



S.A.No.640 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.640 of 2013 &

M.P.No.1 of 2013

P.Devaraj

... Appellant

Vs.

1.R.Rathnambal

2.Dr.M.C.R.Nakeeran

3.T.Semporjothi

4.B.Mangayarkarasi

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree made in A.S.No.43 of 2011 dated 20.07.2012 on the file of the Principal District and Sessions Judge, Erode reversing the judgment and decree dated 23.03.2011 in O.S.No.87 of 2010 on the file of the Subordinate Judge, Gopichettipalayam.

For Appellant

: Mr.S.Parthasarathy, Senior Counsel
for Mr.V.Kathirvelu

For Respondents

: Mr.T.R.Rajaraman, Senior Counsel
for G.Vetrivel Rajan



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JUDGMENT

The Second Appeal arises out of the judgment and decree of the court of Principal District and Sessions Judge, Erode in A.S.No.43 of 2011 dated 20.07.2012 in reversing the judgment and decree of the court of Subordinate Judge at Gobichettipalayam in O.S.No.87 of 2010.

2. For the sake of convenience, the parties will be referred to as their ranks in the suit.

3. O.S.No.87 of 2010 is a suit filed for specific performance of the agreement of sale dated 09.02.2007.

4. There is no dispute that one Dr.Rajamanickam and his wife Rathinambal were the owners of the property, which they had purchased sometime in 1999. The plaintiff entered into an agreement with them for the purchase of the property on 09.02.2007. In terms of the agreement, the



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property was to be measured and thereafter, it was agreed to be sold at the rate of Rs.7,750/- per cent. At the time of entering into the agreement, it was understood that the land measures approximately about one acre and therefore, the value was fixed as Rs.7,75,000/-.

5. Unfortunately, Dr.Rajamanickam passed away on 16.04.2007 leaving behind his wife/ Rathinambal, two daughters namely Semporjothi and B.Mangayarkarasi and one son namely Dr.M.C.R.Nakeeran. As per the agreement, the time period that had been fixed was three months as per the Tamil calender, which ends with on 20.05.2007 in the Gregorian calender.

6. The suit notice was issued by the plaintiff on 01.06.2007 calling upon the legal heirs of the deceased Dr.Rajamanickam to execute the sale deed. Two replies were given; one by the mother and daughters under Ex.A3 and another by the son under Ex.A4 on 15.06.2007. The parties had agreed that the sale agreement had been entered into between the plaintiff and



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Dr.Rajamanickam along with Rathinambal, but had denied the fact that possession had been handed over to the plaintiff as asserted by him in the suit notice.

7. Though the right of the plaintiff to seek for specific performance of the agreement was denied, the plaintiff did not do anything between 15.06.2007 i.e, the date of reply notice by the defendants and the date of presentation of the plaint on 21.02.2008. The suit was presented as aforesaid for specific performance of agreement of sale and possession, and also, curiously enough, to confirm the possession of the plaintiff.

8. The defendants entered appearance and filed written statement in line with their reply notice.

9. The suit went for trial before the learned Subordinate Judge, Gobichettipalayam, who framed the following issues:



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“1.Whether the plaintiff is entitled for specific performance as sought for?

2.To what other relief the plaintiff is entitled for?”

10. The plaintiff entered the witness box and examined himself as PW1 and marked Ex.A1 to Ex.A5. On the side of the defendants, the second defendant, who had adopted the written statement of the first defendant entered the witness box and examined himself as DW1 and two other witnesses as DW2 & DW3. He marked Ex.B1 and Ex.B2 which are subsequent to the filing of the suit.

11. On the basis of the oral and documentary evidence let in before the court below, the learned trial judge, namely the Subordinate Judge at Gobichettipalayam decreed the suit on 23.03.2011. Aggrieved by the same, a regular appeal was preferred before the learned Principal District Judge, Erode in A.S.No.43 of 2011. The learned Judge allowed the appeal in part



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granting the relief of return of advance amount of Rs.3,00,000/- together with interest at the rate of 12% per annum. Till the payment of the principal and interest are made, he created a charge over the property. Aggrieved by the same, the present second appeal arises before me.

12. This second appeal was admitted by this Court on 03.07.2013 on the following substantial questions of law:

“1. Whether the first appellate court was wrong in holding that the suit was filed without adhering to Sections 16 (c) and 20 of the Specific Relief Act even though the suit was filed in the year 2008 itself after issuance of notice on 01.06.2007 in respect of Ex.A1, the agreement to sell dated 09.02.2007, which stipulated three months' time for performance?

2. Whether the extent of the property as found set out in the schedule of the plaint reflects the actual area at the spot and if so, whether the courts below were not justified in ordering appointment of a commission to measure the suit property and arrive at the exact



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measurement available on ground for calculating the total sale consideration at the rate of Rs.7,750/- per cent?

