



S.A.No.420 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.420 of 2023
and
C.M.P.No.12830 of 2023

Abdul Farook

... Appellant

Vs.

1. G.Lalithammal

2. Naveethakrishnan

Mrs.Kasuthuriammal (Deceased)

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 17.03.2020 in A.S.No.11 of 2017 passed by the learned II Additional District Judge, Vellore at Ranipet, reversing the judgment and decree of O.S.No.211 of 2014 dated 11.03.2016 passed by the learned Principal Subordinate Judge, Arakkonam.

For appellant

: Mr.Leelesh Sundaram

for M/s.Nathan and Associates

For respondents

For R1

: Mr.T.Sundararajan

For R2

: Mr.A.Abdul Rahman



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JUDGMENT

The third party to the proceedings has filed the above second appeal seeking to challenge the concurrent judgment and decree passed by the Courts below.

2. The facts are briefly set out hereinbelow and the respondents are referred to in the same rank as before the Trial Court and the appellant herein is referred to as the appellant.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S No.211 of 2014 on the file of the Principal Subordinate Judge, Arakkonam, seeking specific performance of an agreement dated 28.08.2002 executed by the defendants in her favour.

2.2. It is the case of the plaintiff that the defendants, who are the owners of the schedule property, had agreed to sell the property for a sum of Rs.2,00,100/- and an agreement of sale was executed in this



regard. The defendants had received Rs.10,000/- on the very same day.

Further, a sum of Rs.40,000/- was received on 04.04.2003 and a sum of Rs.75,000/- was received on 20.09.2006. The amounts paid later were endorsed on the reverse of the agreement. In all, the defendants had received a sum of Rs.1,25,100/- from the plaintiff.

2.3. The plaintiff would submit that she was always willing and ready to perform her part of the contract by paying the balance sale consideration, however, the defendants were not coming forward to execute the sale deed. Therefore, a legal notice dated 02.04.2009 was issued to the defendants. However, the defendants had neither replied to the same nor come forward to execute the sale deed. Therefore, the plaintiff has come forward with the suit for specific performance.

2.4. The defendants had filed a written statement *inter alia* admitting the agreement of sale by stating that the agreement of sale was entered into mainly to tide over the financial hardship which the defendants were undergoing and the agreement clearly stipulated a year



time for its performance. Further, the plaintiff was making the payment in instalments which would go a long way to prove that she was not ready or willing to proceed further with the agreement. The defendants had denied the receipt of additional sums of Rs.40,000/- on 04.04.2003 and 2003 and a sum of Rs.75,000/- on 20.09.2006. Therefore, they sought for the dismissal of the suit for specific performance.

TRIAL COURT:

3. The learned Subordinate Judge, on considering the pleadings, had framed the issues as to

“1. Whether the plaintiff was ready and willing to perform her part of contract as per the sale agreement dated 28.08.2002?

2. Whether the plaintiff is entitled for the relief as prayed for?

3. To what other relief?”

4. The plaintiff had examined herself as P.W.1 and examined one Varadhan and one Gopalan as P.W.2 and P.W.3 respectively, and



marked Exs.A1 to A7. The second defendant had examined himself as D.W.1 and the deceased first defendant had examined herself as D.W.2 and no documents were marked on their side.

5. The learned Judge, ultimately, dismissed the suit on the ground that the plaintiff had not proved her readiness and willingness. This judgment and decree was taken on appeal in A.S No.11 of 2017 on the file of the II Additional District Court, Vellore at Ranipet.

LOWER APPELLATE COURT:

6. The Lower Appellate Court had framed following points for consideration:

“1.Whether the defendants have received Rs.75,000/- from the plaintiff on 20.09.2006 towards the balance of sale consideration and whether the suit is barred by limitation?

2.Whether the plaintiff has proved her ready and willing to perform her part of contract?



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3. Whether the Trial Court has committed any error in holding that this suit is barred by limitation and dismissed the plaintiff's suit?

4. Whether the judgment and decree passed by the Trial Court in O.S.No.211/2014 dated 15.03.2016 is liable to be set aside and whether the appeal is liable to be allowed?"

7. The learned Judge held that the only dispute in this case was,

“ Whether the plaintiff has proved the payment of Rs.75,000/- towards the balance of sale consideration to the defendants on 20.09.2006 and whether this suit is saved by limitation as per the endorsement dated 20.09.2006 and whether the default clause mentioned in the sale agreement can act as a ground for the dismissal of the plaintiff's suit?"

