



AS.No.614 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2023

Pronounced on : 03.01.2024

CORAM:
THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

AS.No.614 of 2014

John Amarnath

... Appellant

Vs.

A.Thambiraj

...Respondent

PRAYER: Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 of CPC to set aside the judgment and decree dated 26.03.2014 passed in OS.No.117 of 2011 on the file of the III Additional District Judge, Tiruvallur at Poonamallee.

For Appellant : Mr.M.Manivasagam
for M/s.M.Manivasagam Associates

For Respondent : Mr.K.Shanmugakhani

JUDGMENT

This appeal suit is filed against the judgment and decree dated 26.03.2014 passed in OS.No.117 of 2011 on the file of the III Additional



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District Judge, Tiruvallur at Poonamallee, thereby allowed the suit for declaration and recovery of possession.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The defendant is the appellant and the plaintiff is the respondent. The case of the plaintiff is that the suit properties plot No.47, 48, 49 were purchased by the plaintiff by the registered sale deed dated 17.04.2009 vide document No.2232 of 2009 from the power holder G.Selvakumar on behalf of his principal S.Senthil. Prior to the sale deed, one, P.Dharmaraj, a real estate businessman acted as power agent on behalf of his principals i.e. M/s.Alamelu and Gunasekaran who had executed power of attorney to deal with the properties admeasuring 41 cents out of 57 cents of land. The said 41 cents of land is part and parcel of the settlement deed in favour of the principals vide document No.9701 of 1989 and patta No.565. Thereafter, the power holder P.Dharmaraj along with other properties had formed layout in the name and style of Annai Nagar for the total extent of the property admeasuring 3.70 acres. The subject property plot Nos.47 to 49 are



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comprised in survey No.193/1A6. He had entered into an agreement for sale with the defendant. However, the defendant had committed defaults in payment of various instalments and no sale deed was executed in favour of the defendant by the said P.Dharmaraj. In fact, he caused notice on 05.04.2007 to get back the amount which was paid by the defendant. He had also given public notice in the daily newspaper 'Makkal Kural' on 24.05.2007. Therefore, the said agreement was unenforceable and the defendant cannot claim any right or title over the suit properties. Therefore, the said P.Dharmaraj had executed three different sale deeds in respect of plot No.47, 48 & 49 in favour of three different persons by the registered sale deeds. All the three purchasers had executed different power of attorney in favour of one, E.V.Saravanan to deal with the subject properties. In turn, the power holder had executed three different sale deeds in favour of the plaintiff's vendor. Thereafter, he had executed power of attorney in favour of Mr.Selvakumar and in turn, he had executed sale deed in favour of the plaintiff.

3.1 The further case of the plaintiff is that taking advantage of the absence of the plaintiff from the month of July to Middle of October 2009, the defendant trespassed into the property and had put up two huts and also



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obtained electricity connection. In fact, the plaintiff filed writ petition before this Court in WP.No.8607 of 2010 for disconnection of electricity supply. Therefore, the plaintiff caused notice and filed the suit.

4. Resisting the same, the defendant filed written statement stating that the suit properties are in possession and enjoyment of the defendant. Though the plaintiff had purchased the suit property by way of the sale deed dated 17.04.2009, the plaintiff never had taken possession of the suit properties. Insofar as the suit property is concerned, the defendant had entered into an agreement for sale and agreed to pay the sale consideration by way of instalments. After completion of entire payments by instalments, the said Dharmaraj had handed over the possession of the suit properties and also promised to executed sale deeds. The plaintiff was never in possession of the suit properties. At the time of purchase of the suit properties, the possession was not handed over to the plaintiff at any point of time. Therefore, the said Dharmaraj had no title over the property and the sale deeds executed by him are not valid. Even at the time of sale deed executed by the said Dharmaraj in favour of third persons on 22.11.2007, no possession was handed over to them. In turn, they had executed power of attorney in favour of one, Saravanan



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and in turn, he had executed sale deed in favour of Senthil on 24.11.2008.

Even at that point of time, no possession was handed over to the said Senthil.

In turn, the said Senthil had executed sale deed through his power holder Selvakumar in favour of the plaintiff on 17.04.2009. Therefore, from the year 1995 onwards, the defendant is in possession and enjoyment of the suit properties. He had put up construction and also obtained electricity service connection. The writ petition filed by the plaintiff also got dismissed and directed to approach the civil court.

