



S.A.No.652 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.652 of 2019

and

C.M.P.No.11800 of 2019

Krishnaveni

.. Appellant

Vs.

1.K.Duraisamy

2.Kuppammal

3.Radha Rukkumani

4.Narashimma Raj

5.Selvamani

.. Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree in A.S.No.71 of 2016 on the file of the learned Additional District (Fast Track) Judge at Mettur dated 30.01.2019 in reversing the judgment and decree passed in O.S.No.56 of 2004, dated 28.06.2016, on the file of the learned Subordinate Judge at



S.A.No.652 of 2019

Mettur, Salem District.

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For Appellant : Mr.M.R.Jothimanian

For R1 : Mr.S.P.Vishnu Prasanth
for Mr.V.Nicholas

For R4 : Mr.C.Parthiban

R2 : Died

For RR3 & 5 : Served, No Appearance

JUDGMENT

The present Second Appeal arises out of the judgment and decree passed by the Court of the learned Additional District (Fast Track) Judge at Mettur in A.S.No.71 of 2016 dated 30.01.2019, in allowing the appeal against the judgment and decree of the learned Subordinate Judge at Mettur in O.S.No.56 of 2004 dated 28.06.2016, and thereby decreeing the suit for specific performance of an agreement of sale.

2. The appellant before me is the 4th defendant to the suit.

3. For the sake of convenience, the parties will be referred to as per



S.A.No.652 of 2019

their rank in the suit.

WEB COPY

4. The plaintiff/1st respondent herein presented a suit in O.S.No.56 of 2004 for the relief of specific performance of an agreement of sale dated 15.09.2003. In terms of this agreement, which is a registered document, the original defendant Nos.1 and 2 had agreed to sell the property for a sum of Rs.2,50,000/-. As per the deed, the plaintiff pleaded that he had paid a sum of Rs.2,25,000/- leaving the balance of Rs.25,000/-. The period of performance for an agreement was eleven months. The last date for the said agreement was 14.08.2004.

5. On 05.08.2004, the plaintiff issued a suit notice calling upon the defendant Nos.1 and 2 to appear before the Sub Registrar, Jalakandapuram, Mettur Taluk, Salem District for the purpose of converting the sale agreement, dated 15.09.2003, into a sale deed. He would plead that he was waiting in the Sub Registrar's Office from 11 a.m. to 3 p.m., but the defendant Nos.1 and 2 did not appear before the Sub Registrar's Office. Being left with no other option, he presented a suit on 25.08.2004 seeking relief of specific performance.



S.A.No.652 of 2019

WEB COPY

6. Defendant Nos.1 and 2 were served with the summons, and they entered appearance and filed a detailed written statement.

7. According to them, the property belonged to one Marakkal/the elder sister of the 1st defendant. They would plead that the said Marakkal died on 15.06.2002 and consequently, a “WILL” written by her on 18.01.2021 had come into force. In terms of this “WILL”, the suit schedule mentioned property was bequeathed to one Selvamani/the last daughter born to defendant Nos.1 and 2.

8. They would also plead that the agreement, dated 15.09.2003, is a false one. They would project an alternative case that they required an amount of Rs.1,00,000/-, and had approached the plaintiff for the said amount. The plaintiff had agreed to advance the said amount, and had taken them to the Sub Registrar's Office. At that time, he assured that he will take the mortgage deed from them as a security for the amount of Rs.1,00,000/- advanced by them, but instead of getting the mortgage deed, he had committed a fraud on them, and had obtained an agreement of sale. They would specifically plead that they are not ostensible or the real owners of the



S.A.No.652 of 2019

property, and the suit agreement had been created with a view to greet the same.

9. The defendant Nos.1 and 2 would plead that pending the suit, their daughter/Selvamani had executed a registered sale deed in favour of their other daughter/Krishnaveni on 12.01.2005. Consequently, the plaintiff is not entitled for relief of specific performance as the defendants are not the owners of the property.

10. Before the written statement had been filed, defendant Nos.1 and 2 had been set *ex parte*, and the suit had been decreed on 21.12.2004. On 23.12.2004, the plaintiff deposited the remaining amount of Rs.25,000/-. In order to execute the sale deed through the process of Court, he presented a execution petition in E.P.No.11 of 2006.

11. On being aware of the said execution petition, defendant Nos.1 and 2 filed an application to condone the delay of 95 days in setting aside the *ex parte* decree, and also made out an application to condone the delay



S.A.No.652 of 2019

in representation in filing the said petition. This application to condone the delay was received as I.A.No.198 of 2005, and the learned trial Judge dismissed the petition in and by way of an order dated 06.08.2007.

