



WEB COPY



A.S.No.397 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.01.2024

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.397 of 2018
and
CMP.No.10317 of 2018

A.Sivasubramaniam

... Appellant

Versus

K.Palanivelu

... Respondent

Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 23.01.2017 made in O.S.No.188 of 2004, passed by the learned Additional District Judge, Namakkal.

For Appellants : Mr. R.Thirugnanam

For Respondent : Mr. C.Umashankar

for Mr.N.Vijaya Bhaskar

ORDER

The appellant has filed this appeal to set aside the Judgment and decree dated 23.01.2017 made in O.S.No.188 of 2004, passed by the learned Additional District Judge, Namakkal.



A.S.No.397 of 2018

2. Heard Mr. R.Thirugnanam, learned counsel for the appellant and Mr. C. Umashankar, learned counsel for Mr. N. Vijaya Bhaskar learned counsel appearing for the respondent and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellant herein is unsuccessful plaintiff in O.S.No.339 of 2003 on the file of Subordinate Judge, Namakkal, and suit was filed for specific performance against the respondent / defendant. The said suit was contested by the defendant denying the plaintiff's readiness and willingness as well as the suit was barred by limitation. On considering both side submissions, the learned trial Judge declined to grant relief of specific performance in favour of the plaintiff, and directed the defendant to deposit the said amount immediately to the credit of O.S.No.188 of 2004. However, aggrieved by the findings of the learned trial Judge, the plaintiff has preferred this appeal.

5. The brief facts of the case as follows: According to the plaintiff, the suit property absolutely belongs to the defendant who offered to sell the



A.S.No.397 of 2018

property of an extent of 1.77 acres on 14.09.1996, the plaintiff accepted the said proposal and sale consideration was fixed for a sum of Rs.23,50,000/-.

On the same day itself, a sum of Rs.4 lakhs was paid as advance by the plaintiff to the defendant, and time to perform the terms of agreement was fixed as 11 months, within that period, the plaintiff agreed to pay the balance amount. Thereafter, the plaintiff attempted to plot out the land, and the defendant also agreed to execute the sale deed in respect of the suit property in favour of the plaintiff free from all encumbrances on receipt of balance of sale price within the stipulated time. Thereafter, the defendant received the balance sum of Rs.18,55,000/- on various occasions, towards the above said agreement of sale from the plaintiff and there is a balance of sale price of Rs.4,55,000/- to be paid by the plaintiff. There was a Civil suit between the defendant and the family members in O.S.No.1354 of 1998, which was pending on the file of the District Munsif Court, Rasipuram. So, the defendant agreed to execute the sale deed, and to that effect, he made endorsement on the back side of the agreement. After disposal of the said suit in the year 2000, the defendant was not intended to sell the property. Therefore, the plaintiff issued notice on 15.11.2002, but it returned with an endorsement "Address insufficient". Again, he issued another notice, but he has not filed any reply. On the other hand, they filed a suit in O.S.No.1691 of



A.S.No.397 of 2018

2002 for the relief of permanent injunction against the plaintiff. Thereafter, he gave a reply notice with false allegation. Hence the plaintiff filed an appeal through Court over the property.

6. By way of written statement, the defendant admits that there was an agreement of sale and received Rs.4 lakhs only and he denied that the alleged payment said to be paid by the plaintiff on various occasions, stating that the defendant neither received any further amount as alleged by the plaintiff, nor he issued any receipt to that effect. Further, he strongly denied the signature in the alleged receipt produced on the side of the plaintiff and contended that the signature was forged and those receipts are fabricated documents. In order to save the limitation period, the plaintiff has fabricated the receipts, but there is no connection with the another suit i.e., O.S.No.1354 of 1998. The plaintiff himself fabricated the endorsement on the back side of the agreement. Besides the defendant, his family members alone enjoyed the suit property, as all were having joint ownership in that property. Hence, he prays to dismiss the suit.

7. The plaintiff has filed a reply statement stating that, after disposal of the said O.S.No.1354 of 1998, the defendant was bound to execute the sale



A.S.No.397 of 2018

deed, but he failed and it is also contended that the property is under his possession from the date of the agreement.

8. Before the trial Court, both the parties adduced oral and documentary evidence. On the side of the plaintiff P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P12 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.D1 to Ex.D4 were marked.

