



S.A. No. 690 of 2013

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2024
Pronounced on : 25.10.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A. No.690 of 2013 and
M.P.No.1 of 2013

S. Amaladas

... Appellant

Versus

1.Vedambal (Died)
2.Jayakrishnaveni @ Veni
3.Dinesh Kumar

...Respondents

[Memo recorded USR.No.1895 dt. 18.01.2024 R1 died, appellant is exempted from submitting LR's of R1 vide Court order dt. 18.01.2024 made in S.A.No.690/2013 and M.P.No.1/2013]

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 18.07.2012 made in A.S. No. 25 of 2011 on the file of the Principal District and Sessions Court, Erode modifying the judgment and decree dated 06.12.2010 made in O.S. No. 20 of 2004 on the file of the Sub-Court, Bhavani insofar as it is against the appellant.

For Appellant : Mr. T. Murugamanickam, Senior Counsel
for Ms. Zeenath Begum

For Respondents : Mr. C. Ramaraj,
for Mr. M. Guruprasad



S.A. No. 690 of 2013

WEB COPY

J U D G M E N T

The appellant has filed this second appeal, challenging the decree and judgment dated 18.07.2012, made in A.S. No. 25 of 2011 on the file of the Principal District and Sessions Court, Erode, by which, the First Appellate Court partly allowed the appeal suit filed against the judgment and decree dated 06.12.2010 made in O.S. No.20 of 2004 on the file of the Sub-Court, Bhavani, directing the defendants to refund the advance sale consideration to the plaintiff together with interest at 7.5% per annum from the date of suit till the date of realization.

2. For the sake of convenience, the parties are referred to as the plaintiff and defendants, as mentioned in the original suit.

3. The plaintiff/appellant has filed the suit for specific performance on the following grounds:-

(i) An agreement was entered between the plaintiff and the defendants 1 and 2. The first defendant is the mother-in-law of the second



S.A. No. 690 of 2013

WEB COPY

defendant and grandmother of the third defendant. The second defendant is the wife of Late. A. Sangameswaran, S/o. N. Iyyasamy. In other words, the deceased Sangameswaran is the son of the first defendant. At the relevant point of time, the third defendant, who is the son of the deceased Sangameswaran, was a minor.

(ii) Pending suit, the plaintiff filed an Interlocutory Application in I.A.No.282 of 2007 and the same was allowed on 04.09.2007 whereby the third defendant/son of the deceased Sangameswaran was declared as major.

(iii) The suit property belongs to the deceased Sangameswaran, who had purchased it by way of sale deed dated 22.01.1987 and 07.05.1990, which were marked as Ex.A2 & A3 respectively.

(iv) The said Sangameswaran had mortgaged the property with Bhavani Co-operative Housing Society for Rs.71,000/- to put up construction in the front portion. The said mortgage was executed on 20.01.1988 which was marked as Ex.A4.



S.A. No. 690 of 2013

WEB COPY

(v) The said Sangameswaran also had entered into an agreement with respect to the suit schedule property with one B.S.Rangasamy S/o. Sengodamudaliar on 11.03.1991, from whom he received a sum of Rs.50,000/- as advance. The said agreement was marked as Ex.A5.

(vi) The said Sangameswaran also borrowed a sum of Rs.25,000/- from one Munuswamy, S/o. J.K. Marimuthu on 28.01.1990. The said Munuswamy obtained a decree against Sangameswaran. The above debt was discharged by the plaintiff for which the said Munuswamy issued the original receipt dated 10.12.1992 and the same was marked as Ex.A6.

(vii) The said Sangameswaran also borrowed a sum of Rs.15,000/- from one Mr. N.D. Murthy, the Proprietor of N.D.M.Textiles, on a promissory note dated 15.11.1990 and the total due was Rs.20,700/-. The promissory note was marked as Ex.A8.

(viii) The said Sangameswaran further had also entered into an agreement of usufructuary mortgage with one S.Maheswari on 25.06.1991, for a sum of Rs.30,000/-. The said usufructuary mortgage



S.A. No. 690 of 2013

WEB COPY

deed was marked as Ex.A10. The said Sangameswaran was not in a position to discharge it.

