



S.A.No. 652 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 652 of 2021
&
C.M.P.No. 13276 of 2021

S.Devaraj

...Appellant

Vs.

1.Jayalakshmiammal

2.P.L.Priya

3.Usman

4.S.Santhi

5.R.Sankaramurthy

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 22.02.2021 made in A.S.No.9 of 2016 on the file of the Principal District Judge,



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Kancheepuram at Chengalpattu, partly allowed / modifying the Judgement and Decree dated 16.11.2015 made in O.S.No.122 of 1998 on the file of the Additional Sub Judge, Chengalpattu.

For Appellant : Mr. M.Sriram

For Respondent 1: Mr. V.Manohar

For Respondents : Mr. J.D.Srikanth Varma
2 to 5.

J U D G M E N T

The plaintiff in a suit for specific performance is the appellant before this Court challenging the concurrent Judgement and Decree passed against him. The facts are set out herein below and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.122 of 1998 on the file of the Additional Sub Court, Chengalpattu for a direction to the defendants to execute and register sale deed in favour of the plaintiff for a sum of Rs.1,20,000/- as agreed in the agreement of sale dated



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28.05.1993.

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3. It is the case of the plaintiff that the defendants 1 to 3 had agreed to sell Plot Nos.14 to 23 comprised in Krishna Nagar layout in S.Nos.60/2A, 2B, 2C and 1, 59/20 of an extent of 8 grounds at the rate of Rs.15,000/- per ground. The plaintiff would submit that the agreement was reduced into writing in an agreement of sale dated 28.05.1993. On the date of the agreement, a sum of Rs.5,000/- was given as advance. The defendants agreed to execute the sale deed on receiving the balance sale consideration.

4. The plaintiff would submit that over a period of three years he had paid a sum of Rs.11,040/- and a total sum of Rs.16,040/- had been paid as on 21.05.1996. The plaintiff would submit that he had been requesting the defendants to receive the balance sale consideration and execute the sale deed. However, the defendants were putting it off under one pretext or the other. The plaintiff thereafter came to learn that the defendants 1 to 3 have created a sham and nominal sale deed in



favour of the defendants 4 to 7 in respect of Plot Nos.19, 20, 22 and 23.

These purchasers are not bonafide purchasers as they were aware of the sale agreement between the plaintiff and the defendants 1 to 3.

5. The plaintiff had issued a legal notice dated 09.05.1998 calling upon the defendants to execute the sale deed. The 2nd defendant alone sent a reply admitting the agreement but alleging that the plaintiff had not performed his part of the contract. Further, the allegation that no payment has been received by defendants 1 to 3 after the advance of Rs.5,000/- is absolutely false. Originally on 27.01.2000, the Court had passed an ex parte decree against defendants.

6. The defendants 1 and 2 had filed an application to set aside the ex parte decree in I.A.No.103 of 2001 along with the application to condone the delay. The said application was dismissed on 26.07.2001, as against which C.R.P.No.2874 of 2001 was filed before this Court. The said revision petition appears to have been dismissed for default and thereafter the application for restoring the revision with a delay had



been filed by the defendants 1 and 2 in C.M.P.No.16441 of 2002, which was also dismissed on 18.07.2003. Therefore, it is the contention of the plaintiff that the decree against the defendants 1 and 2 became final. The 3rd defendant had died after the suit.

7. The defendants 4 to 7 had contested the suit. The 4th defendant had filed a written statement contending that she is the bonafide purchaser for value and the agreement of sale now put forward in this suit is nothing but a result of collusion between the plaintiff and defendants 1 to 3. The 4th defendant would submit that she had purchased the property in Plot No.23 from the 1st defendant as a power agent of Salsa Ammal, Kamalam and Indira. The 4th defendant would submit that they did not find any encumbrance when they had perused the encumbrance certificate before purchasing the property. They would submit that the sale in her favour is true valid, therefore, the suit may be dismissed.



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8. Similar written statements were filed by defendants 5, 6 and 7.

The 5th defendant had purchased Plot No.19, the 6th defendant had purchased Plot No.20 and the 7th defendant had purchased Plot No.22.

9. The plaintiff had filed a reply statement stating that possession has been with the plaintiff from the date of the sale agreement and documents have also been handed over to him.

10. The defendants 4 to 7 had filed an additional written statement stating that the 3rd defendant who is the mother of the defendants 1 and 2 was very much alive and she had gone to Madurai, after which there was no details about her whereabouts. They would submit that along with the 1st defendant, defendants 4 to 7 had also filed an application for setting aside the decree and that application was allowed and thereafter the suit came to be tried afresh. The contention that the dismissal of the application for setting aside the ex parte decree filed by defendants 1 and 2 would be binding on these defendants is totally false. The order dismissing the application filed by defendants 1



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and 2 is not on merits.

