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S.A.Nos.512 & 513 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.512 & 513 of 2013

and

M.P.Nos.1 & 1 of 2013

S.A.No.512 of 2013:

Manikandan ... Appellant/Respondent No.1/Plaintiff

Vs.

1.Selvam

2.Anbarasu

3.Kannan ...Respondents 1 to 3/Apellants/
Defendants 1 to 3

4.Baskaran

... Respondent No.4/Respondent No.2/
Defendant No.4

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment in A.S.No.17 of 2012 dated 28.09.2012 on the file of Principal District Judge, Villupuram allowing the said appeal in part and thereby modifying the decree and judgment passed in O.S.No.14 of 2008 dated 29.04.2011 on the file of the Learned Sub Ordinate Judge, Gingee.

S.A.No.513 of 2013:



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Manikandan

... Appellant/Respondent No.1/Plaintiff

Vs.

1.Selvam

2.Anbarasu

3.Kannan

...Respondents 1 to 3/Respondents 2 to 4/
Defendants 1 to 3

4.Baskaran

... Respondent No.4/Appellant/
Defendant No.4

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment in A.S.No.50 of 2011 dated 28.09.2012 on the file of Principal District Judge, Villupuram allowing the said appeal in part and thereby modifying the decree and judgment passed in O.S.No.14 of 2008 dated 29.04.2011 on the file of the Learned Sub Ordinate Judge, Gingee.

For Appellant

: Mr.R.Rajarajan in
both second appeals

For Respondent 4

:Mr.D.Rajasekar

For Respondents 1 to 3

:Served – No appearance
in both second appeals.

COMMON JUDGMENT



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These two appeals arise out of a common judgment pronounced by the learned Principal District Judge, Villupuram, in A.S.No.50 of 2011 and A.S.No.17 of 2012 dated 28.09.2012. In and by way of the said judgment, the learned Principal District Judge, allowed the appeals and partly decreed the suit for specific performance. Insofar as it relates to return of advance amount, the learned Principal District Judge granted the same but denied the relief of specific performance of agreement of sale. Thereby, he set aside the decree in O.S.No.14 of 2008, dated 29.04.2011, on the file of the Subordinate Judge at Gingee.

2. For the sake of convenience, the parties will be referred to as plaintiff and defendants.

3. The plaintiff presented a suit for specific performance of an agreement of sale, dated 14.08.2006. The agreement is a registered one. As per the agreement, the defendants 1 to 3 agreed to alienate the suit schedule mentioned property for a sum of Rs.2,10,000/-. As per the agreement, a sum of Rs.2,00,000/- was paid on the date of agreement itself and for the remaining amount of Rs.10,000/- a period of 3 years time was granted. The plaintiff issued a suit notice on 08.12.2007. The



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notice was received on 11.12.2007 and the reply was sent on 14.12.2007.

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4. In the reply notice, the defendants 1 to 3 admitted that they had entered into an agreement on 14.08.2006, after receiving a sum of Rs.2,00,000/- as advance amount. They further pleaded that the agreement dated 14.08.2006 as “sham and nominal” one. According to them, it was their intention to treat the transaction only as a loan transaction and they had paid interest month on month from 26.09.2006 to 19.11.2007. Therefore, they claimed that they had paid a sum of Rs.58,000/- towards interest and further, stated that they are willing to repay the entire balance and it was the plaintiff who refused to receive the same.

5. The 4th defendant claimed that he had purchased the property by way of a registered sale deed, dated 02.01.2008. He alleged that he is a bonafide purchaser for value, without notice of transaction dated 14.08.2006. He further pleaded that, in the year 2003 itself he had agreed to purchase the property for a sum of Rs1,54,000/- and had paid the entire amount on that date itself. According to him, in pursuance of the agreement dated 14.08.2006, they entered into a sale deed on 14.09.2007,



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but the same was registered only on 02.01.2008.

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6. Before the learned trial Judge, the plaintiff examined himself as P.W1 and marked Ex.A1 to Ex.A7. The 1st and 4th defendants examined themselves and in addition they examined D.W2, D.W4 and D.W5. They marked Ex.B1 to Ex.B15 which included Ex.B1, the account book, in order to show that there were money lending transaction between the plaintiff and the defendants 1 to 3.