(ix) On 07.08.1991, the said Sangameswaran executed a sale agreement in favour of one A.R. Sumathi, W/o. A.N. Arunachalam for a sum of Rs.11,500/-. It was marked as Ex.A12.

(x) The said Sangameswaran died on 10.11.1991. In order to settle various amount borrowed by the deceased Sangameswaran, the defendants 1 and 2 have entered into an agreement of sale with the plaintiff in respect of the property described in the plaint on the following terms:-

- “
- i) The price was fixed at Rs.2,65,000/-.
 - ii) A sum of Rs.1,67,200/- was quoted in the agreement under the amount due as mentioned in para 6 to 11 above.
 - (iii) Since the son of A. Sangameswaran, the 3rd defendant was a minor, the defendants 1 and 2 undertook to take necessary permission from Court, intimate the said fact in writing and the sale deed has to be executed by defendants to the plaintiff within one month thereafter. Till date, the defendants have not taken any steps for obtaining permission from court.
 - (iv) The plaintiff was put in possession of th suit property in part performance of the



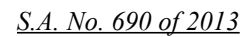
S.A. No. 690 of 2013

WEB COPY

agreement. The defendants have a copy of the agreement dated 10.12.1992. The plaintiff craves that the recitals in the agreement may be treated as part of the plaint. The original agreement dated 10.12.1992 is filed as a document. The original sale deeds were also handed over to the plaintiff at the time of the agreement,”

4. According to the plaintiff, from the date of execution of the agreement of sale on 10.12.1992, the possession of the plaint described property was given to him in part performance of the agreement. Apart from being in possession of the plaint described property, the original deeds were handed over to the plaintiff at the time of executing the agreement of sale.

5. The plaintiff discharged all the aforesaid mortgage and debts obtained by Sangameswaran. The respective mortgagees and money lenders have given receipt for discharge of the loan amount.



7. The plaintiff also contend that as against the said Sangameswaran, a suit was filed in O.S. No.300 of 1996 by one Raja to recover the money in which, he succeeded and filed E.P.No.185 of 1999 in O.S.No.300 of 1996 before the District Munsif Court, Bhavani. The suit was filed against the very same suit schedule property mentioned in the plaint by the plaintiff. The plaintiff therefore, paid a sum of Rs.46,000/- to get over the E.P proceedings and he had obtained receipt from the Court, which was marked as Ex.A14.

7/32
https://www.mhc.tn.gov.in/judis



S.A. No. 690 of 2013

WEB COPY

Sangameswaran, including the said sum of Rs.46,000/- on behalf of the defendants for preventing the property from being sold in the E.P proceedings in E.P. No.185 of 1999 in O.S.No.300 of 1996. Therefore, the outstanding amount payable by the plaintiff is only Rs.51,800/-. The plaintiff is ready and willing to deposit the same before the Court. However, the defendants have been evading and avoiding to perform their part of the contract and execute the sale deed in his favour. Therefore, the plaintiff filed the suit.

9. Repudiating the plaint averments, the second defendant filed the written statement denying all the allegations made by the plaintiff. The specific case of the second defendant is that the plaintiff should prove the documents mentioned in Serial No.5 to 9 in the plaint. The details of the said documents are extracted hereunder:-

“ 5. 11.03.1991- Agreement entered into between A.Sangmeswaran for himself and on behalf of his son Dinesh Kumar and B.S.Rangasamy, son of Sengodamudaliar.



WEB COPY



S.A. No. 690 of 2013

6. 10.12.1992 – Receipt issued by Munuswamy son of J.K. Marimuthu mudiliar to plaintiff.

7. 15.11.1990 – Original promissory note executed by A.Sangmeswaran to N.D. Murthy with endorsement of discharge.

8. 25.06.1991 – Agreement of Usufructuary mortgage entered into between A.Sangmeswaran and S. Maheswari wife of Singaravelu with endorsement of discharge.

9. 07.08.1991 – Agreement entered into between A.R.Sumathi, wife of A.N. Arunachalam and A. Sangameswaran with endorsement of discharge.”

