



S.A.No.492 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.07.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.492 of 2024

Somu

...Appellant

Vs.

1.G.V.Murugesan
2.M.Kumaravel
3.Baby Lakshmi
4.Dhanusu
5.Akash
6.Banumathi @ Banu

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 to set aside the Judgment and Decree dated 04.10.2023 passed by the Additional District Judge Dharmapuri in A.S.No.1 of 2019 confirming the judgment and decree dated 23.08.2018 in O.S.No.58 of 2011 passed by the learned Subordinate Judge Harur.

For Appellant : Mr.M.Devaraj



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JUDGMENT

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The plaintiff in the suit is the appellant in the Second Appeal. The Second Appeal is filed against the confirming judgment of the lower appellate court.

2. The parties will be referred to as per their litigative rank before the trial court.

3. The plaintiff filed the suit for specific performance and for permanent injunction restraining the defendants from creating any encumbrance in the suit properties in favour of third parties. The plaintiff's case was that the defendants as owners of the suit properties agreed to sell the same to the plaintiff and executed a sale agreement on 14.10.1998. The sale consideration was agreed at Rs.1,90,000/- and an advance of Rs.1,75,000/- was paid on the day of agreement and possession was handed over to the plaintiff by the defendants. The plaintiff was always ready and willing to perform his part of the contract. In spite of the plaintiff's legal notice dated 24.03.1999, the defendants failed to perform their part of the contract and so the plaintiff was constrained to file the suit for the aforesaid relief. The written statement was filed by the 1st defendant and adopted by the defendants 2 and 3.



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4. The defendants stated that the plaintiff was a stranger to them. They denied the execution of the sale agreement as also handing over of possession to the plaintiff. The defendants stated that in June 1995, they had borrowed a sum of Rs.1,00,000/- from Chitirai Finance company and at that time, the managing director of the company one Venkatachalam obtained signatures of the defendants in blank signed stamp papers, blank promissory notes and unfilled blank cheques. The defendants also handed over the title deeds of the suit properties at that time. The defendants further stated that entire loan amount along with interest was paid by them in 36 installments of Rs.4,380/- and when the defendants approached the said Venkatachalam for return of the blank signed documents, the said Venkatachalam demanded Rs.1,50,000/- and refused to return the documents. The defendants stated that the said Venkatachalam was in the habit of cheating and grabbing people's property. The defendants stated that even at the time of the sale agreement the value of the property was around Rs.5,00,000/- and therefore it was clear that Venkatachalam and the plaintiff conspired and created the suit sale agreement only to defraud the defendants. The defendants therefore prayed for dismissal of the suit.



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5. The trial court framed relevant issues and on consideration of the same dismissed the suit on its findings that the plaintiff failed to prove that the suit sale agreement was valid. The trial court found that the suit sale agreement was created on the basis of the documents obtained as security for the loan. The trial court also found that the plaintiff had failed to establish that he was ever ready and willing to perform his part of the contract. On appeal by the plaintiff to the lower appellate court, the lower appellate court after framing the points for consideration confirmed the findings of the trial court and dismissed the appeal holding that the contradictions in the evidence of the plaintiff proved that the suit agreement was not genuine and valid and further the plaintiff had failed to prove his readiness and willingness to perform his part of the contract. The lower appellate court also non suited the plaintiff for approaching the Court with unclean hands and suppressing material facts. Aggrieved by the concurrent judgment of the Courts below, the plaintiff has filed the above Second Appeal.

6. At the time of admission, the learned counsel for the appellant submitted that the Courts below erred in their finding that the suit sale agreement was not genuine. The learned counsel submitted that the court's below failed to appreciate



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the evidence in proper perspective, that the Courts below exaggerated the minor discrepancies in the oral evidence of the plaintiffs side for concluding that the suit agreement was not genuine, that the Courts below erred in non suiting the plaintiff for not establishing his readiness and willingness to perform his part of the contract. The learned counsel therefore prayed that the judgment of the courts below were to be interfered with.

