



Second Appeal Nos.1435 & 1436 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal Nos.1435 and 1436 of 2013

1. Prabhakaran (Died)
 2. P.Ranjith Kumar
S/o.B.Prabhakaran
 3. P.Santhosh Kumar,
S/o.B.Prabhakaran
- Appellants in both S.As.

-Vs-

1. Sridharan,
S/o.Krishnananda Reddiyar
 2. Jayakumar,
S/o.Radhakrishna Reddiyar
 3. Samsudeen,
Rep. by its Power of Attorney
John Beevi
- Respondents in both S.As.

Common Prayer : Second Appeal under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.63 of 2010 and A.S.No.3 of 2011 dated 30.07.2012 passed by the Subordinate Court, Mathuranthagam reversing the judgment and decree dated 16.09.2010 passed in O.S.No.133 of 2007 by the District Munsif Court, Madhurantakam.



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For Appellant
[in both S.As.]

: Mr.G.Suryanarayanan
for Mr.K.V.Babu

For Respondent
[in both S.As.]

: R1 – No appearance

Mr.Prabakar Reddy
for APR Associates [R2]

Ms.S.Mathumitha
for Mr.V.Karthikeyan [R3]

COMMON JUDGMENT

These appeals which from a suit for specific performance. For the sake of convenience, the parties are referred to as per their rank in the suit.

2. These two second appeals arise out of the common judgment and decree in A.S.No.63 of 2010 and A.S.No.3 of 2011 on the file of the Subordinate Judge at Maduranthagam in reversing the judgment and decree of the Court of District Munsif at Maduranthagam in O.S.No.133 of 2007 dated 16.09.2010.



WEB COPY 3. O.S.No.133 of 2007 is a suit for specific performance for a agreement of sale dated 07.02.2003. The agreement of sale had been entered into by one Sridharan as general power of agent of Kanaga, Kandhasamy, Sekar, Manickam, Elumalai and Lakshmanan.

4. The essential terms of the agreement is that the first defendant will alienate the property in favour of the plaintiff after receipt of a sum of Rs.70,800/-, for which he had received an advance amount of Rs.10,000/-. The time for converting the sale agreement into sale deed was two years. In pursuance of the power of attorney, which had been executed in favour of the first defendant, he alienated the property in favour of second and third defendants on 10.02.2003 for a sum of Rs.50,000/-, that is to say two days after the sale agreement dated 07.02.2003. Suit notice was issued on 03.02.2005 to the first defendant and to other defendants on 06.05.2007. The suit itself came to be filed on 14.05.2007.



5.The plea of the plaintiff was that the defendants 2 and 3 were well aware of the sale agreement entered into on 07.02.2003 and still proceeded further to get a document executed in their favour on 10.02.2003. Therefore, all of them were joined together as defendants for the purpose of the suit.

6. The second defendant entered appearance and filed a written statement saying that the property is not owned by the first defendant, who is but only a power of attorney. The property is owned by Kamalammal and others and hence, the suit for specific performance without impleading the land owners is not maintainable.

7. He further pleaded that the first defendant had held out to the owners of the property that he will get the property alienated and secured a power of attorney from them, thereafter on the strength of power of attorney, he executed a sale agreement dated 07.02.2003.

8. The defendants 2 and 3 came to know that, after agreeing to execute the sale deed in their favour on 11.02.2003, the agreement of sale had been prepared in collusion. A similar statement was filed by the third



defendant with an additional plea that the plaintiff and the first defendant are closely related and are neighbours.

9. On the basis of the pleadings before the trial Court, the learned Trial Judge framed the following issues:

1. *first issue deleted.*
2. *Is the plaintiff is ready and willing to perform his part of the contract?*
3. *Is the plaintiff entitled for specific performance of contract?*
4. *Is the plaintiff entitled for mandatory injunction?*
5. *Is the suit bad for non joinder of necessary parties?*
6. *What are all the other reliefs and cost plaintiff is entitled for?*

Additional Issues:

1. *Is the first defendant has no power to execute any sale agreement?*
2. *Is the plaintiff entitled for the relief of permanent injunction?"*

10. On behalf of the plaintiff, he examined himself as P.W.1 and one S.Krishnamoorthy was examined as P.W.2 and marked exhibits Ex.A1 to



Ex.A5. On the side of the defendants, one Jayakumar was examined as D.W.1 and their sale deed dated 10.02.2003 was marked as Ex.B1.

11. On consideration of the oral and documentary evidence filed before him, the learned Trial Judge came to a conclusion that the plaintiff is entitled for a decree for specific performance and thereby decreed the suit.