10. The main contention of the defendants is that the property is worth about Rs.10 lakhs, with a *mala-fide* intention to grab the property, the plaintiff paid the sum of Rs.46,000/- in the above said EP proceedings in O.S.No.300 of 1996. Since the agreement of sale was entered into between the plaintiff and the defendants 1 and 2, the said agreement of sale will not bind the third defendant/third respondent herein who was a



S.A. No. 690 of 2013

WEB COPY

minor during the relevant period. The third defendant has vested right in the suit schedule property. According to the third defendant, any decision taken in respect of the suit property before he attained majority will not bind him and his right over the property is an exclusive right vested with him. The third defendant further stated that though the property is worth about Rs.10 lakhs, the agreement was entered for only a meager amount of Rs.2,65,000/-.

11. Therefore, before the Trial Court also, initially, the second defendant had filed written statement and the third defendant filed the written statement separately after attaining majority. The claim of the third defendant is that he was a minor at the time of entering into the agreement of sale between the plaintiff and the first and second defendants and the same will not bind him. Accordingly, the defendants prayed for dismissal of the suit.



S.A. No. 690 of 2013

WEB COPY

12. The Trial Court after taking note of the plaint and the written statements filed by the defendants had framed the following four issues:-

“ (i) Whether the instant suit has been filed within the prescribed period of limitation?

(ii) Whether the agreement of sale dated 10.12.1992 is genuine, valid and bind the defendants?

(iii) Whether the plaintiff is entitled for specific performance?

(iv) To what other reliefs the palintiff is entitled?”

13. Apart from the above issues, on 03.01.2008, the Trail Court has formulated the following additional issue:-

“Whether the contract entered by the second defendant on behalf of the third defendant is not valid legally?”

14. Before the Trial Court, five witnesses were examined on behalf of the plaintiff, out of whom, P.W.2, P.W.3 and P.W.4 are creditors



S.A. No. 690 of 2013

WEB COPY

of the deceased Sangameswaran. The plaintiff also marked the documents under Exs.A1 to A27 in support of his case. On the side of the defendants, the second and third defendants were examined as D.W.1 and D.W.2, but, no documents were marked.

15. It was found that the suit was filed on 23.01.2004, whereas, the agreement was entered on 10.12.1992. Thus, after 11 years of the agreement of sale, the suit was filed and no reason was assigned by the plaintiff for the delay in filing of the suit. During the cross-examination of P.W.1, it was stated that since the third defendant, who was a minor, the plaintiff had to wait until he becomes a major so that he can be sued and made as a party to the suit in respect of his share.

16. It was also observed that the application in I.A. No.282 of 2007 was filed to declare the third defendant as major and the same was ordered on 04.09.2007. The second defendant ought to have got permission of the Court to sell the share of the third defendant in the suit



S.A. No. 690 of 2013

WEB COPY

property. When the application was made in the year 2007 to declare the third defendant as a major, necessary changes were made in the plaint itself. The Trial Court had given a finding with regard to the limitation and answered in favour of the plaintiff that the suit was filed within the limitation period.

17. While answering the second issue whether the agreement dated 10.12.1992, which was marked as Ex.A1 is genuine or not and whether the agreement is binding on the second and third defendants, the Trial Court has taken into consideration that the agreement for sale was entered into between the plaintiff and the first and second defendants. The first defendant had remained absent before the Trial Court and she has not contested the case.

18. Though the second defendant had affixed her signature in the agreement of sale/Ex.A1, it was contended that after the demise of Sangameswaran, the first defendant, mother-in-law of the second



S.A. No. 690 of 2013

WEB COPY

defendant had compelled her to affix the signature and only on that basis the second defendant signed the agreement of sale and she was not aware of the contents and loans which were said to have been received by her husband/the deceased Sangameswaran.

