IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2024

PRONOUNCED ON : 21.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 680 of 2021
&
C.R.P.No. 1738 of 2021

S.A.No.680 of 2021:

M.C.Kalaithangam ...Appellant

Vs.

1.M.Sundaramurthy (Died)

2.V.P.Subramanian (deceased)

3.Saroja Ammal

4.Kumar

5.Gurumurthy

6.Sundari

7.Shanmugam

8.Shanthi ...Respondents

PRAYER: Second Appeal filed under Section 100 of CPC against Judgement dated 24.02.2020 in A.S.No.255 of 2011 on the file of the Appellate Authority of the II Additional City Civil Court, Madras confirming the Judgement and Decree in O.S.No.4341 of 1994 dated 15.02.2010 on the file of IV Assistant City Civil Court, Madras.

For Appellant	:	Mr. A.K.Sriram Senior Counsel for Mr. P.Rajadurai
For Respondents 1 & 2	:	Died
For Respondent 4	:	Mr. S.C.Vishwanth
For Respondents 3 & 5	:	No Appearance
For Respondents 6 to 8	:	Mr. Sampath M/s. Meera Gnanasekar

C.R.P.No.1738 of 2021:

M.C.Kalaithangam ...Petitioner

Vs.

1.Saroja Ammal

2.Gurumurthy

3.Kumar

4.Sundari

5.Shanmugam

6.Shanthi ...Respondents

PRAYER: The petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.02.2020 in C.M.P.No.823 of 2017 in A.S.No.255 of 2011 on the file of the II Additional City Civil Court, Chennai.

For Petitioner	:	Mr. A.K.Sriram Senior Counsel for Mr. P.Rajadurai.
For Respondents 4 to 6	:	Mr. Sampath M/s. Meera Gnanasekar

JUDGEMENT

The unsuccessful plaintiff in a suit for specific performance is the appellant before this Court and the above Second Appeal has been admitted on the following Substantial Questions of Law:

"1. Whether in law are the Courts below right in holding that statements and evidences of witnesses given in criminal proceedings/Courts are binding on the Civil Courts?

2. Whether in law are the Courts below right in holding that statements and evidences of witnesses given in criminal proceeding are vital consideration to decide the civil suit?

3. Whether the Courts below are correct in law in ignoring the evidence of the plaintiff that he has taken steps to evict the tenants for which he has spent a considerable sum of Rs.4 lakhs only on the ground that the version is not in conformity with the documents *totally overlooking the admission made by the defendants?*

4. Whether Courts below are correct in law in ignoring the orders passed by this Court in Cri.R.C.No.942 of 2015 by stating that the order is not binding on the Civil Court especially when the Trial Court has dismissed the suit only on the basis of the order which was ultimately set aside in Crl.R.C.No.942 of 2015?

Facts of the case:

2. In order to appreciate the grievance of the plaintiff, it would be necessary to allude briefly to the facts which has given raise to the above Second Appeal.

(i) Plaintiff's case:

3. The plaintiff had filed the suit O.S.No.4341 of 1994 on the

file of the IV Assistant City Civil Court, Chennai seeking the relief of specific performance of the agreement of sale dated 06.10.1993 and for injunction restraining the defendants from dispossessing the plaintiff from the suit premises. The suit premises comprised of land and the building bearing Door No.57, Muthuvel Naicker Street, Dr.Raghavan Colony, Kodambakkam, Chennai.

4. The plaintiff would contend that on 06.10.1993, he had entered into an agreement of sale with the 1st defendant agreeing to purchase the suit property for a total sale consideration of Rs.4,00,000/-. Till 11.02.1994, the plaintiff had paid a total sum of Rs.2,20,000/-. It is also the case of the plaintiff that there were around 17 tenants in the suit premises who were not paying rents to the plaintiff and he had undertaken to vacate the tenants at his risk. That apart, the 1st defendant had also mortgaged the property and the plaintiff had agreed to settle the mortgagees. On the date of the agreement, the plaintiff had received the certified copy of the title deeds, two registered mortgage deeds and encumbrance certificate.

5. It is the further case of the plaintiff that seeing his progress

with regard to the terms of the agreement, the 1st defendant had received a further sum of Rs.25,000/- from the plaintiff on 11.02.1994 and the time for execution of the sale deeds was further extended till the plaintiff vacates the tenants from the suit property. He would also contend that he had vacated 6 tenants from out of 17 tenants by paying them compensation of Rs.10,000/- each. However, he was unable to obtain vacant possession from the others as they had increased their demand for compensation. The plaintiff would submit that on the date of the agreement he was put in possession of the properties and from then the electricity charges and taxes are being remitted by him.