9. The learned trial Judge framed six issues which are as follows:

"i. whether the endorsement dated 20.06.1998, 05.08.1998, 18.11.1998 found on the back side of the 1st sheet of suit sale agreement are true?

ii. Whether the receipt dated 13.01.1999 is true?

iii. Whether the plaintiff was ready and willing to perform his part of the contract?

iv. Whether the suit is barred by limitation?

v. Whether the plaintiff is entitled to the relief of specific performance of contract of sale?

vi. To what relief the plaintiff is entitled?"

10. Considering both side submissions, the learned trial Judge finally concluded that the endorsements have not been proved by the plaintiff and



A.S.No.397 of 2018

the agreement was of the year of 1996, i.e., within 11 months stipulated period the plaintiff has not proved his readiness and willingness. After 3 years, the plaintiff has approached the Court and the alleged receipt as well as endorsement had not been proved with material evidence. But the suit was filed near about two years, after issuance of the said notice, as well as completion of the time period, thereby, suit is also barred by limitation. Since the defendant admits the receipt of advance, the learned trial Judge directed to return the advance amount with interest and the said direction also complied by the defendant.

11. The learned counsel for the appellant submitted that the learned trial Judge erroneously concluded that the plaintiff has not proved the endorsement made by the defendant in the said sale agreement as well as the receipts issued for payment of the further sale consideration. Though the plaintiff has proved the said facts by examining the witnesses of P.W.2 to P.W.4. the learned trial Judge, without appreciating all those evidence, erroneously concluded and same is liable to be set aside. Further, he submitted that the trial Court failed to take note of the steps taken by the plaintiff to send those receipts found in Ex.P2 to Ex.P5 for expert opinion, but to compare the same with contemporary document was not produced,



A.S.No.397 of 2018

since the defendant did not co-operate, in such circumstances, the Court below ought to have held that the signatures found in Ex.P2 to Ex.P5 were that of the defendant. But the learned trial Judge erroneously dismissed the plaintiff's claim and as such it is liable to be set aside.

12. Even otherwise, the Court is empowered to compare the signature, but the learned trial Judge, on the other hand, erroneously held that the plaintiff has not proved the execution of Ex.P2 to Ex.P5 receipts, as such finding is without reason, and it is liable to be set aside. Furthermore, he submitted that the plaintiff proved his readiness and willingness and also established that the suit is filed within time. He also established that the defendant alone is the owner of the property and inspite of that, the suit was dismissed in respect of relief of specific performance and the trial Court directed to refund the advance amount as such is un reasonable in law. Hence, he prayed to allow the appeal by setting aside the findings rendered by the learned trial Judge.

13. By way of reply, the learned counsel for the respondent / defendant submitted that though there was an agreement in the year 1996 between the plaintiff and the defendant, but the plaintiff voluntarily paid a sum of Rs.4



A.S.No.397 of 2018

lakhs as advance. Thereafter, he was not ready to pay the balance sale consideration within 11 months from the date of agreement. In spite of the request made by the defendant, he did not give any assurance that after completion of the suit in O.S.No.134 of 1998, he agreed to execute the sale deed. Further, it is contended that he was no way connected with the said suit. The plaintiff himself voluntarily had written the suit number, on the back side of the agreement and fabricated the receipts Ex.P.2 to Ex.P5. The defendant received the amount on various occasions, but those documents were created now to save the limitation period. Therefore, the learned trial Judge rightly dismissed the plaintiff's claim. Furthermore, he submits that the plaintiff was not ready and willing to pay the amount within the stipulated period of 11 months and after filing of the suit for injunction, the plaintiff has filed a suit even after issuance of the notice by the plaintiff with false allegations in the year 2002. Thereafter, he filed a suit in the year 1998, but he issued notice only in the year of 2002, even after expiry of 3 years' period of limitation from the stipulation period. The learned trial Judge rightly concluded that the suit is barred by limitation, thereby, he submitted that the finding of the learned trial Judge are well reasoned and the appeal is liable to be dismissed.

14. Considering both side submissions, though the agreement was of



A.S.No.397 of 2018

the year 1996, the plaintiff filed the suit only in the year of 2003, by relying upon the alleged endorsement made on the back side of the sale agreement / Ex.A2 as well as the receipts marked as Ex.P2 to Ex.P5 and Ex.P7 and all those endorsements pertain from 20.06.1998 to 13.11.1999.