19. The Trial Court also considered that the third defendant was a minor at the time of entering into the agreement of sale dated 10.12.1992. The details of the payment made by the plaintiff are extracted hereunder:-

22/

11.3.1991 அன்று பி.எஸ்.ரங்கசாமி என்பவருடன் ஏற்பட்ட கிரைய ஒப்பந்தத்தின்படி சங்கமேஸ்வரன் பெற்ற முன் பணம்	- ரூ.50,000/-.
28.1.1990 அன்று எம்.முனுசாமி என்பவரிடம் புரோதோட்டின் பேரில் சங்கமேஸ்வரன் பெற்ற ரூ.25,000/- மற்றும் அதன் வட்டிதொகை	- ரூ.38,000/-.
என்.டி.மூர்த்தி என்பவரிடம் 15.11.90 அன்று சங்கமேஸ்வரன் கடனுறுதிச் சீட்டின் பேரில் பெற்ற ரூ.15,000/- வட்டி தொகையுடன்	- ரூ.20,700/-.
25.6.91 அன்று மகேஷ்வரி என்பவரிடம் போக்கிய அடமான பத்திரத்தின்படி பெற்ற தொகை	- ரூ.32,000/-.



S.A. No. 690 of 2013

WEB COPY

7.8.1991 அன்று சுமதி என்பவரிடம் செய்து கொண்ட கிரைய ஒப்பந்தத்தின்படி பெற்ற முன்பணம்	- ரூ.11,500/-.
பவானி வீட்டு வசதி சங்கத்தில் பெற்ற அடமானக் கடன் வகையில் நிலுவை தொகை	- ரூ.15,000/-.
	- ரூ.1,67,000/-

20. The above tabulation would show that the plaintiff claims to have paid a sum of Rs.1,67,000/-, which ought to have been discharged by the deceased Sangameswaran, who obtained loan on different categories on different dates. The defendants contended that the said Sangameswaran had not obtained any loan from anybody and there was no occasion for the said Sangameswaran to get loan and they did not instruct the plaintiffs to discharge the loans obtained by Sangameswaran.

21. P.W.3/Munuswamy had deposed that the said Sangameswaran has received a sum of Rs.25,000/- on 28.01.1990 and for recovery of the same, a suit was filed by him in O.S. No.4 of 1992 before the Sub-Court, Erode. On 10.12.1992, a sum of Rs.38,000/- which



S.A. No. 690 of 2013

WEB COPY

includes the interest payable for Rs.25,000/- was paid by the plaintiff. Ex.A7 would show that the plaintiff settled the amount to P.W.3. However, there is no endorsement made in Ex.A7 that the said amount was paid pursuant to the sale agreement/Ex.A1. In the absence of any signatures of the defendants in Ex.A7, it created a doubt in the mind of the Court. P.W.4/N.D. Murthy, in his examination had deposed that the said Sangameswaran received a sum of Rs.15,000/- and executed a promissory note. Ex.A9 is the document which would show that a sum of Rs.20,700/- was paid along with interest by the plaintiff for the loan amount of Rs.15,000/- received from P.W.4.

22. While examining Ex.A9 and A10, the trial Court had its genuineness as well as the signature of the attestors of the documents. Ex.A4 would show that the said Sangameswaran had mortgaged the original sale deeds with the Bhavani Cooperative Housing Society for getting loan for a sum of Rs.71,000/- on 20.01.1988. The plaintiff claimed to have settled one part of the loan interest amount of Rs.15,000/- on



S.A. No. 690 of 2013

WEB COPY

behalf of the said Sangameswaran. Though the Secretary of the Cooperative Society had affixed his signature and seal on the document, the plaintiff had not brought any of the witnesses to prove the same. But the said document was marked as Ex.A4 and the Trial Court had raised suspicion over the payment of Rs.15,000/- made to the society. Ex.A5 is the sale agreement executed by the said Sangameswaran in favour of one B.S. Rangasamy. Though the said agreement was unregistered one, there is no signature and counter signature of the first and second defendants. The Trial Court therefore disbelieved the payments made by the plaintiff on behalf of the said Sangameswaran, who received loans from various persons since there is no counter signature of the first and second defendants in the receipts.

23. Thus, the Trial Court disbelieved the evidence of the plaintiff and other witnesses examined on the side of the plaintiff. The Trial Court has considered the payment of Rs.46,000/- paid by the plaintiff under Ex.A16 which is the document for the dues of sum of



S.A. No. 690 of 2013

WEB COPY

Rs.46,000/- which was paid in E.P.No.185 of 1999 in O.S.No.300 of 1996.