12. Aggrieved by the same, the second defendant preferred A.S.No.33 of 2011 and the third defendant preferred A.S.No.63 of 2010 to the Subordinate Judge at Maduranthagam.

13. The learned Subordinate Judge, held that the plaintiff had not impleaded the owners of the property and therefore, allowed the appeal. Against which, the present second appeal.

14. This Second Appeal was admitted on the following substantial questions of law:

“1. Whether legal notice calling for receiving payment at the agreed point of time will go to show readiness and



willingness to perform the contract?

2. Whether accepting to deposit the remaining sale consideration in court will prove readiness and willingness to perform his part of the contract?

3. Whether a sale deed entered into subsequent to a subsisting registered Agreement for Sale is null and void?

4. Whether any time framed fixed by a consensus ad idem between the parties can be decided as being invalid by the courts of law?"

15. I heard Mr.G.Suryanarayanan, for Mr.K.V.Babu, learned for appellants, Mr.Prabakar Reddy, for second defendant and Ms.S.Mathumitha, for third defendant in both the appeals.

16. It is not in dispute that the property had been owned by several persons, who had given a power of attorney in favour of the first defendant viz., Sridharan. However, while presenting the plaint, the power of attorney alone was made as a party to the suit and the principal had not been made as a party. Despite the objections that has been raised in the written statement by the second defendant, still the owners of the property had not been



impleaded.

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17. The position of law with respect to the liability of a power of attorney vis-a-vis his principal is found under Section 230 of the Indian Contract Act, 1872. Unless and until there is a contract to the contrary stating that the principal agrees that a suit may be filed against the agent alone, an agent is not answerable to the claim as against the principal. Section 230 of the Indian Contract Act, 1872 reads as follows:

“230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.—In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary—Such a contract shall be presumed to exist in the following cases:—

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;*
- (2) where the agent does not disclose the name of his principal;*
- (3) where the principal, though disclosed, cannot be sued.”*

18. A perusal of Section 230 makes it clear that an agent cannot be



made to answer personally for a suit which should have been presented against the principals. This makes it clear that the principals are not merely proper parties, but are necessary parties for the relief of specific performance and that not having been done, it goes to the root of the matter and the suit for specific performance is not maintainable.

19. Apart from that, if I were to ignore this crucial aspect one further thing remains that the plaintiff has not able to show his readiness and willingness to get the sale agreement converted into a sale deed. There is no dispute that the sale agreement was entered into on 07.02.2003 and two years time was given for the said purpose. At the fag end of the period of two years, on 03.02.2005 the suit notice has been issued to the first defendant. Thereafter the plaintiff waited for further period of two years and three months to issue another notice to defendants 2 and 3 on 06.05.2007. It was finally after nearly four years from the date of agreement i.e., the plaint was presented on 14.05.2007.

20. The dates listed above is sufficient to come to the conclusion that



the plaintiff was not ready and willing at all. The delay looms large and remains unexplained. Readiness and willingness is one of the fundamental principle on the basis of which, the Court has to consider the suit for specific performance. Lack of readiness and willingness is a bar to grant any relief by virtue of Section 16(c) of the Specific Relief Act, 1963. The plaintiff not having proved his readiness and willingness, I am not in a position to consider the vehement pleas of Mr.G.Suryanarayanan contending otherwise. Consequently, these second appeals fail and the judgment and decree of the Court of Subordinate Judge at Maduranthagam in A.S.No.3 of 2011 and A.S.No.63 of 2010 dated 30.07.2012 in reversing the judgment and decree of the District Munsif at Maduranthagam in O.S.No.133 of 2007 dated 16.09.2010 is confirmed.

21. At this stage, Mr.G.Suryanarayanan, learned counsel appearing for the appellant made a request to the Court that he may be permitted to withdraw the sum of Rs.60,800/- deposited by him to the credit of the suit in O.S.No.133 of 2007. The plaintiff will be entitled to withdraw the amount deposited by him in the Court, with interest, if any for which, Mr.Prabakar



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Reddy and Ms.M.Mathumitha have no objection. Apart from that, a further sum of Rs.10,000/- paid by the plaintiff to the first defendant is agreed to be repaid by Mr.Prabakar Reddy. It will be repaid by the defendants 2 and 3 within four(4) weeks.

With the above directions, these second appeals dismissed. No costs.

13.03.2024

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

To

1. The Subordinate Court, Mathuranthagam.
- 2.The District Munsif Court, Mathuranthagam.



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V.LAKSHMINARAYANAN, J.

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