



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.764 of 2022

and

C.M.P. No.15629 of 2022

1.V.Shankar

2.S.Vasanthamani

... Appellants

Vs.

Devika

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 22.04.2022 passed in A.S. No.14 of 2016, on the file of the Principal Sub Court, Coimbatore, upholding the decree and judgment dated 21.01.2016 passed in O.S.No.215 of 2012, on the file of the Principal District Munsif, Coimbatore.

For Appellants : Mr.R.Rajarajan

For Respondent : Mr.C.Mukunth, Senior Counsel
for M/s.Sarvabhauman Associates



WEB COPY



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

JUDGMENT

The unsuccessful defendants before both the Courts below have filed the present second appeal.

2. The respondent / plaintiff filed the suit in O.S.No.215 of 2012, on the file of the Principal District Munsif, Coimbatore, for specific performance of contract and for costs.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

4.The case of the plaintiff in a nutshell is as follows :

The suit property which is a natham poromboke land in survey number 288/1 of Chinnavedampatti Village, Coimbatore was assigned in favour of the defendants 1 and 2 by the Tamil Nadu State Government through an Assignment Patta dated 30.09.1989 (Ex.A2 = Ex.A19). The



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

plaintiff and the defendants entered into an agreement of sale on 11.06.2001 (Ex.A1) in respect of the suit property and the sale consideration was fixed as Rs.23,500/-. The entire sale consideration was paid by the defendants on the date of the sale agreement. No time limit was stipulated for performance of contract. As per the terms of patta (Ex.A19) the property should not be sold or encumbered for a period of ten years. The plaintiff was put in possession of the suit property as per the sale agreement and the plaintiff also put up a shed. The plaintiff approached the defendants to execute the sale deed in her favour. However, the defendants evaded and therefore, the plaintiff was constrained to issue a legal notice dated 12.12.2011 (Ex.A4). Both the defendants received the said notice as is evidenced by the postal acknowledgment cards Ex.A5 and Ex.A6. However, the defendants did not come forward to execute the sale deed in favour of the plaintiff. Hence the suit.



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

5. The suit was resisted by the defendants on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The defendants borrowed a sum of Rs.5,000/- from the plaintiff during 2001 and the plaintiff obtained signatures of the defendants in blank papers and blank promissory notes.
- iii. The defendants did not execute the sale agreement in favour of the plaintiff.
- iv. The plaintiff was not put in possession of the suit property as alleged by her.

6. On the basis of the above pleadings, the trial Court framed the following issues :

"(i) Whether the plaintiff is entitled for directing the defendants 1 and 2 specifically to perform the sale agreement dated 11.06.2001 and to execute the sale deed as per contract and put the plaintiff in full possession in default through process of court?"



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY (ii) *To what other relief the plaintiff is entitled?"*

7. In the trial Court, the plaintiff examined herself and three other witnesses and marked Ex.A1 to Ex.A19. The second defendant examined herself. However, no documentary evidence was adduced on the side of the defendants.

8. The learned trial court judge after analysing the oral and documentary evidence on record, decreed the suit in favour of the plaintiffs vide his decree and judgment dated 21.01.2016, on the following grounds:-

- i. Though the defendants have admitted their signatures on the sale agreement they subsequently, denied the same.
- ii. The plaintiff has proved the execution of the sale agreement (Ex.A1) by adducing acceptable evidence.
- iii. The defendants, though received the legal notice dated 12.12.2011 (Ex.A4) did not issue any reply and there is no explanation for the same from them.



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

- iv. As per the assignment patta the suit property cannot be sold or encumbered for a period of ten years.
- v. Moreover, one of the conditions stipulated in the sale agreement is that the defendants should obtain House Site Development Number from the Government. The defendants did not obtain the said number.
- vi. The entire sale consideration has been paid by the plaintiff on the date of the sale agreement itself.
- vii. The suit is not barred by limitation as the plaintiff has filed the suit within three years from the date of the legal notice (Ex.A4).
- viii. The defendants have not proved that the transaction between them and the plaintiff is only a loan transaction.