6. While so, it is the contention of the plaintiff that the 1st and 2nd defendants who were school friends had separated due to certain property disputes. After the agreement of sale was entered into between the plaintiff and the 1st defendant, the two had re-united and they started taking steps to sell the property to the third parties and to dispossess the plaintiff from the property. Therefore, the plaintiff had come forward with the suit in question.

ii. Defendant's Case:

7. **The 1st defendant** had filed a written statement and an additional written statement in which the 1st defendant had stated that he had not entered into any agreement of sale nor had he received any amounts from the plaintiff. It is the case of the 1st defendant that he had canceled the power given to the plaintiff, on coming to know about the fact that his signatures in blank papers were being misused.

8. The 1st defendant would submit that the Advocate who was engaged by the plaintiff to prepare the power of attorney had obtained the 1st defendant's signatures in blank papers and this has now been misused by the plaintiff. The 1st defendant had denied the fact that he had handed over title deeds of the property and the other documents. It is also his case that the mortgage had already been cleared and the 2nd defendant had stealthily got the original documents from the mortgagee.

9. The 1st defendant further contended that the plaintiff had suppressed the filing of the suit O.S.No.3188 of 1994 by the 2nd

defendant, for specific performance alleging that the 1st defendant had executed an agreement of sale in his favour. The 1st defendant would submit that it appears that the plaintiff and 2nd defendant were colluding to somehow take away the 1st defendant's property as the 1st defendant had no intention to sell his property.

10. The 1st defendant would further contend that after the filing of the suit, the plaintiff had instituted other suits and proceedings before various fora. The plaintiff had filed O.S.No.10271 of 1996 on the file of the III Assistant City Civil Court, Chennai against the 1st defendant and one Subramanian. In this proceedings, the 1st defendant would submit that though he had never been served with any summons, it appears that one Selvam, Advocate had appeared on his behalf on the basis of the forged signature of the plaintiff in the vakalat. In fact all of this came to light only after the 1st defendant had engaged the services of the another counsel, A.Ramasamy. The Court permitted the said Advocate Ramasamy to enter appearance on behalf of the 1st defendant without the consent of the earlier counsel since the 1st defendant was not able to reach out to him even in the address given

as the address for service. The 1st defendant had also initiated a private complaint against the plaintiff in Crl.M.P.No.2335 of 1999 seeking a direction to the Police authorities to conduct an enquiry.

11. In this proceeding, the plaintiff had produced an injunction order said to have been obtained by him in O.S.No.8853 of 1997 on the file of the XVIII City Civil Court, Chennai. It was only then that the 1st defendant had came to know about the suit. Here again the 1st defendant was not served with any summons and it appears that the service of one Anbalagan had been engaged to represent the 1st defendant with the plaintiff's forged signature. When the plaintiff had attempted to serve the vacate injunction petition upon the said Anbalagan, they were unable to trace out the said Anbalagan even at the address of service that had been given. In fact there was no such Advocate in the given address.

12. Taking note of the various manipulation and fabrication of records, the 1st defendant had filed W.P.No.12715 of 2000 before this Court to issue direction to the ADSP, CCB, Egmore to direct the Police authorities to conduct an enquiry with regard to the fraudulent

documents which have been used in the suit O.S.No.8853 of 1997. On coming to know about this order, the plaintiff had allowed the suit O.S.No.8853 of 1997 to be dismissed for default. Though in the earlier Writ directions had been issued to the plaintiff to handover the documents for sending them for forensic examination the same was not handed over by the plaintiff. That apart, the plaintiff who had been served with the summons had not turned up for the enquiry.

13.Thereafter, the 1st defendant had filed W.P.No.14372 of 2001 for a direction to the plaintiff to handover documents to the police authorities for forensic verification. Once again the plaintiff who had been served with the summons had not bothered to appear before this Court. Therefore, directions were issued by this Court on 28.01.2002 to the Assistant City Civil Court, Chennai to hand over the original documents. The signatures were thereafter compared and it came to the light that these signatures were not the signatures of the 1st defendant. The summons had also been sent to the Advocate appearing for the plaintiff and the Court officials as well. Therefore, the 1st defendant had sought to have the suit dismissed.