7. The learned Trial Judge, on the basis of this evidence, decreed the suit as prayed for, on 29.04.2011.

8. Aggrieved by the said judgment and decree, the subsequent purchaser namely, the 4th defendant, preferred A.S.No.50 of 2011. The original owners of the property namely, defendants 1 to 3 subsequently, preferred A.S.No.17 of 2012, both the appeals were clubbed and heard together. As stated above, the learned Appellate Judge allowed the appeals in part, denied the relief of specific performance to the plaintiff but granted the relief of return of advance amount.



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WEB COPY 9. As against the reversing judgment, the present second appeals have been presented.

10. When the matter came up for admission before this Court, on 29.04.2013, this Court ordered notice regarding admission but did not admit the second appeals. On notice, though all the defendants were served, only 4th defendant entered appearance. The original vendors namely defendants 1 to 3 had chosen not to appear before this Court either in person or through the counsel.

11. Mr.Rajarajan, the learned counsel appearing for the appellant very strongly contended that the circumstances of the case should have lead the lower appellate Court to the conclusion that the suit agreement is true and genuine and the 4th defendant is not a bonafide purchaser for value without due notice of the transaction. He would state that his client, though involved in money lending transaction, had entered into the witness box and had proved the agreement. He would also state that having entered into the agreement under Ex.A6, there is a bar under Section 91 & 92 of the Indian Evidence Act, which prevents the party



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from pleading otherwise.

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12. To that end, he would rely upon two judgments of the Supreme Court in *P.S.Ramakrishna Reddy Vs. M.K.Bhagyalakshmi and Anr.* in Civil Appeal No.6952 of 2000, dated 20.02.2007 and *Madhukar Nivrutti Jagtap and Ors. Vs. Smt.Pramilabail Chandulal Parandekar* in Civil Appeal No.5382 of 2007, dated 13.08.2019. On the strength of these two judgments, he would urge that the Court below should have held that it is an agreement of sale and not a loan transaction and should have dismissed the appeal.

13. Mr.D.Rajasekar, the learned counsel appearing for the 4th defendant would contend that the transaction that was entered between the plaintiff and the defendants 1 to 3 is only a loan transaction. He would state that having paid a sum of Rs.2,00,000/- on 14.08.2006, no reasonable person would seek for a period of 3 years to pay the balance amount of Rs.10,000/- to convert the sale agreement into a sale deed. He would further plead that the plaintiff, being a money lender, had created a sale agreement and on that basis had filed a suit for specific performance. In any event, he would very strongly urge that the 4th defendant is



bonafide purchaser for value without notice of the previous agreement and therefore, his client is entitled to have the benefit of the appellate Court decree in A.S.No.50 of 2011 dated 28.09.2012. On the basis of these submissions, he would state that no substantial question of law arises for consideration and would pray for dismissal of the appeals.

14. Mr. Rajarajan, the learned counsel appearing for the appellant suggested the following substantial questions of law:

“(i) Has not the First Appellate Court committed a serious error on application of law by shifting the burden of disproving the 4th respondent is a bonafide purchaser for value without notice of pending encumbrance?

(ii) Has not the First Appellate Court committed a serious error in believing Ex.B2 which is unregistered in preference over Ex.A1 which is a registered one?

(iii) Has not the First Appellate Court fallen into a grave error in having found that the appellant should have proved Ex.A1 by examining the arrestors to the said agreement when it is a registered one?”

Being a suit for specific performance arising out of a common judgment, I heard these appeals clubbing all the substantial questions of law together.



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15. The title to the property is not in dispute. The defendants 1 to 3 are the owners of the property. The suit agreement dated 14.08.2006 is also not in dispute. The factum that a suit notice was sent on 08.12.2007 and admitting to the suit transaction, the defendants 1 to 3 had issued a reply notice on 14.12.2007 is also not in dispute. Further more, the 4th defendant claims that, having entered into an agreement on 14.08.2003, i.e. 3 years before entering into the registered transaction and 4 years and 4 months after the reply notice admitting to the agreement, he had purchased the property on 02.01.2008. Therefore, the plea of the 4th defendant that he is a bonafide purchaser for value without due notice is absolutely not acceptable.