9. Aggrieved over the decree and judgment passed by the trial court judge, the defendants filed an appeal in A.S. No.14 of 2016, before the Principal Sub Court, Coimbatore. The learned Principal Subordinate Judge, Coimbatore after analysing the oral and documentary evidence



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 22.04.2022, as against which the present second appeal is filed.

10. At the time of admission the following substantial questions of law were framed by my learned predecessor.

"(a) Are not the Courts below wrong in decreeing the suit for the specific performance of the agreement dated 11.06.2001 when admittedly the suit is filed after 10 year in the year 2011 and therefore barred by law of Limitation under Article 54 of the Limitation Act, 1963?

(b) Whether the Courts below are right in granting the relief of specific performance when the grant of relief against Appellant/Defendant is inequitable and when the Plaintiff is not able to prove he is always ready and willing and approached the court with clean hands?"

11. Heard Mr.R.Rajarajan, learned counsel for the appellants and Mr.C.Mukunth, learned senior counsel for the respondent.



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

12. In the written statement, the defendants have averred that the plaintiff at the time of lending a sum of Rs.5,000/- to the defendants obtained their signatures in some blank papers and blank promissory notes. However, during the course of cross examination the defendants have denied their signatures on the sale agreement itself. In the written statement, there is no specific averment that the signatures found on the sale agreement dated 11.06.2001 (Ex.A1) are forged.

13. The Special Tahsildhar, Coimbatore, had passed an assignment order in favour of the plaintiff on 30.09.1989 and subsequently, the patta was issued in favour of the defendants only on 02.06.1996 (Ex.A3). There is a clause in the patta which prohibits the defendants from alienating the suit property in favour of the third parties for ten years. However, the sale agreement was dated 11.06.2001. According to the defendants, they did not execute the sale agreement in favour of the plaintiff.



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

14. In order to prove the genuineness of the sale agreement (Ex.A1), the plaintiff relied on her evidence as well as the evidence of the attestors to the sale agreement. P.W.2, one of the attestors had deposed that on the date of the sale agreement the plaintiff paid the entire sale consideration of Rs.23,500/- and that the defendants also agreed to execute the sale deed whenever the plaintiff requests them. Tmt.Saraswathi (P.W.4) is the wife of late Kandhasamy another attesting witness to Ex.A1. Her evidence was that her husband signed as a witness in the sale agreement (Ex.A1) and that she had also visited the suit property.

15. A perusal of sale agreement (Ex.A1) shows that it consists of three sheets. The first sheet contains the stamp paper of value of Rs.10/- and other two sheets are green papers. The entire document is typewritten and the defendants' signatures are found below the typed content. There is nothing to suggest that the document was subsequently filled up after getting the signatures of the defendants 1 and 2. In fact, the



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

trial court had gone into this aspect and had observed thus:

"Ex.A1 is the sale agreement dated 11.06.2001 containing the 3 sheets in which the 1st sheet is stamp paper of value of Rs.10/- and the other two sheets are green papers and under the writings in the first and second sheets, the defendants' signature is found on the left side below the signature of 1st defendant. In the 3rd sheet after the description of property, on the left side 1st defendant Shankar's signature is found and on the right side 2nd defendant's signature found with the typewritten numbers. Under the said signatures two lines were typewritten and below it, the plaintiff's signature found. Further, below it witnesses was type written in Tamil and numbers 1, 2 were typed and then for 3rd witness number 3 was hand written. The defendants in their written statement stated that the plaintiff obtained signature on blank promissory note, blank papers and blank stamp papers. It is significant that on the 2nd page about 2/3rd part of the paper was typewritten and immediately under which in the typewritten number 1, on the left side, the 1st defendant's signature found and on the right side at No.2, the 2nd defendant's signature found. The plaintiff side pointed



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

out if the papers prepared with blank signatures, in the 2nd sheet, the signatures should have been far below and it is not so. The said point is found to be reasonable and acceptable. Similarly, in the 3rd page also the numbers 1,2 were typewritten after about 2/3rd typewritten matter of description of property and the defendants' signature is found at numbers 1, 2. Further below after typing two lines, the plaintiff's signature is found. If the Ex.A1, sale agreement is fabricated after obtaining signature such kind of precision would not be there and the signatures would be usually obtained far below and not under 2/3rd typewritten matters is acceptable. Though it is not conclusive, it creates doubt in the case of the defendants."