14. **The 2nd defendant** had also filed a written statement and an additional written statement, wherein the 2nd defendant would submit that the plaintiff has suppressed the filing of the earlier suit. The 2nd defendant would further submit that the plaintiff is related to the 1st defendant and the suit is collusive one filed only with the intent to defeat the 2nd defendant's claim. The 2nd defendant would further submit that the plaintiff has suppressed the filing of the earlier suit in O.S.No.1903 of 1993 on the file of the VIII Assistant City Civil Court, Chennai. The 2nd defendant had contended that he continued to be in possession of the property under the agreement that had been entered into between him and the 1st defendant. The 2nd defendant also submit that the earlier suit O.S.No.1903 of 1993 had become infructuous and the 1st defendant was never in possession of the property. Therefore, he had no right to enter into any sale agreement with the plaintiff.

15. The 2nd defendant would submit that he had purchased the suit property from the 1st defendant under a sale deed dated 17.10.1979 and possession was also handed over to him. The entire

sale consideration in respect of the property was also paid and ever since the purchase he has been in continuous, uninterrupted possession of the suit property. The 2nd defendant would submit that the 1st defendant had no title to the property since he has already sold the subject property to the 2nd defendant. Therefore, he would contend that the plaintiff and the 1st defendant were colluding solely with an intent to deprive the 2nd defendant of his right of the suit property. The 2nd defendant therefore prayed that the suit be dismissed.

Trial Court:

16. The learned IV Assistant Judge, City Civil Court, Chennai had framed the following issues:

> *"(i)Whether the Agreement for sale is a fraudulent one?*
>
> *(ii)Whether the suit for specific performance is barred by the limitation?*
>
> *(iii)Whether the plaintiff is entitled for specific performance of agreement for sale as prayed for?*

Additional Issues:

(i)Whether the plaintiff is entitled for permanent injunction as prayed for?

(ii)To what other relief?

17. The plaintiff examined himself as P.W.1 and one Karnakaran and Anand as P.W.2 and P.W.3. Ex.A.1 to Ex.A.63 were marked on the side of the plaintiff. The 1st defendant had entered the box and given evidence as D.W.1. Ex.B.1 to Ex.B.19 were marked on the side of the defendants. That apart, Court document Ex.X.1 to Ex.X.17 were marked. Ultimately, on consideration of the evidence, pleadings and the arguments, the learned Trial Judge was pleased to dismiss the suit.

Lower Appellate Court:

18. Aggrieved by the same, the plaintiff had filed A.S.No.255 of 2011 on the file of the II Additional Judge, City Civil Court, Chennai.

19. The Lower Appellate Court also confirmed the Judgement and Decree of the Trial Court and dismissed the appeal. Aggrieved

by which, the plaintiff is now before this Court and the Second Appeal has been admitted on the Substantial Questions of Law set out in paragraph no.1 supra.

Submissions:

20. The learned senior counsel appearing on behalf of the counsel for the appellant / plaintiff would submit that once the execution of the agreement of sale has been admitted burden shifts on the 1st defendant to prove the fact that he has not received the consideration. The 1st defendant as D.W.1 has accepted the execution of Ex.A.1 as well as Ex.A.2. In his written statement, the case of the 1st defendant is that he has executed several unsigned documents which have now been used to create Ex.A.1 and Ex.A.2. Once the execution is admitted, the Courts below have failed to appreciate, that the onus is upon the 1st defendant to prove that the agreement was not entered into as contended by the plaintiff and that the 1st defendant had not intended to alienate the property.

21. The main thrust of the arguments of the learned senior counsel is that the Lower Appellate Court by not accepting to

receive the original documents committed a grave error in as much as these documents would go to prove that the plaintiff's case that he has not committed any fraud since the plaintiff has been primarily non suited on the ground that the plaintiff has come to Court with unclean hands. He would further submit that the issue of readiness and willingness has also not been properly appreciated by the Courts below. He would submit that even as per the agreement there was no time frame fixed for concluding the transaction. As per endorsement, the parties had agreed that the time for concluding the contract would depend on the eviction of the tenants. This clause has been totally overlooked by the Courts below.

22. The learned senior counsel would submit that the Courts below have totally ignored Ex.A.7, Ex.A.8, Ex.A.9, Ex.A.24, Ex.A.25, Ex.A.26 and Ex.A.27 which would go long way to show that the plaintiff has taken steps to evict the tenants and the same was in progress and the documents would clearly show that it was the plaintiff who has been making the payments to the tenants to have them vacate and handover vacant possession of the suit schedule property.

