



S.A. Nos.993 & 994 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2024

PRONOUNCED ON : 20.03.2024

CORAM:

THE HON'BLE MR.JUSTICE G. ARUL MURUGAN

S.A. Nos.993 & 994 of 2012

and

M.P.Nos. 1 & 1 of 2012

S.A.No.993 of 2012

Kalaiselvi

... Appellant

Vs.

Govindaraju

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.42 of 2010 dated 08.03.2012 on the file of Court of Subordinate Judge, Chidambaram reversing the judgment and decree passed in O.S.No.190 of 2004 dated 29.03.2010 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil.

For Appellant : Mr.A.Muthukumar

For Respondent : No appearance



S.A. Nos.993 & 994 of 2012

WEB COPY

S.A.No.994 of 2012

Kalaiselvi

... Appellant

Vs.

1. Govindaraju
2. Kalayarasi
3. Veeramai

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.17 of 2011 dated 08.03.2012 on the file of Court of Subordinate Judge, Chidambaram modifying the judgment and decree passed in O.S.No.140 of 2004 dated 29.03.2010 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil.

For Appellant : Mr.A.Muthukumar

For Respondents : No appearance for R1

R2 & R3 - exparte

JUDGMENT

The plaintiff in O.S.No.190 of 2004, who had filed a suit for specific performance and 1st defendant in O.S.No.140 of 2004, who had filed a suit for bare injunction is before this court, as Appellant in both Second



S.A. Nos.993 & 994 of 2012

Appeals. The sole defendant in the suit for specific performance, the plaintiff in the suit for bare injunction is the 1st respondent in both Second Appeals.

2. For the sake of convenience, the parties are referred to as per the ranking before the trial court in the comprehensive suit in O.S.No.190 of 2004.

3. As both Second Appeals arise out of a common judgment and decree dated 08.03.2012 in A.S.No. 42 of 2010 and A.S.No.17 of 2011, both Second Appeals are disposed of by this common judgment.

4. According to the plaintiff, the defendant's father Rathinasamy owned the suit property and pursuant to his death, the defendant is the owner of suit property. The defendant is none other than the paternal uncle of plaintiff. The plaintiff entered into an agreement of sale with the father of defendant Rathinasamy on 25.06.1986 and due to close relationship, the agreement was not registered, but possession of first item of suit property



S.A. Nos.993 & 994 of 2012

was handed over to the plaintiff. From then on, she has been in possession and enjoyment of the suit property, however, based on the request of the defendant and his father Rathinasamy, the plaintiff changed the possession from the first item to the second item of suit property, constructed a brick built house and living therein. According to plaintiff, after the death of his father, the defendant entered into an agreement to sell the suit property in favour of plaintiff on 19.01.2002 and on the date of the agreement, the defendant had handed over possession of first item of suit property also. The total sale consideration was fixed at Rs.20,000/- and out of which, a sum of Rs.15,000/- was paid by the plaintiff as advance and period of three years was fixed for the payment of remaining sale consideration of Rs.5000/-. The plaintiff was always ready and willing to perform her part of contract and get the sale deed completed by paying balance sale consideration. When the defendant evaded to complete the sale, the plaintiff has issued a legal notice through her advocate on 28.06.2004, for which the defendant issued an evasive reply on 16.08.2004. After receipt of notice, the defendant had filed a suit in O.S.No.140 of 2004 and obtained an exparte order of injunction and tried to trespass into suit property,



S.A. Nos.993 & 994 of 2012

however it was prevented by the plaintiff. As such, the plaintiff filed a suit for specific performance and also for recovery of possession of suit property.

5. The defendant apart from filing a suit in O.S.No.140 of 2004 as against the plaintiff and two others, who are her sister and husband, resisted the suit by filing a written statement. The defendant had denied the execution of sale agreement on 19.01.2002 and also earlier agreement dated 25.06.1986. The plaintiff was never in possession of suit property and this defendant had been all along in possession and enjoyment of suit property. The suit properties originally belonged to Saradhambal Achi and the defendant had been cultivating the lands for more than 30 years and only in the year 1993, Saradhambal Achi had conveyed the suit properties in favour of defendant for valuable consideration. From the date of purchase on 03.04.1993, the defendant had been in possession and enjoyment of property by paying necessary kist. He had put up a foundation for constructing a house in the year 1999 in 0.49 cents of land in Survey No. 45/2 and the defendant with the help of land surveyor on