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11. Second additional written statement also came to be filed by defendants 4 and 7, in which they had contended that on the date of the agreement, namely, 28.05.1993, the defendants 1 to 3 were not absolute owners of the property and one Munusamy was the power agent of Salsa Ammal, Kamalam and Indira, even as early as on 28.10.1991. This fact was suppressed and thereafter the agreement was entered into by the plaintiff with the defendants 1 to 3, which was written in English, which is a language not known to defendants 1 to 3. The defendants would submit that the suit was not maintainable since on the date of the agreement, the defendants 1 to 3 were not absolute owners and could not execute the sale deed in favour of the defendants. The defendants would submit that the plaintiff has come to the Court with unclean hands.



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12. The learned Judge had framed several issues and additional issues. The plaintiff had examined himself as P.W.1 and three other witnesses were examined on his side and Ex.A.1 to Ex.35 were marked on the side of the plaintiff. The 5th defendant examined himself as D.W.1 and marked Ex.B.1 to Ex.B.9.

13. The learned Additional Sub Judge, Chengalpattu on perusing the conduct of the plaintiff had returned a finding that the plaintiff was not ready or willing to proceed with the sale and the manner in which the amounts have been paid and the time taken between each payment would clearly prove the same. The learned Judge had also upheld the purchase by the defendants 4 to 7 that they were bonafide purchasers for value. The learned Judge held that ex parte decree against the 1st and 2nd defendant would have no bearing on the defendants 4 to 7 as they had purchased the property even prior to the passing of the ex parte decree and their application for setting aside the ex parte decree had been allowed.



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14. Challenging the said Judgement and Decree, the plaintiff had filed A.S.No.9 of 2016 on the file of the Principal District Judge, Kancheepuram at Chengalpattu. The learned Principal District Judge, Kancheepuram at Chengalpattu, also confirmed the Judgement and Decree of the Trial Court and dismissed the appeal. Challenging the same, the plaintiff is before this Court.

15. Notice was ordered in the above Second Appeal and the respondents have entered appearance through counsel.

16. Mr.M.Sriram, learned counsel appearing for the appellant / plaintiff would submit that the plaintiff has proved his readiness and willingness. The series of payments that have been made at regular intervals and depositing of the money after the ex parte decree would prove the readiness and willingness of the plaintiff. Further, the defendants 1 and 2 have taken out an application for setting aside the ex parte decree against them and the same has been dismissed and there were no further appeals against the said dismissal order. Therefore, he



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would submit that the Second Appeal has to be allowed.

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17. The learned counsels for the respondents would submit that a mere perusal of the documents in question would clearly show how the plaintiff was never been ready and willing to perform his part of the contract. For this reason, the defendants 1 and 2 had sold the property to defendants 4 to 7. They would submit that both the Courts below have rightly considered the evidence and this Court should not upset the findings of the Courts below. Therefore, they sought for the dismissal of the Second Appeal.

18. Heard the learned counsels on the either side and perused the records.

19. The suit is one for specific performance. Section 16 (c) of the Specific Relief Act, clearly enjoins the plaintiff to prove not only the readiness but also willingness to proceed with the agreement of sale. Readiness is the capacity to pay the sale consideration and willingness



is the desire to move forward with the sale.

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20. In the instant case, a mere perusal of the pleadings would clearly show that towards the balance sale consideration of a sum of Rs.1,15,000/-, the plaintiff has been making payment at a regular intervals spread over three years and only a sum of Rs.11,040/- was paid as on 21.05.1996. Even on that said date, the plaintiff was still owing a sum of Rs.1,03,960/-. Therefore, even after three years the plaintiff had not even paid 50% of the sale consideration. This clearly shows his inability to raise funds and his intention to prolong the agreement.

21. A reading of the agreement of sale, ExA.1 would indicate that defendants 1 to 3 are not the original owners of the property and clause 2 of this agreement would simply state that the original vendors of the property have been fully paid the sale consideration by the respective parties.



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22. That apart, the plaintiff has only paid a sum of Rs.16,040/- as on 21.05.1996, which does not even constitute 25% of the total sale consideration. The total sale consideration is a sum of Rs.1,20,000/- as claimed by the plaintiff. The plaintiff would contend that an unregistered sale deed came to be executed on 21.06.1996. However, there is absolutely no mention about this sale deed in the plaint. Therefore, it is crystal clear that this document has been created after the filing of the suit.

23. Even as per records, it is seen that the balance sum of Rs.1,03,960/- had been deposited to the credit of the suit only on 04.02.2000 after the ex parte decree came to be passed in the suit. Therefore, from the date of the agreement, it has taken the plaintiff nearly 7 and odd years to deposit the money into the Court. This clearly shows that the plaintiff was neither ready nor willing to proceed with the agreement of sale.



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24. The Trial Court had dismissed the suit in its entirety and the Lower Appellate Court had modified the decree stating that the plaintiff would be entitled to the refund of a sum of Rs.16,040/-. The defendants have not challenged the said order. Therefore, I see no reason to interfere with the Judgement and Decree of the Lower Appellate Court.

25. Accordingly, the Second Appeal stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

1.The Principal District Judge,
Kancheepuram,
Chengalpattu.

2.The Additional Sub Judge,
Chengalpattu.

P.T. ASHA, J,



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