23. The learned senior counsel would further submit that a perusal of Ex.A.22 would show that the mortgage has been discharged only by the plaintiff which is evident from the fact that the original documents are in his possession.

24. The learned senior counsel would draw the attention of the Court to the additional documents that were filed before the Lower Appellate Court. He would submit that the defendant in his evidence as P.W.1 in C.C.No.7225 of 2004 before the XI Metropolitan Magistrate, Chennai has admitted his signatures in the agreement of sale. He would highlight the fact that this Court in its order in Crl.R.C.No.942 of 2015, had held that the allegations that the plaintiff had forged the sale agreement was false. This criminal revision was filed challenging the Judgement of the XV Additional Sessions Judge, Chennai in C.A.No.181 of 2013 in and by which the learned Judge had confirmed the Judgement in C.C.No.7225 of 2004. The allegation regarding the forging of the defendant's signatures by the plaintiff in the vakalat in the two suits was also held to be not true by this Court and ultimately the order passed in

C.C.No.7225 of 2004 confirmed in C.A.No.181 of 2013 was set aside and the plaintiff has been acquitted. All these would only go to show that the plaintiff has proved the execution of the agreement and that he has acted in terms there of. This would also prove that the defense of the 1st defendant is totally false.

25. The learned senior counsel would submit that the plaintiff had filed the additional documents to show proof both with regard to his wherewithal as well as his willingness to proceed with the agreement and by rejecting these documents, the Lower Appellate Judge had clearly foreclosed the plaintiff's attempts to prove his case. The learned senior counsel would submit that possession had been handed over even at the time of the execution of the agreement.

26. The learned senior counsel would submit that the fact that the plaintiff is in possession of the property would be clearly proved by Ex.A.1, Ex.A.7 to Ex.A.9, Ex.A.58 to Ex.A.63. The plaintiff had vacated all the 17 tenants and therefore he has proved his possession of the suit property. He would therefore submit that the observation of the Courts below that the plaintiff is not in possession of the suit

property is absolutely erroneous. Therefore, he would seek to have the Judgement and Decree of the Courts below set aside.

27. Per contra, Mr. S.Sampath, learned counsel appearing on behalf of the respondents 6 to 8 would submit that it was the signatures of the 1st defendant which has been obtained in blank papers had been issued by the plaintiff to prepare various documents. The learned counsel would submit that the original of ExA.1 sale agreement has not been filed by the plaintiff and this fact has been admitted by P.W.1. The reason for not filing the original has also not been pleaded by the plaintiff.

28. The learned counsel would submit that though the plaintiff pleads that a sum of Rs.1,95,000/- has been paid on various dates a perusal of Ex.A.1 would clearly show that the details of these payments have been inserted at the end of the document and not within the body of the document, whereas in his cross examination P.W.1 would state that a sum of Rs.1,95,000/- was paid in cash on the date of the agreement, namely, 06.10.1993. P.W.1 in his evidence has stated that Ex.A.1 was retained by the 1st defendant.

However, P.W.2, the alleged attestor of Ex.A.1 has deposed that Ex.A.1 agreement was prepared and brought by the plaintiff and in this document he has signed as a witness.

29. P.W.2 who is the attestor of Ex.A.1 has in his letter dated 30.08.1999 marked as Ex.B.2 clearly stated that he has not witnessed the execution of the sale agreement at all. He has only signed in the documents to vacate the tenants. The fallacy in the evidence of the witness is evident from the fact that Ex.A.1 is a typed document and not written document as contended by P.W.1. Therefore, the learned counsel would submit that Courts below have rightly come to the conclusion that Ex.A.1 has been created by the plaintiff.

30. As regards Ex.A.2 agreement dated 11.02.1994, the said document has not been witnessed by any one. Ex.A.2 has been marked to show that further a sum of Rs.25,000/- has been paid by the plaintiff to the defendant and the time for the performance of the contract has been extended till eviction of all the tenants from the property. The learned counsel would state that this document is not

a genuine document is evident from the fact that according to the plaintiff on 24.11.1993 an agreement had been made in favour of Ms/Srivari Estate & Agencies (P) Ltd,. (herein after called the Srivari Estate) by the 1st defendant with the plaintiff signing as a confirming party. Once the agreement of sale Ex.A.1 has been made over to Srivari Estate there was no question of the plaintiff making further payment under Ex.A.2. The plaintiff who has examined P.W.2 and P.W.3 to prove execution of Ex.A.1 has failed in the attempt as there is a contradiction in the deposition of all the three.