S.A. Nos.993 & 994 of 2012

01.06.2004, measured and surveyed the land. When the defendant, due to his ill-health, was taking treatment at Karaikal and requested the sister of plaintiff, who was residing in an adjacent Government poramboke property to look after the lands, in which the cultivation has been done and the plaintiff's sister used for cattle grazing and damaged the crops in the lands and he took steps to evict her from Poramboke property, she became enemical and due to which, the plaintiff has filed a suit for specific performance with false and fabricated document. The defendant prayed for dismissal of suit and also sought for bare injunction against the plaintiff in the suit filed by him.

6. Both the suits were taken up for joint trial and during trial, the plaintiff examined herself as P.W.1 and the attestor Balamurugan was examined as P.W.2 and marked documents in Exs. A1 to A8. On the side of defendant, he examined himself as D.W.1 and one Pandian was examined as D.W.2 and marked documents in Exs. B1 to B9.

7. The trial court, after analysing the documents and evidence,



S.A. Nos.993 & 994 of 2012

decreed both the suits. The trial court found that the plaintiff has proved the sale agreement in Ex.A8 and also found that the defendant is in possession of suit property even as per the admission of the plaintiff. Therefore, the trial court decreed both suit for specific performance and also the suit for bare injunction. Aggrieved by the judgment and decree of the trial court, the parties filed two separate appeals in A.S.No.42 of 2010 and A.S.No. 17 of 2011 on the file of Subordinate Court, Chidambaram. The lower appellate court after reappraising the evidence, by a common judgment and decree dated 08.03.2012, allowed the appeal in A.S.No.17 of 2011 and set aside the decree granted for specific performance in O.S.No.140 of 2004 and dismissed the appeal in A.S.No.42 of 2010 confirming the injunction granted in favour of defendant.

8. Aggrieved by the judgment and decree of lower appellate court, the plaintiff is before this court by preferring two separate Second Appeals in S.A.Nos.993 and 994 of 2012. This Court, by an order dated 16.11.2012, framed the following substantial questions of law in S.A.No.993 of 2012 and also, by an order dated 16.11.2012, framed the



following substantial questions of law in S.A.No. 994 of 2012 :-

“S.A.No. 993 of 2012

a) *Whether the Lower Appellate Court erred in law in comparing the signatures of the defendant in Ex.A8 with that of his signatures in his deposition contrary to the decisions of this Court reported in 1999 (3) CTC page 156 and 2006 (3) MLJ Page 567 (DB)?*

b) *Whether the Lower Appellate Court erred in law in comparing the disputed signatures of the defendant with his admitted signatures without a report from a handwriting expert?*

c) *When the plaintiff had discharged his burden of proving Ex.A8 by examining the attesting witness, Whether the Lower Appellate Court erred in law in comparing the signatures of the defendant in the absence of any application from the defendant for an expert opinion?*

d) *Whether the Lower Appellate Court has misconstrued and misappreciated the evidence on record?*

S.A.No. 994 of 2012



S.A. Nos.993 & 994 of 2012

- 1) *Whether the Lower Appellate Court erred in decreeing the suit in entirety in the absence of any appeal or Cross Objections from the plaintiff?*
- 2) *When the plaintiff had satisfied with the decree of the trial court whether the lower appellate court erred in law in granting reliefs to him in an appeal preferred by the 1st defendant?*
- 3) *When the plaintiff had gained possession on the strength of the interim order whether the Courts below erred in law in granting the relief on the basis of judicial possession?"*

9. The learned counsel appearing for appellant argued that even when the sale agreement was executed by the defendant's father in favour of plaintiff as early as on 25.06.1986 in Exs.A1 and A2, the plaintiff was put in possession of first item of suit property and only because, the defendant's father was the paternal uncle, the agreement was not registered. The learned counsel further contended that the property originally belonged to Saradhambal Achi and the same was conveyed in favour of the defendant and his father only on 03.04.1993 in Ex.B1. After the death of defendant's father Rathinasamy, a mutual understanding was arrived at and