The above observations of the trial court judge cannot be found fault with.

16. Mr.R.Rajarajan, learned counsel appearing for the appellants contended that when the plaintiff claims that the entire sale consideration was paid on the date of the agreement she issued the suit notice only after a lapse of ten years from the date of the sale agreement



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COURT (Ex.A1) and therefore, it is barred by Article 54 of the Limitation Act.

According to him, the conduct of the plaintiff would clearly go to show that the transaction between the defendants and the plaintiff is only a loan transaction and that the defendants 1 and 2 never intended to sell the suit property in favour of the plaintiff. He relied on the decision of the Hon'ble Supreme Court in *Tejram vs Patirambhau* reported in *AIR 1997 SC 2702* and contended that when the plaintiff had paid the entire sale consideration he would not have kept quiet continuously for a period of ten years for getting the sale deed executed. He also relied on the decision of the Hon'ble Supreme Court in *Sabbir (dead) through LRs Vs Anjuman (since deceased) through LRs in Civil Appeal No.6075 of 2023* and contended that when the sale agreement is dated 11.06.2001, the suit filed by the plaintiff in the year 2001 is hopelessly barred by limitation under Article 54 of the Limitation Act.

17. In the decision in *Tejram vs Patirambhau* (cited supra) it was found that the plaintiff was a money lender and the scribe of the agreement admitted in his chief examination that he had executed several



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

similar documents. In the circumstances, it was held that the plaintiff would not have kept quiet for a period of three years for getting the sale deed executed in his favour for payment of Rs.2,000/-. In the instant case, there is no evidence to show that the plaintiff is a professional money lender and therefore, the above said decision would not apply to the facts of the present case. Similarly, in the decision in ***Sabbir (dead) through LRs Vs Anjuman (since deceased) through LRs*** (cited supra), specific time was fixed for performance of contract and the plaintiff had filed the suit beyond the period of limitation. Therefore, the above said decision would not also apply to the facts of the present case. As per Article 54 of the Limitation Act the period of limitation is three years from the date fixed for performance of contract or if no such date is fixed, when the plaintiff has notice that the performance is refused. In the instant case, the plaintiff had issued the legal notice dated 12.12.2011 (Ex.A4) to the defendants and the same was received by the defendants as is evidenced by the postal acknowledgment cards (Ex.A5 and Ex.A6). The defendants did not send any reply to the said legal notice. Thereafter, the plaintiff has filed the suit within a period of limitation i.e. three years



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

WEB COPY

from the date of legal notice issued by her. In Ex.A1, a specific mention was made that the defendants should obtain House Site Development Number from the Government and then execute the sale deed. Both the defendants admitted that they did not get the said House Site Development Number. Moreover, in the assignment patta dated 02.06.1996 (Ex.A3) there is a specific clause which prohibits the defendants from alienating or encumbering the suit property for ten years. Therefore, the plaintiff was forced to wait for such a long period. As far as immovable properties are concerned, time is not the essence of contract. In the instant case, the parties to the contract did not fix any specific time for performance of contract. In the circumstances, the contention of the defendants that the suit is hit by Article 54 of the Limitation Act cannot be sustained.

18. Both the Courts below, had properly analysed the evidence on record. The observations made by both the Courts below are based on the evidence and facts and by no stretch of imagination they can be termed as perverse. Therefore, the substantial questions of law 1 and 2



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

are answered against the appellants.

19. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected Civil Miscellaneous Petition is also closed.
- ii. the decree and judgment dated 22.04.2022 passed in A.S. No.14 of 2016, on the file of the Principal Sub Court, Coimbatore, and the decree and judgment dated 21.01.2016 passed in O.S.No.215 of 2012, on the file of the Principal District Munsif, Coimbatore, are upheld.

27.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



WEB COPY



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

To

1. The Principal Sub Court, Coimbatore.
2. The Principal District Munsif, Coimbatore.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.764 of 2022
& C.M.P. No.15629 of 2022

R. HEMALATHA, J.

mtl

S.A.No.764 of 2022
and C.M.P. No.15629 of 2022

27.11.2024