31. Another fact that would be lie on Ex.A.1 and Ex.A.2 is the fact that under Ex.A.1 dated 06.10.1993, there is a clause that the plaintiff has to clear the mortgage. However, a perusal of Ex.A.4 would clearly show that this mortgage has been cleared by the 1st defendant even as early as on 03.03.1993. To further prove the falsity of the plaintiff's case it is necessary to examine Ex.B.5 which is the plaint in O.S.No.3188 of 1994 filed by the 2nd defendant. In this suit, the 2nd defendant has clearly admitted that the mortgage was cleared only by the 1st defendant. D.W.1 has also deposed to this effect and this deposition remains unchallenged. Therefore the

very recitals in Ex.A.1 would clearly show that the same has been created by the plaintiff using the signatures obtained from the 1st defendant in various blank papers. Though the 2nd defendant had filed a suit for specific performance in O.S.No.3188 of 1994, the same has been withdrawn and thereafter the 1st defendant has issued Ex.B.19 notice to the legal representatives of the 2nd defendant, to return all the original document in their possession.

32. The other recital contained in the agreement of sale is that the plaintiff should vacate the tenants. The plaintiff would allege that he has paid amounts to the tenants for vacating them from the property. In the plaint in the main suit, the plaintiff has admitted that he has paid Rs.10,000/- each to 6 of the tenants and the remaining tenants were not willing to receive the said money and were demanding more money. However, in the later suit O.S.No.10271 of 1996 the plaintiff has alleged that 10 tenants had received a sum of Rs.10,000/- on 11.02.1994 itself i.e., even before the filing of the present suit. All of this will go to show that the plaintiff has come to Court with a false case.

33. The learned counsel would submit that Ex.A.7, Ex.A.24, Ex.A.25, Ex.A.59, Ex.A.61 and Ex.A.63 are alleged receipts of payments received from tenants. However, the persons named therein are not tenants in the premises and none of them have been examined by the plaintiff. These aforesaid exhibits when compared with Ex.A.16 which is a legal notice which has been issued by the 1st defendant to all the tenants would clearly show that the name in Ex.A.17, Ex.A.17, Ex.A.24, Ex.A.25, Ex.A.59, Ex.A.61 and Ex.A.63 are different. Therefore, the allegation of the plaintiff that he has paid the tenants to vacate and hand over possession of the property is also a totally false statement. The learned counsel would submit that it is the 1st defendant who has vacated the tenants.

34. Yet another falsity on the side of the plaintiff is evident from the fact that the tenants who has been evicted by the 1st defendant by filing rent control proceedings is shown to have been paid a sum of Rs.10,000/- under Ex.A.59. Ex.A.59 however has not been signed by the parties. The learned counsel would further submit that the 1st defendant had taken a defense that the plaintiff did not have necessary wherewithal to proceed with the sale. His

incapacity is evident from a perusal of Ex.A.39 series where jewel loan as low as a sum of Rs.225/- has not been cleared by the plaintiff.

35. Further, Ex.A.45 is the bank statement of the plaintiff in this only a sum of Rs.51/- is found available. Therefore, readiness and willingness has also not been proved by the plaintiff. The Courts below have rightly held that the plaintiff is not entitled to a decree for specific performance.

36. The learned counsel would also raise a plea that the plaintiff did not have locus standi to file the suit since as on the date of the filing of the suit, he was not even an agreement holder as he had made over agreement to Srivari Estate. From a perusal of Ex.B.1, legal notice issued by the 1st defendant to the plaintiff, wherein, the 1st defendant has referred to this agreement that has been entered into between the plaintiff and the said Srivari Estate which has not been refuted by the plaintiff. He would therefore submit that the plaintiff did not have locus standi to file the suit on the date of the institution of the suit.

37. The learned counsel would rely on the following Judgement in support of the preposition that the finding of the Criminal Court would not bind on the Civil Court:

"***AIR 2015 SC 3389 = CDJ 2015 SC 686*** – K.Nanjappa (Dead) by Lrs. Vs. R.A. Hameed Alias Ameersab (Dead) by Lrs.

38. The learned senior counsel representing for the plaintiff's counsel by way of rejoinder would submit that the reliance of the learned Judge on Ex.B.2 which are the records received from Sub Inspector of Police, Central Crime Branch, Egmore is totally inappropriate particularly when these documents have come into existence pending the criminal proceedings and he would submit that a Section 161 statement cannot be relied upon in Civil proceedings to hold that the plaintiff is guilty of committing forgery. He would in this context rely upon the Judgement reported in ***2014 (4) CTC 290 – Farooque Dadabhoy Vs. Dr. Usha S.Bhat,*** and draw the Court's attention to paragraph nos.30 and 31.