The Trial Court, while examining Ex.A16 found that in the absence of any signature of the defendants or the counsel for the defendants appeared in O.S.No.300 of 1996, Ex.A16 cannot be accepted. The Trial Court has also considered the evidentiary value of D.W.1/the second defendant, who had categorically deposed that the signature found in Ex.A1 was out of compulsion and she was not aware of what was written in the document and only due to the family situation, the second defendant affixed her signature in the agreement. Though the second defendant admitted that they have made an agreement of sale for a sum of Rs.2,65,000/-, she had stated that only out of compulsion, she affixed her signature.

24. The document writer, namely, one Lakshmanan, who was examined as P.W.2 had categorically stated that he has written all the documents only on the basis of the statements given by the plaintiff and got the signatures of the respective parties. However, the Trial Court had come to the conclusion that there are several infirmities in execution of



S.A. No. 690 of 2013

WEB COPY

Ex.A1/agreement of sale and disbelieved the evidence of the plaintiff and negated the claim of the plaintiff.

25. Regarding the additional issue, whether the agreement of sale between the plaintiff and defendants 1 and 2 will bind the third defendant who was a minor at the time of entering into the agreement, the Trial Court considered that Ex.A1 is not binding on the third defendant. In view of the same, the suit was dismissed by the Trial Court.

26. Challenging the same, the plaintiff filed an appeal in A.S.No.25 of 2011 before the Principal District and Sessions Court, Erode. The first respondent remained *ex-parte* and only the second and third respondents contested the case. The First Appellate Court had formulated the following points for consideration:-

“i) Whether agreement dated 10.12.1992 executed by the 1st defendant and the 2nd defendant for herself and on behalf of minor 3rd defendant is true and valid?

ii) Whether the plaintiff has discharged the loan



S.A. No. 690 of 2013

WEB COPY

of Sangameswaran to various third parties?

iii) Whether the plaintiff was ready and willing to perform his part of the contract?

iv) To what relief?”

27. The First Appellate Court had considered that the said Sangameswaran has mortgaged the suit property with the Cooperative Society and availed loan. That apart the said Sangameswaran had also availed loan from various persons on various dates on different categories and he died on 10.11.1991 leaving behind the defendants as his legal heirs. After the agreement of sale dated 10.12.1992 was entered between the plaintiff and the defendants, for a sum of Rs.2,65,000/-, the plaintiff settled a sum of Rs.1,67,200/- for the debts incurred by the said Sangameswaran as a part of sale consideration.

28. Though the defendants had informed the plaintiff that they will obtain the Court permission to sell the share of the third defendant being minor at the time of execution of the sale agreement marked as



S.A. No. 690 of 2013

WEB COPY

Ex.A1, they did not do so. The First Appellate Court examined all the documents marked on the side of the appellant/plaintiff and come to the conclusion that the defendants gave evasive reply with regard to the amount borrowed by the said Sangameswaran.

29. The evidence of P.W.2 to P.W.5 clearly shows that the said Sangameswaran borrowed money from them. Ex.A2 and Ex.A3 dated 22.01.1987 and 07.05.1990 respectively, are the original title deeds of the said Sangameswaran and they were handed over to the plaintiff by the first defendant at the time of entering into the agreement of sale. Ex.A4 is the original mortgage deed, which is also with the plaintiff.

30. The First Appellate Court considered the documents marked by the appellant/plaintiff and observed that the documents clearly show that the plaintiff had settled the debts incurred by the said Sangameswaran. Thus, the possession of the original documents would show that only on the basis of payment of outstanding of the debts



S.A. No. 690 of 2013

WEB COPY

borrowed by the said Sangameswaran, the documents were handed over to the plaintiff.