7. I have heard the learned counsel for the appellant and I have perused the materials placed before me.

Brief Facts:

8. The suit sale agreement was entered into on 14.10.1998 for the sale of the suit properties for sale consideration of Rs.1,90,000/-. As per the recitals in the sale agreement an advance of Rs.1,75,000/- was paid and possession was also handed over to the plaintiffs. In the sale Agreement, the period for performance was fixed at '6' months. According to the plaintiff, he was always ready and willing to perform his part of contract and he even sent legal notice on 24.03.1999 calling upon the defendants to perform their part of the contract but as the defendants refused, the suit was filed. The defendant's case in brief was that the



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plaintiff fabricated the suit sale agreement by utilising the signed blank papers given by the defendant at the time of the borrowal of Rs.1,00,000/- from Chitirai Finance company and therefore the suit sale Agreement was invalid. Further possession continued with the defendant's and the allegation to the contrary in the plaint was false. The defendant therefore prayed for the dismissal of the suit.

9. I find that on the issue of validity of the sale agreement and readiness and willingness of the plaintiff to perform his part of the contract that the Courts below on consideration of the evidence on record both oral and documentary have elaborately discussed the same and rendered factual findings which in my view are judicious and therefore in the absence of any compelling reasons, I find no reason to interfere with the same. One more aspect which raises a doubt on the validity of the suit sale Agreement is the recital as to possession. Apart from the findings on the aforesaid issues the Courts below have also non suited the plaintiff for approaching the Court with unclean hands on possession. It was the defendant's specific case that the defendant had never executed the sale agreement in favour of the plaintiff and also did not put the plaintiff in possession of the suit properties. In the suit sale agreement, it was recited that the plaintiff was put in possession of



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the suit properties. The plaintiff in his pleadings also stated that in pursuance of the suit sale Agreement he was given possession of the suit properties. But when the plaintiff was cross-examined by the defendants on possession, he categorically admitted that he was never put in possession of the suit property. The plaintiff further admitted that though it was recited in the agreement that he was put in possession, possession was never given to him. The evidence of the plaintiff in the cross-examination is as follows:

“தாவா சொத்தில் நான் எப்பொழுதும் சுவாதீனத்தில் இல்லை. சுவாதீனம் கொடுப்பதாக சொல்லியிருந்தார்கள். ஆனால் அவர்கள் கொடுக்கவில்லை. நான் வழக்கு நிலுவையில் இருக்கும் போதும் நான் எதுவும் காவல்நிலையத்தில் புகார் கொடுக்கவில்லை.”

From the aforesaid evidence of the plaintiff, it is clear that possession was never given to the plaintiff by the defendants and therefore the contention of the defendant's, that the suit sale Agreement was fabricated cannot be ruled out. Assuming that the Agreement was valid, the plaintiff pleaded in the plaint that he was put in possession, knowing pretty well that possession was only with the defendant's. It is therefore clear that the plaintiff has approached the Court with



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unclean hands on material term of the agreement, namely possession. It is also pertinent to note here that in the legal notice dated 24.03.1999 in Ex.A3, the plaintiff did not whisper about his possession, if really the plaintiff was put in possession, he would have stated the same in the legal notice. It is therefore clear that the plaintiff has approached the Court with unclean hands on vital term of the contract and therefore the Court's below rightly non-suited the plaintiff for approaching the Court with unclean hands.

10. It is trite that the relief of specific performance is a discretionary and equitable relief. Therefore the person who seeks relief of specific performance should approach the Court with clean hands. The statement of fact made by the plaintiff in the plaint that he was put in possession of the suit property is admittedly a false statement. Therefore I am of the view that the plaintiff is not entitled to the relief of specific performance and the Courts below have rightly non suited the plaintiff on this ground also.

11. The Hon'ble Supreme Court in the case of *Lourdu Mari David and Others Versus Louis Chinnaya Arogiaswamy* reported in 1996 (5) SCC 589, held



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as follows:

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“2. It is settled law that the party who seeks to avail of the equitable jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.....”

I am of the view that the said judgment squarely applies to the facts of the case. I therefore find that no substantial questions of law arise for consideration by this Court and hence the Second Appeal is dismissed at the admission stage itself.

No costs.

dsn

24.07.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No



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N.MALA,J.

dsn

To

1. The learned Additional District Judge,
Dharmapuri.

2.The learned Subordinate Judge,
Harur.

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