12. Aggrieved by the same, a Civil Revision Petition was preferred before this Court in C.R.P.(NPD)No.2315 of 2012. The said revision was allowed on 29.06.2012, and the delay of 95 days in filing the application to set aside the *ex parte* decree was condoned. Thereafter, on the direction of this Court, the learned trial Judge set aside the *ex parte* decree, and took up the matter for trial.

13. On the basis of these pleadings, the learned trial Judge framed the following issues :

“1. Whether the defendants 1 and 2 are not the owner of the suit property is true and correct?

2. Whether the sale agreement dated 15.09.2003 is executed only for loan transaction is true and correct?

3. Whether the plaintiff is always readiness and willingness to



S.A.No.652 of 2019

perform the part of contract is true and correct?

WEB COPY

4. Whether the plaintiff is entitled to get the relief of specific performance or alternate relief?

5. To what are the reliefs, the plaintiff is entitled to do? ”

14. On the side of the plaintiff, he examined two witnesses, namely the plaintiff himself as P.W.1, and one Muthusamy, as P.W.2. On the side of the defendants, the 4th defendant, namely Krishnaveni, alone examined herself, and she did not mark any other document other than the sale deed dated 12.01.2005.

15. On the basis of these pleadings and documentary evidences let in before the Court, the learned trial Judge came to the following conclusion:

(1) The plea, that the agreement dated 15.09.2003 is a mortgage, is a false plea, and the registered agreement is true and genuine.

(2) The plaintiff has been ready and willing to get the sale deed executed.

(3) As defendant Nos.1 and 2 are not the owners of the property, the



S.A.No.652 of 2019

plaintiff is not entitled for a decree for specific performance. Hence, the Court granted a decree for return of an advance amount of Rs.2,25,000/- together with an interest at the rate of 12 % per annum from 15.09.2003 till the date of passing of the decree and further, the said amount will carry an interest of 6 % till the date of realization. He also directed the defendant Nos.3 to 7 to pay the costs in the suit.

16. Defendant Nos.3 to 7 are none else than the son and daughters of the original defendants Thulasi and S.Ramalinga Chettiyar. Thulasi and S.Ramalinga Chettiyar had four daughters and one son, they are as follows :

- (1) Kuppammal (D3)
- (2) Krishnaveni (D4)
- (3) Radha Rukkumani (D5)
- (4) Narashimma Raj (D6)
- (5) Selvamani (D7)

17. The aforesaid persons were brought on record as the legal representatives of the deceased defendant Nos.1 and 2.



S.A.No.652 of 2019

18. Aggrieved by the dismissal of the suit for specific performance, the plaintiff preferred an appeal before the learned Additional District Judge at Salem. The said appeal was received as A.S.No.71 of 2016. The appeal was heard by the learned Additional District Judge (Fast Track), Mettur. He allowed the appeal in and by way of a judgment dated 30.01.2019. By the said judgment, the lower appellate Court decreed the suit for specific performance. Hence, the present Second Appeal.

19. This Second Appeal was admitted on 04.06.2019 on the following substantial questions of law :

“1. Whether the plaintiff/1st Respondent is entitled to get Decree for Specific Performance based on the Exhibit A1 dated 15.09.2003?

2. Whether the 1st Appellate court is properly appreciating Exs.A1 and B1 to decree the suit and reversing the judgment of the trial court dated 28.06.2016?

3. Whether Thulasi was owned the suit



WEB COPY



S.A.No.652 of 2019

*property as claimed by the plaintiff based on Ex.A1
dated 15.09.2003?*

*4. Whether the 1st Appellate court erred in
reversing the judgment and decree of the Trial court
dated 28.06.2016 made in O.S.No.56 of 2004 that
directing the defendants to return the advance
amount of Rs.2,25,000/- with interest as alternative
relief? ”*

20. On service of notice, Mr.V.Nicholas entered appearance on behalf of the 1st respondent, and Mr.C.Parthiban entered appearance on behalf of the 4th respondent.

21. Heard Mr.M.R.Jothimanian, appearing on behalf of the appellant, Mr.S.P.Vishnu Prasanth, for Mr.V.Nicholas, appearing on behalf of the 1st respondent, and Mr.C.Parthiban, appearing on behalf of the 4th respondent.

