



Second Appeal No.1136 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.1136 of 2013
and M.P.No.1 of 2013

Prabhakaran Appellant

-Vs-

Munusamy Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 26.02.2013 made in A.S.No.17 of 2010 on the file of the learned Subordinate Judge at Tiruvallur confirming the judgment and decree dated 31.03.2010 made in O.S.No.33 of 2007 on the file of the learned District Munsif-cum-Judicial Magistrate at Uthukottai.

For Appellant : Mr.A.K.Rajaraman

For Respondent : Mr.R.Babu

J U D G M E N T

This is an appeal which arises from a suit for specific performance. For the sake of convenience, the parties are referred to as per their rank in the suit.



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2. Parties entered into an agreement on 12.11.1998 agreeing to sell the suit schedule mentioned property for a sum of Rs.25,000/-. The agreement shows that a sum of Rs.20,000/- was paid and the balance to be paid was Rs.5,000/-. The time fixed for completion of the transaction was 31.03.1999. The agreement holder claims to have taken possession of the property from the defendant on the date of the agreement itself.

3. The plaintiff issued the suit notice on 27.09.2001 and followed it up with a suit on 07.11.2001. After the suit had been presented, a reply notice was issued on 16.11.2001. To enforce the agreement dated 12.11.1998, the plaintiff presented O.S.No.281 of 2001 on the file of the District Munsif Court at Tiruvallur. Later, on the formation of the District Munsif Court at Uthukottai, the suit was transferred and renumbered as O.S.No.33 of 2007. The plaintiff stated that he had been ready and willing to get the agreement converted into a sale deed and sought for interference by the Court.

4. The defendant took a stand in the written statement that he never wanted to sell the suit property and did not execute the sale agreement. His specific plea is the agreement dated 12.11.1998 is a false and fabricated one and he further pleaded that the suit is hit by limitation.



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5. On the aforesaid pleadings, the learned trial Judge framed the following issues:

"1. Whether the plaintiff is entitled to get specific performance relief as prayed for?"

2. To what other relief the plaintiff is entitled?"

6. On the side of the plaintiff, he examined himself as P.W.1 and the scribe and attesting witness were examined as P.W.2 and P.W.3. The defendant examined himself as D.W.1 and the Sub Registrar as D.W.2. In order to show that the telephone number which was found in the agreement itself was given only in the year 2000, he examined the Junior Telecom Officer as D.W.3. On the side of the plaintiff, Exs.A1 to A3 were marked and on the side of the defendant, Exs.B1 to B6 were marked.

7. The learned trial Judge came to a conclusion that the agreement was true and genuine and directly decreed the suit. On appeal before the lower appellate Court in A.S.No.17 of 2010, it was pleaded that the learned trial Judge has not framed the issue of readiness and willingness and had decreed the suit for specific performance. Nonetheless, the learned lower appellate court



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dismissed the appeal, which it had taken on file as A.S.No.17 of 2010 on 26.02.2013.

8. Against the concurrent findings of the Court below, the present Second Appeal came to be filed before this Court. On 05.12.2013, notice regarding admission was issued and the appeal came to be admitted by this Court on 05.04.2022. This Court framed the following substantial questions of law for being considered in the appeal.

" a) Whether the judgment of the lower appellate Court is liable to be interfered with on the ground of non-framing of point for determination as mandated under Order 41 Rule 31 of CPC?

b) Whether both the Courts below erred in decreeing the suit filed by the respondent even without satisfying themselves that the respondent was ready and willing to fulfill his part of the contract within the time stipulated under the sale agreement dated 12.11.1998?

c) Whether the findings of the Courts below can be termed as perverse due to improper appreciation of the oral and documentary evidence available on record?



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9. Heard Mr.A.K.Rajaraman learned counsel for the appellant and Mr.R.Babu learned counsel for the respondent. I have carefully gone through the records and perused the judgments of the Court below.

10. In a suit for specific performance, the Court has to first see whether the plaintiff is ready and willing for getting the agreement converted into a sale deed. The narration of the aforesaid facts goes to show that, though the agreement fixed an outer limit of 31.03.1999 to pay the balance sale consideration and completion of the sale, the suit notice itself had come to be issued only on 27.09.2001. The delay remains unexplained. Further, the plaintiff has not produced any evidence to show that he had the funds in his hands for the purpose of proving his readiness and willingness. Apart from that, though the time for fulfilling of the agreement was over in March 1999, the suit itself came to be filed only in November 2001. Both the courts below have not gone into the readiness and willingness which is the condition precedent in order to decree a suit for specific performance.

11. The Courts below had merely gone on the facts that since the defendant had not proved his case, the suit for specific performance should be decreed. In fact, in suits of the present nature, it is the duty of the plaintiff first



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to prove that he was ready and willing and it is the duty of the Court under Section 20 to come to a conclusion that even if the agreement is lawful, it is just and necessary to decree the suit. As pointed out above, there is no discussion on either of these aspects, rendering the judgment contrary to the Specific Relief Act and hence perverse.

12. In the light of the above, the substantial questions of law are answered in favour of the appellant. The judgment and decree of the Court below in A.S.No.17 of 2010 dated 26.02.2013 on the file of the learned Subordinate Judge at Thiruvallur in confirming the judgment and decree of the learned District Munsif-cum-Judicial Magistrate, Uthukkottai in O.S.No.33 of 2007 dated 31.03.2010 is set aside. The Second Appeal is allowed. Accordingly, the suit for the relief of specific performance shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. At this stage, the learned counsel for the appellant submitted that, he has no objection to return the sum of Rs.20,000/- together with interest as that may be fixed by this Court.

14. Considering the fair submission, I am of the view that the amount of Rs.20,000/- paid on 12.11.1998 will be returned by the appellant to the



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respondent herein together with interest at the rate of 9% per annum from 12.11.1998 till the date of return. Therefore, there shall be a decree for repayment of the amount of Rs.20,000/- by the appellant to the respondent together with interest at the rate of 9% per annum from 12.11.1998 within a period of three months from the date of receipt of a copy of this order. Till the amount is repaid, there shall be a charge over the property.

09.02.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.The Subordinate Judge, Thiruvallur.
- 2.The District Munsif-cum-Judicial Magistrate, Uthukottai.



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V.LAKSHMINARAYANAN, J.

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