4.1 The defendant further stated that the defendant originally booked four plots No.39, 47, 48, 49 from the said P.Dharmaraj. Thereafter, the defendant had paid all the instalments regularly and executed sale deed in favour of the defendant's wife in respect of plot No.39 alone in the month of March 2000. However, insofar as plot No.47 to 49, the sale consideration was increased into many folds after entering into agreement for sale. Therefore, the defendant refused to pay the illegal demand made by the said Dharmaraj. Therefore, the other investors lodged complaint along with the defendant. However, one FIR was registered in crime No.923 of 2007 for the offence under Sections 420, 406 and 506(i) of IPC, in which the defendant also stood



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as one of the witness. Therefore, he prayed for dismissal of the suit for declaration and recovery of possession.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- 1) வாதி வழக்குத்தொத்தின் உரிமையாளரா?
- 2) வாதி கோரியுள்ள விளம்புகை பரிகாரம் வழக்குத்தொத்தில் கிடைக்கக்கூடியதா?
- 3) வாதிக்கு வழக்குத்தொத்தின் சுவாதீனம் கிடைக்கத்தக்கதா?
- 4) வாதிக்கு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
- 5) வாதிக்கு வேறு என்ன பரிகாரம் கிடைக்கத்தக்கது?

6. In support of the plaintiff's case, P.W.1 was examined and fifteen documents were marked as Ex.P.1 to Ex.P.15. On the side of the defendant, D.W.1 and D.W.2 were examined and Ex.D.1 to Ex.D.30 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court partly decreed the suit. Aggrieved by the same, the defendant has filed this appeal suit.



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7. The learned counsel for the defendant would submit that all the sale deeds executed in favour of the plaintiff and his vendor are sham and nominal, because no possession was handed over to any of his vendor after execution of sale deed. In the year 1995 itself, the defendant entered into an agreement in the instalment scheme. After payment of the entire amount, in the year 1998, the said Dharmaraj had entered into an agreement for sale with the defendant and he was put in possession even in the year 1998 itself. Thereafter, he had put up a hut in the said properties and also obtained electricity service connection. The said Dharmaraj was a real estate broker and he cheated so many persons and after having been received the entire sale consideration, he failed to execute any sale deed in favour of the investors. Therefore, all the victims lodged complaint and FIR was registered for the offence punishable under Sections 406, 420 & 506(i) of IPC on the file of the Inspector of Police, T3 Korattur Police Station in crime No.923 of 2007, which culminated into trial in CC.No.22 of 2009 on the file of the Judicial Magistrate, Ambattur. Therefore, the plaintiff is none other than a name lender and the said Dharmaraj encumbered the property after having been entered into agreement for sale with the defendant. Though the defendant claimed adverse possession and also permissive possession under Section 53A of the



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Transfer of Property Act, he cannot seek relief on both heads since it is not maintainable. Therefore, he restricted the relief only under Section 53A of the Transfer of Property Act.

8. Per contra, the learned counsel for the plaintiff would submit that the plaintiff is a bonafide purchaser under the registered sale deed for valid sale consideration. When the plaintiff was not in station, the defendant illegally encroached and put up hut in the suit properties. Thereafter, he also obtained electricity service connection. Therefore, the plaintiff also filed writ petition before this Court in WP.No.8607 of 2010. Though the writ petition was dismissed, the plaintiff was directed to submit fresh representation for disconnection of electricity service obtained by the defendant and the same was directed to be considered subject to the result of this appeal suit. The criminal case initiated as against the plaintiff's vendor also ended in acquittal by the judgment dated 10.02.2021. The defendant cannot blow hot and cool air at the same time by claiming adverse possession and also permissive possession as contemplated under Section 53A of the Transfer of Property Act. Though the defendant contended that he paid the entire sale consideration and thereafter the said Dharmaraj failed to execute sale deed, the defendant failed



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to produce any receipt for the entire payments of sale consideration. Even he categorically admitted that part of the sale consideration was not paid and as such, the said Dharmaraj had executed sale deed in favour of other third parties. Hence, the trial court rightly decreed the suit. As such, he prayed for dismissal of this appeal suit.

9. Heard, Mr.M.Manivasagam, the learned counsel appearing for the defendant, and Mr.K.Shanmugakhani, the learned counsel appearing for the plaintiff.

10. On hearing both sides, the following points arise for consideration in this appeal suit.

(i) Whether the plaintiff is entitled for the relief of declaration and recovery of possession?

(ii) Whether the possession of the defendant is protected under Section 53A of the Transfer of Property Act?