S.A. Nos.993 & 994 of 2012

based on which, an agreement of sale dated 19.01.2002 has been entered into between the plaintiff and defendant in Ex.A8. The learned counsel submitted that out of the total sale consideration of Rs.20,000/-, an advance of Rs.15,000/- was paid and for the balance payment of Rs.5000/-, the period of three years was fixed. On the date of execution of sale agreement in Ex.A8, on a mutual understanding, the plaintiff had surrendered the possession of first item of suit property and she was put in possession of the second item of suit property. The learned counsel contended that since the defendant evaded to complete the sale, she has issued a legal notice on 28.06.2004 and received an evasive reply, the plaintiff filed a suit for specific performance on 21.09.2004. The learned counsel contended that the plaintiff has examined herself as P.W.1 and also by examining the attessor P.W.2, has duly proved the execution of sale agreement. The defendant had not disproved the sale agreement by establishing that he has not executed the document.

10. The learned counsel further submitted that when D.W.1 has only stated that after the filing of suit, with the help of exparte order of interim

10/26



S.A. Nos.993 & 994 of 2012

injunction, the defendant had entered into possession, but it had been wrongly considered as an admission and the court below have decreed the suit for bare injunction. The learned counsel submitted that the trial court by considering the evidence of P.W.1 and 2 had correctly arrived at a decision that the execution of sale agreement in Ex.A8 has been proved and decreed the suit for specific performance. But, however, the lower appellate court even though has come to a conclusion that the agreement has been proved by examining P.W.2 attester to the document, has erroneously reversed the finding by holding that when the defendant has disputed the sale agreement, the plaintiff has not taken any steps to compare the signature to get an expert opinion and prove the signature. The learned counsel further argued that the lower appellate court had gone ahead and compared the signature in Exs.A1, A7 and A8, and the procedure adopted by the lower appellate court is erroneous. The learned counsel contended that the comparison of document can only be done with the admitted signature that too only with the contemporaneous document. The learned counsel further submitted that even though this court has power to compare the signature under Sec.73 of Evidence Act, the



S.A. Nos.993 & 994 of 2012

procedure adopted by the lower appellate court in going into minor's details and giving an expert opinion in respect of signature is not sustainable in view of settled principles that it is always better for the court to get the expert opinion, if the same is not able to identify by comparison. The learned counsel relied on the decision in the case of ***Central Bank of India vs Antony Hardware Mart, rep. by its Proprietor*** reported in **(2006) 3 MLJ 567** for the proposition that the disputed signature can be only compared with admitted signature on the contemporaneous document and not with admitted signature obtained subsequent to the date of disputed signature. As such, the learned counsel contended that the procedure adopted by the lower appellate court and the finding arrived at is not based on the legal provision and the materials available on records and therefore are perverse and sought for allowing the Second Appeals.

11. Even though the counsel has entered appearance for the respondent and name is printed in the cause list, but there is no appearance on the side of respondent.



S.A. Nos.993 & 994 of 2012

WEB COPY

12. Heard the learned counsel for appellant and perused the materials available on record.

13. The plaintiff has come up with the suit for specific performance based on the sale agreement dated 19.01.2002 executed by the defendant in Ex.A8. Plaintiff claims that already two separate sale agreements dated 25.06.1986 had been executed by the defendant's father in favour of plaintiff in Exs.A1 and A2. Further, it is claimed that on the execution of Exs.A1 and A2, the defendant's father put the plaintiff in possession of suit property and since the defendant was her paternal uncle, the agreement was not registered.

14. Admittedly, the suit properties belong to one Saradhambal Achi and defendant's father was only a cultivating tenant and except that, he had no right over the suit property. Eventhough the plaintiff claims that possession of first item of suit property was handed over on the date of execution of Exs.A1 and A2, admittedly agreements have not been registered. Saradhambal Achi had conveyed the suit properties in favour of



S.A. Nos.993 & 994 of 2012

defendant and his father Rathinasamy only on 03.04.1993 through Ex.B1.

Therefore, on the alleged date of execution of sale agreement in Exs.A1 and A2, Saradhambal Achi continued to be the owner and the plaintiff has also not made any claim based on the sale agreement executed in her favour in Exs.A1 and A2.