15. As per the evidence of the defendant as well as the written statement, the defendant admits that the suit sale agreement with the plaintiff in the year 1996, but time to perform the agreement was fixed as 11 months, which ends on August 1997. According to the defendant, except the said advance of Rs.4 lakhs in the year of 1996 from the plaintiff, he has not received any further amount from him and nor he made any endorsement and neither issued any receipt by receiving further sale consideration, thereby he totally denied Ex.P2 to Ex.P5 and Ex.P7. Under Section 16(c) of the Specific Relief Act, it is mandatory that the plaintiff has to prove the readiness and willingness till he approaches the Court, thus burden is on the plaintiff to establish those things.

16. As discussed above, within 11 months stipulated period, the plaintiff has neither issued notice, nor taken any steps to express his willingness to pay the balance sale consideration. But the plaintiff contended



A.S.No.397 of 2018

WEB C

that the defendant received a sum of Rs.1,30,000/- on 20.06.1998, and another sum of Rs.5,00,000/- on 05.08.1998 and again another sum of Rs.4,00,000/- on 16.11.1998, and by receiving those sale consideration in the presence of witnesses, the defendant made endorsement and those endorsements are marked as Ex.P2 to Ex.P4. Further, defendant received another sum of Rs.2,00,000/- on 19.01.1999 and again another sum of Rs.2,25,000/- on 13.11.1999, and for that, he received receipt which was marked as Ex.P5, thereby the plaintiff contended that the defendant received a total Sum of Rs.18,55,000/- as part of sale consideration. As the defendant denied the signatures in those receipts are not that of him and also contended that it is a fabricated document by the plaintiff in order to save the limitation.

17. By relying on the ratio in "2000(VI) CTC 513, *Tmt.Nallammal vs. Dhanshkodi*, in which *Evidence Act,1872*, was discussed and Sections 101 and 103 shows that Burden of proof in a Suit for specific performance filed by purchaser – Vendor, disputed very agreement and alleged that agreement was forged, the Ouns of proving that agreement was actually entered into is on one who relies on such agreement and purchaser had to prove it.

The learned counsel for the defendant submitted that the burden is on the plaintiff to prove that the said signatures belongs to the defendant.



A.S.No.397 of 2018

WEB COPY

18. Per contra, the learned counsel for the plaintiff submitted that before the trial Court, he took steps and sent those receipts and endorsement to establish that the signatures belong to the defendant, but that petition was dismissed by the learned trial Judge holding that even the Court can compare against which CRP.Nos.466 &467 of 2012 were preferred by the plaintiff, wherein the findings of the learned trial Judge was set aside and the documents were sent to forensic Lab through Commissioner for expert opinion. But experts are not able to give opinion. Since, to compare the signatures of the defendant is not sufficient. To establish that the defendant withheld the contemporary document, already there was an observation made by this Court, while disposing of CRP.Nos.466 & 467 of 2012.

19. In view of the fact that the expert opinion will guide a Judge to note the point of similarity and dis-similarity, to arrive at the conclusion as to whether the disputed signatures were made by the former person who made the admitted signature. Therefore, this Court itself agrees with a view that the learned trial Judge himself can compare the disputed signatures with admitted signature. Hence the learned trial Judge, while deciding the genuineness of



A.S.No.397 of 2018

the documents, relying on the said observation made by this Court, concluded that the alleged signature endorsement as well as the receipt had not been proved by the plaintiff with sufficient materials and as such, it is well reasoned order, which needs no interference and therefore the plaintiff has not proved the said endorsement and the receipt issued by the defendant on various occasions. Furthermore, the plaintiff contended that on the back side of the agreement itself, the defendant entered a suit number O.S.No.134 of 1997 which was pending between himself and others in respect of the suit property, after disposal of the suit, he agreed to execute the sale deed, but defendant totally denied that he has not made any endorsement and suit number which is connected with the defendant.

20. The learned counsel for the defendant submitted that the said suit was filed at the instance of the plaintiff for this defendant, who is also a defendant in the suit engaged by the counsel. At the instance of the plaintiff's counsels and without the knowledge of the defendant, the said suit was proceeded. In fact, the said suit was dismissed as settled out of Court but the defendant totally denied the said aspect and to prove the same, the plaintiff has not examined the said Perumayee in order to prove the allegation made by the defendant against him. But the copy of the said suit proceedings were