39. The learned senior counsel would further place reliance

upon Ex.B.8, which is the suit filed by the plaintiff against defendants 1 and 2 and one Guru, in which the plaintiff has made a mention about the Ex.A.1 and in the said suit the plaintiff had also contended that he is running a moulding work shop in the said suit property from 15.12.1993. He would also submit that having accepted the execution of the said agreement in the suit O.S.No.10271 of 1996, the 1st defendant cannot deny the agreement of sale. He would therefore submit that the suit be decreed and the Judgement of the Courts below be set aside.

C.R.P.No.1738 of 2021:

40. The plaintiff had taken out an application before the Lower Appellate Court, namely, II Additional City Civil Court, Chennai, in A.S.No.255 of 2011 for receiving additional documents in C.M.P.No.823 of 2017. In the affidavit filed in support of the said application the plaintiff had contended that the documents based upon which the plaintiff had been non suited were primarily the Section 161 statements which had been obtained under coercion by the Police. In the said affidavit it is further stated that the criminal proceedings initiated against the plaintiff had ultimately ended in an

acquital by orders of this Court in Crl. R.C.No.942 of 2015 whereby this Court had set aside the order of conviction made in C.C.No.7225 of 2004 which was confirmed in C.A.No.181 of 2013. In the said order there is a reference to the 1st defendant admitting that he had entered into agreement with one Srivari Estate on 24.11.1993 in which the plaintiff is a confirming party thereby proving that the plaintiff and the 1st defendant had entered into Ex.A.1 agreement dated 06.10.1993. The plaintiff would rely extensively on this document in support of his case and therefore would seek permission of this Court to permit him to file the order in Crl.R.C.No.942 of 2015 as an additional documents.

41. Apart from that document, the plaintiff has also sought to mark the deposition of prosecution witnesses P.W.1 to P.W.13 in C.C.No.7225 of 2014, the agreement entered into with Srivari Estate dated 24.11.1993, written statement filed by the 1st defendant and 2nd defendant in O.S.No.3188 of 1994, the statement of accounts for the year 2008 to 2017, photocopy of the plaintiff's bank passbook, deposit slips of the year 1997 by the plaintiff, etc,.

42. The affidavit does not give any reason as to why the documents were being produced at the belated stage. The petition was contested by the 1st defendant and ultimately by order dated 24.02.2020, the petition was dismissed. The learned Judge had observed that already there were 63 documents on record and the deposition of the prosecution witness in C.C.No.7225 of 2014 is already on record. The learned Judge also took the view that these documents would not advance the case of the plaintiff. Consequently, the petition was dismissed. Challenging the same, the petitioner has filed the Civil Revision Petition in C.R.P.No.1738 of 2021.

Discussion:

43. Heard the learned counsels and perused the records.

44. In the course of his arguments, the counsel for the 1st defendant had contended that the plaintiff does not have the locus standi to maintain the suit since even prior to the institution of the

suit, the plaintiff had along with the 1st defendant entered into an agreement of sale of M/s.Srivari Estate. The plaintiff has executed this document as a confirming party. This argument is objected to by the learned senior counsel for the plaintiff stating that this defense has not been raised in both the Courts below.

45. Therefore, there is a necessity to frame this Substantial Question of Law as an additional Substantial Question of Law, namely, *Whether on the date of its institution the plaintiff had the locus standi to institute the suit O.S.No.4341 of 1994 on the file of the IV Assistant City Civil Court, Chennai?.*

46. Substantial Questions of Law Nos.1, 2 and 4 need to be considered together. The plaintiff's primary grievance is that the suit had been dismissed relying upon the documents filed in C.C.No.7225 of 2004. It is no doubt true that the Civil Court is not bound by the findings of the Criminal Court and the same can be relied on to find out if the proceedings had ended in an acquittal or a conviction. However, the evidence produced before the criminal

Court can be considered independently by the civil Court to compare the evidence that has been given in the two proceedings. Section 20 of the Specific Relief Act provides that the grant of a decree for specific performance is subject to Judicial discretion. Therefore, a responsibility is cast on the Court to weigh all the evidence placed before it and exercise this discretion on sound and reasonable judicial principles.

