the title to a third party, to the original agreement-holder cannot also confer a title. The agreement-holder can acquire title to the property only if proper conveyance is executed by the subsequent purchaser as well. Though this judgment might be interpreted as holding that the sale deed in purchase of a decree for specific performance is to be executed only by the subsequent purchaser and to that extent is not fully supported by the view of the Supreme Court in [Durga Prasad v. Deep Chand](#) 1954 S.C.J. 23 : (1954)1 M.L.J. 60, the decision is certainly an authority for the position that the original owner by himself could not confer or convey any title in respect of the



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a necessary party in a suit for specific performance and the decree should direct both the owner and the subsequent purchaser to execute the conveyance in favour of the agreement-holder. This was also the view expressed in Premsookh Gulgulia v. Habib Ullah A.I.R. 1945 Cal. 355, The same view was expressed in a different way in Krishnaswamy v. Sundarappayyar (1895).”

22. In view of the above proposition of law and considering the facts of the case, the plaintiff is entitled to 1/3rd share in the suit property pursuant to Ex.A.1 Sale Deed, even though he purchased the property subsequent to Ex.B.1 Sale Agreement in favour of the defendants. The Sale Deed Ex.B.2 dated 04.03.1994 executed by one of the vendors of the defendants would not convey any title in respect of the 1/3rd share in the suit property, which Samsuddin had already sold to the plaintiff under Ex.A.1 Sale Deed dated 12.05.1992. Ex.B.1 Sale Agreement does not create any right in the suit property in favour of the defendants and affect the title in favour of the plaintiff under Ex.A.1, Sale Deed, so far as Samsuddin's 1/3rd share is concerned. Therefore, the judgment of the trial Court and the First Appellate Court is erroneous, against the law and not sustainable and liable to be set aside. Accordingly, the judgment and decree dated 21.10.2011 passed in A.S.No.1 of 2010 on the file of the Additional District Court, Krishnagiri is set



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set aside. Accordingly, the judgment and decree dated 21.10.2011 passed in A.S.No.1 of 2010 on the file of the Additional District Court, Krishnagiri is set aside.

23.In the result, the Second Appeal is allowed and a preliminary decree is passed to divide the suit properties into three equal shares by taking into consideration of the good and bad soil and allotting one such share to the plaintiff and delivering separate possession of such share allotted to the plaintiff. With regard to means profit and cost, it will be separately decided upon an enquiry. With the above directions, this Second Appeal is allowed, with costs throughout. Consequently, the connected Miscellaneous Petition, if any, is closed.

29.07.2024

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To:

1. The Additional District Court, Krishnagiri.
2. The Sub-Court, Hosur.



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.443 of 2012

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