11. The plaintiff purchased the suit properties by the registered sale deed dated 17.04.2009 vide document No.2232 of 2009. The suit properties



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are plot Nos.47 to 49 comprised in survey No.193/1A6. Originally the suit property along with other properties were owned by one, Dharmaraj. He laid out the properties into house plots in the name of Annai Nagar. He floated scheme to sell the house plots. In the said scheme, various persons joined and they paid sale consideration by way of instalments. Accordingly, the defendant booked four house plots i.e. plot Nos.39, 47 to 49. Though he had paid substantial amount, insofar as the plot No.47 to 49, he failed to pay the entire sale consideration. Therefore, no sale deed was executed in favour of the defendant by the said Dharmaraj. Insofar as the plot No.39 is concerned, he had paid full sale consideration and the same plot was registered in favour of the defendant's wife in the year 2000 itself. Since the defendant failed to pay the entire sale consideration, plots were sold out to the third parties by three different sale deeds dated 22.11.2007. All the three sale deeds were registered vide document No.12573 to 12575 of 2007. The purchasers had executed three power of attorneys dated 11.11.2008 in favour of one, E.V.Saravanan vide document No.1294, 1293 & 1295 of 2008. In turn, the power holder had executed sale deeds in favour of one, Senthil who is none other than the vendor of the plaintiff. In turn, the said Senthil had executed power of attorney in favour of one, Selvakumar vide document No.269 of 2009 dated



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16.04.2009. On the strength of the power of attorney, the said power holder had executed sale deed in favour of the plaintiff dated 17.04.2009. Whereas the defendant claims title over the property by the unregistered agreement for sale dated 01.06.1998, 18.06.1998. He also marked passbook to show that he paid some instalments in order to purchase the house plots No.47 to 49. Therefore, by the registered sale deeds, the plaintiff and his vendors had derived title over the suit properties. Further, when the plaintiff was not in station, the defendant had trespassed into the suit property and had put up hut and also obtained electricity service connection.

12. Insofar as the title is concerned, the plaintiff categorically proved his case and the trial court rightly decreed the suit. Insofar as the possession is concerned, though the plaintiff stated that when the plaintiff was in Kanyakumari, the suit properties were trespassed by the defendant and put up a hut, the other documents which were marked by the defendant are clear that the defendant was put in possession of the suit properties at the time of agreement for sale. However, the defendant failed to pay the entire instalments and as such, no sale deeds were executed in respect of plot Nos.47 to 49. Insofar as the plot No.39 is concerned, he had paid the entire instalments and



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as such, the plaintiff's vendor Dharmaraj had executed sale deed in favour of the defendant's wife. It is also evident from the criminal complaint lodged by the other persons who had entered into agreement for sale with the said Dharmaraj for non registration of sale deeds in their favour, in which the defendant is one of the witnesses. The criminal case ended in acquittal.

13. On perusal of the deposition of various persons who had entered into an agreement for sale with the said Dharmaraj, they had deposed that after payment of some instalments, the said Dharmaraj due to escalation of the value of the property and other expenses, they were asked to pay some more amount. After payment of the said amount, they were registered sale deeds by the said Dharmaraj. Therefore, his vendor was acquitted by the criminal court. However, the defendant failed to pay the balance sale consideration as demanded by the said Dharmaraj and as such, no sale deeds were executed in his favour in respect of plot Nos.47 to 49. Though the defendant claims protection under Section 53A of the Transfer of Property Act, the agreement for sale should be registered. Whereas the agreement entered between the defendant and the said Dharmaraj are unregistered one dated 01.06.1998 and 18.06.1998. Though the defendant was put in possession, he failed to pay the



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balance sale consideration and as such, no sale deed was executed in his favour. Therefore, the defendant is not entitled to have protection under Section 53A of the Transfer of Property Act.

14. That apart, the defendant did not take any steps to register the sale deed in his favour as against the said Dharmaraj. If at all the defendant had paid entire sale consideration, definitely he would have stepped into filing a suit for specific performance. No prudent man would keep quiet after having been paid the entire sale consideration without insisting for registration of sale deed. In fact, the said Dharmaraj had given public notice in the daily newspaper on 24.05.2007 in respect of the suit properties. After period of four months, he had executed sale deed to three different persons. Therefore, the plaintiff is a bonafide purchaser and there is absolutely no collusion or conspiracy between the plaintiff and the said Dharmaraj. As such, all the points are answered in favour of the plaintiff and this Court finds no infirmity or illegality in the judgment and decree passed by the trial court. Hence, this appeal suit is liable to be dismissed.



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15. Accordingly, this appeal suit is dismissed and the judgment and decree dated 26.03.2014 passed in OS.No.117 of 2011 on the file of the III Additional District Judge, Tiruvallur at Poonamallee is confirmed. No order as to costs.

03.01.2024

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The III Additional District Judge,
Tiruvallur at Poonamallee.
- 2.Section Officer,
V.R.Section,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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