22. Mr.M.R.Jothimanian would submit that the transaction, dated



S.A.No.652 of 2019

15.09.2003, is a loan transaction that had been entered between his mother and father, namely the 1st and the 2nd defendants. He would submit that the amount that had been paid under the agreement was Rs.2,50,000/-. Out of which, the plaintiff pleads that he had paid the sum of Rs.2,25,000/-, and the balance that remaining was only Rs.25,000/-, for which the period that was granted was eleven months.

23. He would plead that the plaintiff had not proved his readiness and willingness in order to get the benefit of the decree. He would also point out from the judgment of the lower appellate Court that the learned Judge decreed the suit for specific performance without reference to Section 16(c) of the Specific Relief Act. These arguments of Mr.M.R.Jothimanian was supported by Mr.C.Parthiban, who is none else than the brother of the appellant, and an other legal heir of the original defendants.

24. Mr.S.P.Vishnu Prasanth would submit that the plaintiff had paid the substantial amount of Rs.2,25,000/- on the date of agreement itself, and all that remained to pay is a paltry sum of Rs.25,000/-, and he had produced evidence to show that he was ready and willing, and was also ready to



S.A.No.652 of 2019

present himself before the Sub Registrar's Office on 09.08.2004. He would state that the lower appellate Court had correctly appreciated the position that the property came to Thulasiammal by virtue of being a sister of Marakkal/the original owner of the property.

25. He would state that before the lower appellate Court, he had produced Ex.A7 and Ex.A8 in order to substantiate the fact that during the lifetime of Marakkal, she had entered into an agreement with the plaintiff on 06.02.2002 agreeing to alienate the property for a sum of Rs.2,25,000/-. He would point out that his client had paid substantial amount to the defendants, and that within two days from the date of an *ex parte* decree, on 23.12.2004 itself, he had deposited the remaining amount. Therefore, this proves his readiness and willingness. He would state that the judgment of the first appellate Court is correct in law, and it does not require any interference at the hands of this Court.

26. In a suit for specific performance, the condition precedent for a party to prove before he obtains a decree is that he was ready and willing to get the sale agreement converted into a sale deed. In terms of an unamended



S.A.No.652 of 2019

Section 16(c) of the Specific Relief Act, the specific words are “aver and prove”. In case, the plaintiff does not prove his readiness and willingness before the Court, being a personal bar, the Court cannot decree a suit for specific performance. It is the duty of the Court, which decrees a suit for specific performance, to come to the conclusion with a clear and categorical term that the plaintiff had been in such position so as to satisfy the requirements of Section 16(c) of the said Act.

27. As rightly contended by Mr.M.R.Jothimanian, a perusal of the judgment of the lower appellate Court would show that nowhere had the Court come to the conclusion that the plaintiff was ready and willing to convert the sale agreement into a sale deed.

28. It is here that I have to take note of the misappreciation of law by the trial Court as well as by the lower appellate Court. An issue of title is alien in the suit for specific performance. This is because, in terms of Section 54 of the Transfer of Property Act, an agreement of sale does not confer any interest in immovable property in favour of the agreement holder. An agreement of sale continues in the realm of contract and therefore, when a



S.A.No.652 of 2019

suit for specific performance is filed, it is the enforcement of that contract which the Court grants. An issue of title is absolutely irrelevant to such a suit. The trial Court as well as the lower appellate Court had laboured themselves on the issue of title instead of concentrating on the requirements of the Specific Relief Act and the Indian Contract Act. The trial Court came to the conclusion that the 1st and 2nd defendants are not the owners of the property, and the learned first appellate Judge came to the conclusion that the 1st and 2nd defendants are the owners of the property.

29. As pointed out above, the ownership is absolutely irrelevant in a suit for specific performance. Unfortunately, the Courts below have spent much time on this issue. I shall therefore concentrate whether the plaintiff had proved his readiness and willingness which is the first substantial question of law that has to be answered in this case.

30. The plaintiff moved an application for recording additional evidence before the lower appellate Court. Taking advantage of the order granted by the lower appellate Court, he marked Ex.A7 and Ex.A8. The procedure has required under Order XLI Rule 28 of the Code of Civil



S.A.No.652 of 2019

Procedure had been followed. The plaintiff entered the box and marked the aforesaid two documents. These are agreement of sale entered between the plaintiff and Marakkal on 06.02.2002, and an encumbrance certificate dated 17.08.2004. The defendants cross examined him on this issue.