3. Whether the plaintiff proved that he was ready and willing to perform his part of the contract throughout?

4. Whether the first appellate court was justified in not granting the relief of Specific performance on the ground that the value of the land at the time of Ex.A1 agreement was three times' over and above the sale consideration specified in the agreement to sell?

5. Whether the first appellate court was justified in holding that the plaintiff approached the court with unclean hands, to wit. the plaintiff approached the court with the alleged false plea that he was put in possession of the suit property in connection with Ex.A1?

6. Whether there is any perversity or illegality in the judgments and decrees of both the courts below?"

13. I heard Mr.S.Parthasarathy, learned Senior Counsel for Mr.V.Kathirvelu, learned counsel for the appellant and Mr.T.R.Rajaraman



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learned counsel for Mr.Muthu, learned counsel for the respondents.

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14. Mr.S.Parthasarathy would contend that the plaintiff having pleaded his readiness and willingness in his plaint as well as in the suit notice, and the defendants not having denied the same, the lower appellate court erred in putting Section 16(c) of the Specific Relief Act against the plaintiff and dismissing the suit. He would also plead that the plaintiff was ready and willing throughout from the date of agreement till the date of presentation of the plaint and thereafter and to substantiate the same, the entire amount had been deposited pending the litigation before the trial court. On the plea of possession, he would say that the plaintiff had expended a sum of Rs.1,00,000/- towards levelling and laying out of plots and therefore, the lower appellate Judge erred in holding that the plaintiff is not in possession of the property.



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15. Mr.T.R.Rajaraman, learned Senior Counsel for Mr.Muthu would contend that as per the sale agreement, the possession was to be deferred till the execution of the sale deed and therefore, the plea taken of possession is a false one. Apart from that, he would point out that during the period from the date of sale agreement, there is a delay on the part of the plaintiff in not measuring the property to ascertain the proper extent. Apart from that, he would point out the delay between the issuance of suit notice as well as in the presentation of the suit. He further submits that it is not the duty of the defendants to disprove the readiness and willingness of the plaintiff, but as per Section 16(c), it is the duty of the plaintiff to plead and prove the same.

16. I have carefully considered the arguments made on either side.

17. As per the unamended Section 16(c) of the Specific Relief Act, it is the duty of the plaintiff to 'aver and prove' the readiness and willingness



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from the date of agreement till the presentation of the plaint and thereafter. In this particular case, the period fixed under the agreement expired on 20.05.2007 and the suit notice itself had been issued, after the period of agreement had expired viz., on 01.06.2007.

18. Even if I were to ignore the negligible delay of 10 days, I have to take note of the fact that the defendants 1, 3, 4 and the second defendant in their separate notices had specifically pleaded that

(a) possession had not been handed over;

(b) the plaintiff has not been ready and willing to come forward and measure the property in order to ascertain the actual position over the same.

19. Even if I were to condone the fact that the plaintiff did not measure the property and ascertain the actual value, which I am not willing to, there is absolutely no explanation as to why he kept quiet for a further period of eight months to present the plaint. In a suit for specific



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performance, the plaintiff should show his utmost urgency to approach the court as he seeks the assistance of the court to execute the document, for and on behalf, of the defendants. Since there has been no explanation for this period, I necessarily have to come to the conclusion that the plaintiff was not ready and willing to convert the sale agreement dated 09.02.2007 into a sale deed.

20. Apart from that, a person, who comes to the court seeking for the relief of specific performance, must come with clean hands and not set up a false case. This position is too well settled for it to be reiterated by weight of authorities.

21. The relief of specific performance is a relief of equity and a person, who pleads a false case is not entitled to get the relief of specific performance from the court. In this particular case, the plaintiff has taken a false plea of possession. He has also not proved the fact that he had taken the



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property and for levelling the same, he had spent a sum of Rs.1,00,000/-.

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22. A perusal of the agreement in more than one place shows that the possession will be handed over only on the date of execution of the sale deed. On reading of Ex.A1, the suit notice along with lawyers notice issued under Ex.A2 and the averments made under plaint in O.S.No.87 of 2010, I am able to come to the conclusion that the plaintiff had set up a false plea of possession and therefore, he is not entitled for the relief of specific performance.

23. All these aspects have been considered by the learned lower appellate court in a proper perspective.

24. In view of the above, the substantial questions of law framed are accordingly answered against the appellant/plaintiff and in favour of the



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respondents/defendants.

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25. To clarify, the charge that has been created over the property by the learned first appellate court would continue, till the date of repayment i.e., till the principal amount of Rs.3,00,000/- and the interest at the rate of 12% per annum from the date of payment till the repayment. The plaintiff will be entitled to withdraw the amount said to have been deposited by him before the trial court.

26. In fine, the second appeal is dismissed. The judgment and decree of the court of Principal District Judge at Erode in A.S.No.43 of 2011 dated 20.07.2012 is confirmed. Costs throughout. Connected M.Ps. is closed.

26.02.2024

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The Principal District and Sessions Judge, Erode

2.The Subordinate Judge, Gopichettipalayam.



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V.LAKSHMINARAYANAN, J.

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