16. It is to be seen that though the sale deed was entered into on 14.09.2007, it was presented for registration only on 02.01.2008. The suit transaction between the plaintiff and the defendants 1 to 3 is evidenced by way of a registered deed on 14.08.2006. The 4th defendant, who entered the witness box has admitted that prior to the purchase of the property, he had not applied for the encumbrance certificate but had accepted, if applied for encumbrance certificate, he would have come to know about



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the transaction between the plaintiff and the defendants 1 to 3. A person, who bonafidely seeks to purchase the property, would certainly apply for an encumbrance certificate to find out whether there is any encumbrance in and over the property. The factum that the 4th defendant pleads that he did not apply so, leads me to the conclusion that there had been some kind of an arrangement, rather secretive, between the defendants 1 to 3 and the 4th defendant, in order to keep the property away from the hands of the plaintiff. This itself shows that the 4th defendant is not a bonafide purchaser for value.

17. Having come to this conclusion, it does not mean that the plaintiff is entitled to a decree of specific performance automatically. The agreement has been proved but the plaintiff had been absolutely silent between 14.08.2006 to 08.12.2007, yet again he maintained silence from the time the agreement was denied, till he presented the plaint on 22.04.2008. Though the plaint had been made ready on 22.03.2008, it came to be presented only on 22.04.2008 even for this one month, there is no explanation by the plaintiff. There is absolutely no explanation as to why the plaintiff kept quiet for such a long period.



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18. Mr.Rajarajan would explain this delay saying that his client had a period of 3 years from the date of transaction i.e., 14.08.2006 to come before the Court. Period of limitation is different from the readiness and willingness which is an essential pre-requisite to obtain a decree in a suit for specific performance. If the suit is barred by time, the Court is not going to go into the issue of readiness and willingness but by enforcement of its duty under Section 3 of the Limitation Act, will dismiss the suit as barred by time without going into the merits of the claim. Only if the suit is within time, the question of probing into the conduct of the party arises. I am not holding that the suit is barred by time but the silence of the plaintiff as displayed between 14.08.2006 to 08.12.2007 and subsequently from 14.08.2007 to 22.04.2008 shows that the plaintiff has not been ready and willing. Readiness and willingness is the fundamental aspect necessary under the unamended Specific Relief Act, 1963, which governs the parties to this litigation. Not only should the plaintiff aver but a duty is cast on him to prove the same.

19. I am of the clear view that unless and until requirement of Section 16(c) are satisfied, in this case, though the plaintiff has proved the agreement, he is not entitled to the relief of specific performance.



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20. Having said that, I have to proceed to see as to what relief can be granted to the plaintiff, since the transaction itself has been admitted. The defendants D1 to D3 has accepted the payment of Rs.2,00,000/- from the plaintiff. I have already found that the 4th defendant is not a bonafide purchaser for value without due notice of the previous agreement dated 14.08.2006.

21. In the light of the above, the second appeals are dismissed insofar as the relief of specific performance is concerned, thereby the judgment and decree of the Court of the learned Principal District Judge, Villupuram in A.S.No.50 of 2011, dated 28.09.2012 is confirmed. However, insofar as the alternate relief of return of advance amount is concerned, the decree is modified to the extent, D1 to D4 shall repay a sum of Rs.2,00,000/- . As return of advance amount is concerned, the said amount shall carry 12% simple interest from 14.08.2006 till the date of repayment. In default, there shall be a charge over the suit schedule mentioned property. In case, the defendants 1 to 4 defaults in payment of the aforesaid amount, the plaintiff will be entitled to enforce this charge through process of Court.



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22. Insofar as the return of advance amount alone is concerned, the decree shall stand modified. The appellant will be entitled to costs in the appeal. In fine, the second appeals are partly allowed with costs.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
dpa

V.LAKSHMINARAYANAN, J.

dpa

To:

1. The Principal District Judge,
Villupuram
2. The Sub Ordinate Judge,
Gingee.
3. The Section Officer,
Vernacular Section,
High Court of Madras.

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