31. During the course of evidence, the plaintiff, who could have kept quiet without marking these two documents, unfortunately made a statement which is fatal to the case. The said statement reads as follows :

“ வா.த.சா.ஆ.1 ன் படி 15.09.2003 ஆம் தேதி
நான் துளசி அம்மாள், இராமலிங்கசெட்டியார்
ஆகியோருக்கு ரூபாய்.2,25,000/- கொடுக்கவில்லை
என்றால் சரிதான். ”

32. This shows that the plaintiff has given up his case as pleaded by him in the plaint. It was his clear and categorical case that on 15.09.2003, he had advanced a sum of Rs.2,25,000/- towards Ex.A1. However, in clear terms as extracted above, he had stated that he had not paid any money to defendant Nos.1 and 2. The entire substratum of this case falls to the ground. He wanted to prove to the Court that he had entered into an



S.A.No.652 of 2019

agreement with Marakkal, and had given her an advance amount of Rs.1,80,000/-.

33. It is not in dispute by both sides that Marakkal had purchased the property in the year 1972. She is sister of the 1st defendant. Since she did not have any issues on her death, the 1st defendant succeeds to the estate. Therefore, the plaintiff entered into a fresh agreement with the 1st defendant. Had the plaintiff confined himself to the agreement, dated 15.09.2003, without trying to overstate his case by entering into the witness box in the first appellate Court, perhaps, I would have some difficulty. Fortunately for the appellant, the plaintiff entered into the witness box, and admitted to the fact that he had never paid any money to defendant Nos.1 and 2, and indirectly he was trying to enforce the agreement, dated 06.02.2002, that he had entered into with Marakkal.

34. Apart from this fact, a clear and categorical statement of the plaintiff is that he was waiting in the Sub Registrar's Office on 09.08.2004. In order to substantiate this plea, he had filed Ex.A6, which is an encumbrance certificate issued by the Sub Registrar at Jalakandapuram.



S.A.No.652 of 2019

WEB COPY

35. A careful perusal of Ex.A6 shows that it was not issued on 09.08.2004, but had only been issued on 12.08.2004. Therefore, Ex.A6 does not substantiate the case of the plaintiff that he was present in the Sub Registrar's Office on that date of waiting for defendant Nos.1 and 2 to come and execute the sale deed. Having projected a false case of being present in the Sub Registrar's Office on 09.08.2004, I am not inclined to grant the relief of specific performance in favour of the plaintiff.

36. The issue of title being alien, I am not going to declare that the 7th defendant or that the appellant, who is the 4th defendant, is the owner of the property. This is because, the “WILL” dated 18.01.2001, on the basis of which the 7th defendant claims to have right over the property, was never produced before the Court.

37. Further, the argument of Mr.M.R.Jothimanian that Krishnaveni had purchased the property from Selvamani and became the owner of the property is also not relevant for this case. This is because, defendant Nos.3 to 7 had been impleaded as the legal representatives of the deceased 1st and



S.A.No.652 of 2019

2nd defendants. The legal representatives cannot take a plea higher than or one different from what had been taken by the original defendants.

Therefore, the attempt of Mr.M.R.Jothimanian is to indirectly to get a decree for title in a suit for specific performance. I am not willing to fall prey to such an argument.

38. The purchase made by the 4th defendant/Krishnaveni is a pending suit and therefore, she would be bound by any decree that is granted in the present appeal. To clarify, the purchase was made on 12.01.2005. When the suit had been presented on 20.08.2004, a sale of a property *pendente lite* is not void. In terms of Section 52 of the Transfer of Property Act, a purchaser takes the property subject to any decree that may be passed in the suit which is pending.

39. In the light of the above discussion, since I do not find that the plaintiff has proved his readiness and willingness, and as he has projected a false case before the Court by producing Ex.A6, I am inclined to allow the appeal.



S.A.No.652 of 2019

40. Accordingly, the Second Appeal stands allowed. The judgment and decree of the Court of the learned Additional District Judge (Fast Track) at Mettur in A.S.No.71 of 2016, dated 30.01.2019, is set aside. The suit for specific performance will stand dismissed.

41. The plaintiff will be entitled to an alternative relief of return of an advance amount of Rs.2,25,000/-. The decree of the trial Court with respect to Clause Nos.2 to 6 shall stand restored. As a security for repayment of the amount, there shall be a charge over the suit schedule mentioned property. The said amount shall be repaid to the plaintiff on or before three months from the date of receipt of a copy of this order. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

30.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



WEB COPY



S.A.No.652 of 2019

V. LAKSHMINARAYANAN, J.

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To

- 1.The learned Additional District (Fast Track) Judge,
Mettur
- 2.The learned Subordinate Judge,
Mettur, Salem District

S.A.No.652 of 2019
and
C.M.P.No.11800 of 2019

30.07.2024