15. It is the case of the plaintiff that after the death of defendant's father Rathinasamy, a mutual understanding was arrived at, through which the defendant agreed to sell both items of suit properties in favour of plaintiff and thereby the sale agreement dated 19.01.2002 in Ex.A8 has been executed. The plaintiff claims that on the date of execution of Ex.A8, based on the mutual understanding, the plaintiff handed over possession of first item of suit property to the defendant and she was put in possession of second item of the suit property. Further admittedly when the plaintiff claims that she was put in possession of second item of suit property on the date of execution of sale agreement in Ex.A8, based on which the suit has been filed, the agreement in Ex.A8 has not been registered.



S.A. Nos.993 & 994 of 2012

WEB COPY

16. The defendant has disputed the execution of sale agreement in Ex.A8 and also disputed the handing over of possession of suit property. The lower appellate court, as no steps had been taken by the plaintiff to send the document for expert opinion, has compared the signatures in Exs.A1, A7 and A8 and found that the signatures are not the same and it differs.

17. As per Sec.73 of Evidence Act, the court has the power to compare signature with other admitted document. By placing reliance on the decision referred above, the counsel for appellant contended that the disputed signature can be compared with admitted signature only with a contemporaneous document and not with the signatures obtained subsequent to the date of disputed signature by comparing with vakalat and



S.A. Nos.993 & 994 of 2012

affidavit or any other document, which came into existence at a later point of time.

18. From the judgment of lower appellate court, it could be seen that the lower appellate court compared the signatures found in the sale agreement Ex.A8 with the other admitted document filed in the suit. The counsel for appellant contends that the document in Ex.A7 has been executed on 07.08.1985 and the sale agreement in Ex.A8 has been executed on 19.01.2002, since there is a huge gap, the same cannot be compared with Ex.A7, which is not a contemporaneous document. The lower appellate court had compared the signature as contained in Exs.A7, A8 and A1 and found that the signature of defendant varies, which cannot be sustained as the admitted signature has not been compared with a signature in contemporaneous document, so the substantial questions of law (a) to (c) in S.A No.993 of 2012 are answered as above.

19. Dehors the finding of the lower appellate court based on the comparison of signatures, the conduct of plaintiff shows that she has not



S.A. Nos.993 & 994 of 2012

come forward with true facts and it cannot be taken that the plaintiff has proved the sale agreement.

20. For obtaining the decree of specific performance, the plaintiff has to plead and prove her readiness and willingness as per Sec.16 (c) of Specific Relief Act for the discretionary relief. The readiness and willingness is not only the readiness of plaintiff to pay balance sale consideration, but also the willingness includes the conduct of plaintiff.

21. The perusal of the sale agreement in Ex.A8 shows that the total sale consideration of Rs.20,000/- has been fixed and the plaintiff has paid an advance sum of Rs.15,000/- on the date of sale agreement itself and for the balance payment of Rs.5,000/- the period of three years has been fixed for completion of sale. When a suit for specific performance itself has to be filed within a period of 3 years from the date of agreement, beyond which, the suit cannot be maintained due to limitation, it is not clear as to why the time period of three years has been fixed when the plaintiff has parted with major part of agreement and only a sum of Rs.5000/- was pending.



S.A. Nos.993 & 994 of 2012

Further, when the plaintiff claims that she had also been put in possession of second item of suit property, based on which, she has constructed a house and residing there, there is absolutely no explanation in the sale agreement for fixing a long period of three years for completion of sale.

22. The plaintiff claims that she had been put in possession of second item of suit property and she has also put up a house and residing there but the perusal of schedule to suit property mentioned in the plaint would go to show that the second item of suit property is only 0.50 cents of land in R.S.No.42/2 and no such existence of house is included in the schedule of the suit property. The schedule in item 2 of the suit property makes it clear that the plaintiff has not constructed any house as claimed by her and it is only a vacant land.

23. P.W.1, in her evidence, has admitted that the defendant is in possession of suit properties. Further, the evidence of P.W.1 goes to show that when she claimed that the defendant had trespassed into the suit property, she has not preferred any complaint. Further admission on her



S.A. Nos.993 & 994 of 2012

part that she had given an application as against the defendant before the Tahsildar, Kattumannarkoil claiming to register her as a cultivating tenant and she had also participated in the enquiry before the Tahsildar would go to show that when the plaintiff had entered into a sale agreement with the defendant for purchase of property and based on which, she has also paid major part of sale consideration and she had also been put in possession of second item of suit property, there was no reason for the plaintiff to file an application before the Tahsildar to register herself as a cultivating tenant. This very admission of plaintiff goes against her claim and the sale agreement executed in Ex.A8 becomes doubtful.