31. Ex.A1/agreement of sale dated 10.12.1992 is a clear document, which was executed in between the plaintiff and the defendants. On considering the evidence of P.W.1, it is clear that the above said loans were obtained by the deceased Sangameswaran from several persons and he mortgaged the property with the said Cooperative Society and all these debts borrowed by the deceased Sangameswaran was settled by the plaintiff. The evidence of P.W.3, P.W.4 and P.W.5 would also clearly establish that the deceased Sangameswaran had borrowed money from them and that the said due amounts were settled by the plaintiff. There is no iota of evidence to disbelieve the evidence of P.W.2 to P.W.5. Ex.A1/agreement clearly states that the value of total sale consideration and the plaintiff has specifically stated that he is ready to deposit the balance amount of Rs.51,800/- before the Court and it shows the *bona fide* of the appellant/plaintiff.



S.A. No. 690 of 2013

WEB COPY

32. The First Appellate Court had also taken into consideration that though the agreement marked under Ex.A1 entered into between the plaintiff and the first and second defendants in the year 1992, there is an inordinate delay in filing the suit which is barred by limitation. However, in Ex.A1/agreement there is no time limit, therefore, the invocation of limitation point does not arise. The only point for consideration before the First Appellate Court is with regard to the readiness and willingness of the plaintiff, which is otherwise demonstrated by the plaintiff by paying all the debts such as loans and mortgages, which were to be settled by the said Sangameswaran. The amount settled by the plaintiff is not a word of commitment but it is an act of commitment and which is supported with the evidence of P.W.3, P.W.4 & P.W.5 and the exhibits under Exs.A4 to A14. It is important to note that Ex.A14 dated 15.11.2003 is the Judgment passed in O.S.No.300 of 1996 and Ex.A16 is the E.P proceedings in E.P.No.185 of 1999 in O.S.No.300 of 1996, in which the appellant/plaintiff has settled all the dues and the same was deposed by



S.A. No. 690 of 2013

WEB COPY

P.W.1 in his evidence. In view of the same, there would be nothing to suspect the genuineness of execution of Ex.A1/agreement of sale.

33. However, the First Appellate Court, modified the judgment and decree of the Trial Court and directed the defendants to pay the advance amount to the plaintiff along with interest. It is as against the said portion of the judgment of the First Appellate Court in granting the alternative relief of refund of the advance sale amount, the present second appeal is filed.

34. Heard the learned Senior counsel for the appellant and the learned counsel for the respondents and perused the materials placed on record.

35. The second appeal was admitted on the following substantial question of law:-

“When the suit agreement has been found to be true and enforceable against the respondents



S.A. No. 690 of 2013

WEB COPY

herein, whether the Lower Appellate Court is justified in that it has granted the alternative relief of refundable of advance instead of the main relief of specific performance?”

36. The plaintiff had filed the suit for specific performance. During the pendency of the suit, the first defendant, mother-in-law of the second defendant died. The legal heirs of the first defendant are the second and third defendants and they are already on record. Therefore, as per Order XXII r/w Rule 4 of Civil Procedure Code, the plaintiff has given up the relief as against the first defendant in the suit. Taking note of the verified petition filed by the learned counsel for the appellant/plaintiff, this Court by order dated 18.01.2024, permitted the appellant/plaintiff to record the exemption in terms of Order XLI of CPC.

37. Before proceeding with the contentions raised by both sides, it is necessary to point out that the plaintiff has filed the suit for specific performance based on the agreement he had entered into with the first and



S.A. No. 690 of 2013

WEB COPY

second defendants on 10.12.1992, which was marked as Ex.A1. The genuineness of Ex.A1 need not be gone into by this Court inasmuch as the First Appellate Court accepted the execution of Ex.A1 and held it to be genuine. Therefore, in this background of facts that Ex.A1 is genuine, this Court proceeds to consider the substantial question of law involved in this appeal.

38. The First Appellate Court directed refund of sale advance on the ground that in the event of specific performance granted against the defendants 1 and 2, it may cause hardship to the third defendant who was a minor at the time of execution of Ex.A1/agreement. First of all, such a defence was not even put forth by the defendants in the written statement. All that has been stated is that the value of the property has been skyrocketed but the agreement of sale was entered into for a paltry sum. Furthermore, the plaintiff had settled the debts incurred by the son of the first defendant from various persons. Some of the borrowers have also filed suit in respect of the plaint described property which were clearly



S.A. No. 690 of 2013

WEB COPY

narrated in the plaint. Therefore, one after the other borrowers have come up with a claim for payment of money to be paid by the deceased Sangameswaran.