8. The Trial Court had relied upon this default clause. However, Lower Appellate Court took into consideration the fact that



the plaintiff had entered into the agreement of sale dated 28.08.2002 and ultimately, the suit has been filed on 14.06.2009. However, under Ex.A3, the defendants have received a further sum and made an endorsement for extending the agreement. The learned Judge had also taken note of the discrepancies in the evidence of D.W.1 and D.W.2 with reference to these endorsements and the fact that D.W.2 (the first defendant) had denied her admitted signatures in Exs.A1, A2, A5 and A6.

9. Therefore, once the extension of period of contract has been proved, then, the Lower Appellate Court held that the Trial Court had erred in holding that this suit was barred by limitation. Since the suit was dismissed only on this ground, the Lower Appellate Court has allowed the appeal and decreed the suit as prayed for. This judgment and decree came to be passed on 17.03.2020. However, the defendants have not preferred any appeal against the said judgment and decree.

10. Heard the learned counsel appearing on either side and



perused the materials available on record.

DISCUSSION:

11. It appears that pending this suit, the defendants had alienated the property to the appellant herein. In fact, the appellant would submit that his brother-in-law viz., Abdul Gani, had purchased a property from Kasthuri Ammal under a registered sale deed dated 10.10.2013 even pending the suit before the Sub Court, Arakonam. Thereafter, the said Abdul Gani had sold the property to the appellant's wife under a sale deed dated 15.07.2021. Thereafter, within a few days, the appellant's wife had settled the property in his favour under a settlement deed dated 05.08.2021. Neither the purchase of the property by the appellant's brother-in-law nor the sale in favour of the appellant's wife and the settlement in favour of the appellant were brought to the notice of the Courts below nor did the appellant has implead himself in the proceedings. The appellant is a *pendente lite* purchaser.

12. The written statement had been filed on 02.07.2014 after



the alleged sale. Even then, the sale in favour of the appellant's brother-in-law had not been brought to the notice of the Courts below. The suit had originally been filed on 14.06.2009 on the file of the Sub Court, Ranipet, and numbered as O.S.No.94 of 2009 thereafter, the suit appears to have been transferred to the Sub Court, Arakkonam and re-numbered as O.S.No.211 of 2014. Therefore, the sale has taken place pending the suit.

13. The suit is in respect of the property measuring totally 660 sq.ft. comprised in S.F.No.760/1 in Bazaar Street of Thakkolam Village, Arakonam. The property is said to be bounded by street in the north and in the west and south by the lands of the defendants and in the east by the house of one Mahalakshmi. The property that has been sold to the appellant's brother-in-law as is evidenced by the sale deed annexed in the typed set of papers dated 10.10.2013 is an extent of 1,568 sq.ft. comprised in Old S.No. 760/1Part and New S.No.1362/5 which was bounded on the north by Bazaar Street, south by Govindhasamy and Venureddy's fruit shop, east by the house of



Mahalakshmi and west by one Karimbai Shahil Ameer's vacant site and the property is said to be measuring 16 feet on the east-west and 98 feet on the north-south.

14. The defendants had sold the property in favour of the third party on 10.10.2013 and the defendants have filed a written statement on 02.07.2014. Even during the evidence, the defendants have not referred to the sale in favour of the third party. They have also not challenged the judgment and decree of the Lower Appellate Court.

15. The learned counsel for the appellant had argued that there was no agreement of sale and only a declaration has been filed by the plaintiff in the suit. This argument fails in the light of the fact that Ex.A1 is an agreement of sale duly signed by both the parties and the defendants have not denied the execution of agreement of sale. Further, the description of the property stated supra which is the subject matter of the agreement of sale and the description of the property that has been sold to the appellant are not one and the same.



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16. It is also seen that the appellant has filed an application under Section 47 of the C.P.C. before the Execution Court and the same appears to be pending. Since the suit and appeal had been contested by the defendants without bringing to the notice of the Court, the sale in favour of the third party and as they have not challenged the judgment and decree in A.S.No.11 of 2017, the appellant has made out no grounds to interfere with the concurrent judgments of the Courts below. Further, the appellant can work out its remedy in Section 47 application filed by him before the Execution Court.

Accordingly, this second appeal stands dismissed. Consequently, the connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
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To

1. The II Additional District Judge, Vellore at Ranipet.
- 2.The Sub Judge, Arakonam.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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