24. The plaintiff has also admitted that even when Exs.A1 and A2 were executed, the defendant's father Rathinasamy was not the owner of the property, but she has not filed any document to substantiate the same and she is not aware of any of the details in respect of execution of sale agreement in Ex.A1. The plaintiff has also admitted in her evidence that after agreement, she has handed over the suit property to her brother for carrying on cultivation and she is residing in Chidambaram. As there was a



S.A. Nos.993 & 994 of 2012

dispute between her brother and defendant, there was a panchayat and in the panchayat, the problem was solved on 19.01.2002.

25. P.W.1 had also admitted that when the sale agreement in Ex.A8 was executed, she was not present there at that time and only her husband and one Balamurugan was present and she is not aware of details about the execution of document in Ex.A8. In fact, for the purpose of executing the sale agreement, the discussion itself happened only on 19.01.2002, wherein defendant, plaintiff's husband, brother and one Kaliyaperumal were present. Therefore, from the evidence of P.W.1, it can be seen that neither she had any knowledge about the execution of agreement in Exs.A1 and A2 nor she was present or aware of the details about the execution of sale agreement in Ex.A8. Further, when P.W.1 claimed that the sale agreement was executed in the presence of Advocate, P.W.2 attester to the agreement deposed that in respect of sale agreement, the discussion happened and document was prepared on 19.01.2002 and he has attested the document in the house of plaintiff and the defendant and other persons also signed in the sale agreement in the plaintiff's house and thereafter, they have taken it



S.A. Nos.993 & 994 of 2012

to the advocate's office and obtained signature.

26. P.W.2 also has deposed in his chief-examination that second item of suit property was handed over to the plaintiff and defendant obtained possession of first item of suit property. Admittedly, when according to plaintiff, she was not present on the date of execution of sale agreement, the claim that possession of suit property was interchanged and the second item of suit property was handed over, has not been established and further the fact that the plaintiff has gone and filed an application to register herself as a cultivating tenant would create a serious doubt in respect of nature of document executed in Ex.A8.

27. When the plaintiff claims that she has entered into a sale agreement with defendant's father as early as in 1986 itself, admittedly when Saradhambal achi was the owner of suit property and she had also been put in possession of first item of suit property, the sale agreement was not registered and the plaintiff also has not proceeded further in respect of sale agreement in Exs. A1 and A2. However, the plaintiff claims that a



S.A. Nos.993 & 994 of 2012

fresh sale agreement in Ex.A8 was executed and based on understanding, the possession of first item of suit property was surrendered to the defendant and she took possession of second item of suit property and even the agreement in Ex.A8 was also not registered. Further, according to the plaintiff, she had put up a house and residing there, but the Schedule to the suit shows it is only a vacant land without any house in second item of suit property. There is also no explanation for fixing a period of three years for payment of Rs.5,000/- balance sale consideration. Admittedly, the plaintiff was not present or had any knowledge about the execution of sale agreement in Ex.A8 and more clinching aspect is the plaintiff filing an application before the Tahsildar claiming to register herself as a cultivating tenant, all of which creates a serious doubt in the execution of sale agreement Ex.A8 and the conduct of plaintiff shows that she is not ready and willing for discretionary relief of specific performance.

28. Both courts below have concurrently found that defendant is in possession and enjoyment of suit property and even the plaintiff has



S.A. Nos.993 & 994 of 2012

admitted the defendant's possession over the suit property, which is not perverse. In view of the above findings, the other substantial questions of law are answered against the appellant and in favour of respondent.

WEB COPY



S.A. Nos.993 & 994 of 2012

WEB COPY

29. In the said circumstances, both the Second Appeals are dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

20.03.2024

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

1. The Subordinate Judge, Chidambaram.
2. The District Munsif cum Judicial Magistrate,
Kattumannarkoil



WEB COPY



S.A. Nos.993 & 994 of 2012

G. ARUL MURUGAN, J.

rpp

Pre-delivery judgment in
S.A. Nos.993 & 994 of 2012



WEB COPY



S.A. Nos.993 & 994 of 2012

20.03.2024