39. According to the plaintiff, only on the instructions given by the first defendant, he had settled the debtors one after the another in order to ensure the purchase of the plaint described property free from any encumbrance. It can be safely visualized that if there is any encumbrance in the property, no prudent purchaser would purchase it. In such event, a purchaser may attempt to clear the encumbrance or will opt out of the transaction. In this case, the plaintiff has attempted to clear the debts incurred by the deceased Sangameswaran with the knowledge and expressed consent of the defendants 1 and 2. If the defendants 1 and 2 had not named the borrowers, the plaintiff may not be aware of the same. The plaintiff also, after settling the amount, obtained receipt from the borrowers. Even the plaintiff has examined some of the borrowers. Furthermore, the original documents of title as well as possession, is with



S.A. No. 690 of 2013

WEB COPY

the plaintiff all along and it was not disputed by the defendants. In such circumstances, this Court is of the view that the delay cannot be put against the plaintiff in this case, who had taken pains to settle all the debts incurred by the owner of the land Sangameswaran to ensure that there is no other subsisting encumbrance in the property.

40. In that process, time had run out and therefore, this Court is of the view that the first appellate Court is not justified in directing repayment of the advance amount. Even though the third defendant contended that the value of the plaint described property has shoot up, it is not a ground to deny the decree for specific performance in favour of the plaintiff.

41. As a prudent purchaser, the plaintiff had knocked the doors of the borrowers who have paid money to the husband of the second defendant and father of the third defendant Sangameswaran. The plaintiff had even settled the amount and got the execution petition terminated in



S.A. No. 690 of 2013

WEB COPY

the suit instituted against the deceased Sangameswaran for recovery of money. In such event, it cannot be said that the plaintiff is also a passive spectator as he did not insist the defendants to obtain permission of the Court within the reasonable time and disentitle the plaintiff to the decree of the specific performance.

42. As far as the contention of the third defendant that the agreement of sale executed between the plaintiff and defendants 1 and 2 will not bind him, this Court finds that in the written statement, there was no whisper that the deceased Sangameswaran had borrowed the money to lead a wayward life or the borrowal is not for a legal necessity. In fact, the deceased Sangameswaran appears to have borrowed money for construction of house. In such event, the debts incurred by the deceased Sangameswaran and the settlement to the borrowers by the plaintiff would definitely bind the third defendant.

43. It is also to be mentioned that the third defendant, after



S.A. No. 690 of 2013

WEB COPY

attaining majority, is only interested to get a share in the plaint described property, but he did not whisper anything about his readiness and willingness to settle the debt incurred by his father. Therefore, this Court holds that the debt incurred by the deceased Sangameswaran is for a legal necessity and it will bind the third defendant and the third defendant cannot claim right over the property.

44. In light of the above, this Court finds that, the First Appellate Court, having admitted the genuineness of Ex.A1 and various amount settled by the plaintiff to the money lenders of the deceased Sangameswaran, ought to have granted a decree for specific performance in favour of the plaintiff. Therefore, the decree and judgment of the First Appellate Court warrants interference by this Court. Accordingly, the substantial question of law is answered in favour of the appellant/plaintiff and against the respondents/defendants.

45. In view of the same, the Second Appeal is allowed and the judgment and decree of the First Appellate Court in A.S.No.25 of 2011



S.A. No. 690 of 2013

WEB COPY

dated 18.07.2012 is set aside. The defendants are directed to execute the sale deed in respect of the plaint described properties in favour of the plaintiff. There shall be no order as to costs; and consequently, the connected miscellaneous petition is also closed.

25.10.2024

Index :Yes/No
Speaking/Non-Speaking Order
Neutral Case Citation : Yes
klt

To:

1. The II-Additional District Munisf Court, Bhavani.
2. The Subordinate Court, Bhavani.
3. The Section Officer, V.R.Section, High Court of Madras.



WEB COPY



S.A. No. 690 of 2013

N.SENTHILKUMAR, J.

klr

Pre-Delivery Judgment in

S.A.No.690 of 2013
and
M.P.No.1 of 2013

25.10.2024