A.S.No.397 of 2018

obtained by the plaintiff at his own instance, which shows that he might have actually proceeded for filing of such suit proceedings on the file of the Namakkal Munsif Court. Therefore, on the back side of the alleged agreement marked as Ex.P2, it has not been proved by the plaintiff beyond reasonable doubt. Even on bare perusal of the alleged endorsements in Ex.P2 to Ex.P7, it appears not genuine one, more particularly, the original suit is mentioned as O.S.No.134 of 1998 and the same is established through the document / Ex.P8. In respect of alleged receipt, one witness Nadassapa was examined as P.W.3 who is said to be a witness of both endorsement, but as discussed above, the signature of the Palanivel not been proved by the plaintiff without which the evidence of, those witnesses did not support the case of the plaintiff. To prove his readiness, the plaintiff examined P.W.2 independent witnesses, as per the evidence, possession was given to the plaintiff on the date of agreement, but the same was denied by the defendant stating that his son and daughter are also having share in the property, and till date he is in possession of the property and to disprove the same, there is no document on the side of the plaintiff to prove that he is in possession of the property. Admittedly, as per the suit schedule, the suit property is a land and the plaintiff has not produced Chitta, Adangal extract etc., to prove his possession. Therefore, the evidence of Ex.P2 also does not support the case



A.S.No.397 of 2018

of the plaintiff. Furthermore, to prove the readiness, the plaintiff relied on Ex.P6 document to show that he deposited the amount in KVB, but admittedly the said saving belongs to him and his advocate K.M.Jaya, and the said amount was also deposited on 10.03.2005, after the suit, as observed by the learned trial Judge, there is no proof that the amount belongs to the plaintiff, which stands in the name of the counsel and it no way supports the plaintiff's case, nor he proved he had amount before filing the suit. In all aspects, the plaintiff failed to establish that he is ready and willing to perform his part of the contract and the learned trial Judge rightly concluded, which needs not interference by this Court.

21. Furthermore, the alleged endorsement as well as the receipt had not been proved by the plaintiff with valid evidence and the same was rightly ignored by the learned trial Judge concluded the issues Nos.1 and 2 are well reasoned, which needs no interference by this Court. Therefore, the suit agreement was in the year 1996. On the date of filing of the suit, in the year of 2003, the plaintiff has not proved those endorsements and receipts. The suit is clearly barred by limitation, as rightly decided by the learned trial Judge while deciding Issue No.5.



A.S.No.397 of 2018

WEB COPY 22. Therefore, the findings rendered by the learned trial Judge for not granting relief of specific performance are valid and well reasoned. As the defendant admits the agreement receipt of Rs.4 lakh as advance, the learned trial Judge directed the defendant to refund the said Rs.4 lakhs with 18 % interest as discussed above. Except the said receipt of the amount, the defendant has not received any further consideration, nor the plaintiff established that he was ready and willing to perform the part of the agreement, thereby he is not entitled for the relief of specific performance. Immediately, after disposal of the suit, the defendant deposited the said advance amount of Rs.4 lakhs with 18% interest, which comes around Rs.19 lakhs.

23. Considering the entire facts of the case, it clearly reveals that the plaintiff manipulated the documents, more particularly, at the instance of one Perumayee, on filing of the suit in O.S.No.134 of 1998 before the District Munsiff, Rasipuram, against the defendant. In order to save the limitation period for that, M/s.K.N.Jaya who is a counsel on record of plaintiff, also assisted him by engaging another counsel and thereafter the said suit was dismissed as settled out of Court. It clearly denotes that in order to save the



A.S.No.397 of 2018

limitation period, the plaintiff colluded with other parties and created fabricated receipts and endorsements and he has not approached the Court with clean hands. Therefore, he is not entitled for further relief during the pendency of the appeal.

24. Hence, this appeal is dismissed as devoid of merits and the findings of the learned trial Judge are confirmed. In respect of relief of specific performance suit dismissed, and the suit is partly decreed, directing the defendant to refund the advance amount of Rs.4 lakhs with 18% interest. As per the direction of the learned trial Judge the defendant deposited the amount which comes to around Rs.19 lakhs, and the plaintiff is entitled to that amount alone.

25. Accordingly, this Appeal suit is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs. However, the plaintiff is directed to withdraw the amount which was already deposited by the defendant in the manner known to law.

30.01.2024

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation: Yes/No

rri

<https://www.mhc.tn.gov.in/judis>



A.S.No.397 of 2018

WEB COPY

- To
1. The Additional District Judge, Namakkal.
 2. The Section Officer,
VR-Section, High Court of Madras.



WEB COPY



A.S.No.397 of 2018

T.V.THAMILSELVI, J.

rrr

A.S.No.397 of 2018
and
CMP.No.10317 of 2018

30.01.2024