47. Serious allegations of forgery and fraud has been made out against the plaintiff by the 1st defendant and criminal proceedings had also been initiated against the plaintiff by the 1st defendant. The persons who have been shown as witnesses to the agreement of sale in their statement before the Police Authorities have clearly and categorically contended that they have not affixed their signature to the agreement of sale. P.W.2 in his statement before the authorities had said that he has not signed the agreement and P.W.3 would say that he was a coolie working under plaintiff's brother and he was asked to sign typed paper and further the 1st defendant was not present when the document was signed.

48. In his evidence in the Civil Proceedings, P.W.2 would submit that he had executed Ex.X.7 as he was threatened into executing the same. However, he has admitted that after the execution of this letter, no notice has been issued by him either to the 1st defendant or to the Police alleging that his signature had been obtained by threat / coercion. P.W.3 the other witness to Ex.A.1 in the civil proceedings had stated that he is not aware as to who was the other witness who had signed Ex.A.1. He would also submit that it was the plaintiff who had prepared the document and asked him to affix his signature. Both witnesses have been acquainted with the plaintiff for over 25 years and could therefore be interested witnesses.

49. Both the Courts below have not passed their Judgement merely relying only upon the evidence given in the Criminal Court, they have also taken into account the conduct of the plaintiff to ultimately non suit him. The plaintiff has alleged that he has entered into an agreement of sale with the 1st defendant and seeks specific performance of this agreement. However, even as per his own statement (affidavit filed in support of C.R.P.No.1738 of 2021) he

has subsequently entered into an agreement with one Srivari Estate. This is also evident from Ex.B.1 legal notice dated 04.12.1995 issued by the 1st defendant to the plaintiff in which this agreement has been mentioned. There is no rebuttal to this statement. Therefore, on the date of the institution of the suit the agreement between the plaintiff and the 1st defendant was not subsisting. It would also go to show that the plaintiff was not willing to proceed with the agreement.

50. It is also on record, that the 2nd defendant had filed a suit O.S.No.3188 of 1994 even before the plaintiff had instituted a suit in which it was contended that the 2nd defendant had entered into an agreement of sale with the 1st defendant pursuant to which the 2nd defendant had discharged the mortgage and had collected all the original documents from the mortgagee. This suit was contested by the 1st defendant stating that he had not entered into any agreement of sale with Subramani, the 2nd defendant and that the 2nd defendant had clandestinely collected all the original documents from the mortgagee, which mortgage was cleared by the 1st defendant. It

appears that in this suit the signature of the 1st defendant was sent to expert opinion and the expert had given an opinion that the signature is not that of the 1st defendant. Thereafter, his legal representatives had withdrawn the suit.

51. Pursuant to the dismissal of O.S.No.3188 of 1994, the 1st defendant had also issued a legal notice Ex.B.19 calling upon legal representatives of the 2nd defendant to handover all the original documents. There are a lot of glaring discrepancies in the evidence of P.W.2 and P.W.3. P.W.3 has submitted that the agreement of sale is a hand written agreement and that he had signed the agreement which was prepared and brought by the plaintiff. P.W.2 on the contrary would submit that the document Ex.A.1 was prepared by the 1st defendant and the same is a typed document and not hand written one. Therefore, even with reference to the very nature of the document there are discrepancies in the evidence of P.W.2 and P.W.3. Further, the plaintiff has not deemed it fit to file the original agreement of sale into the Court.

52. The Courts below have considered the evidence and come

to the conclusion that the plaintiff has failed to prove the readiness and willingness particularly when even according to him agreement of sale was of the year 1993 and under that agreement the time for performance was 3 months. To overcome this clause, Ex.A.2 appears to have been prepared where the plaintiff claims that a sum of Rs.25,000/- was paid on 11.02.1994 and the time was extended till eviction of the tenants. The execution of this document has been denied by the 1st defendant and the plaintiff has not examined any witness to prove the said document and further the document has not been attested by any witness. No doubt reliance cannot be placed absolutely on the statement and evidence of witnesses in criminal Court. However, they can be looked into to verify statements made by the witnesses and the documents. In other words they have a persuasive value. Therefore, substantial question of law no.1 is answered in favour of the plaintiff.

53. As regards substantial question of law No.2, in the Judgment in the case of ***R.Shaji Vs. State of Kerala*** reported in ***2013 (14) SCC 266,*** the Hon'ble Supreme Court has observed that *"a Section 161 statement can be used for the purpose of*

contradiction". In the case on hand the Courts below have only used it for the aforesaid purpose. Therefore, this substantial question of law is answered against the plaintiff.

