



Second Appeal No.754 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.754 of 2013
and M.P.No.1 of 2013

L.Mahimairaj

.... Appellant

-Vs-

1.Palanisamy

2.Minor Sabarithani

rep.by her father and natural guardian

Mr.Palanisamy

3.Valliammal

4.Kaliammal

5.Muthulakshmi

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 07.01.2013 made in A.S.No.17 of 2012 on the file of the learned Sub Court, Gobichettipalayam reversing the judgment and decree dated 23.02.2012 made in O.S.No.119 of 2009 on the file of the learned District Munsif Court, Gobichettipalayam.

For Appellant : Mr.V.Jayaprakash

For Respondents : Mr.K.Prasath
for Mr.N.Chinnaraj - for R1 and R2
(R2 minor represented by R1)
R3 to R5 - Served, no appearance



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J U D G M E N T

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The present Second Appeal arises out of the judgment and decree in A.S.No.17 of 2012 dated 07.01.2013 on the file of the Subordinate Judge at Gobichettipalayam in reversing the judgment and decree of the District Munsif at Gobichettipalayam in O.S.No.119 of 2009 dated 23.02.2012.

2. The plaintiff is the appellant. He filed a suit for specific performance of an agreement of sale dated 24.01.2007. There is no dispute that the property originally belonged to one Chellappan. Chellappan had four children viz., Palanisamy, Valliammal, Kaliammal and Muthulakshmi. Chellappan had purchased the property on 10.11.1996. On 24.01.2007, Palanisamy along with his mother ie., the wife of Chellappan entered into an unregistered agreement of sale to sell the suit schedule mentioned property. The total extent is 2.88 acres and the price per acre was fixed at Rs.42,000/-. An advance of Rs.25,000/- was given on the same date.

3. It is the case of the plaintiff that, since the defendants did not sell the property, he issued a notice on 28.11.2008. By this notice, he called upon the defendants 1 to 4 to come to the Sub Registrar's office on 05.12.2008 for receiving the balance consideration of Rs.11,330/- and to execute the sale deed.



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Since the defendant did not accede to the request, he filed the suit on 15.04.2009.

4. The defendants filed a written statement that the first defendant had borrowed a sum of Rs.25,000/- for urgent family expenses and as a security for the amount so paid, he had executed the sale agreement. He would state that the other owners of the property were not parties to the document. In fact, the transaction being a loan transaction, he was ready to discharge the same, However, the plaintiff instead of accepting the same, presented the suit for specific performance.

5. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and two other witnesses viz., Kathirvel and Ayyavoo as P.W.2 and P.W.3. On the side of the plaintiff, Ex.A1 to A6 were marked. The first defendant examined himself as D.W.1 and Ex.B1 was marked on the side of the defendant.

6. On the basis of the evidence and the documents tendered before the Court, the learned Trial Judge decreed the suit as against the first defendant as he was the agreement holder and dismissed the suit as against defendants 2 to 5, as they were not parties to the agreement.



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7. Aggrieved by the same, the first defendant preferred an appeal before the lower appellate Court, which allowed the appeal and dismissed the suit for specific performance.

8. Aggrieved by the same, the present Second Appeal has been preferred. On 21.08.2013, the Second Appeal was admitted on the following substantial question of law.

" Whether the Lower Appellate Court is right in holding that Ex.A.1 cannot be splitted and the appellant is not entitled to claim specific performance of 1/5th share as decreed by the trial Court?"

9. Heard Mr.V.Jayaprakash, learned counsel for the appellant and Mr.Prasath learned counsel for the respondents 1 and 2.

10. In a suit for specific performance, it is the duty of the plaintiff to prove that he was ready and willing to convert the sale agreement into sale deed. The facts narrated above would go to show that the sale agreement was entered into on 24.01.2007, but the plaintiff issued the suit notice only on 28.11.2007. As per the notice, he called upon the defendants to be present on 05.12.2008 to



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execute the sale deed before the Sub Registrar and having found that the defendants were not cooperating with the execution of the sale deed, he ought to have approached the Court immediately. However, the plaintiff waited for few more months and presented the plaint only in April 2009. There is absolutely no explanation as to what transpired from 24.01.2007 to 28.11.2008 and from 05.12.2008 to 15.04.2009.

11. In a suit for specific performance, a plaintiff must always be ready and willing. The excuse that he was waiting for the Panchayatdars for convincing the defendants to execute the sale deed does not hold water. As the plaintiff has not proved his readiness and willingness, the suit for specific performance necessarily has to fail. However, the findings of the lower appellate Court that a suit for specific performance has to be dismissed when other co-owners are not parties is contrary to Section 12(3) of the Specific Relief Act. The dismissal of the suit is confirmed, not for the reasons given by the lower appellate Court, but for the reason that the plaintiff has not proved his readiness and willingness.

12. Insofar as the money transaction is concerned, a reading of the written statement shows that the first defendant had agreed that he had received a sum of Rs.25,000/- on 24.01.2007. Taking this into consideration, the lower appellate Court had directed refund of this amount at the rate of 2%



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from 24.01.2007 till the date of the suit, 9% till the date of the decree and thereafter at 6%. I find this judgment is equitable and as against this allowed portion, no appeal has been preferred by the defendants, hence I am constrained to confirm the same.

13. In fine, the judgment and decree dated 07.01.2013 in A.S.No.17 of 2012 on the file of the Subordinate Court, Gobichettipalayam in reversing the judgment and decree of the Court of District Munsif, Gobichettipalayam in O.S.No.119 of 2009 dated 23.02.2012 stands confirmed. The Second Appeal is dismissed. No costs.

08.02.2024

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

To

- 1.The Subordinate Judge, Gobichettipalayam
- 2.The District Munsif, Gobichettipalayam.



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V.LAKSHMINARAYANAN, J.

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