54. As regards Substantial Question of Law No.4, this order came to be passed after the Judgement and Decree in O.S.No.4341 of 1994. In the Judgement of the Hon'ble Supreme Court reported in ***2005 (4) SCC 370 – Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another,*** the learned Judges while discussing binding nature of findings of the Civil Court and Criminal Court on each other had observed as follows:

> *"24. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the*

other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in M.S. Sheriff vs. State of Madras AIR 1954 SC 397 give a complete answer to the problem posed :

"(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

(16) Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal

justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under S. 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.

Therefore, this question of law is answered in favour of the 1st defendant.

55. Further, being a suit for specific performance where discretion has to be applied judicially by the Court the Court has to consider the conduct of the plaintiff. The plaintiff has failed to prove readiness and willingness. The plaintiff would contend that by virtue of Ex.A.2 the time for performance has been indefinitely

extend till such time the 1st defendant refuses to execute the deed. However, as observed earlier Ex.A.2 has not been proved by the plaintiff. Further by admitting to entering into an agreement along with the 1st defendant with M/s.Srivari Estate the plaintiff has clearly demonstrated a lack of willingness to proceed further with Ex.A.1 agreement of sale.

56. Next the plaintiff had contended that he is in possession of the property. However, he has failed to prove the same. Neither Ex.A.1 nor Ex.A.2 contain a recital that possession was handed over to the plaintiff. That apart, Ex.A.7, which are receipts said to have been issued by tenants have been proved to be created by the plaintiff for the purpose of the suit since receipts have been issued by persons whose names are not reflected in Ex.A.16 the notice issued by the plaintiff to the tenants to vacate and hand over vacant possession. In the light of the above, it is clearly evident that the plaintiff has not taken steps to evict the tenants and therefore the Courts below have rightly not considered this evidence in favour of the plaintiff. Therefore, the substantial question of law no.3 is also answered against the plaintiff.

57. The plaintiff has been accused of manipulating and forging documents and attempting to take advantage of his close relationship with the 1st defendant who is his paternal uncle. The 1st defendant had also canceled the power executed in favour of the plaintiff. In the Judgement of this Court reported in ***2016 (6) CTC 58 – T.Basker Vs. S.Venkatammal and others,*** this Court had observed that the plaintiff has to come to Court with clean hands and should remove all suspicion that arise on attending circumstances of the execution of Ex.A.1 in order to seek the relief of specific performance.

58. With reference to the additional substantial question of law that has been now raised, a perusal of Ex.B.1 would clearly indicate that there has been an agreement with one Srivari Estate. There has been no rebuttal by the plaintiff about the above statement that the persons belonging to Srivari Estate had come to the property stating that they had to be given possession of the property. Though the additional documents filed before the Trial Court have not been received in evidence, however, a reading of the affidavit filed in

support of C.M.P.No.823 of 2017 in A.S.No.255 of 2011 which is the subject matter of CRP.No.1738 of 2021, would indicate as follows:

> *"In para 11 of the order the Hon'ble High Court has held that the 1st defendant herein (PW1 in the Criminal case) has admitted in his evidence that he had entered into an agreement with one Srivari Estate vide Ex.P.23 dated 24.11.1993 and on perusal of the same the plaintiff is a confirming party to the said document and in which P.W.1 admitted that he had already entered into an agreement sale with the plaintiff on 06.10.1993 (Ex.A.1) and received advance that the plaintiff being a confirming party he will hand over the possession of the suit property to the agreement holder within one week."*

59. This statement has been made by the plaintiff himself and this would clearly show that even assuming that Ex.A.1 was duly executed by the 1st defendant in favour of the plaintiff however on the date of the filing of the suit the plaintiff did not have subsisting

agreement with the 1st defendant. Therefore, it is clear that the plaintiff did not have locus standi to file the suit. Therefore, he cannot seek a relief of specific performance of an agreement which he had made over Ex.A.1 by executing the agreement of sale with Srivari Estate as a confirming party. This also indicates that the plaintiff is neither ready nor willing to proceed further with the agreement. Therefore the additional substantial question of law is answered against the plaintiff.

60. In the result, the Second Appeal dismissed. The Civil Revision Petition is closed. No costs.

21.06.2024

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
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To

1.The II Additional City Civil Court,
Chennai.

2.The IV Assistant City Civil Court,
Chennai.

P.T. ASHA, J,

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Pre-Delivery Judgment in
S.A.No. 680 of 2021

21.06.2024